B

March 7, 2003

Senator Carol A. Roessler
P.O. Box 7884
Madison, WI 53707-7882

Representative Suzanne Jeskewitz
P.O. Box 8952
Madison, WI 53708

RE: Audit of Department of Public Instruction's Compliance with Wis. Stat. § 121.02(1)(t)

Dear Senator Roessler and Representative Jeskewitz:

I am writing to request a legislative audit of the Department of Public Instruction ("DPI") to assess its compliance with the talented and gifted ("TAG") student mandates of Wis. Stat. §§ 118.35, 121.02(t) and related regulations. I also request the Audit Bureau's expertise in identifying why TAG standards are not being adequately met by many school districts in Wisconsin, why DPI audits have not been successful in ensuring compliance with these mandates and to recommend potential solutions to this dilemma.

Background on TAG Mandates

As you may be aware, our Legislature has defined twenty minimal standards which all Wisconsin school districts must meet in order to receive state funding. *See,* Wis. Stat. § 121.02(1). In its wisdom, our Legislature placed an emphasis on ensuring that *all* Wisconsin school children are successful learners. To that end, our elected representatives included standards to ensure that TAG students in Wisconsin public schools are provided with access to an appropriate program to fully develop their potential. Specifically, state school districts must:

> (t) provide access to an appropriate program for pupils identified as gifted and talented.

To further this goal, the Legislature directed the State Superintendent of Public Instruction to establish rules that clarify minimal TAG standards. *See*, Wis. Stat. §§ 118.35 and 121.02(5). Pursuant to that charge, DPI promulgated Wis. Admin. Rule § PI 8.01(2)(t) which provides in relevant part:

> 2. Each school district board shall establish a plan and designate a person to coordinate the gifted and talented program. Gifted and talented students shall be identified as required in s. 118.35(1), Stats. This identification shall include multiple criteria that are appropriate for the category of gifted including intelligence, achievement, leadership, creativity, product evaluations, and nominations. A pupil may be identified as gifted or talented in one or more of the categories under s. 118.35(1), Stats. **The school district board shall provide access, without charge for tuition, to**

> **appropriate programs for pupils identified as gifted or talented as required under ss. 118.35(3) and 121.02(1)(t), Stats.** The school district board shall provide an opportunity for parental participation in the planning of the proposed program. (emphasis added)

Compliance with these TAG standards is ensured through audit procedures set forth at Wis. Stat. § 121.02(2):

> In order to ensure compliance with the standards under sub. (1), the department shall conduct an inquiry into compliance with the standards upon receipt of a complaint and may, on its own initiative, conduct an audit of a school district.

DPI's own rules commit the department to annually audit at least 10% of all school districts to ensure their compliance with the minimal state standards set forth in § 121.02, Stat. - including the mandates for TAG students. DPI's rules also committed the department to audit each school district at least once every ten years to ensure compliance with the state's standards–again, including TAG mandates. Wis. Admin. Rule § PI 8.02(1).

As discussed further below, it appears as if DPI has not been performing routine and meaningful audits to ensure that all Wisconsin school districts are meeting the minimal TAG mandates. As a consequence, it appears that many school districts throughout the state are operating without adequate TAG programs and, in some cases, without any TAG program whatsoever.

DPI Acknowledges the Importance of TAG Mandates and the Fact That They Are Often Not Met

DPI has developed some guidance for school districts to use in meeting their TAG mandates. In one guide, the TAG standard is described as being consistent with Wisconsin's philosophy that all children are entitled to an education commensurate with their abilities and interests. Notably, DPI further acknowledges that research continues to show that TAG children "are the most underserved pupils in the public schools:"

> Standard [121.02](t) requires school districts to assure that the needs of gifted and talented students are understood and accommodated in all Wisconsin public schools from kindergarten through grade 12. The standard is consistent with the philosophy of Wisconsin school districts that children are entitled to an education commensurate with their abilities and interests.
>
> **Research continues to show that, as a group, gifted and talented children are the most underserved pupils in the public schools. Too often, these pupils are ignored, restricted, or underachieving and, if not part of the typical dropout statistics, have become in-school dropouts.**
>
> The intent of the standard is to cause schools to develop the means by which gifted/talented pupils will be identified and, once identified, provided access to a set of systematic and continuous instructional activities which are appropriate to the developmental needs of those children and youth so identified. (emphasis added)

DPI was correct. TAG children have enormous potential. They may grow up to become a leader in the field of biotechnology, a world-renowned performer or a public leader. However, this cannot happen automatically. Gifted and talented children need to be challenged and their unique skills must be nurtured. As DPI recognizes, many gifted and talented children do not receive the educational programs and services they need to live up to their potential. As a consequence, many of these children lose interest in school or learn how to expend minimal effort for top grades and develop poor work habits. This is a tragedy not only for students but also for the State of Wisconsin. These children are an important part of our future.

It Appears that DPI and Many State School Districts Do Not Comply With State TAG Mandates

Despite the importance of TAG programs and the Legislature's clear directive to fully fund such programs, it appears that many state school districts are not meeting their obligations. This noncompliance is exacerbated, if not encouraged, by DPI's apparent lax auditing of school district compliance with TAG mandates.

Indeed, at one time, DPI audited school district programs on a somewhat consistent basis. However, in recent years, there appears to be little, if any, audits being routinely performed on a statewide basis to ensure and enforce compliance with TAG mandates. This deficiency is likely caused by DPI's failure to devote adequate resources toward this effort.

I have been informed that DPI currently devotes only one person who works three days a month on TAG issues. It is simply impossible for that person to audit all the school districts in the state on a routine basis–let alone once every ten years as mandated in Wis. Admin. Code § PI 8.02. This is especially disconcerting in that I understand that one person is also required to be available to school districts for consulting on TAG issues and programs.

This lax auditing has resulted in school districts under-funding TAG programs and devoting inadequate resources to TAG children. School districts and DPI personnel have publicly stated that TAG programs are often ignored because there is no enforcement and therefore are not deemed a priority. In other words, school districts know they are not meeting TAG standards and DPI is not correcting the situation.

Conclusion

Despite what I believe are well-grounded views on DPI and school districts' compliance with TAG mandates, I would welcome an independent analysis of the relevant issues. The Audit Bureau could provide such an analysis. The Audit Bureau is charged with reviewing the performance and program accomplishments of state departments (including DPI). *See*, Wis. Stat. § 13.94.

I would suggest that such an audit include, but not necessarily be limited to, the following issues:

- Has DPI devoted adequate resources and funding to meet its statutory obligation to ensure every school district is are meeting TAG mandates?

- Is DPI currently devoting sufficient resources to its auditing program so that statewide compliance with the Legislature's TAG mandate at Wis. Stat. § 121.02(t)?

- Is DPI currently devoting sufficient resources to assist school districts in meeting their TAG mandates?

- Are our school districts adequately meeting the needs of TAG children? If not, why not?

- Are our school districts meeting the TAG standards set forth in state statutes and rules? If not, why have DPI audits not been successful in ensuring compliance with these mandates

- Recommendations for correcting any problems that are identified in the auditing process.

I look forward to your response to this request and offer my willingness to participate and assist in completing this important review.

Sincerely,

Todd Palmer

TEP:jav

cc: Governor James Doyle
State Superintendent Elizabeth Burmaster
Joint Legislative Audit Committee

WISCONSIN LEGISLATURE

P.O. BOX 8952 · MADISON, WI 53708

March 11, 2003

Janice Mueller, State Auditor
Wisconsin Legislative Audit Bureau
22 E. Mifflin Street, Suite 500
Madison, WI 53703

Dear Janice,

We are writing to request that the Legislative Audit Bureau conduct an audit of the Department of Natural Resources Sex-Age-Kill formula for estimating the size of the deer population.

As you may know, the Department of Natural Resources uses a formula based upon the sex and age of deer killed in order to estimate the size of the deer herd. This formula uses a reconstruction technique for determining the population immediately prior to the harvest season. This formula relies heavily on the estimated number of bucks in the population to derive the overall herd estimate; however, the number of does harvested has vastly increased in recent years, and our current formula does not take these changes into account.

The Department of Natural Resources believes the size of the deer herd is too large, and is currently proposing an extension of the 9-day deer gun season to 23 days, as one tool for reducing the herd. Because the current nine-day deer gun season has an economic impact of $1 billion for the state of Wisconsin we believe that before any change is made to the long-standing tradition of a nine-day hunt, we must be certain the DNR has an accurate estimate of the herd size.

We are requesting an audit of the current S-A-K formula to ensure the formula's accuracy to ensure Wisconsin's white-tail herd is protected from over-harvesting. The Department of Natural Resources acknowledges that the estimates derived from the current S-A-K formula can be off by more than 20% in either direction. With an over-winter herd goal of approximately 900,000 deer, a 20% over-estimate error on a herd-size of 900,000 would have long-lasting and devastating effects on not only Wisconsin's white-tail population, but also our economy. Thus, it is imperative that we have the most accurate formula possible for estimating the size of our deer population.

Thank you in advance for your consideration of this request. Should you have any questions or concerns, please feel free to call Rep. Gunderson's office at 266-3363 or Senator Decker's office 266-2502.

Sincerely,

Representative Scott Gunderson
83rd District
Wisconsin State Assembly

Senator Russ Decker
29th Senate District
Wisconsin State Senate

WISCONSIN STATE LEGISLATURE

Joint Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

March 18, 2003

Representative Scott Gunderson
Room 7 West, State Capitol
Madison, WI 53708

Dear Representative Gunderson;

We received the request that you recently submitted to the Joint Audit Committee. This letter serves as confirmation of that request.

Each request submitted receives serious consideration. As conscientious legislators, we all welcome new ways to do things less expensively or more efficiently. We, as co-chairs of the committee, aim to meet once a month to discuss all requests. Shortly after the meeting, one of us will call you directly to let you know the status of your request.

Thank you again for your request and we will be in touch soon.

Sincerely,

Senator Carol Roessler
Co-chairperson
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz
Co-chairperson
Joint Legislative Audit Committee

SENATOR ROESSLER
P.O. Box 7882 • Madison, WI 53707-7882
(608) 266-5300 • Fax (608) 266-0423

REPRESENTATIVE JESKEWITZ
P.O. Box 8952 • Madison, WI 53708-8952
(608) 266-3796 • Fax (608) 282-3624

WISCONSIN STATE LEGISLATURE

Joint Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

March 18, 2003

Senator Russ Decker
Room 323 South, State Capitol
Madison, WI 53708

Dear Senator Decker;

We received the request that you recently submitted to the Joint Audit Committee. This letter serves as confirmation of that request.

Each request submitted receives serious consideration. As conscientious legislators, we all welcome new ways to do things less expensively or more efficiently. We, as co-chairs of the committee, aim to meet once a month to discuss all requests. Shortly after the meeting, one of us will call you directly to let you know the status of your request.

Thank you again for your request and we will be in touch soon.

Sincerely,

Senator Carol Roessler
Co-chairperson
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz
Co-chairperson
Joint Legislative Audit Committee

SENATOR ROESSLER
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Appleton Post-Crescent March 14, 2003

Legislative Audit Bureau counts beans, not deer

Right now, the state Legislative Audit Bureau is auditing the Wisconsin lottery, the state's employee trust funds, the state Historical Society, the state's mental health institutions and the University of Wisconsin System's staffing and expenditures.

It just got done investigating the state's W-2 program and the regulation of the state's nursing homes.

That's the kind of thing it does – intricate analysis of complicated issues. But, now, two state legislators want to send the bureau out to count deer because hunters are telling them there aren't as many whitetails in Wisconsin as the state says there are.

The Department of Natural Resources uses a Sex-Age-Kill formula to estimate the size of the herd. Rep. Scott Gunderson, R-Waterford, and Sen. Russ Decker, D-Schofield, are worried that the formula is inaccurate and that the DNR's proposal to extend the deer gun-hunting season from nine to 23 days will devastate the herd.

Two things. First, gun hunters killed 1.62 million deer between 1998 and 2001. If the deer herd were much smaller than the DNR's 1.6 million estimate, there wouldn't have been 261,000 deer to kill in 2002 because the population would have been too depleted. Second, the Legislative Audit Bureau has better things to do right now.

If Gunderson and Decker really want to serve hunters, they should concentrate their efforts on restoring the political independence of the DNR and the Office of the Public Intervenor.

LORRAINE M.
SERATTI
STATE REPRESENTATIVE
36TH ASSEMBLY DISTRICT

P.O. Box 8953, State Capitol • Madison, Wisconsin 53708-8953
Toll-Free: (888) 534-0036 • Fax: (608) 282-3636 • Rep.Seratti@legis.state.wi.us

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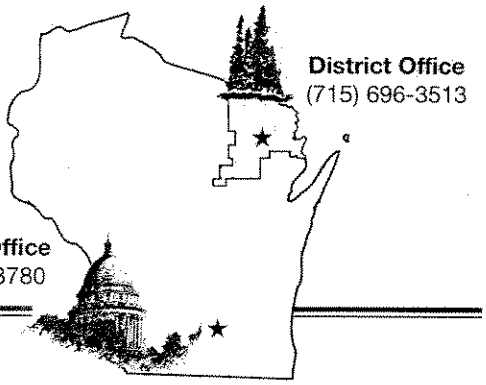

March 14, 2003

Representative Suzanne Jeskewitz
Co-Chair Joint Legislative Audit Committee
314 North, State Capitol
Madison, WI 53708

Dear Representative Jeskewitz,

As the Chair of the Assembly Committee on Small Business, I have concerns relating to the effective use of economic development funds in the Department of Commerce.

As you know, small businesses fuel our state's economy and provide a stable, secure job base. In my past experience with the Department of Commerce, the focus and distribution of funds appears to favor larger businesses.

I would appreciate your consideration of on an audit of the Department of Commerce programs to determine the percentage of funds allocated to large versus small employers, the number of jobs created, the retention of jobs created and the sales volume generated by companies receiving economic development assistance. It would also be very helpful to know the class of industry – manufacturing, service, technology, etc.

With our current fiscal crisis we must ensure maximum utilization of all available resources to help grow our economy.

Finally, 95% of Wisconsin businesses employ fewer than 100 people and generate 80% of all new jobs in the state. This is a compelling reason to analyze the utilization of our economic resources.

Your thoughtful consideration of my request will be greatly appreciated.

Sincerely,

Lorraine M. Seratti
State Representative
36th Assembly District

cc: Senator Roessler

WISCONSIN STATE LEGISLATURE

Joint Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

March 26, 2003

Representative Alvin Ott
318 North, State Capitol
Madison, Wisconsin 53702

Dear Representative Ott:

Thank you for your letter, dated February 6, 2003, requesting that the Joint Legislative Audit Committee direct the Legislative Audit Bureau to review the use of funds derived from pesticide and fertilizer fees. After discussions with the State Auditor, we have directed the Audit Bureau to conduct a limited-scope review of the use of these fees. At our request, Bureau staff will contact the agencies which receive funding from pesticide and fertilizers fees, analyze the allocation and use of funds within and among the programs funded, and prepare a brief report on their findings.

If you have any additional questions or concerns, please contact our offices.

Sincerely,

Senator Carol A. Roessler, Co-chair
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

cc: Mr. Scott Hassett, Secretary
Department of Natural Resources

Mr. Rod Nilsestuen, Secretary
Department of Agriculture, Trade, and Consumer Protection

Janice Mueller, State Auditor

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WISCONSIN STATE LEGISLATURE

Joint Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

February 19, 2003

Representative Al Ott
Room 318 North
State Capitol

Dear Representative Ott:

We received the request that you recently submitted to the Joint Audit Committee. This letter serves as confirmation of that request.

