Chapter DOC 303

DISCIPLINE

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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.

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 adult inmates in its legal custody. It implements ss. 302.07, 302.08, 302.11 (2) and 302.04, Stats. The rules governing inmate conduct under this chapter describe all the conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) "Discipline" includes only the sanctions described in s. DOC 303.08. It does not include reclassification, change of program assignment, loss or modification of a MAP contract, change of housing assignment, or transfer to another institution.

(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; and

(g) Deterrence of misbehavior.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378.

DOC 303.02 Definitions. In this chapter:

(1) "Authorized" means:

(a) According to departmental rules;

(b) According to posted policies and procedures;

(c) According to the latest order of a staff member;

(d) According to established institution custom; or

(e) With permission from the appropriate staff member.

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

(3) "Administrator" means administrator of the division of adult institutions, department of corrections, or designee.

(4) "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.

(5) "Communicate" means:

(a) To express verbally;

(b) To express in writing; or

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

(6) "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 following persons are presumed 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; or

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

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

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

(9) "Inmate gang" means a group of inmates which threatens, intimidates, coerces or harasses other inmates or engages in activities which intentionally violate or encourage the intentional violation of statutes, administrative rules or institutional policies and procedures.

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

(11) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions, to include: LSD, heroin, cocaine, marijuana, alcoholic drinks, paint thinner or glue. Tobacco is not included.

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

(12m) "No–contact visiting" means visitation during which no physical contact is permitted between an inmate and a visitor.

(13) "Overt behavior" means behavior which is open and observable.

(14) "Possession" means on one's person, in one's quarters, in one's locker or under one's immediate physical control.

(15) "Sexual contact" means:

(a) Kissing;

(b) Handholding;

(c) Touching by the intimate parts of one person to any part of another person. In this subsection, "intimate part" means breast, penis, buttocks, scrotum, or vaginal area, whether clothed or unclothed; or

(d) Any touching by any part of one person or with any object or device of the intimate parts of another person.

(16) "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.

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

(18) "Superintendent" means the superintendent of an institution, or designee.

(19) "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 by the use or threat of imminent use of physical violence on him or her, or on a person in his or her presence, or on a member of his or her immediate family; or

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

(c) Because the victim did not understand the nature of the thing to which he or she consented, either by reason of ignorance, or mistake of fact or of law other than criminal law, or by reason of youth, or by reason of defective mental condition—whether permanent or temporary.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; renum. (14) to (16) to be (16) to (18), cr. (14) and (15), Register, April, 1985, No. 352, eff. 5–1–85; emerg. renum. (9) to (18) to be (10) to (19), cr. (9) eff. 12–5–86; renum. (9) to (18) to be (10) to (19), cr. (9), Register, June, 1987, No. 378, eff. 7–1–87; cr. (12m), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.03 Lesser included offenses. (1) If one offense is a lesser included offense of another, then if an inmate is charged with the greater offense, the inmate is deemed to be charged with the lesser included offense as well.

(2) An inmate may be found guilty of a lesser included offense of the offense charged, even if he or she was not expressly charged with the lesser included offense.

(3) An inmate may not be found guilty of 2 offenses or punished for 2 offenses based on a single incident if one offense is a lesser included offense of the other.

(4) No offense may be considered 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
		303.21	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
303.28	Disruptive conduct	303.29	Talking
303.34	Theft	303.40	Unauthorized transfer of property
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

Table DOC 303.03 – Continued

Greater offense		Lesser included offense	
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
303.46	Possession of excess smoking materials	303.47	Possession of contraband—miscellaneous
303.57	Misuse of prescription medicine	303.40	Unauthorized transfer of property
Any substantive offense		303.06	Attempt
		303.07	Aiding and abetting
		303.21	Conspiracy

(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, August, 1980, No. 296, eff. 9–1–80; am. (4), Register, April, 1985, No. 352, eff. 5–1–85.

DOC 303.04 Definitions relating to state of mind. In this chapter, these words have the following meanings:

(1) "Intentionally" means that the inmate had a purpose to do the thing or cause the result specified, or believed that his or her act, if successful, would cause the result specified.

(2) "Knowingly" means only that the inmate believes that the specified fact exists.

(3) "Recklessly" means that the inmate did an act or failed to do an act and thereby created a situation of unreasonable risk that another might be injured. The act or failure to act must demonstrate both a conscious disregard for the safety of another and a willingness to take known chances of perpetrating an injury.

(4) "Negligently" means that the inmate did an act or failed to do an act and thereby failed to exercise that degree of care appropriate for the circumstances.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.05 Defenses. The following, if established by clear and convincing evidence, to the satisfaction of the committee, by the inmate, are complete defenses to alleged violations of the sections under this chapter.

(1) MENTAL INCAPACITY. At the time of the conduct, the inmate, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform his or her conduct to the sections.

(2) INVOLUNTARY INTOXICATION. At the time of the conduct, the inmate, as a result of involuntary intoxication, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform his or her conduct to the rules. This section does not afford a defense if the intoxicant was taken voluntarily.

(3) MISTAKE. The inmate honestly erred (except an error regarding the contents of this chapter), and such error negates the existence of a state of mind essential to the offense.

(4) SELF–DEFENSE. An inmate may use the minimum amount of force necessary to prevent death or bodily injury to himself or herself. An inmate may never use force which may cause death to another in exercising the privilege of self–defense. An inmate may never use a weapon in exercising the privilege of self–defense. An inmate may not continue to exercise the privilege of self–defense after an order to stop. In determining whether the minimum force was used in exercising the privilege of self–defense, staff should consider:

(a) Whether a weapon was used by the aggressor;

(b) The size of the inmates;

(c) The opportunity of the inmate who claims self–defense to flee or get assistance from a staff member; and

(d) Whether staff members were nearby.

(5) ORDERS. An inmate may disobey a rule if he or she is expressly authorized to disobey it by a staff member.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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

(a) The inmate intended to do something which would have been a rule violation; and

(b) The inmate did acts which showed that he or she intended to violate the rule at that time.

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

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) An inmate may be charged with both a substantive offense and attempt to commit that offense, based on the same incident, but may be found guilty of only one.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.07 Aiding and abetting. (1) If an inmate intentionally does any of the following things, he or she is guilty of aiding and abetting a rule violation:

(a) Tells or hires another inmate to commit a rule violation;

(b) Assists another inmate, prior to a rule violation, in planning or preparing for it, with intent that the offense be committed;

(c) Assists another inmate during commission of an offense, whether or not this was planned in advance; or

(d) Destroys evidence of an offense committed by another person or otherwise helps to prevent discovery of a violation or of who committed it.

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

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

(3) An inmate may be charged with both a substantive offense and aiding and abetting that offense, based on the same incident, but he or she may be found guilty of only one.

(4) An inmate may be charged and found guilty of aiding an 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 penalty for aiding and abetting may be the same as for the substantive offense. See Table DOC 303.84.

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

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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. Wherever a specific policy or procedure provides for discipline if an inmate violates it, discipline may only be imposed if the policy or procedure was in fact posted on an official bulletin board at the time of the violation, or if the inmate had actual knowledge of the contents of the bulletin and that it was still in force, or if the inmate had received a copy of the bulletin.

(2) Each institution shall maintain at least one bulletin board for bulletins of general applicability. Bulletin boards shall be so located that every inmate has an opportunity to read all bulletins which apply to him or her. Additional bulletin boards should be maintained in workshops, classrooms, recreation areas, housing units, or other places for the posting of notices which apply only to inmates who use the particular facility involved. Each inmate at a maximum security institution shall be given a copy of all bulletins which are applicable to him or her.

(3) Bulletins which are no longer in force shall be removed.

(4) A notebook of all current bulletins shall be maintained and be available for inmates in the library.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.09 Manual of disciplinary rules. (1) All of the sections under this chapter, along with their notes, shall be printed in pamphlet or other appropriate form.

(2) A copy of this pamphlet shall be given to every inmate. Any time major changes are made, written notice to inmates shall be provided. The pamphlet shall be entitled *Disciplinary Rules*.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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

(a) Any item which inmates may not knowingly possess under ss. DOC 303.42 to 303.47 (for example, money, intoxicants, drug paraphernalia and weapons);

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

(c) Any item which is in the possession of an inmate, if knowing possession of it would violate s. DOC 303.47;

(d) Any item which an inmate may possess but which comes into his or her possession through unauthorized channels or which is not on the inmate's property list and is required to be; or

(e) Stolen property.