Each request submitted receives serious consideration. As conscientious legislators, we all welcome new ways to do things less expensively or more efficiently. We, as co-chairs of the committee, aim to meet once a month to discuss all requests. Shortly after the meeting, one of us will call you directly to let you know the status of your request.

Thank you again for your request and we will be in touch soon.

Sincerely,

Senator Carol Roessler
Co-chairperson
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz
Co-chairperson
Joint Legislative Audit Committee

SENATOR ROESSLER
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WISCONSIN STATE LEGISLATURE

Joint Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

March 26, 2003

Senator Tom Reynolds
306 South, State Capitol
Madison, Wisconsin 53702

Dear Senator Reynolds:

Thank you for your letter, dated February 5, 2003, requesting that the Joint Legislative Audit Committee direct the Legislative Audit Bureau to review the state's Public Benefits program, which is funded in part by fees assessed on utility ratepayers. After discussions with the State Auditor, we have directed the Audit Bureau to conduct a limited-scope review of the program. At our request, Bureau staff will contact agency staff who administer the program, review program goals, analyze program expenditures, and prepare a brief report on their findings.

If you have any additional questions or concerns, please contact our offices.

Sincerely,

Senator Carol A. Roessler, Co-chair
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

cc: Mr. Marc Marotta, Secretary
Department of Administration

Janice Mueller, State Auditor

SENATOR ROESSLER
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WISCONSIN STATE LEGISLATURE

Joint Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

February 19, 2003

Senator Tom Reynolds
Room 306 South
State Capitol

Dear Senator Reynolds:

We received the request that you recently submitted to the Joint Audit Committee. This letter serves as confirmation of that request.

Each request submitted receives serious consideration. As conscientious legislators, we all welcome new ways to do things less expensively or more efficiently. We, as co-chairs of the committee, aim to meet once a month to discuss all requests. Shortly after the meeting, one of us will call you directly to let you know the status of your request.

Thank you again for your request and we will be in touch soon.

Sincerely,

Senator Carol Roessler
Co-chairperson
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz
Co-chairperson
Joint Legislative Audit Committee

SENATOR ROESSLER
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REPRESENTATIVE
STEVE
FOTI
ASSEMBLY
MAJORITY LEADER

March 27, 2003

Representative Suzanne Jeskewitz, Co-Chairperson
Joint Audit Committee
State Capitol, Room 314 North

Senator Carol Roessler, Co-Chairperson
Joint Audit Committee
State Capitol, Room 8 South

Dear Representative Jeskewitz and Senator Roessler:

I am writing to you concerning the Patients Compensation Fund (PCF) administered by the Office of the Commissioner of Insurance. We have all seen press reports on the legality of Governor Doyle's proposed transfer of PCF monies to the general fund in order to help balance the budget. Furthermore, I am very concerned about the long-term actuarial integrity of the fund as a result of this raid.

While I understand an audit of the Patients Compensation Fund must be completed every three years per state statute 13.94 (1)(de), I am requesting the Joint Audit Committee conduct an audit of the PCF now in order to determine the extent of potential fiscal instability the transfer of monies from this fund may cause. I believe we need a clear answer on whether or not this transfer from the PCF would have detrimental effects in the future, therefore placing our state's sound system of medical malpractice liability in jeopardy.

Another area of question that needs to be explored is the comparison of a private insurance company's malpractice reserve fund to that of the State. How much is a private insurance company required to retain in their malpractice reserve fund in order to actuarially comply with state law? How does this amount compare to what the PCF is required?

Thank you for your utmost attention to this matter. Please feel free to contact me if you would like to discuss this further.

Sincerely,

Steve Foti
State Representative
38th Assembly District

cc: Jan Mueller, State Auditor

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Jim Doyle
Governor

Matthew J. Frank
Secretary

MAR 31 2003

Mailing Address

3099 E. Washington Ave.
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 240-5000
Fax (608) 240-3300

State of Wisconsin
Department of Corrections

March 28, 2003

Senator Carol Roessler
Co-chair Joint Audit Committee
P.O. Box 7882
Madison, WI 53707-7882

Representative Suzanne Jeswkewitz
Co-chair Joint Audit Committee
P.O. Box 8952
Madison, WI 53707-8952

Dear Senator Roessler and Representative Jeswkewitz:

This is in response to your letter dated February 20, 2003 regarding a request for an audit of prison disciplinary policies and procedures, particularly those concerning fraternization between inmates and correctional officers.

Inmate disciplinary guidelines are contained in Department of Corrections Administrative Rule Chapter 303. This rule defines the conduct for which an inmate may be disciplined, procedures for the imposition of discipline, and allowable penalties. Per your request, I am enclosing a copy of DOC 303.

In 1994 the Division of Adult Institutions created an Administrative Rules Steering Committee charged with regular review and updating of DOC Rules. The committee meets monthly and is chaired by Waupun Correctional Institution Warden, Gary McCaughtry and Division of Adult Institutions Assistant Administrator, Marianne Cooke. At a recent meeting of the Steering Committee, the specific topics of mental health status and sexual conduct/soliciting staff violations were reviewed and discussed. Two sub committees have been formed to make recommendations in this area and I am confident we can adequately address the concerns which arose out of the Taycheedah incident. The Administrative Rules Steering Committee meets again on April 25 and I will be happy to send you a status report at that time.

Sincerely,

Matthew J. Frank
Secretary

cc: DAI

Chapter DOC 303

DISCIPLINE

Note: Several sections in this chapter have explanatory material which can be found in the appendix following the last section in this chapter.

Note: Chapter HSS 303 was renumbered chapter DOC 303 and revised under s. 13.93 (2m) (b) 1., 2., 4. to 7., Stats., Register, April, 1990, No. 412.

Note: Sections DOC 303.01 to 303.74, 303.78 and 303.82 to 303.87 as they existed on December 31, 2000 were repealed and new sections DOC 303.01 to 303.74, 303.78 and 303.82 to 303.87 were created, Register, December, 2000, No. 540, effective January 1, 2001.

Subchapter I — General Provisions

DOC 303.01 Applicability and purposes. (1) Pursuant to authority vested in the department of corrections by s. 227.11 (2), Stats., the department adopts this chapter which applies to the department of corrections and to all inmates in its legal custody pursuant to a judgment of conviction or court order regardless of the inmate's physical custody. The department may discipline inmates in its legal custody. This subsection does not preclude another jurisdiction that has physical custody of the inmate from enforcing its rules related to inmate behavior. The department may not discipline an inmate for an incident for which the inmate was disciplined in another jurisdiction. This section implements ss. 302.04, 302.07, 302.08 and 302.11 (2), Stats. The rules governing inmate conduct under this chapter describe the conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) "Discipline" includes the sanctions described in s. DOC 303.68.

(3) The objectives of the disciplinary rules under this chapter are the following:

(a) The maintenance of order in correctional institutions.

(b) The maintenance of a safe setting in which inmates can participate in constructive programs.

(c) The rehabilitation of inmates through the development of their ability to live with others, within rules.

(d) Fairness in the treatment of inmates.

(e) The development and maintenance of respect for the correctional system and for our system of government through fair treatment of inmates.

(f) Punishment of inmates for misbehavior.

(g) Deterrence of misbehavior.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.02 Definitions. In this chapter:

(1) "Adjustment committee" means adjustment committee or hearing officer.

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

(3) "Authorized" means any of the following:

(a) According to departmental rules.

(b) According to policies and procedures.

(c) According to the direction of a staff member.

(d) According to established institution custom.

(e) With permission from the appropriate staff member.

(4) "Bodily injury" means injury or physical pain, illness or any impairment of physical condition.

(5) "Case record" means any file folder or other method of storing information which is accessible by the use of an individual inmate's name or other identifying symbol.

(6) "Communicate" means any of the following:

(a) To express verbally.

(b) To express in writing.

(c) To express by means of a gesture or other action.

(7) "Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. A person under 15 years of age is incapable of consent as a matter of law. The department presumes that the following persons are incapable of consent but the presumption may be rebutted by competent evidence:

(a) A person who is 15 to 17 years of age.

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

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

(9) "Division" means the division of adult institutions, department of corrections.

(10) "Harass" means to annoy or irritate persistently.

(11) "Inmate gang" means a group of inmates which is not sanctioned by the warden under s. DOC 309.22.

(12) "Institution" means a correctional institution, correctional facility, or center or a prison defined under intensive sanctions in ch. DOC 333 or a facility that the department contracts with for services to inmates.

(13) "Intimate parts" means breast, penis, buttocks, scrotum, or vaginal area or any other parts of the body that may result in sexual arousal or gratification for either party.

(14) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions. Tobacco is not included.

(15) "Negotiable instrument" is a writing, signed by the maker or drawer, which contains a promise to pay which is payable on demand or at a specified time, and which is payable to the order of the bearer.

(16) "Possession" means on one's person, in one's quarters, in one's locker or under one's physical control. The department considers possession an activity under s. DOC 303.20 (3).

(17) "Public" means outside of the inmate complaint review system.

(18) "Security director" means the security director at an institution, or designee.

(19) "Sexual contact" means any of the following:

(a) Kissing except for that allowed under policy and procedures of an institution.

(b) Handholding except for that allowed under policy and procedures of an institution.

(c) Touching by the intimate parts of one person to any part of another person whether clothed or unclothed.

(d) Any touching by any part of one person or with any object or device of the intimate parts of another person or any other parts of the body that may result in sexual arousal or gratification for either party except as provided for in s. DOC 309.11 (2).

(20) "Sexual intercourse" means any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration by any part of the body or an object into the anus or vagina of another person.

(21) "Staff" means any state employee, an employee of a contract facility, an independent contractor, or a volunteer of the department or institution.

(22) "TLU" means temporary lock up which is a nonpunitive segregated status allowing an inmate to be removed from the general population pending further administrative action.

(23) "Warden" means the warden at an institution, or the warden's designee.

(24) "Without consent" means no consent in fact or that consent is given for any of the following reasons:

(a) Because the actor put the victim in fear.

(b) Because the actor purported to be acting under legal authority.

(c) Because the victim did not understand the nature of the thing to which the victim consented.

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

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.03 Lesser included offenses. (1) If one offense is a lesser included offense of another, then if the reporting staff member charges an inmate with the greater offense, the staff member has charged the inmate with the lesser included offense.

(2) The adjustment committee may find an inmate guilty of a lesser included offense of the offense charged, even if the reporting staff member did not expressly charge the inmate with the lesser included offense.

(3) The adjustment committee may not find an inmate guilty of 2 offenses or punish the inmate for 2 offenses based on a single incident if one offense is a lesser included offense of the other.

(4) The adjustment committee may not find an offense a lesser included offense of another unless it is so listed in the following table:

Table DOC 303.03

Greater Offense		Lesser Included Offense	
303.07	Aiding and abetting	303.06	Attempt
		303.05	Conspiracy
303.12	Battery	303.17	Fighting
		303.28	Disruptive conduct
303.13	Sexual assault—intercourse	303.14	Sexual assault—contact
		303.15	Sexual conduct
303.14	Sexual assault—contact	303.15	Sexual conduct
303.17	Fighting	303.28	Disruptive conduct
303.18	Inciting a riot	303.19	Participating in a riot
		303.20	Group resistance and petitions
		303.28	Disruptive conduct
303.19	Participating in a riot	303.20	Group resistance and petitions
		303.28	Disruptive conduct
303.22	Escape	303.51	Leaving assigned area
303.34	Theft	303.40	Unauthorized transfer of property
		303.47	Possession of contraband—miscellaneous
303.37	Arson	303.38	Causing an explosion or fire
		303.39	Creating a hazard
		303.47	Possession of contraband—miscellaneous
303.38	Causing an explosion or fire	303.39	Creating a hazard
303.42	Possession of money	303.47	Possession of contraband—miscellaneous
303.43	Possession of intoxicants	303.40	Unauthorized transfer of property
		303.47	Possession of contraband—miscellaneous
303.44	Possession of drug paraphernalia	303.47	Possession of contraband—miscellaneous
303.45	Possession, manufacture, and alteration of weapons	303.47	Possession of contraband— miscellaneous
303.57	Misuse of prescription medicine	303.40	Unauthorized transfer of property
Any substantive offense		303.05	Conspiracy
		303.06	Attempt
		303.07	Aiding and abetting

(5) After each note to a substantive offense under this chapter, all offenses which are lesser included offenses of the offense are listed, except that aiding and abetting, attempt, and conspiracy are not listed. They are always lesser included offenses of the completed offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.05 Conspiracy. (1) If 2 or more inmates or others plan or agree to do acts which are prohibited under this chapter, all inmates may be guilty of an offense.

(2) An inmates who plans or agrees with individuals to do acts which are forbidden under this chapter is guilty of an offense.

(3) The penalty for conspiracy may be the same as the penalty for the most serious of the planned offenses.

(4) The number used for conspiracies in recordkeeping and conduct reports shall be the offense's number plus the suffix C.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.06 Attempt. (1) An inmate is guilty of attempt to violate a rule if either of the following are true:

(a) The inmate planned to do something which would have been a rule violation if actually committed.

(b) The inmate did acts which showed a plan to violate the rule when the acts occurred.

(2) The number used for attempts in recordkeeping and conduct reports shall be the offense's number plus the suffix A.

Note: Note: Battery is DOC 303.12. Attempted battery is DOC 303.12–A.

(3) The penalty for an attempt may be the same as for the completed offense. See Table DOC 303.84.

(4) Staff may charge an inmate with both a substantive offense and attempt to commit that offense, based on the same incident, but may find an inmate guilty of only one.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.07 Aiding and abetting. (1) An inmate who does any of the following is guilty of aiding and abetting a rule violation:

(a) Tells or hires another to commit a rule violation.

(b) Assists another in planning or preparing for a rule violation.

(c) Assists another during commission of an offense, whether or not the assistance was planned in advance.

(d) Assists another to prevent discovery of a violation or the identity of the person who committed it.

(2) The institution shall use the offense's number plus the suffix B for aiding and abetting in record keeping and conduct reports.

Note: Battery is DOC 303.12. Aiding and abetting a battery is DOC 303.12–B.

(3) The reporting staff member may charge an inmate with both a substantive offense and aiding and abetting that offense, based on the same incident, but the adjustment committee may find the inmate guilty of only one offense.

(4) The reporting staff member may charge and the adjustment committee may find an inmate guilty of aiding and abetting even if no one is charged or found guilty of committing the offense. The principal should, if possible, be identified when the inmate is charged.

(5) The adjustment committee may impose the same penalty for aiding and abetting as for the substantive offense. See Table DOC 303.84.

(6) The adjustment committee need not base the penalty given to an inmate who aids and abets in any way on the penalty, if any, given to the inmate who actually committed the offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.08 Institutional policies and procedures. (1) As provided under this chapter, institutions may make specific policies and procedures and provide that if inmates violate them, they may be disciplined.

(2) Each institution shall maintain at least one official method and location for notifying inmates about notices of general applicability.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.09 Manual of disciplinary rules. (1) The department shall print all of the sections under this chapter, along with their notes, in pamphlet or other available form, and distribute it to inmates when they enter the prison system.

(2) Each institution shall make copies of this pamphlet and any published changes available to every inmate.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.10 Seizure and disposition of contraband. (1) DEFINITION. "Contraband" means any of the following:

(a) Any item which inmates may not possess under this chapter or is not authorized by the institution.

(b) Any item which is not state property and is on the institution grounds but not in the possession of any person.

(c) Any allowable item which comes into an inmate's possession through unauthorized channels or which is not on the inmate's property list and is required to be.