(2) SEIZURE. Any staff member who reasonably believes that an item is contraband may seize the item, whether or not the staff member believes a violation of ss. DOC 303.42 to 303.47 has occurred. Items seized shall be sent to the security director, accompanied by the conduct report if there is one. If there is not, the item shall be accompanied by a written report. Property which is not contraband shall be returned to the owner or disposed of in accordance with this section.

(3) DISPOSITION. If a conduct report is written, the disposal of the item shall be decided by the hearing officer or committee at the disciplinary hearing. If there is no conduct report, the security director may dispose of seized items. Disposal should be as follows:

(a) *Currency (money).* All confiscated currency shall be placed in the state's general fund.

(b) *Checks.* Checks and other negotiable instruments shall be returned to the maker. If it is not possible to determine an address for the maker of the check, the check shall be destroyed.

(c) *U.S. bonds and other securities.* Upon proof of ownership and the source of a U.S. bond or other security, the item shall be held in the institution business office until it can be returned to the owner. If the owner is an inmate, it shall be held until his or her release from the institution, at which time it shall be transferred with the inmate's general account funds to the department cashier. It shall be returned to the inmate upon discharge or at any earlier time when the supervising agent determines that continued control over it is no longer necessary.

(d) *Property.* If the owner is known, property may be returned to the true owner, placed in storage, or sent at the inmate's expense to another, in accordance with the nature of the property, unless the owner transferred the property in an unauthorized manner. Otherwise, items of inherent value shall be sold through the department's purchasing officer and money received shall be placed in the state's general fund. Items of inconsequential value (having a value of $5 or less) shall be destroyed. Property items authorized but in excess of the amount allowed inmates may be sent at the inmate's expense to anyone designated by the inmate or stored.

(e) *Intoxicating substances.* Intoxicating substances shall be disposed of by the institution or given to the sheriff's department for use as evidence or for disposal.

(f) *Weapons.* Weapons not required for use as evidence may be retained for training purposes or disposed of by institution authorities or law enforcement agencies.

(g) *Institution property.* Any article originally assigned as property of the institution shall be returned to service at the institution.

(4) If an inmate believes that property should be returned, placed in storage or sent out at his or her direction, and a decision to dispose of it in a different manner has been made, the inmate may file a grievance. The property shall not be disposed of until the grievance is resolved.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.11 Temporary lockup: use. (1) An inmate may be placed in temporary lockup (TLU) by a security supervisor, security director, or superintendent.

(2) If the inmate is placed in temporary lockup by a security supervisor, the security director shall review this action on the next working day. Before this review and the review provided for in sub. (3), the inmate shall be provided with the reason for confinement in TLU and with an opportunity to respond, either orally or in writing. Review of the decision must include consideration of the inmate's response to the confinement. If, upon review, it is determined that TLU is not appropriate, the inmate shall be released from TLU immediately.

(3) No inmate may remain in TLU more than 21 days, except that the superintendent, with notice to the division administrator, may extend this period for up to 21 additional days for cause. The security director shall review the status of each inmate in TLU every 7 days to determine whether TLU continues to be appropriate. If upon review it is determined the TLU is not appropriate, the inmate shall be released from TLU immediately.

(4) An inmate may be placed in TLU and kept there only if the decision maker is satisfied that it is more likely than not that one or more of the following is true:

(a) If the inmate remains in the general population, the inmate will seek to intimidate a witness in a pending investigation or disciplinary action;

(b) If the inmate remains in the general population, he or she will encourage other inmates by example, expressly, or by their presence, to defy staff authority and thereby erode staff's ability to control a particular situation;

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

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

(e) If the inmate remains in the general population, a disciplinary investigation will thereby be inhibited.

(5) When an inmate is placed in TLU, the person who does so shall state the reasons on the appropriate form and shall include the facts upon which the decision is based. The inmate shall be given a copy of the form. Upon review, the security director shall approve or disapprove the TLU on the form.

(6) Conditions in TLU shall, insofar as feasible, be the same as those in the status from which the inmate came prior to TLU placement. An inmate who had been earning compensation shall continue to be compensated at the rate earned in his or her previous status, except that an inmate employed by corrections industries shall be compensated in accordance with s. DOC 313.08. If 1983 Wis. Act 528 does not apply to the inmate, he or she shall continue to earn extra good time credit. The inmate may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside the cell if the superintendent or designee determines that the use of mechanical restraints is necessary to

protect staff or inmates or to maintain the security of the institution.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (3), Register, April, 1985, No. 352, eff. 5–1–85; emerg. am. (6), eff. 11–18–85; am. (6), Register, May, 1986, No. 365, eff. 6–1–86; am. (6), Register, February, 1987, No. 374, eff. 3–1–87; am (6), Register, June, 1989, No. 402, eff. 7–1–89.

Note: Code of inmate offenses introductory note. The purposes of the disciplinary system, including the substantive rules, are addressed in s. DOC 303.01 and note. However, it is helpful to stress and develop further several points which have particular relevance to the substantive offenses.

In identifying what conduct should be the subject of the disciplinary code, principal reliance was placed on experience. Experience teaches that the offenses which follow are those committed in institutions and that the disciplinary system is appropriate for dealing with them.

There is considerable overlap between the disciplinary rules and the criminal code, principally in the area of crimes of violence. "White–collar" crimes are generally not duplicated in the rules because they have not been a disciplinary problem. However, crimes against persons and property are an important disciplinary problem, and the correctional authorities need to have the power to deal with them without always resorting to the cumbersome machinery of the judicial system.

The experience in Wisconsin has been that disciplinary proceedings are a more effective way of dealing with most crimes committed in prison than prosecution is. In extreme cases, of course, cases are referred for prosecution. However, in these cases as well as in less serious cases, prison officials need to have the authority to isolate or punish individuals in order to prevent a recurrence of violence. The U.S. supreme court has approved the practice of bringing both disciplinary and criminal proceedings against an individual based on a single incident, implying that no double jeopardy problems are raised by this practice. Baxter v. Palmigiano, 425 U.S. 308 (1976)

In addition to reevaluating the purpose and effectiveness of each rule, an attempt has been made to make sections as specific as possible even where the substance of the rule remained unchanged. For example, former policy and procedure 2.02 stated, "Residents shall not sexually assault another person." New ss. DOC 303.13 and 303.14 define 2 types of sexual assault in very specific terms. This example also points up another change in some rules: rules covering both serious and less serious offenses have been split, so that now someone looking at an inmate's record will have a clearer idea of exactly how serious the disciplinary offenses have been. This is especially important at parole hearings and program review committee meetings

Subchapter II — Offenses Against Bodily Security

DOC 303.12 Battery. Any inmate who intentionally causes bodily injury to another is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.13 Sexual assault—intercourse. Any inmate who has sexual intercourse, as defined in s. DOC 303.02 (16), with another person without that person's consent and knowing that it is without that person's consent is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. Register, April, 1985, No. 352, eff. 5–1–85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378.

DOC 303.14 Sexual assault—contact. Any inmate who intentionally has sexual contact, as defined in s. DOC 303.02 (15), with another person without that person's consent and knowing that it is without that person's consent is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. Register, April, 1985, No. 352, eff. 5–1–85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378.

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

(a) Has sexual intercourse, as defined in s. DOC 303.02 (16), with another person;

(b) Has sexual contact, as defined in s. DOC 303.02 (15), with another person;

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

(d) Exposes his or her intimate parts to another person for the purpose of sexual arousal or gratification, or for exhibitionistic purposes; or

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

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

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; renum. (intro.) to (5) to be (1) and am., cr. (2), Register, April, 1985, No. 352, eff. 5–1–85; correction in (1) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1987, No. 378.

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

(1) Communicates to another an intent to physically harm or harass that person or another;

(2) Communicates an intent to cause damage to or loss of that person's or another person's property; or

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

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.17 Fighting. Any inmate who intentionally 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, to include hitting, biting, kicking, scratching, throwing or swinging objects, or using weapons.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

Subchapter III — Offenses Against Institutional Security

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

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.19 Participating in a riot. Any inmate who intentionally or recklessly participates in a riot, as defined under s. DOC 303.18, or who intentionally or recklessly remains in a group which has been ordered to disperse if some members of the group are participating in a riot, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.20 Group resistance and petitions. (1) Any inmate who intentionally participates in any group activity which is not approved under s. DOC 309.365 or is contrary to provisions of this chapter, to institution policies and procedures or to a direct verbal order from a staff member, but which does not create a serious risk of injury to persons or property, is guilty of an offense.

(2) Any inmate who intentionally 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 superintendent under s. DOC 309.365 or legitimate activities required to submit a request under s. DOC 309.365 (3) or (4); or

(d) Group petitions to people outside an institution, for example, to legislators or newspapers.