(d) Stolen property.

(e) Property that is damaged or altered.

(f) Anything used as evidence for a disciplinary hearing deemed contraband by the adjustment committee or hearing officer.

(2) SEIZURE. Any staff member who believes that an item is contraband may seize the item. The institution shall return property which is not contraband to the owner or dispose of the property in accordance with division Internal Management Procedures.

(3) DISPOSITION. The hearing officer, adjustment committee, or security director shall dispose of items in accordance with institution policies and procedures. If the inmate files a grievance regarding the seizure or disposition of the property, the institution shall retain property until the warden makes a final decision on the grievance.

(4) INMATE REPORTING. Inmates shall immediately report to staff any property item that becomes damaged.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.11 Temporary lockup: use. (1) A security supervisor, security director, or warden may place an inmate in temporary lockup or TLU.

(2) If the security supervisor places an inmate in temporary lockup, the security director shall review this action within 2 working days. Before this review and the review provided for in sub. (3), the institution shall provide the inmate with the reason for confinement in TLU and with an opportunity to respond, either orally or in writing. If upon review, the security director determines that TLU is not appropriate, the institution shall release the inmate from TLU immediately.

(3) The institution shall not allow any inmate to remain in TLU more than 21 days, except that the warden may extend this period for up to 21 additional days. The administrator may extend an inmate's time in TLU for a second time. The security director shall review the status of each inmate in TLU every 7 days to determine whether TLU continues to be appropriate.

(4) The institution may place an inmate in TLU and keep the inmate there if the decision– maker believes that one or more of the following is present:

(a) If the inmate remains in the general population, the inmate may impede a pending investigation or disciplinary action.

(b) If the inmate remains in the general population, it may be disruptive to the operation of the institution.

(c) If the inmate remains in the general population, it may create a danger to the physical safety of the inmate or another.

(d) If the inmate remains in the general population, it may create a danger that the inmate will try to escape from the institution.

(5) Institution staff shall document the reasons for TLU placement and shall notify the inmate of the reasons.

(6) The institution shall continue to compensate an inmate who had been earning institution compensation at the rate earned in the inmate's previous status, except that the institution shall compensate an inmate employed by prison industries in accordance with s. DOC 313.11. If 1983 Wis. Act 528 does not apply to the inmate, the inmate shall continue to earn extra good time credit. If the reporting staff member charges an inmate in a private sector/prison industry enhancement certification program with one or more offenses under this chapter, and the adjustment committee finds the inmate not guilty of all charges, the institution in which the inmate is confined shall pay the inmate at the prison's maximum pay rate for all hours absent from work due to the disciplinary process including temporary lock-up time. If the adjustment committee finds the inmate in a private sector/prison industry enhancement certification program guilty, the department shall not pay the inmate any pay for hours absent due to the disciplinary process.

(7) TLU time shall not be considered time served for disciplinary penalty purposes.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter II — Offenses Against Bodily Security

DOC 303.12 Battery. (1) Any inmate who causes bodily injury or harm to another is guilty of an offense.

(2) Any inmate who spits or throws or uses body fluids or waste or any substance on another is guilty of an offense.

(3) Any inmate who causes the death of another is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.13 Sexual assault—intercourse. Any inmate who has sexual intercourse, as defined in s. DOC 303.02 (21), with another person without that person's consent is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.14 Sexual assault—contact. Any inmate who has sexual contact, as defined in s. DOC 303.02 (20), with another person without that person's consent is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.15 Sexual conduct. (1) Any inmate who does any of the following is guilty of an offense:

(a) Has sexual intercourse, as defined in s. DOC 303.02 (21), with another person.

(b) Has sexual contact, as defined in s. DOC 303.02 (20), with another person.

(c) Requests, hires or tells another person to have sexual intercourse or sexual contact.

(d) Exposes the inmate's own intimate parts to another person for the purpose of sexual arousal or gratification.

(e) Has contact with or performs acts with an animal that would be sexual intercourse or sexual contact if with another person.

(f) Clutches, fondles, or touches the inmate's own intimate parts, whether clothed or unclothed, while observable by others.

(2) Lack of consent is not an element of the offense of sexual conduct.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.16 Threats. Any inmate who does any of the following is guilty of an offense:

(1) Communicates to another a plan to physically harm, harass or intimidate that person or another.

(2) Communicates a plan to cause damage to or loss of that person's or another person's property.

(3) Communicates a plan to make an accusation he or she knows is false.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.17 Fighting. Any inmate who participates in a fight is guilty of an offense. "Fight" means any situation where 2 or more people are trying to injure each other by any physical means.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter III — Offenses Against Institutional Security

DOC 303.18 Inciting a riot. Any inmate who encourages, directs, commands, coerces or signals one or more other persons to participate in a riot is guilty of an offense. "Riot" means a disturbance to institutional order caused by a group of 2 or more inmates which creates a risk of injury to persons or property.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.19 Participating in a riot. Any inmate who participates in a riot, as defined under s. DOC 303.18, or who remains in a group where some members of the group are participating in a riot, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.20 Group resistance and petitions. (1) Any inmate who participates in any group activity which is not approved under s. DOC 309.365 or is contrary to provisions of this chapter is guilty of an offense.

(2) Any inmate who joins in or solicits another to join in any group petition or statement is guilty of an offense, except that the following activities are not prohibited:

(a) Group complaints in the inmate complaint review system.

(b) Group petitions to courts.

(c) Authorized activity by groups approved by the warden under s. DOC 309.365 or legitimate activities required to submit a request under s. DOC 309.365 (3) or (4).

(d) Group petitions to government bodies, legislators, courts or newspapers.

(3) Any inmate who participates in any activity with an inmate gang, as defined in s. DOC 303.02 (11), or possesses any gang literature, creed, symbols or symbolisms is guilty of an offense. An inmate's possession of gang literature, creed symbols or symbolism is an act which shows that the inmate violates the rule. Institution staff may determine on a case by case basis what constitutes an unsanctioned group activity.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01; **corrections in (1) and (2) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543.**

DOC 303.21 Cruelty to animals. Any inmate who causes bodily injury to an animal or the unauthorized death of an animal is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.22 Escape. (1) An inmate who does or attempts to do any of the following without permission is guilty of an offense:

(a) Leaves an institution.

(b) Leaves the custody of a staff member while outside of the institution.

(c) Does not follow the inmate's assigned schedule.

(d) Leaves the authorized area to which the inmate is assigned.

(2) Any inmate who makes or possesses any materials for use in escape is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.23 Disguising identity. Any inmate who conceals or disguises the inmate's usual appearance to interfere with or prevent identification is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter IV — Offenses Against Order

DOC 303.24 Disobeying orders. (1) Any inmate who disobeys a verbal or written directive or order from any staff member, directed to the inmate or to a group of which the inmate is or was a member is guilty of an offense.

(2) An inmate is guilty of an offense if the inmate commits an act which violates an order, whether the inmate knew or should have known that the order existed.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.25 Disrespect. Any inmate who shows disrespect to any person is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes, but is not limited to, derogatory or profane writing, remarks or gestures, name–calling, yelling, and other acts made outside the formal complaint process which are expressions of disrespect for authority.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.26 Soliciting staff. An inmate who does any of the following is guilty of an offense:

(1) Offers or gives anything to a staff member or acquaintance or family of a staff member. This subsection does not apply to anything authorized by these rules or institution policy and procedure.

(2) Requests or accepts anything from a staff member or acquaintance or family of a staff member. This subsection does not apply to anything authorized by these rules or institution policy and procedure.

(3) Buys anything from, or sells anything to, a staff member or acquaintance or family of a staff member. This subsection does not apply to items for sale in accordance with institutional procedures.

(4) Requests a staff member or acquaintance or family of a staff member to purchase anything for the inmate. The warden may allow this by special authorization.

(5) Requests another person to give anything to a staff member, or agrees with another person to give anything to a staff member or acquaintance or family of a staff member.

(6) Conveys affection to, or about staff verbally or in writing whether personally written or commercially written or by drawings; or asks for addresses, phone numbers, favors or requests special attention of a staff member or acquaintance or family of a staff member.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.27 Lying. Any inmate who makes a false written or oral statement which may affect the integrity, safety or security of the institution is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.271 Lying about staff. Any inmate who makes a false written or oral statement about a staff member which may affect the integrity, safety or security of the institution or staff, and makes that false statement outside the complaint review system is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.28 Disruptive conduct. Any inmate who engages in, causes or provokes disruptive conduct is guilty of an offense. "Disruptive conduct" includes physically resisting a staff member, or overt behavior which is loud, offensive or vulgar.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.30 Unauthorized forms of communication. Any inmate who communicates with another person by a method not authorized by the institution is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.31 False names and titles. Any inmate who uses any of the following is guilty of an offense:

(1) A title for the inmate other than Mr., Ms., Miss, or Mrs., as appropriate.

(2) A name other than the name by which the inmate was committed to the department unless the name was legally changed.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.32 Enterprises and fraud. (1) Any inmate who engages in a business or enterprise, whether or not for profit, or who sells anything except as specifically allowed under other sections is guilty of an offense, except for the following situation:

(a) An inmate who was owner or part owner of any business or enterprise prior to sentencing may communicate with the inmate's manager or partner concerning the management of the enterprise or business.

(b) An inmate may write and seek publication of works in accordance with these rules and institutional policies and procedures.

(2) Any inmate who offers to buy or orders any item with the intention of not paying for it or buys it on credit is guilty of an offense.

(3) Any inmate who misrepresents facts to another to obtain items of value is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter V — Offenses Against Property

DOC 303.34 Theft. Any inmate who steals the property of another person or of the state is guilty of an offense. "Steals" means obtains or retains possession of or title to the property of another, without consent of the owner.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.35 Damage or alteration of property. (1) Any inmate who damages, destroys or alters any property of the state or of another person without authorization is guilty of an offense.

(2) Any inmate who damages, destroys, alters, or disposes of the inmate's own property without the permission of the staff of the inmate's own living unit is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.36 Misuse of state or federal property. Any inmate who uses any government property in any way that is not authorized is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.37 Arson. Any inmate who ignites a fire and thereby creates a risk to people or property, or both, is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.38 Causing an explosion or fire. Any inmate who causes an explosion or starts a fire is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.39 Creating a hazard. Any inmate who creates a hazard by fire, explosion or other means, is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.40 Unauthorized transfer of property. Any inmate who gives, receives, sells, buys, exchanges, barters, lends, borrows or takes any property from another inmate without authorization is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.41 Counterfeiting and forgery. Any inmate who makes, uses, possesses, or alters any document so it appears that the document was made or signed by a different person; or that the document was signed at a different time or with different provisions is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter VI — Contraband Offenses

DOC 303.42 Possession of money. Except as specifically authorized, any inmate who has in the inmate's possession any of the following is guilty of an offense:

(1) Coins or paper money.

(2) A check.

(3) A money order.

(4) A savings bond.

(5) Any other negotiable instrument.

(6) A credit card.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.43 Possession of intoxicants. Except as specifically authorized, any inmate who has in the inmate's possession any intoxicating substance is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.44 Possession of drug paraphernalia. Any inmate who possesses any device used in the manufacture of an intoxicating substance or any device used to take an intoxicating substance into the body, is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.45 Possession, manufacture and alteration of weapons. (1) Any inmate who possesses any item to be used as a weapon, is guilty of an offense.

(2) Any inmate who makes or alters any item making it suitable for use as a weapon is guilty of an offense.

(3) Any inmate who possesses an item which is designed to be used as a weapon is guilty of an offense.

(4) Any inmate who possesses an item which could be used in the manufacture of a weapon is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.47 Possession of contraband—miscellaneous. (1) Each institution shall maintain and make available to inmates a list of all types of property which inmates are allowed to possess in accordance with department policies and procedures relating to personal property.

(2) Any inmate who possess any of the following is guilty of an offense:

(a) Items of a type which are not allowed.

(b) Allowable items in excess of the quantity allowed.

(c) Allowable items which are required to be listed but are not listed on the inmate's property list.

(d) Items which do not belong to the inmate, except state property issued to the inmate for the inmate's use, such as sheets and uniforms.

(e) Personal written information relating to any staff of the department, including a staff's or staff's immediate family home address or telephone number.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.48 Unauthorized use of the mail. (1) Any inmate who uses a postal service to communicate with a person who has been declared a prohibited correspondent of that inmate in accordance with ch. DOC 309 is guilty of an offense.

(2) Any inmate who sends through the mail anything which, according to this chapter, the inmate may not have in the inmate's possession, is guilty of an offense.

(3) Any inmate who does any of the following is guilty of an offense:

(a) Makes or alters any postage stamp or alters or erases a postal cancellation mark or possesses any postage stamp that has been altered.

(b) Mails or attempts to mail any letter or parcel on which is affixed a canceled postage stamp.

(c) Uses a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.

(4) Any inmate who attempts to circumvent the rules under s. DOC 309.04 related to mail by sending a second envelope or letter within an envelope addressed to a destination other than the address on the outside envelope, is guilty of an offense.

(5) Any inmate who sends food samples through the mail is guilty of an offense.

(6) Any inmate who sends body fluids or body wastes, including pubic hair, through the mail is guilty of an offense.

(7) Any inmate who sends correspondence which harms, harasses or intimidates any person is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter VII — Movement Offenses

DOC 303.49 Punctuality and attendance. Inmates shall attend and be on time for all activities for which they are scheduled. Any inmate who violates this section is guilty of an offense, unless one of the following exist:

(1) The inmate is sick and reports this fact as required by institution policies and procedures.

(2) The inmate has a valid pass to be in some other location.

(3) The inmate is authorized to skip the event.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.50 Loitering. Inmates shall walk at a normal pace, following a normal route, and without delay when going to and from all activities and their quarters. Any inmate who violates this section is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.51 Leaving assigned area. Any inmate who leaves a room or area where the inmate is required to be is guilty of an offense, unless one of the following exists:

(1) The inmate gets permission to leave from a staff member supervising the activity.

(2) The inmate has a valid pass to go somewhere else at that time.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.511 Being in an unassigned area. Any inmate who, without a staff member's permission, enters or remains in a room or area other than the one to which the inmate is assigned is guilty of an offense.
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.52 Entry of another inmate's quarters. Any inmate who enters the quarters of any other inmate or permits another to enter their own quarters, is guilty of an offense, unless such entry is the result of one of the following:

(1) (a) Part of a work assignment and under the supervision of a staff member.

(b) Allowed according to institution policies and procedures.

(2) Reaching, leaning, or putting any object or part of the body into another inmate's quarters is included in "entering."
History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter VIII — Offenses Against Safety And Health

DOC 303.54 Improper storage. The inmate shall keep toiletries, hobby materials, medications, cleaning supplies and

certain other items in the original containers, unless otherwise specified, and in the authorized place. Any inmate who stores any of these items in a different container or in an unauthorized place is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.55 Dirty quarters. Any inmate who does not comply with institution procedures for orderly and clean quarters is guilty of an offense, provided the inmate had knowledge of the condition of his or her quarters and had the opportunity to clean or rearrange it.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.56 Poor grooming. **(1)** Any inmate whose personal cleanliness or grooming is a health hazard to the inmate or others or is offensive to others, and who has knowledge of this condition and the opportunity to correct it, but does not, is guilty of an offense.

(2) Any inmate who fails to shower at least once a week, unless the inmate has a medical excuse, is guilty of an offense.

(3) The institution may require inmates performing work assignments which may be hazardous to maintain suitably cut hair, or to wear protective equipment. Any inmate who fails to wear such required equipment or who fails to maintain suitably cut hair is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.57 Misuse of prescription medication. Any inmate who does any of the following is guilty of an offense:

(1) Takes more of a prescription medication than was prescribed.

(2) Takes a prescription medication more often than was prescribed.

(3) Takes a prescription medication which was not prescribed for the inmate.

(4) Possesses or takes any prescription medication except at the time and place where the inmate is supposed to take it.

(5) Improperly disposes of any prescription medication. The inmate shall return unused medication to staff.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.58 Disfigurement. Any inmate who disfigures, cuts, pierces, removes, mutilates, discolors or tattoos any part of the inmate's body or the body of another, is guilty of a offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter IX — Miscellaneous Offenses

DOC 303.59 Use of intoxicants. **(1)** Any inmate who takes into the inmate's body any intoxicating substance, except prescription medication in accordance with the prescription, is guilty of an offense.

(2) (a) When a test on an inmate's body specimen or a physical examination of an inmate indicates use of an intoxicating substance, the inmate is guilty of an offense.

(b) The institution shall confirm results of a test conducted under par. (a) by a second test if the inmate requests a confirmatory test immediately after the institution informs the inmate of a positive test result.

(c) Any confirmatory test shall be conducted in accordance with department procedures.

(d) An inmate who requests a confirmatory test shall pay for the cost of the test. If the inmate does not have sufficient funds to pay for the cost of the test, the institution in which the inmate is confined shall loan the inmate the necessary funds. If the confirmatory test does not validate the results of the first test, the institution shall refund any money the inmate contributed to the cost of the confirmatory test.

(3) An inmate who refuses to provide a body specimen, submit to a physical examination, or a breathalyzer test, is guilty of the offense of use of intoxicants.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.60 Gambling. Any inmate who is involved in gambling, gambles or possesses any gambling material is guilty of an offense. "Gambles" includes betting money or anything of value on the outcome of all or any part of any game of skill or chance or an athletic contest or on the outcome of any event, or participation in any lottery or sweepstakes.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.61 Refusal to work or attend school. Any inmate who refuses to perform a work assignment or attend school, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.62 Inadequate work or study performance. Any inmate whose work fails to meet the standards set for performance on a job or school program and who has the ability to meet those standards, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.63 Violations of institution policies and procedures. Each institution may make specific substantive disciplinary policies and procedures. Any inmate who violates any of these specific disciplinary policies and procedures is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.631 Violating conditions of leave. Any inmate who violates conditions of leave imposed under s. DOC 326.10 is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

Subchapter X — Disciplinary Procedure And Penalties

DOC 303.64 Disciplinary violations—possible dispositions. The institution may deal with a violation of ss. DOC 303.12 to 303.63 in the following ways:

(1) If a staff member determines that a conduct report is not required, the staff member may counsel and warn the inmate under s. DOC 303.65.

(2) The staff member may dispose of a minor violation summarily under s. DOC 303.74.

(3) Staff may refer any violation to the security director in writing by a conduct report as provided under s. DOC 303.66. The security director may deal with these violations as follows:

(a) The security director may dismiss, alter or correct the report as provided under s. DOC 303.67.

(b) If the violation is a minor one, the security director shall refer the matter to a hearing officer to be disposed of in accordance with s. DOC 303.75.

(c) If the violation is a major one, the security director shall refer the matter to a hearing officer to be disposed of in accordance with ss. DOC 303.76 to 303.84.

(4) The security director may refer violations of the criminal law to law enforcement authorities for further investigation and prosecution. Whether or not prosecution is started, the institution may handle the incident as a disciplinary offense.

(5) If the adjustment committee finds an inmate guilty, the adjustment committee may refer the inmate to program review to review the inmate's program assignment and custody level.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.65 Offenses that do not require a conduct report. **(1)** The department does not require staff members to make official conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, staff may

merely inform the inmate that the inmate's behavior is against the rules and discuss the inmate's behavior and give a warning if:

(a) The inmate is unfamiliar with the rule.

(b) The inmate has not violated the same or a closely related rule within the previous year (whether or not a conduct report was made).

(c) The inmate is unlikely to repeat the offense if warned and counseled.

(d) Although the inmate's acts were a technical violation of a rule, the purposes of this chapter would not be served by writing a conduct report in the particular situation.

(2) The staff member shall write a conduct report if an inmate commits a major offense.

(3) The department does not require staff to make official reports of dispositions made in accordance with sub. (1).

(4) The security director may strike a charge if the security director believes the charge is inappropriate, in accordance with s. DOC 303.67. The hearing officer, adjustment committee or warden may not review the security director's decision to strike a charge.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.66 Conduct report. (1) Except under the conditions described in s. DOC 303.65, any staff member who observes or finds out about a rule violation shall do any investigation necessary to assure that a violation occurred, and if the staff member believes a violation has occurred, shall write a conduct report. If more than one staff member knows of the same incident, only one of them shall write a conduct report.

(2) In the conduct report, the staff member shall describe the facts in detail and what other staff members reported, and list the sections of ch. DOC 303 which were allegedly violated, even if they overlap.

(3) The institution shall issue only one conduct report for each act or transaction that is alleged to violate these sections. If one act or transaction is a violation of more than one section, the institution shall only issue one conduct report.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.67 Review by security office. (1) Within 2 working days of the date of issuance, the security director shall review all conduct reports.

(2) The security director shall review and approve conduct reports which resulted in summary disposition prior to entry in any of the inmate's records.

(3) The security director shall review conduct reports for the appropriateness of the charge.

(a) The security director may dismiss a conduct report.

(b) The security director shall strike any section number if the statement of facts could not support a finding of guilty of violating that section.

(c) The security director may add any section number if the statement of facts could support a finding of guilty of violating that section and the addition is appropriate.

(d) The security director may refer a conduct report for further investigation.

(4) The security director shall divide all remaining conduct reports into major offenses, which include those with both major and minor offenses, in accordance with ss. DOC 303.76 to 303.84, and shall dispose of minor offenses in accordance with s. DOC 303.75.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.68 Major and minor penalties and offenses. (1) (a) A "major penalty" is adjustment segregation as defined in ss. DOC 303.69 and 303.84, program segregation as defined in ss. DOC 303.70 and 303.84, loss of earned good time or extension of mandatory release date under s. DOC 303.84, disciplinary separation under s. 303.70, room confinement of 16 to 30 days, loss of recreation privileges for over 60 days for inmates in the general population, loss of recreation privileges for over 8 days for inmates in segregation, building confinement for over 30 days, and loss of specific privileges for over 60 days. The adjustment committee may impose a minor penalty for a violation where a major penalty could be imposed. The adjustment committee may impose restitution in addition to or in lieu of any major penalty and may impose any combination of penalties.

(b) A "minor penalty" is a reprimand, loss of recreation privileges for 1 to 60 days for an inmate in general population, loss of recreation privileges for 1 to 8 days for inmates in segregation, building confinement for 1 to 30 days, room confinement for 1 to 15 days, loss of a specific privilege for 1 to 60 days, extra duty for up to 80 hours, assignments to secure work crews under ch. 304, and restitution in accordance with ss. DOC 303.72 and 303.84. The adjustment committee may impose restitution in addition to or in lieu of any other minor penalty and may impose any combination of penalties.

(c) A "major offense" is a violation of a disciplinary rule for which a major penalty may be imposed if the accused inmate is found guilty.

(d) A "minor offense" is any violation of a disciplinary rule which is not a major offense under sub. (3) or (5) or which the security director has not classified as a major offense.

(2) Except for an offense listed under sub. (3) or covered by sub. (5), an offense is neither a major nor a minor offense until the security director classifies it as major or minor.

(3) Any violation of the following sections is a major offense:

Section	Title
DOC 303.12	Battery
DOC 303.13	Sexual assault—intercourse
DOC 303.14	Sexual assault—contact
DOC 303.18	Inciting a riot
DOC 303.19	Participating in a riot
DOC 303.21	Cruelty to animals
DOC 303.22	Escape
DOC 303.23	Disguising identity
DOC 303.37	Arson
DOC 303.41	Counterfeiting and forgery
DOC 303.43	Possession of Intoxicant
DOC 303.44	Possession of Drug Paraphernalia
DOC 303.45	Possession, manufacture and alteration of weapons
DOC 303.57	Misuse of prescription medication
DOC 303.59	Use of intoxicants

(4) The institution may handle an alleged violation of any section other than ones listed in sub. (3) as either a major or minor offense. The security director shall decide whether it shall be treated as a major or minor offense, if the offense has not been disposed of summarily in accordance with s. DOC 303.76. In deciding whether an alleged violation should be treated as a major or minor offense, the security director shall consider the following criteria and shall indicate in the record of disciplinary action the reason for the decision based on these criteria:

(a) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently.

(b) Whether the inmate has recently been warned about the same or similar conduct.

(c) Whether the alleged violation created a risk of serious disruption at the institution or in the community.

(d) Whether the alleged violation created a risk of serious injury to another person.

(e) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft.

(5) The adjustment committee shall handle any conduct report containing at least one charge of a major offense as a major offense, even if it also includes minor offenses. Any such conduct report may result in major penalties.

(6) The institution shall handle any alleged violation of a rule which may result in a suspension of visiting or correspondence privileges, work or study release, or leave.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.69 Major penalties: adjustment segregation. (1) CONDITIONS. Adjustment segregation may not exceed the time period specified in s. DOC 303.84. The institution shall provide inmates in adjustment segregation the following:

(a) Clean mattress.

(b) Sufficient light to read by at least 12 hours per day.

(c) Sanitary toilet and sink.

(d) Adequate ventilation and heating.

(2) NECESSITIES. The institution shall provide the following for each inmate in adjustment segregation but the items need not be kept in the cell, as determined by the warden based on safety and security concerns:

(a) Adequate clothing and bedding.

(b) Toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use personal hygiene supplies.

(c) Writing materials and stamps.

(d) Holy books.

(e) Meals, which shall be nutritionally adequate.

(3) OTHER PROPERTY. The institution may allow inmates in adjustment segregation access to material pertaining to legal proceedings and law books or other property provided by the institution.

(4) VISITS AND TELEPHONE CALLS. The institution shall permit inmates in adjustment segregation visitation and telephone calls in accordance with ch. DOC 309.

(5) CORRESPONDENCE. Inmates in adjustment segregation may receive and send first class mail in accordance with the departmental rules relating to inmate mail.

(6) SHOWERS. The institution shall permit inmates in adjustment segregation to shower at least once every 4 days.

(7) SPECIAL PROCEDURES. The institution shall not allow any property in the cell except that described in subs. (1), (2) and (3), and letters received while in adjustment segregation. Institutions may establish policies and procedures for the orderly operation of facilities used for segregated inmates.

(8) LEAVING CELL. Inmates in adjustment segregation may not leave their cells except as needed for urgent medical or psychological attention, showers, visits, exercise and emergencies endangering their safety in the cell or other reasons as authorized by the warden. The warden may require inmates to wear mechanical restraints, as defined in s. DOC 306.09 (1), while the inmates are outside their cells.

(9) EXERCISE. The institution shall give an inmate in adjustment segregation an opportunity to exercise outside the inmate's cell at least once every eight days.

(10) GOOD TIME. An inmate shall not earn extra good time while in adjustment segregation. The institution shall not pay wages to inmates in adjustment segregation.

(11) OBSERVATION. The institution shall give a person placed in observation while in adjustment segregation credit toward the penalty being served.

(12) TIME SERVED. Adjustment segregation starts the day of the disposition. If the inmate is already in adjustment status, adjustment segregation is then consecutive to the current adjustment segregation being served and is concurrent to any other segregation or separation status being served.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.70 Major penalties: program segregation and disciplinary separation. (1) CONDITIONS. Program segregation and disciplinary separation may not exceed the period specified in s. DOC 303.84. The adjustment committee or the hearing officer may impose program segregation or disciplinary separation for a major offense. The institution shall provide inmates in program segregation and disciplinary separation the following:

(a) Clean mattress.

(b) Sufficient light to read by at least 12 hours per day.

(c) Sanitary toilet and sink.

(d) Adequate ventilation and heating.

(2) NECESSITIES. The institution shall provide the following for each inmate in program segregation or disciplinary separation, but the items need not be kept in the cell, as determined by the warden based on safety and security concerns:

(a) Adequate clothing and bedding.

(b) A toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use personal hygiene supplies.

(c) Writing materials and stamps.

(d) Holy books.

(e) Meals, which shall be nutritionally adequate.

(3) OTHER PROPERTY. The institution may allow inmates in program segregation and disciplinary separation access to material pertaining to legal proceedings and law books or other property provided by the institution.

(4) VISITS AND TELEPHONE CALLS. The institution shall permit inmates in program segregation and disciplinary separation visitation and telephone calls in accordance with ch. DOC 309.

(5) CORRESPONDENCE. Inmates in program segregation and disciplinary separation may receive and send first class mail in accordance with departmental rules relating to mail.

(6) SHOWERS. The institution shall allow inmates in program segregation and disciplinary separation to shower at least once every 4 days.

(7) SERVICES AND PROGRAMS. The institution shall provide social services, clinical services, program opportunities and an opportunity to exercise for inmates in program segregation and disciplinary separation, but the institution shall provide these services at the individual's cell, unless otherwise authorized by the warden.

(8) LEAVING CELL. Inmates in program segregation and disciplinary separation may not leave their cells except as needed for urgent medical or psychological attention, showers, visits, exercise and emergencies endangering their safety in the cell or other reasons as authorized by the warden. The warden may require inmates in program segregation or disciplinary separation to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells.

(9) GOOD TIME, PAY AND TIME SERVED. (a) Inmates in program segregation earn neither extra good time nor compensation. Inmates in disciplinary separation continue to earn good time, but may not earn compensation.

(b) Program segregation is concurrent to all segregation or disciplinary separation time. Program segregation starts the day of

the disposition. When concurrent to disciplinary separation, the rules for program segregation apply.

(c) Disciplinary separation is concurrent to all segregation statuses. When concurrent to other segregation statuses, the rules of the other statuses govern.

(10) CANTEEN. Inmates in program segregation and disciplinary separation may have approved items brought in from the canteen but may not go to the canteen in person.

(11) SPECIAL RULES. Institutions may establish policies and procedures for the orderly operation of facilities used for inmates in program segregation and disciplinary separation.

(12) REVIEW OF PROGRAM SEGREGATION AND DISCIPLINARY SEPARATION. The warden may review an inmate's status in program segregation and disciplinary separation at any time and may place the inmate in the general population at any time. The warden shall review such status at least every 30 days.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.71 Controlled segregation. (1) USE. A security supervisor may order into controlled segregation any inmate in segregated status who exhibits disruptive or destructive behavior. Staff shall not place an inmate in controlled segregation unless a conduct report is written for the conduct giving rise to the use of controlled segregation.

(a) A security supervisor may not order controlled segregation for more than 72 hours for a single inmate, but the security director may extend the placement for uncontrollable behavior.

(b) The security director shall review extensions every 24 hours. When the inmate's behavior is brought under control, the person who authorized the extension shall remove the inmate from controlled segregation.

(2) CONDITIONS. The institution shall provide inmates in controlled segregation the following: clean mattress, sufficient light to read by for at least 12 hours per day, sanitary toilet and sink and adequate ventilation and heating.

(3) NECESSITIES. The institution shall provide the following for each inmate in controlled segregation: adequate clothing, essential hygiene supplies, and nutritionally adequate meals. While an inmate is acting in a disruptive manner, the institution shall maintain close control of all property.