(3) Any inmate who intentionally participates in any activity with the purpose of identifying himself or herself with an inmate gang, as defined in s. DOC 303.02 (9), is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; emerg. am. eff. 12–5–86; am. Register, June, 1987, No. 378, eff. 7–1–87.

DOC 303.21 Conspiracy. (1) If 2 or more inmates plan or agree to do acts which are forbidden under this chapter, all of them are guilty of an offense.

(2) An inmate who plans or agrees with a non–inmate 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.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; renum. (2) to be (3), cr. (2), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.22 Escape. (1) An inmate who does any of the following without permission and with the intent to escape 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 his or her assigned schedule; or

(d) Leaves the authorized area to which he or she is assigned and does not return promptly.

(2) Any inmate who makes or possesses any materials with the intent to use them to escape is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.23 Disguising identity. Any inmate who intentionally conceals, alters or disguises his or her usual appearance with the intention of preventing identification is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80

Subchapter IV — Offenses Against Order

DOC 303.24 Disobeying orders. (1) Any inmate who disobeys any of the following is guilty of an offense:

(a) A verbal or written order from any staff member, directed to the inmate or to a group of which the inmate is or was a member;

(b) A bulletin which applies to the inmate and which was posted or distributed in compliance with s. DOC 303.08; or

(c) Any other order which applies to the inmate and of which he or she has actual knowledge.

(2) An inmate is guilty of an offense if he or she intentionally commits an act which violates an order, whenever the inmate knew or should have known that the order existed.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.25 Disrespect. Any inmate who overtly shows disrespect for any person performing his or her duty as an employe of the state of Wisconsin 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, spitting, yelling, and other acts intended as public expressions of disrespect for authority and made to other inmates and staff. Disrespect does not include all oral or written criticism of staff members, criticism of them expressed through the mail, thoughts and attitudes critical of them, or activity in therapy groups.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. Register, April, 1985, No. 352, eff. 5–1–85.

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

(1) Offers or gives anything of value to a staff member or the family of a staff member. *Exception:* in accordance with contraband regulations, property of an inmate may be entrusted to a designated staff member for the purpose of storage or sending it to a friend or relative of the inmate;

(2) Requests or accepts anything of value from a staff member or the family of a staff member. *Exceptions:* state property which the staff member is authorized to issue or property belonging to the inmate which was in storage or which has been sent or brought in;

(3) Buys anything from, or sells anything to, a staff member or the family of a staff member. *Exception:* hobby items for sale to the public in accordance with institutional procedures; or

(4) Requests a staff member or family of a staff member to purchase anything for him or her. *Exception:* the superintendent may allow this by special authorization, or may designate a staff member to handle such requests.

(5) Directs another person to give anything of value to a staff member, or agrees with another person to give anything of value to a staff member.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; cr. (5), Register, April, 1985, No. 352, eff. 5–1–85.

DOC 303.27 Lying. Any inmate who knowingly makes a false written or oral statement to a staff member which directly affects the integrity, safety or security of the institution is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.271 Lying about staff. (1) Any inmate who knowingly makes a false written or oral statement about a staff member with the intent to harm the staff member and makes that false statement public is guilty of an offense.

(2) This section applies to all false statements, including those made in the inmate complaint review system, which are revealed to persons outside the complaint system.

(3) A staff member who believes he or she is the subject of a false statement may not write the conduct report. The staff member may contact his or her supervisor who shall do an investigation, and, if the supervisor believes a violation has occurred, the supervisor shall, write a conduct report. An inmate complaint investigator may not write a conduct report alleging lying about staff.

History: Cr. Register, April, 1985, No. 352, eff. 5–1–85.

DOC 303.28 Disruptive conduct. Any inmate who intentionally or recklessly 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 unusually loud, offensive or vulgar, and may include arguments, yelling, loud noises, horseplay, or loud talking, which may annoy another.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. Register, April, 1985, No. 352, eff. 5–1–85.