(4) VISITS. Inmates in controlled segregation may not receive visits, including no–contact visits, except from their attorney or with permission from the security director.

(5) CORRESPONDENCE. Inmates in controlled segregation may receive and send first class mail in accordance with departmental rules relating to mail. The institution may provide correspondence materials if they do not pose a threat to anyone.

(6) SPECIAL RULES. (a) The institution shall not allow any property in the cell except that described in subs. (2) and (3), letters received while in controlled segregation and legal materials. Institutions may establish policies and procedures for the orderly operation of the facilities used for inmates in controlled segregation.

(b) Inmates in controlled segregation may not leave their cells except in emergencies endangering the inmate's safety in the cell or with permission from the security director. The warden may require inmates in controlled segregation to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(7) GOOD TIME. An inmate in controlled segregation shall earn compensation if the inmate earned compensation in the previous status. If 1983 Wis. Act 528 does not apply to the inmate, the inmate earns extra good time if the inmate earned extra good time in the previous status.

(8) RECORDS. Staff shall visually check inmates in controlled segregation every half–hour and make a written record or log entry at each such interval noting the condition of the inmate.

(9) CREDIT. The institution shall give an inmate in controlled segregation credit toward a term of program segregation and adjustment segregation during such period of confinement.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.72 Other penalties. Other penalties in accordance with ss. DOC 303.68 and 303.84 shall include any of the following:

(1) REPRIMAND. The adjustment committee or hearing officer may impose a reprimand as a minor penalty. A reprimand is any oral statement by the committee or hearing officer to an inmate when the inmate is found guilty of a disciplinary offense. The committee or hearing officer shall only record the reprimand if no other penalty is given.

(2) LOSS OF RECREATION PRIVILEGES. (a) The adjustment committee or hearing officer may impose loss of recreation privileges for 1 to 60 days as a minor penalty and for over 60 days as a major penalty for inmates in the general population. Recreation privileges include sports and leisure activities outside the cell, either on grounds or off grounds.

(b) The adjustment committee or hearing officer may impose loss of recreation privileges for 1 to 8 days as a minor penalty and for 9 to 60 days as a major penalty for inmates in segregation.

(3) ROOM AND CELL CONFINEMENT. The adjustment committee or hearing officer may impose room and cell confinement for 1 to 15 days as a minor penalty and for 16 to 30 days as a major penalty. During the hours of confinement, the inmate may not leave the inmate's quarters without specific permission. The warden may grant permission for attendance at religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement. The warden may remove any or all electronic equipment from an inmate's quarters if room confinement is imposed.

(4) LOSS OF A SPECIFIC PRIVILEGE. The adjustment committee or hearing officer may impose the loss of a specific privilege for a period of 1 to 60 days as a minor penalty and for a period of over 60 days as a major penalty. Specific privileges which the adjustment committee or hearing officer may take away include but are not limited to: use of inmate's own TV, radio or cassette player; phone calls; participation in off grounds activities; having meals in the dining room; and canteen privileges. However, the adjustment committee or hearing officer may suspend mail for periods of time in accordance with s. DOC 309.05.

(5) RESTITUTION. The adjustment committee or hearing officer may impose restitution as a minor penalty. Restitution is payment to the owner for the replacement or repair of stolen, destroyed and damaged property or for medical bills. Restitution may include escape expenses or any other expenses caused by the inmate's actions. The adjustment committee or hearing officer may order an inmate to make full or partial restitution. The institution may withhold money from earnings or take money from an inmate's account to satisfy the requirements to make restitution.

(6) EXTRA DUTY. The adjustment committee or hearing officer may assign an inmate extra work or school duty for a maximum of 80 hours or require an inmate to report as ordered to a school or a work assignment for as long as 80 hours, without pay, as a minor penalty.

(7) BUILDING CONFINEMENT. The adjustment committee or hearing officer may impose building confinement for a period of 1 to 30 days as a minor penalty and for a period of over 30 days as a major penalty. Building confinement is confinement to the building in which the inmate resides. During the hours of confinement, the inmate may not leave the building without specific permission. The warden may grant permission for attendance at

religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement.

(9) SECURE WORK CREWS. The adjustment committee or hearing officer may give uncompensated secure work crew assignments under ch. DOC 304 as a minor disciplinary sanction to inmates.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.73 Referral for prosecution. The warden shall work with the local district attorney and determine when violations that may violate criminal statute shall be referred for prosecution.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.74 Summary disposition procedure. (1) The staff member may summarily find an inmate guilty and punish the inmate for minor rule infractions in accordance with this section.

(2) Before an inmate is summarily found guilty and punished, a staff member shall do the following:

(a) Inform the inmate of the nature of the alleged infraction and the contemplated penalty.

(b) Inform the inmate that the incident may be handled summarily or that it may be handled through the formal disciplinary process.

(3) If the inmate agrees to summary disposition, the staff member shall inform the inmate of the punishment. This agreement is not appealable.

(4) Before imposing the punishment, the staff member shall get the oral or written approval of the supervisor. If the supervisor disapproves of the summary disposition, the institution shall handle the alleged infraction through the formal disciplinary process or alter the disposition so that the supervisor approves it.

(5) The staff member shall impose punishments pursuant to s. DOC 303.68 (1) (b).

(6) The reporting staff member shall make a written record of dispositions pursuant to this section on an appropriate form indicating that summary disposition has been made and approved by the supervisor.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.75 Hearing procedure for minor violations. (1) NOTICE. When an inmate is alleged to have committed a minor violation and the security director has reviewed the conduct report pursuant to s. DOC 303.67 and staff have not disposed of the conduct report summarily in accordance with s. DOC 303.74, staff shall give a copy of the approved conduct report to the accused inmate.

(2) TIME LIMITS. The institution may not hold the hearing until at least 2 working days after the inmate receives the approved conduct report. The institution may not hold the hearing more than 21 days after the inmate receives the approved conduct report unless otherwise authorized. The security director may authorize a hearing beyond the 21 day time limit, either before or after the 21st day. The 21 day time limit is not jurisdictional. The inmate may request more time to prepare, and the security director may grant this request. An inmate may waive in writing the time limits provided in this section. The institution shall toll time for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(3) HEARING OFFICER. The warden shall appoint one or more staff members to serve as hearing officers. A hearing officer with substantial involvement in the conduct report may not hold a hearing on that conduct report.

(4) HEARING. At the hearing, a hearing officer shall review the conduct report and discuss it with the inmate. The hearing officer shall provide the inmate with an opportunity to respond to the report and make a statement about the alleged violation. The hearing officer may question the inmate. The inmate has no right to a staff advocate, to confront witnesses or to have witnesses testify on the inmate's behalf. If an inmate refuses to attend a hearing, or is disruptive, the hearing officer may conduct the hearing without the inmate being present. The institution may use electronic conferencing for hearings.

(5) DECISION AND DISPOSITION. (a) The hearing officer shall decide the guilt or innocence of the inmate on each charge, and decide the punishment. Staff shall inform the inmate of the decision. The hearing officer may impose penalties for minor violations in accordance with s. DOC 303.72. The adjustment committee may impose penalties for major violations when a due process hearing is waived under s. DOC 303.76 (6) in accordance with ss. DOC 303.83 and 303.84.

(b) The institution shall establish guilt based on a finding that it was more likely than not that the inmate committed the act.

(c) The hearing officer shall state in writing the finding of guilt for each charge, the punishment and the reasons for it.

(6) APPEAL. An inmate may appeal the disposition of a minor hearing within 10 days to the warden.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; r. and recr. Register, April, 1985, No. 352, eff. 5–1–85; r. and recr. Register, July, 2000, No. 535, eff. 8–1–00.

DOC 303.76 Hearing procedure for major violations. (1) NOTICE. When an inmate is alleged to have committed a major violation and the security director has reviewed the conduct report pursuant to s. DOC 303.67, staff shall give the inmate a copy of the approved conduct report within 2 working days after its approval. The institution shall inform the inmate of all of the following:

(a) The rules which the inmate is alleged to have violated.

(b) The potential penalties or other potential results that may be imposed, including but not limited to removal from work release.

(c) The right the inmate has to a due process hearing or to waive this right in writing.

(d) If the inmate waives the right to a formal due process hearing, the inmate will be given an informal hearing under s. DOC 303.75.

(e) If a formal due process hearing is chosen, the inmate shall be informed of all of the following:

1. The inmate may present oral, written, documentary and physical evidence, and evidence from witnesses in accordance with this section and s. DOC 303.81.

2. The inmate may have the assistance of a staff advocate in accordance with this section and s. DOC 303.78.

3. The adjustment committee may permit direct questions or require the inmate or the inmate's advocate to submit questions to the adjustment committee to be asked of the witness.

4. The adjustment committee may prohibit repetitive, disrespectful and irrelevant questions.

5. The inmate may appeal the finding and disposition of the adjustment committee in accordance with sub. (7).

6. If the inmate refuses to attend a hearing, or is disruptive, the adjustment committee may conduct the hearing without the inmate being present.

(2) WAIVER. An inmate may waive the right to a due process hearing in writing at any time. If the inmate waives a due process hearing, the institution shall dispose of the conduct report under the hearing procedures for minor violations, s. DOC 303.75. A waiver does not constitute an admission of the alleged violation. A waiver may not be retracted without the security director's approval.

(3) TIME LIMITS. The institution may not hold the hearing until at least 2 working days after the inmate receives a copy of the conduct report and hearing rights notice. The institution may not hold the hearing more than 21 days after the inmate receives the

approved conduct report and hearing rights notice unless otherwise authorized. The security director may authorize a hearing beyond the 21 day time limit, either before or after the 21st day. The 21 day time limit is not jurisdictional. The inmate may request more time to prepare, and the security director may grant the request. An inmate may waive in writing the time limits provided in this section. The institution shall toll time for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(4) PLACE. The due process hearing may take place at the institution where the alleged conduct occurred, at a county jail or at an institution to which an inmate has been transferred.

(5) HEARING. The adjustment committee, as defined in s. DOC 303.82, shall conduct the due process hearing. If an inmate refuses to attend the hearing or disrupts the hearing, the adjustment committee may conduct the hearing without the inmate being present. The institution may use electronic conferencing for hearings. At a due process hearing, the adjustment committee:

(a) Shall read the conduct report aloud.

(b) Shall provide all witnesses who are requested and permitted to speak for or against the accused a chance to speak.

(c) May require that physical evidence be offered. May permit direct questions or require the inmate or the inmate's advocate to submit questions to the adjustment committee to be asked of the witness.

(d) May prohibit repetitive, disrespectful or irrelevant questions.

(6) DECISION. After the hearing the adjustment committee:

(a) Shall consider all relevant information.

(b) Shall establish guilt based on a finding that it was more likely than not that the inmate committed the act.

(c) May find the inmate guilty or not guilty. A committee of 3 may find the inmate guilty if at least 2 of the 3 members find that it was more likely than not that the inmate committed the act and if 2 agree upon a sentence, may sentence the inmate. A committee of 2 or of one may find the inmate guilty if the committee members unanimously find that it was more likely than not that the inmate committed the act and may sentence the inmate if they are unanimous as to the sentence. The committee may consider any of the inmate's defenses or other mitigating factors.

(d) May refer the matter to the warden for a decision if the adjustment committee members do not agree on a finding of guilt or a sentence.

(e) Shall inform the inmate of the decision or give the inmate a postponed or delayed decision.

(f) Provide the accused inmate and the inmate's advocate, if any, a written copy of the decision with reasons for the decision.

(7) APPEAL. (a) Any time within 10 days after either a due process hearing or after the inmate receives a copy of the decision, whichever is later. An inmate who is found guilty may appeal the decision or the sentence, or both, to the warden.

(b) The warden shall review all records and forms pertaining to the appeal and make the decision within 60 days following receipt of the request for appeal.

(c) The warden's decision shall be one of the following:

1. Affirm the adjustment committee's decision and the sentence.

2. Modify all or part of the adjustment committee's decision or sentence.

3. Reverse the adjustment committee's decision, in whole or in part.

4. Return the case to the adjustment committee for further consideration or to complete or correct the record.

(d) The warden's decision is final regarding the sufficiency of the evidence. An inmate may appeal procedural errors as provided under s. DOC 310.08 (3).

(e) The warden may at any time review the conduct report and act on it unilaterally as if there were an appeal.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; r. and recr. Register, April, 1985, No. 352, eff. 5–1–85; r. and recr. Register, July, 2000, No. 535, eff. 8–1–00; correction in (1) (e) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, December, 2000, No. 540.

DOC 303.78 Due process: advocates. (1) (a) At each institution, the warden may designate or hire staff members to serve as advocates for inmates in disciplinary hearings at the institution.

(b) The warden may assign a different staff member to serve as the inmate's advocate if the inmate establishes the assigned advocate has a conflict of interest in the case.

(c) The warden may assign advocates to inmates. If an inmate objects to the assignment of a particular advocate because the advocate has a known and demonstrated conflict of interest in the case, the warden shall assign a different staff member to serve as the inmate's advocate.

(2) When the warden assigns an advocate, the advocate's purpose is to help the accused inmate to understand the charges against the inmate and to help in the preparation and presentation of any defense the inmate has, including gathering evidence and testimony, and preparing the inmate's own statement. The advocate may speak on behalf of the accused inmate at a disciplinary hearing or may help the inmate prepare to speak.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.81 Due process hearing: witnesses. (1) The accused may directly or through an advocate make a request to the security office for witnesses to appear at the major violation hearing, including requests for the appearance of the staff member who signed the conduct report. Except for good cause, an inmate may present no more than 2 witnesses in addition to the reporting staff member or members. The inmate shall make this request within 2 days of the service of notice when no advocate is assigned and within 2 days of the initial contact by the advocate when an advocate is assigned. The security director may waive the time limits for good cause.

(2) After all witness requests have been received, the security director shall review them to determine whether the witnesses possess relevant information and shall be called.

(3) Witnesses requested by the accused who are staff or inmates shall attend the disciplinary hearing unless one of the following exist:

(a) The risk of harm to the witness if the witness testifies.

(b) The testimony is irrelevant to the question of guilt or innocence.

(c) The testimony is merely cumulative of other evidence and would unduly prolong the hearing.

(4) If a witness is unavailable to testify, the adjustment committee may consider a written statement, a transcript of an oral statement, or a tape–recorded statement. Unavailability means death, transfer, release, hospitalization, or escape in the case of an inmate; death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of a staff member. The adjustment committee may consider a written statement, a transcript of an oral statement, or a tape–recorded statement if it determines that there is cause for the witness not to testify.

(5) If the institution finds that testifying would pose a risk of harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity or a corroborated signed statement from a staff member getting the statement from that witness. The adjustment committee shall reveal the contents of the statement to the accused inmate, though the adjustment committee may edit the statement to avoid revealing the identity of the witness. The committee may question the witnesses, if they are otherwise available. Two anonymous statements by different persons may be used to

corroborate each other. A statement can be corroborated in either of the following ways:

(a) By other evidence which substantially corroborates the facts alleged in the statement such as an eyewitness account by a staff member or circumstantial evidence.

(b) By evidence of a very similar violation by the same person.

(6) If it is not possible to get a signed statement in accordance with subs. (4) and (5), the hearing officer may consider other evidence of what the witness would say if present.

(7) After determining which witnesses will be called for the accused inmate, staff shall notify the inmate of the decision in writing.

(8) Witnesses other than inmates or staff may not attend hearings but advocates with the hearing officer's permission may contact them. The adjustment committee may designate a staff member to interview any such witness and report to the committee.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (1) to (4) and (8), Register, April, 1985, No. 352, eff. 5–1–85; r. and recr. Register, July, 2000, No. 535, eff. 8–1–00.

DOC 303.82 Adjustment committee. (1) Due process disciplinary hearings shall be conducted by an adjustment committee of one, 2 or 3 staff members appointed by the warden. At least one member of every adjustment committee shall be a supervisor.

(2) No person who has substantial involvement in an incident, which is the subject of a hearing, may serve on the committee for that hearing. Committee members shall determine the subject matter of the hearing in advance in order to allow replacement of committee members if necessary and thereby avoid the necessity of postponing the hearing.

(3) An adjustment committee may hold a hearing even if the inmate has waived due process.

(4) When a single hearing officer is sitting on the adjustment committee pursuant to sub. (1), or after the waiver of due process, the hearing officer has the same authority as given the adjustment committee under this chapter.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.83 Sentencing considerations. In deciding the sentence for a violation or group of violations, the supervisor making summary disposition or the adjustment committee or hearing officer who is holding the hearing may consider any of the following:

(1) The inmate's overall disciplinary record, especially during the last year.

(2) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently.

(3) Whether the alleged violation created a risk of serious disruption at the institution or in the community.

(4) Whether the alleged violation created a risk of serious injury to another person.

(5) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft.

(6) Whether the inmate was actually aware that the inmate was committing a crime or offense at the time of the offense.

(7) The motivation for the offense.

(8) The inmate's attitude toward the offense and toward the victim, if any.

(9) Mitigating factors, such as coercion, family difficulties which may have created anxiety and any special circumstances.

(10) Whether the offense created a risk to the security of the institution, inmates, staff or the community.

(11) Any other relevant factors.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.84 Sentencing procedure and schedule of penalties. (1) In every case where an inmate is found guilty of one or more violations of the disciplinary rules, one or more of the following penalties shall be imposed, except as provided in sub. (2) and subject to the limitations under ss. DOC 303.68 to 303.72:

(a) Reprimand.

(b) Loss of recreational privilege.

(c) Room confinement.

(d) Building confinement.

(e) Loss of a specific privilege.

(f) Mail as provided in the departmental rules relating to mail.

(g) Adjustment segregation.

(h) Extra duty without pay.

(i) Program segregation or disciplinary separation.

(j) Loss of good time for an inmate whose crime was committed before June 1, 1984, and who did not choose to have 1983 Wis. Act 528 apply to the inmate, or extension of the mandatory release date for an inmate whose crime was committed on or after June 1, 1984, and for other inmates who chose to have 1983 Wis. Act 528 apply to them.

(k) Restitution.

(2) Punishment imposed pursuant to sub. (1) is subject to the following:

(a) Adjustment segregation, program segregation or disciplinary separation, 16 to 30 days in room confinement, and loss of good time or extension of the mandatory release date, whichever is applicable, may be imposed for a single major offense. At one hearing, the maximum penalty is the most severe penalty the inmate could receive for any single offense of which the inmate is found guilty. The duration of a penalty may not exceed the duration shown in Table 303.84.

TABLE DOC 303.84
SCHEDULE OF PENALTIES
(Maximum in days)

		Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983 Wisconsin Act 528*	Disciplinary Separation
Offenses against bodily security						
303.12	Battery	8	360	20	40	360
303.13	Sexual assault—intercourse	8	360	20	40	360
303.14	Sexual assault—contact	8	360	20	40	360
303.15	Sexual conduct	8	180	10	20	180
303.16	Threats	5	180	10	20	180
303.17	Fighting	8	360	20	40	360
Offenses against institutional security						
303.18	Inciting a riot	8	360	20	40	360
303.19	Participating in a riot	6	360	10	20	360
303.20	Group resistance and petitions	4	360	10	20	360
303.21	Cruelty to animals	8	360	20	40	360
303.22	Escape	8	360	20	40	360
303.23	Disguising identity	8	180	20	40	180
Offenses against order						
303.24	Disobeying orders	6	180	10	20	180
303.25	Disrespect	8	180	10	20	180
303.26	Soliciting staff	8	360	20	40	360
303.27	Lying	5	180	10	20	180
303.271	Lying about staff	8	360	20	40	360
303.28	Disruptive conduct	5	360	10	20	360
303.30	Unauthorized forms of communication	5	60	10	20	60
303.31	False names and titles	4	180	0	0	180
303.32	Enterprises and fraud	6	120	5	10	120
Offenses against property						
303.34	Theft	8	360	20	40	360
303.35	Damage or alteration of property	8	180	15	30	180
303.36	Misuse of state property	4	60	0	0	60
303.37	Arson	8	360	20	40	360
303.38	Causing an explosion or fire	6	180	15	30	180
303.39	Creating a hazard	6	120	10	20	120
303.40	Unauthorized transfer of property	5	120	0	0	120
303.41	Counterfeiting and forgery	8	360	20	40	360
Contraband offenses						
303.42	Possession of money	8	360	20	40	360
303.43	Possession of intoxicants	8	360	20	40	360
303.44	Possession of drug paraphernalia	8	360	20	40	360
303.45	Possession, manufacture & alteration of weapons	8	360	20	40	360
303.47	Possession of contraband–miscellaneous	6	120	10	20	120
303.48	Unauthorized use of the mail	8	360	20	40	360
Movement offenses						
303.49	Punctuality and attendance	5	120	5	10	120
303.50	Loitering	4	120	5	10	120
303.51	Leaving assigned area	6	180	10	20	180
303.511	Being in unassigned area	6	180	10	20	180
303.52	Entry of another inmate's quarters	8	360	20	40	360

TABLE DOC 303.84 (Continued)
SCHEDULE OF PENALTIES
(Maximum in days)

		Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983 Wisconsin Act 528*	Disciplinary Separation
Offenses against safety and health						
303.54	Improper storage	4	60	5	10	60
303.55	Dirty quarters	4	60	0	0	60
303.56	Poor grooming	4	60	0	0	60
303.57	Misuse of prescription medication	8	360	20	40	360
303.58	Disfigurement	5	120	10	20	120
Miscellaneous						
303.59	Use of intoxicants	8	360	20	40	360
303.60	Gambling	4	180	5	10	180
303.61	Refusal to work or attend school	4	60	5	10	60
303.62	Inadequate work or study performance	4	60	5	10	60
303.63	Violation of institutional policies and procedures	6	180	10	20	180
303.631	Violating conditions of leave	8	360	20	40	360
303.05	Conspiracy		Maximum for completed offense			
303.06	Attempt		Maximum for completed offense			
303.07	Aiding and abetting		Maximum for completed offense			

* Does not include the mandatory extension of 50% of the number of days spent in segregation status required under par. (e).

(b) Program segregation and disciplinary separation shall be given for a specific term of 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330 or 360 days.

(c) More than one minor or major penalty may be imposed for a single offense and both a major and minor penalty may be imposed for a major offense.

(d) Loss of accumulated good time or extension of the mandatory release date may be imposed as a penalty only where the violation is listed as a major offense under s. DOC 303.68 (3) or is designated as a major offense by the security director because of its nature or the inmate's prior record.

(e) 1. For those inmates to whom 1983 Wis. Act 528 does not apply, the number of days of good time lost on one occasion may be based on the number of prior occasions on which the inmate lost good time but shall not exceed the following:

Number of prior occasions good time lost	Maximum number of days good time lost
None	5
One	10
2 or more	20

2. For those inmates to whom 1983 Wis. Act 528 applies, the number of days the mandatory release date is extended on one occasion may be based on the number of prior occasions on which the inmate lost good time or had his or her mandatory release date extended but shall not exceed the following:

Number of prior occasions good time lost or mandatory Release date extended	Maximum number of days mandatory release date extended
None	10
One	20
2 or more	40

(f) Restitution may be imposed in addition to any other penalty.

(g) For those inmates to whom 1983 Wis. Act 528 applies, in addition to other penalties imposed in accordance with this subsection, the inmate's mandatory release date shall be extended by the number of days equal to 50% of the number of days spent in adjustment, program or controlled segregation status.

(h) TLU time may not be considered as time served for disciplinary penalty purposes.

(i) A guilty finding on any conduct report designated major for any reason in this chapter may result in one or more major penalties.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.85 Recordkeeping. (1) The Department may keep records of disciplinary infractions in an inmate's case record only in the following situations:

(a) If the inmate was found guilty by summary disposition procedure.

Note: See s. DOC 303.74.

(b) If the inmate was found guilty by a hearing officer or an adjustment committee. The institution shall remove records if an appeal is successful except a conduct report entry may remain on a warning card as it still constitutes a warning.

Note: See s. DOC 303.82.

(2) The department may keep conduct reports which have been dismissed or in which the inmate was found not guilty for statistical purposes, and security reasons, but the department may not consider them in making program assignment, transfer, or parole release decisions, nor may the department include them in any inmate's case record except that a conduct report may remain on a warning card as it constitutes a warning that the conduct specified in the conduct report is a violation.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.86 Evidence. (1) (a) "Evidence" is any statement or object which could be presented at a disciplinary hearing or in a court of law, whether or not it is admissible.

(b) Evidence is relevant if that evidence makes it appear more likely or less likely that the inmate committed the offense of which the inmate is accused.

Note: For example: an inmate is accused of threatening another inmate. Testimony that the accused inmate and the other inmate had a loud argument the day before is relevant. It indicates a possible motive for a threat and makes it appear more likely

that a threat occurred. An officer testifies that the accused inmate has lied to the officer on previous occasions. This is relevant if the testimony of the accused inmate varies from the conduct report.

(2) (a) An adjustment committee or a hearing officer may consider any relevant evidence, whether or not it would be admissible in a court of law and whether or not any violation of any state law or any DOC administrative code provision occurred in the process of gathering the evidence.

(b) An adjustment committee or a hearing officer may refuse to hear or admit relevant evidence for any of the following reasons:

1. The evidence is not reliable.

Note: For example: opinions which are not supported by factual observation; hearsay or statements made outside of the hearing; reputation of the witness.

2. The evidence, even if true, would be of marginal relevance.

Note: For example: evidence of prior acts by the accused inmate or a witness, to show that the inmate is repeating a pattern.

3. The evidence is merely cumulative of evidence already received at the hearing and is no more reliable than the already admitted evidence, for example: testimony of other inmates corroborating the accused's story, when corroboration has already occurred.

(3) If a witness is unavailable to testify, the adjustment committee may consider a written statement, a transcript of an oral statement, or a tape–recorded statement. Unavailability means death, transfer, release, hospitalization, or escape in the case of an inmate; death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of a staff member. The adjustment committee may consider a written statement, a transcript of an oral statement, or a tape– recorded statement if it determines that there is cause for the witness not to testify.

(4) If the institution finds that testifying would pose a risk of harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity or a signed statement from a staff member getting the statement from that witness. The adjustment committee shall reveal the statement to the accused inmate, though the adjustment committee may edit the statement to avoid revealing the identity of the witness. The committee may question the witnesses, if they are otherwise available. Two anonymous statements by different persons may be used to corroborate each other. A statement can be corroborated in either of the following ways:

(a) By other evidence which substantially corroborates the facts alleged in the statement such as, eyewitness account by a staff member or circumstantial evidence.

(b) By evidence of a very similar violation by the same person.

(5) After disposition has been reached by the adjustment committee, and if a finding of guilt results, the adjustment committee shall then forward restricted informant material to the security office for retention in the restricted security department file.

(6) The institution shall place the original conduct report and all due process documents in the inmate's case record. However, the institution shall place restricted informant reports only in the security department restricted file.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

DOC 303.87 Harmless error. If staff does not adhere to a procedural requirement under this chapter, the error is harmless if it does not substantially affect a finding of guilt or the inmate's ability to provide a defense.

History: Cr. Register, December, 2000, No. 540, eff. 1–1–01.

STATE REPRESENTATIVE

Garey Bies

1ST ASSEMBLY DISTRICT

April 8, 2003

Representative Sue Jeskewitz
Room 314 North, State Capitol
Madison, WI 53708

Senator Carol Roessler
8 South, State Capitol
Madison, WI 53708

Dear Representative Jeskewitz and Senator Roessler:

I would like to request the Joint Committee on Audit direct the Legislative Audit Bureau to conduct an audit of the Wisconsin Technical College System. I would like the audit to focus on two major subjects: funding of the system and merging the system with the University of Wisconsin's two-year colleges.

First, I would like the audit to investigate how the Technical College System is funded. Currently, the Technical College System operates with minimal oversight by the State of Wisconsin, yet College districts are allowed to levy a property tax upon the residents of the technical college district. Given the current fiscal condition, I believe the state needs to take a closer look at the Technical Colleges where, in some instances, annual budgets have increased over 100% since 1995.

Further, I am interested in situations where residents in one portion of a district are responsible for a disproportionate amount of the funding in relation to population and number of students. I would also be interested to learn how these discrepancies would change with the utilization of an alternative funding source such as the sales tax.

Second, I would like the audit to investigate the feasibility of merging the Wisconsin Technical College system with the University of Wisconsin's 2-year college system. Are these two systems competing with each other unnecessarily? Can efficiencies and cost savings to the taxpayers be gained if the two were combined? Such a merger has been successful in other states, including Minnesota.

Thank you for your consideration of this request. I would be happy to provide more information or answer any questions that you may have.

Respectfully,

GAREY BIES
State Representative
1st Assembly District

First for Wisconsin!

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Mary Lazich

Wisconsin State Senator

Senate District 28

April 18, 2003

Senator Carol Roessler, Chair
Joint Legislative Audit Committee
8 South, State Capitol
Madison, Wisconsin 53707

Representative Suzanne Jeskewitz, Chair
Joint Legislative Audit Committee
314 North, State Capitol
Madison, Wisconsin 53707

Dear Senator Roessler and Representative Jeskewitz:

I request the Joint Audit Committee direct the Legislative Audit Bureau (LAB) to audit the eligibility determination used by the Department of Health and Family Services especially in the Medicaid, BadgerCare and SeniorCare programs.

It has come to my attention that the State of Wisconsin allows Medicaid, BadgerCare and SeniorCare applicants to self-declare their income level, age, ability to obtain private health insurance, and residence, without obtaining verification. This is referred to as self-declaration. In addition, once an applicant is determined to be eligible for SeniorCare, they automatically remain eligible for one year, regardless of changes in income, residency, or family composition. This is referred to as continuous eligibility regardless of circumstances. Once an applicant is found eligible for Medicaid, BadgerCare, or SeniorCare they are not required to undergo a review for one year.

According to a report by the Kaiser Commission on Medicaid and the Uninsured, only ten states allow self-declaration of income, and only thirteen states have adopted 12-month continuous eligibility, guaranteeing enrollment regardless of changes in income or family circumstances. The Kaiser Commission Report indicates that several states have applied lenient eligibility standards to Medicaid or their health insurance program for children, but not to both. It is my understanding that Wisconsin may be the only state that applies self-declaration and continuous eligibility to both programs.

More disturbing are recent audit findings in two of the states that allow applicants to self-declare income, residency, and other eligibility criteria. In Arizona, an audit was

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completed on a sample of Medicaid cases in which applications were made through outreach offices rather than through county public assistance offices. Forty three percent of the 2,570 applications reviewed contained incorrect information. Immediate denials were issued to 33 percent of the applications, based on information obtained as a result of the audit. The most common misrepresentation was related to residency: 29 percent of the applicants provided a false address. Arizona now requires information to be verified, and the state saves approximately $1.15 million per month in Medicaid expenditures paid on behalf of ineligible applicants.

The State of Washington audited a sample of its Medicaid cases. It was discovered that 13 percent of the clients in the 1,140 cases reviewed, did not accurately declare their income on their application. Almost 50 percent of the clients who were declared ineligible as a result of the review, had unreported income. In more than one-third of the cases reviewed, reviewers were unable to verify income, because the initial information and documentation provided were inadequate. In more than one-third of the cases reviewed, reviewers were unable to verify income, because the initial information and documentation provided were inadequate. Based on its findings, Washington, which is facing an estimated $2.6 billion dollar state budget deficit, is proposing to adopt new verification requirements and reduce its 12-month continuous eligibility period to six months.

The Center for Medicaid and Medicare Services (CMS), the federal agency which manages the Medicaid and Medicare programs, has encouraged states in recent years to streamline the application and eligibility determination process for all Medicaid funded programs. Janet Reichert from CMS informed my office that CMS never encouraged states not to verify information. It is my understanding that CMS has recently raised concerns about errors in eligibility determinations resulting from self-declaration and is discussing tougher Quality Control options. According to an e-mail received by my office, CMS has asked the federal Office of Management and Budget to review six options that may require states to complete in-depth eligibility review samples that include verifying information provided by the applicant. The options also include increasing single state audit testing of Medicaid eligibility.

BadgerCare enrollment has grown steadily since the program's implementation in 1999. Enrollment in the SeniorCare program, which began in September 2001, is anticipated to grow by one percent per year. It is also anticipated that the costs of these programs will continue to rise, as health care costs and prescription drug costs continue to outpace inflation.

I am requesting that an audit include a statistically valid sample of Medicaid, BadgerCare and SeniorCare cases. The audit should gather factual, verified information on a participant's income and residency to determine whether their eligibility was correctly determined. The audit should require an interview of workers at the county level, who routinely handle BadgerCare and SeniorCare applications. Anecdotally, county workers around the state have indicated that face-to-face interviews with applicants often result in more complete or different information, particularly in the area of income, than that provided on a written application form.

BadgerCare is appreciated by the working people of Wisconsin. SeniorCare is appreciated by the elderly population in Wisconsin. Both programs have greatly improved the ability of many people to meet their medical needs. Particularly in these difficult budgetary times, it is important to ensure that only persons who are eligible receive benefits. An audit of the Medicaid programs will provide important information about Wisconsin's current policy of self-declaration and 12-month continuous eligibility.

Thank you for your consideration of my request. If you have questions, please contact me.

Sincerely,

Mary Lazich

Mary Lazich
State Senator
Senate District 28

cc: Senator Robert Cowles, Member Joint Legislative Audit Committee
Senator Alberta Darling, Member Joint Legislative Audit Committee
Senator Gary George, Member Joint Legislative Audit Committee
Senator Dave Hansen, Member Joint Legislative Audit Committee
Representative Samantha Kerkman, Member Joint Legislative Audit Committee
Representative Dean Kaufert, Member Joint Legislative Audit Committee
Representative David Cullen, Member Joint Legislative Audit Committee
Representative Mark Pocan, Member Joint Legislative Audit Committee
Janice Mueller, State Auditor
Secretary Nelson, DHFS

MAL/tve

WISCONSIN STATE LEGISLATURE

Joint Audit Committee

Committee Co-Chairs:
State Senator Carol Roessler
State Representative Suzanne Jeskewitz

April 21, 2003

Representative Steve Foti
215 West, State Capitol
Madison, Wisconsin 53702

Dear Representative Foti:

Thank you for your March 27, 2003 letter expressing interest in an audit of the Patients Compensation Fund. As noted in your letter, your particular audit interest relates to the proposed transfer of $200 million from the Fund to the Medical Assistance program. Enclosed is a copy of testimony that State Auditor Janice Mueller provided at an informational meeting about the proposed transfer before the Assembly Committee on Insurance on March 25, 2003. In her testimony, the State Auditor notes that a transfer would place the Fund in a significant deficit accounting position. At the same time, the State Auditor notes that the imprecise and conservative nature of actuarial estimates must be carefully weighed when considering the effect of a transfer on the long-term integrity of the Fund.

The State Auditor states in her testimony that the decision to transfer funds from the Patients Compensation Fund ultimately is a legal and policy decision that needs to be made in the context of the State's overall budget needs and priorities. We agree and do not believe that additional audit work would provide the clear answer you seek on this difficult issue.

The Legislative Audit Bureau is scheduled to begin its triennial financial audit of the Patients Compensation Fund this summer. The State Auditor assures us that, as in the past, the Legislative Audit Bureau will continue to monitor and report on the financial status of the Fund.

Thank you for submission of this audit request. If you have questions or concerns about this or any other audit topic, please contact our offices.

Sincerely,

Senator Carol A. Roessler, Co-chair
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

Enclosure

cc: Janice Mueller, State Auditor

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Assembly Committee on Insurance
Informational Meeting on the Patients Compensation Fund
March 25, 2003

Testimony Provided by the Legislative Audit Bureau
Jan Mueller and Diann Allsen

We appreciate the invitation for today's meeting and are here for informational purposes because of our ongoing role auditing the financial statements for the Patients Compensation Fund. We first will provide background on our audits of the Patients Compensation Fund and second will offer our perspective on the proposed budget provisions that transfer $200 million from the Fund.

We are required by statute to audit the Patient Compensation Fund's financial statements at least once every three years. We have been auditing the Fund since the early 1980s. Our most recent audit was issued in 2001 and covered fiscal years (FYs) 1997-98, 1998-99, and 1999-00.

As required by statute, the Patients Compensation Fund's financial reports are prepared in accordance with generally accepted accounting principles. These accounting principles require that the Fund recognize in its financial reports not only claims that have been paid, but also estimated claims for malpractice incidents that have occurred but have not been paid or even yet reported. The ultimate projected amounts to be paid out for the claim liabilities are based upon estimates prepared by actuaries contracted by the Office of the Commissioner of Insurance (OCI).

For several years, the Fund had reported an accounting deficit because the estimated claim liabilities exceeded the cash and investments available to pay them. In the late 1980s, the accounting deficit had grown to almost $123 million.

During past audits of the Fund, we recommended that the Fund's Board of Governors take steps to address the accounting deficit. In response, the Board developed a plan in 1994 to fund the deficit over a 25-year period by collecting additional assessments from health care providers.

The accounting deficit, however, was eliminated over a much quicker period than the projected 25 years. By the end of FY 1998-99, the Fund reported a positive accounting balance. At June 30, 2002, the Fund reported an accounting balance of $6.6 million.

A number of actions taken by the Board and the Legislature have contributed to the Fund's improved financial position. One major step was statutory changes in 1990 that allowed SWIB to make long-term investments for the Fund. With more investment flexibility, the Fund was able to benefit from the strong investment markets in the 1990s, although investment returns have been significantly reduced with current market conditions.

Another major step was legislative action in 1995 that re-established a cap on noneconomic damages. The re-established limit was set at $350,000, with annual adjustments to reflect changes in the consumer price index. The current limit for non-economic damages is $410,322. Other steps that have improved the Fund's financial position, include:

- increases in the statutory thresholds at which Fund coverage begins; and
- increases in provider assessment fees in six of the first eight years of 1990s.

Another major factor affecting the Fund's financial position, however, has been changes in actuarial estimates of claims liabilities. Because of the Fund's unlimited coverage for economic damages and the length of time that can elapse before a claim is even filed, a great deal of uncertainty and impreciseness is involved in estimating the amounts that ultimately will be paid out for malpractice incidents that have already occurred. As a result, there is almost a 100 percent chance that actual experience will differ from original estimates of the claims liabilities. Therefore, it is expected that the actuaries continually adjust past estimates to take into account most recent experience.

However, in our most recent audit in 2001, we note that recent experience suggests that the actuaries may have been overly conservative in estimating claims. In nine of the ten years from FY 1990-91 through FY 1999-00, the actuary's estimate was decreased following actuarial review of subsequent experience and information. Our review of the most recent actuarial report indicates that this trend is continuing, with additional decreases in past estimates.

In response, we recommended that OCI contract for an audit of the reasonableness of the actuarial methods and assumptions used in estimating claims liabilities and recommending assessment levels for the Patients Compensation Fund. We understand that OCI has contracted for the audit and expects to receive a report in 4 to 6 weeks.

You asked us to also speak on the proposed budget provisions that transfer $200 million from the Patients Compensation Fund. While this ultimately will be a legal and policy decision that needs to be made in context of the State's overall budget needs and priorities, I can provide some observations for your consideration in making this important decision.

A transfer of $200 million will again place the Fund in a significant accounting deficit position. Because future investment returns on the Fund's investments are taken into account in determining the amount of liabilities reported in the Fund's financial reports, the effect of the transfer on the accounting balance will be greater than $200 million as fewer investment returns will be available to fund the liabilities. Further, the need to liquidate investments may increase costs, depending on the markets for the Fund's investments.

As you are aware, we have raised concerns with accounting deficits for the State overall. My certified public accountants, of course, would be concerned with a similar situation for the Patients Compensation Fund, as they have in the past. While the Fund would likely have no problems paying claims in the near future, the effect of the deficit on the long-term solvency of the Fund and future assessments health care providers will be required to pay is less clear.

At the same time, the imprecise and conservative nature of the actuarial estimates of claims liabilities, which significantly affect the Fund's accounting position, also need to be kept in mind. Wisconsin has had relatively more favorable and stable experience in its medical malpractice activity than seen nationally. If the actuaries continue to reduce past claim estimates as they factor in more of Wisconsin's experience, the effect of the transfer on the Fund's financial position would be lessened.

Finally, the budget provision that establishes a sum-sufficient State general purpose revenue appropriation as a guarantee for the payment of claims if the Patients Compensation Fund runs out of funds adds a new dimension that may need to be considered in how the Fund operates and is funded in the future. For example, could or should this guarantee be factored in when the Board of Governors establish the annual assessment rates for health care providers?

We appreciate the opportunity to present information on our financial audits of the Patients Compensation Fund and assure you that we will continue to closely monitor the Fund's finances in the future. We would be happy to answer questions from the committee members.

MIKE POWERS

STATE REPRESENTATIVE 80TH ASSEMBLY DISTRICT
310 NORTH, WISCONSIN STATE CAPITOL,
PO BOX 8953 MADISON, W 53708-8953
MIKE.POWERS@LEGIS.STATE.WI.US 608 266-1192

06 May 2003

Representative Suzanne Jeskewitz
PO Box 8952
Madison, WI 53708

Senator Carol Roessler
PO Box 7884
Madison, WI 53708

Dear Representative Jeskewitz and Senator Roessler,

I am writing to forward to you a request from Todd Palmer. Todd is someone whom I represent, from the Town of New Glarus in Green County. Earlier this spring, Todd sent to you a letter of March 07, 2003.

In his letter, Todd has requested a legislative audit of the Department of Public Instruction (DPI) to assess the Department's compliance with the requirement that school districts "provide access to an appropriate program for pupils identified as gifted and talented." His concern is that individual school districts, across the state, are redirecting the resources that would ordinarily be used for gifted and talented programs.

I have included a copy of Todd's letter in which he state's his concern.

I have also met with Todd and let him know that it was unlikely that a full audit would be considered. However, I am hopeful that there may be some manner in which the Committee could assist.

Thank you in advance for your consideration.

Sincerely,

Mike

Asbjornson, Karen

From: Bilot, Erin
Sent: Sunday, May 18, 2003 2:49 PM
To: Asbjornson, Karen; 'Sue Home'
Subject: FW: Audit Support


Audit WATG.doc


Card for Ruth Robinson

-----Original Message-----
From: Ruth Robinson [mailto:rrobinson@janesville.k12.wi.us]
Sent: Friday, May 16, 2003 5:49 PM
To: erin.bilot@legis.state.wi.us
Subject: Audit Support

Erin:

Mr. Todd Palmer has informed me of the request for an audit of the Department of Public Instruction. As the Legislative Committee Chairperson of the Wisconsin Association for Talented and Gifted I am submitting a letter of support attached.

A hard copy of the letter along with a supplementary item is coming via snail mail.

Thank you for your assistance.
Please call if there is any additional information you require.

Sincerely,

Ruth Robinson
WATG
Legislative Chair

May 15, 2003

Representative Suzanne Jeskewitz
P.O. Box 8952
Madison, WI 53708

Representative Michael Powers
P.O. Box 8953
Madison, WI 53708

Senator Jon Erpenbach
P.O. Box 7882
Madison, WI 53707-7882

RE: Audit of the Department of Public Instruction – Talented & Gifted Education Mandates

Dear Senator Erpenbach and Representatives Powers and Jeskowitz:

I am writing on behalf of the Wisconsin Association for Talented and Gifted (WATG) in support of the audit which I understand is underway in regard to the priority of supporting an appropriate education for our most able learners. I am the Legislative Committee Chairperson for the WATG board.

WATG is a non-profit organization of parents, students, educators business and industry personnel, and other interested persons who are dedicated to fostering a climate at home, school and community that allows each individual to reach his or her potential. WATG was formed in 1993 as the result of merging two earlier organizations, Wisconsin Association of Educators of Gifted and Talented and the Wisconsin Council for Gifted and Talented, which had been serving student and educator needs since 1973. WATG has 500 members located in virtually every school district in the state.

Wisconsin has a long heritage of excellence in education. Unfortunately, in the current climate, we are in danger of slighting those young people among us who have the greatest potential to become state and world leaders, inventors, medical researchers, problem solvers and peacemakers of the future. America's top students do not perform well when compared to their counterparts around the world. We can ill afford to let this resource be squandered.

In the Governor's budget proposal, the Department of Public Instruction was given more flexibility in its staffing by the removal of state statute requiring two consultants in each of the five career and technical education areas of Business Education, Agriculture Education, Family and Consumer Education, Marketing Education and Technical Education. Even though the department still needed to eliminate twenty positions, it had the flexibility to reassign those remaining.

For whatever reason, even with the extra flexibility provided them through the Governor's Budget, the department has chosen not to assign more than three days a month to the person in the position currently handling Gifted Education. That person is also the first to admit that she has no background in the field. It is very difficult to advocate for the students we are charged to educate when there is no support from the state level.

As a parent, educator and in my contact with districts across the state through WATG, it is disturbing to hear district administrators and school board members openly suggest cutting staff and resources for gifted education since there are no repercussions for doing so from the state or federal levels. Parents and educators who turn to the Department of Public Instruction website for information and assistance are referred to WATG or the Wisconsin Center for Academically Talented Youth, another non-profit organization in the state. There is no expertise, guidance or enforcement of statute emanating from the DPI now nor has there been since 1996.

In light of the No Child Left Behind federal legislation, it would seem to us that the state of Wisconsin would be anxious to meet all of the tenets included in the law. There are sections found in the NCLB legislation and that do ask that Gifted Education be made a priority. I have enclosed a document with the snail mail copy of this letter which quotes specific sections of NCLB in question.

It is because WATG receives requests for information, consultations and referrals from parents on a regular basis that, as a statewide organization, we support the request for this legislative audit of the Department of Public Instruction. We believe that it is critical for the problems to be identified and corrected. If we speak conservatively of serving the top ten per cent of students in the state, 80,000 children and their families deserve the attention requested and by state statute, it is required.

Sincerely,

Ruth Robinson
President –elect WATG
Legislative Committee Chair

W3290 Schaefer Road
Belleville, WI 53508
608-743-5035 work
608-424-6205 home

Asbjornson, Karen

Full Name:	Ruth Robinson
Last Name:	Robinson
First Name:	Ruth
Job Title:	Coordinator of TAG & District Assessment
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Other Address:	527 South Franklin Street
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wcaty

Wisconsin Center for Academically Talented Youth

May 19, 2003

Representative Suzanne Jeskewitz
P.O. Box 8952
Madison, WI 53708

Senator Carol A. Roessler
P.O. Box 7884
Madison, WI 53707-7882

RE: Audit of Department of Public Instruction – Talented and Gifted Children Education Mandates

Dear Representative Jeskewitz and Senator Roessler:

I am writing in support of the audit request presented by Todd Palmer, a parent and citizen concerned about the quality of education provided to our gifted youth. He has requested the Audit Bureau's assistance in determining why TAG standards are not being adequately met by many school districts in Wisconsin, why DPI audits have not been successful in ensuring compliance with these mandates, and recommendations for potential solutions to this dilemma.

My organization, the Wisconsin Center for Academically Talented Youth, has been serving children and families since 1991. We are a non-profit, educational organization with a membership of almost 1000 families and 200 schools and school districts statewide. Our mission is to provide programs and services that support, motivate and challenge academically talented students in the state of Wisconsin, their parents and educators, because we know that gifted children have very unique needs and that they require special programs and services.

The legislature recognizes these needs too, as exemplified by the adoption of standard Wis. Stat. 121.02(1)(t). And, this recognition does not stop at the state level. Federally, giftedness is recognized in the Javits Gifted and Talented Students Education Act of 1993 U.S. Dept. of Education, 1993, p. 26 and is defined as. *"Children and youth with outstanding talent perform or show the potential for performing at remarkably high levels of accomplishment when compared with others of their age, experience or environment. These children and youth exhibit high performance capability in intellectual, creative, and/or artistic areas, possess an unusual leadership capacity, or excel in specific academic fields. They require services or activities not ordinarily provided by the schools."*

(over)

2909 Landmark Place
Madison, WI 53713

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e-mail: info@wcaty.org

When programs and services are not provided, the results can prove devastating:

- Without exposure to appropriate, challenging learning experiences, interaction with peers of like capabilities and interests, and encouragement to develop their talents, many gifted and talented children disconnect from school.
- **18-25 % of high school dropouts**—nationwide—are students of exceptional academic ability
- gifted and talented people represent up to **20% of our prison population**

For any number of reasons, DPI has not had a full-time gifted and talented consultant in place to audit school districts and assure compliance with the standards since 1996. Since that time, the programs and services provided to gifted students in the schools continue to erode as districts face difficult budgets. Despite the requirement that districts have a gifted and talented program and a program coordinator, many schools continue to eliminate services because there is no active process in place for monitoring compliance, and because many school administrators are not even fully aware of the mandates. Increasingly, our constituents are expressing concern and dissatisfaction with the current state of affairs.

It is because of these concerns that we support the audit request. If there are requirements that are not being met, we believe it is critical that the problems are identified and corrected. Our children and families deserve it and you as the state governing body require it.

Sincerely,

Susan Richert Corwith

Susan Richert Corwith
President

Alberta Darling

Wisconsin State Senator

Co-Chair, Joint Committee on Finance

May 19, 2003

Senator Carol Roessler
Co-Chair, Joint Committee on Audit
Room 8 South

Representative Sue Jeskewitz
Co-Chair, Joint Committee on Audit
Room 314 North

Hand-Delivered

Dear Chairwomen ~~Roessler~~ Carol and Jeskewitz,

A recent Milwaukee Journal Sentinel review of Milwaukee County day care providers uncovered some disturbing facts and trends regarding how well they are being regulated and checked by the state.

At issue is whether or not the state's Bureau of Regulation and Licensing is compiling with current state law when it comes to its oversight of group and family day care providers. Since the Bureau is a part of the larger Department of Health and Family Services (DHFS), I feel it's appropriate to ask for a comprehensive audit of the Bureau and the Department. My goal in requesting this audit is to determine if more state aid is needed to properly regulate and oversee our state's child care providers, or if state funds currently allocated for this task can be used more efficiently and effectively.

I then respectfully request an audit be performed on the state's Bureau of Regulation and Licensing to determine what is needed to ensure Wisconsin children receive the best possible day care. Please approve an audit that includes whether the Bureau, under the direction of DHFS, is:

- Properly regulating and licensing all day care providers.
- Enforcing child-to-staff ratios at all centers.
- Inspecting day care centers as often and as thoroughly as the law calls for.
- Issuing necessary sanctions when license violations are found to have occurred.
- Spending necessary state and federal funds on inspector positions.
- Appropriately utilizing, or misusing, the state and federal dollars they current receive.

I believe an audit would provide reliable information for legislators and the public to ensure that our most vulnerable citizens, our children, are being properly taken care of by appropriately licensed professionals. Thank you for your consideration.

Sincerely,

Alberta

ALBERTA DARLING
State Senator
8th District

Capitol Office: P.O. Box 7882 ▫ Madison, Wisconsin 53707-7882 ▫ Phone: 608-266-5830 ▫ Fax: 608-267-0588 ▫ Toll-free: 1-800-863-1113
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Rapid growth of day cares leaves oversight behind

Dangers to children emerge as surprise inspections decline

By JAMAAL ABDUL-ALIM
jabdul-alim@journalsentinel.com

Last Updated: May 17, 2003

When state inspectors showed up at Cuddle Corner Community Child Care for a surprise visit in March, they heard "shuffling sounds" and a "voice whispering" inside, but no one answered the door.

Things got even more suspicious when the inspectors - who by then had called the police - spotted a man trying to scale the backyard fence. He claimed he could not help them get into the day care center, records show, but when police arrived and asked him to empty his pockets, out came a set of keys.

Police got inside and searched the premises, finding no one. But when state inspector Ruth Sprangers insisted she had heard children when the inspectors first arrived, police searched again.

This time, they found the day care center's owner, Theodora McQueen, cowering behind a latched, paneled section of a closet with two children who had been left in her care.

McQueen claimed she had been scared because she heard banging at the door and did not recognize Sprangers' car. But McQueen had another reason to be fearful: Her live-in boyfriend, Marquis McSwain - the one trying to jump the fence - has a pending case of second-degree sexual assault against a mentally ill person who had been under McQueen's care. He goes to trial later this year.

McSwain's presence was a violation of state day care rules, which prohibit people with such charges from being at day care centers. As a result, McQueen lost her license.

The case is just one of many at a time when state day care inspectors are finding more problems than ever before, according to records. Between 1998 and 2002, the number of sanctions imposed against licensed day care centers in Wisconsin more than doubled, from 142 to 291. Inspectors found several cases in which children were molested, abused, abandoned or forgotten, according to the examination.

But there is growing concern that inspectors are missing many more, particularly in Milwaukee County.

In each of the last five years, Milwaukee County accounted for roughly one-quarter of the sanctions, according to records. But during that same five-year period, the number of family or home-based care centers in Milwaukee County grew from 310 to 820 - a 165% increase - by far the biggest expansion in the day care field.

At the same time, the number of inspectors in southeastern Wisconsin has stayed virtually level. And budget constraints recently forced inspectors to cut the number of surprise inspections from two a year to just one.

So while Wisconsin's welfare-to-work program has moved parents into the work force, set off an explosion in the need for day care and helped pay for that care, the state has not kept pace - at least in Milwaukee - in monitoring the centers that serve those children.

"Surprise visits are extremely important as tools in the arsenal of regulatory enforcement," says William Gormley, a former University of Wisconsin-Madison public policy professor, now at Georgetown University.

Child Care

Photo/Rick Wood

Wanda Hudson, owner and operator of Love to Care child care center in Milwaukee, gets a group hug. The most challenging part of her job, Hudson says, is finding reliable help. "You can tell right away if they care for the children. I want workers who care about the children."

Quotable

"These are our most vulnerable children. They should not be in questionable situations."

- Sen. Alberta Darling

Related Coverage

Rapid growth of day cares leaves oversight behind
Day's learning comes from kids
Many believe the child

"Any reduction in the number of unannounced inspections is likely to place children at greater risk."

Gormley, author of "Everybody's Children: Child Care as a Public Problem," says Wisconsin children in day care appear to be "at greater risk" now than in 1998. Then, 34% of the more than 2,500 alleged violations at day care centers ultimately were substantiated. By the end of last year, that percentage had risen to 40%.

Cinda Jones, head of the southeastern regional office of the state's Bureau of Regulation and Licensing, says inspectors are doing the best they can in the face of growth in both group and family day care centers.

Jones and others say the situation underscores the need for parents to investigate day care centers before they enroll their children, and conduct their own surprise visits.

But one state lawmaker who regularly works on child care issues says that duty is a "core service" of the state agency that regulates child care centers and should not be compromised by fiscal constraints.

"These are our most vulnerable children," says Sen. Alberta Darling (R-River Hills). "They should not be in questionable situations."

Darling, co-chair of the Joint Finance Committee, says the bureau - which falls under the Department of Health and Family Services - should be audited to see whether it can use money more efficiently.

Glaring violations

David Riley, a University of Wisconsin Extension professor in Madison and one of the top day care researchers in the state, says it isn't hard to find day care incidents that "make your skin crawl."

"The scary thing is that our research staff see some awful stuff even while they are standing there watching, clipboards in hand," Riley says. "It makes you wonder what might be going on when we aren't there observing."

A Journal Sentinel review of just the past three years in Milwaukee County found:

- At least two episodes where children as young as 4 years old were sexually molested by older children or adults.
- At least four cases in which children between 3 and 5 years old managed to slip away, disrobe and engage in adult-like sexual acts among themselves.
- Two cases where unsupervised children had their hair set on fire by older children with cigarette lighters. In one of the cases, a 4-year-old girl suffered second-degree burns to her head and shoulders.
- Several cases in which infants and toddlers were left with minors or completely unattended while providers ran errands.
- Several cases where children wandered away from the centers, or were forgotten about altogether and left alone in transportation vans or the day care center.

"This is a shame," says Annette Wilburn, president of Providers Taking Action and a child care instructor for the Wisconsin Early Childhood Association, an agency that trains child care teachers.

Wilburn says more surprise visits are needed by the state.

Georgetown University's Gormley agrees.

"If you know an inspector is coming, it's relatively easy to meet child-to-staff ratio standards on the day of inspection," Gormley says.

State statistics show that child-to-staff violations represent the largest share - about one-fifth - of all day care violations.

"When child-to-staff ratios become too high, you run the risk of inadequate supervision, which can put children at risk," Gormley says.

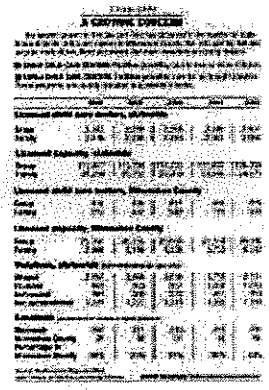
care industry is open to any and everyone

With the element of surprise on her side, inspector looks for breaches

Resources

Community Coordinated Child Care Inc. links parents with child care centers that match their needs and preferences. The agency also offers information on what to look for in a child care center. The agency serves residents in Milwaukee, Waukesha, Ozaukee and Washington counties. Call (414) 562-2676.

For the complaint and compliance history of a particular child care center in Milwaukee, Racine, Waukesha or Kenosha counties, call the Southeastern Regional Office of the Bureau of Regulation and Licensing, (262) 521-5100.



Graphic/David Arbanas

A Growing Concern

Frightening episodes

Tendercare Luther Manor, 4545 N. 92nd St., learned the hard way about the importance of supervision even when it had the proper child-to-staff ratio.

Records show that in May 2001 - when one of two teachers was on the phone and the other was washing tables during a nap time for children - a 3-year-old girl went to the bathroom and was followed by two 4-year-old boys, who then performed a sex act on her.

Mark Lyday, program director at the Child Protection Center, says such incidents suggest children may have been exposed to sexual activity in some form. The cases represent behavior that is "outside the realm of what reasonable people would believe to be sexual experimentation for a child that age."

Tendercare was subsequently fined $900 for failing to closely supervise each child, and $100 for not reporting the incident in a timely manner. One teacher was subsequently fired; the other quit.

Emily Amling, administrator for Tendercare, says the case was a "very isolated incident" and that Tendercare uses it to teach staff.

Other centers have had similar problems:

- In April 2002, at ABC Day Care on N. 49th St., two boys - ages 2 and 3 - managed to slip away to a play area and take off their clothes. A staffer, alerted by other children, found one on top of the other, trying to perform a sex act. Employees at ABC told state investigators they "were not sure" how long the boys had been unattended.

"What type of supervision is that?" the mother of one of the boys asked, records show.

The license-holder at ABC, Janice Schmitt, denied that the incident took place "to the degree" in which it is described in ABC's file. However, Schmitt declined to elaborate and offered nothing to rebut the state's findings.

ABC was also cited in the past after inspectors found the place to be filthy and in a state of disrepair, records show.

- In May 2001 at the Lutheran Home, 7500 W. North Ave., Wauwatosa, there was an incident "involving child-to-child sexual contact" between a 4-year-old girl and a 5-year-old boy, records show.

The incident came to light only after a teacher - who was busy taking Mother's Day pictures of the kindergarten class - heard the 4-year-old girl yell "ow" from a bathroom at the center.

It was later determined that the boy indecently touched the girl, who subsequently suffered "developmental regression," records show.

Eileen Hayes, administrator of Lutheran Home, made no excuses for the incident, or two others in which children at the day care center briefly wandered away unnoticed.

"It's unacceptable when it happens," Hayes says. "And if it should happen, you always look at yourself and operation introspectively, because the safety and welfare of children is first and foremost."

Low pay, high turnover

Carol Maurer, executive director of Community Coordinated Child Care, a child care referral agency in Milwaukee, says the situation illustrates the need for parental involvement.

"The parents are in the center every single day," Maurer said. "They need to be watchful and see what's going on. And when there is a problem make a complaint. Bottom line: Parents are the protectors of their children."

But poor parents - particularly those participating in the state's welfare-to-work program - may not be the ones dropping off or picking up their children. And it may be difficult for them to drop in unannounced. Further, parents may not always know what constitutes a violation.

Even if state inspectors and parents were able to drop by day care centers more frequently, there are other factors that cause or enable substandard care to exist.

Riley, of the UW-Madison Extension, says the state's average turnover rate of 40% each year among child care staff and the lack of staff development play major roles in the problem.

The high turnover rate "means staff are constantly changing, which means we have chaos in many programs," Riley says. "Most researchers believe the number one reason for this high rate of turnover is the low wages and lack of benefits for early childhood teachers."

According to one statewide study in 2001, median wages of child care workers in Wisconsin were below $8 per hour. Taking into account inflation, Riley says, the wages have remained virtually flat for two decades.

Research has shown that "child care is of consistently and significantly higher quality in settings with higher paid teachers," Riley says.

But wages are not expected to improve in Wisconsin on a large-scale basis any time soon.

In fact, two programs credited with furthering the pay issue - TEACH, Teacher Education And Compensation Helps, and REWARD, Rewarding Education with Wages and Respect for Dedication - are on the chopping block. Rates at which the providers are reimbursed by the state for providing subsidized care were also recently reduced.

"We're in a huge deficit," says Darling, the senator. "We aren't seeing any increase in revenue in the near future."

Wanda Hudson, 29, owner and operator of Love To Care and Love To Care II, child care centers on the city's northwest side, knows all about the impact of high turnover rates.

She speaks of workers' failure to show up for work, exposing her to potential violations for child-to-staff ratios.

Hudson says she would like her staff to seek associate degrees in early childhood development if they stay six months. But the longest she's been able to retain any worker is four months.

From the May 18, 2003 editions of the Milwaukee Journal Sentinel