DOC 303.29 Talking. Each institution shall post specific policies and procedures stating times and places when talking is forbidden. Any inmate who talks during those times or in those places is guilty of an offense, unless either:

(1) The inmate is replying to a question addressed to him or her by a staff member; or

(2) Talking at that time and place is necessary for the physical health and safety of the inmate or another person.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.30 Unauthorized forms of communication. Any inmate who communicates with another person by an unauthorized means, such as by passing notes, using sign language, signals, a telephone, any other communication device or code, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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

(1) A title for himself or herself other than Mr., Ms., Miss, or Mrs., as appropriate;

(2) A name other than the name by which he or she was committed to the department, unless the name was legally changed.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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 that:

(a) An inmate who was owner or part owner of any business or enterprise prior to sentencing may communicate with his or her

manager or partner concerning the management of the enterprise or business; and

(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 is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.33 Attire. Each institution shall post policies and procedures describing the clothing to be issued to inmates and how it shall be worn, and the circumstances when personal clothing and accessories may be worn and how they may be worn. Any inmate who violates these policies and procedures is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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, with intent to deprive the owner of it permanently, and without consent of the owner.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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

(2) Any inmate who intentionally damages, destroys or alters his or her own property without the permission of the supervisor of his or her own living unit is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.36 Misuse of state or federal property. (1) Any inmate who intentionally uses any property of the state in any way that is not authorized is guilty of an offense.

(2) Any inmate who knowingly mails or attempts to mail any letter or parcel on which is affixed a canceled postage stamp is guilty of an offense.

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

DOC 303.37 Arson. Any inmate who intentionally ignites a fire and thereby creates a risk to people or property, or both, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.38 Causing an explosion or fire. Any inmate who intentionally causes an explosion or starts a fire is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.39 Creating a hazard. Any inmate who intentionally, recklessly or negligently creates a hazard by fire or explosion is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.40 Unauthorized transfer of property. Any inmate who intentionally 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, August, 1980, No. 296, eff. 9–1–80.

DOC 303.41 Counterfeiting and forgery. Any inmate who does any of the following is guilty of an offense:

(1) Intentionally makes or alters:

(a) Any document so it appears to have been made, signed, initialed or stamped either by someone else, or at a different time, or with different provisions; or

(b) Any postage stamp or postal cancellation mark; or

(2) Knowingly uses a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

Subchapter VI — Contraband Offenses

DOC 303.42 Possession of money. (1) Except as specifically authorized, any inmate who knowingly has in his or her possession any of the following is guilty of an offense:

(a) Coins or paper money;

(b) A check;

(c) A money order;

(d) A savings bond; or

(e) Any other negotiable instrument.

(2) Any of the above items, if received through the mail, shall be turned over to the proper authority and deposited to the inmate's account or put in safekeeping.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.43 Possession of intoxicants. (1) Except as specifically authorized, any inmate who knowingly has in his or her possession any intoxicating substance to include items which have a legitimate use and are used under the supervision of a staff member such as approved glue or cough syrup, is guilty of an offense.

(2) All intoxicating substances prohibited by this section shall be confiscated, whether or not any violation of this section occurred.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.44 Possession of drug paraphernalia. (1) Any inmate who knowingly possesses any device used in the manufacture of an intoxicating substance or any device used to take an intoxicating substance into the body, with intent to use the device for manufacture or use of an intoxicating substance, is guilty of an offense. A "device" includes, but is not limited to, stills, chemical laboratory equipment, hollow needles, small spoons, roach clips and marijuana or hashish pipes.

(2) Any item found which apparently violates this section may be seized. If the inmate is not guilty and the item is allowable, it shall be returned. Otherwise, it shall be confiscated.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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

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

(3) Any inmate who knowingly possesses an item which is designed exclusively to be used as a weapon or to be used in the manufacture of a weapon is guilty of an offense.

(4) Any item found which apparently violates this section may be seized. If the inmate is not guilty and the item is allowable, it shall be returned. Otherwise, it shall be confiscated.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.46 Possession of excess smoking materials. (1) Any inmate who knowingly has in his or her possession over 4 cartons of cigarettes or over 50 cigars is guilty of an offense.

(2) Any item found which apparently violates this section may be seized. If the inmate is not guilty, the item shall be returned as soon as its return would not put the inmate over the limit of allowable cigarettes or cigars. If the inmate is guilty, the item shall be confiscated.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.47 Possession of contraband—miscellaneous. (1) Each institution shall post a list of all types of property which inmates are allowed to possess in accordance with

department policies and procedures relating to personal property. Some types of property may be allowed, but only in limited quantity. Some items may be allowed but must be registered on the inmate's property list.

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

(a) Items of a type which are not allowed, according to the posted list;

(b) Allowable items in excess of the quantity allowed, according to the posted list;

(c) Nonexpendable allowable items which are required to be listed but are not listed on the inmate's property list; or

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

(3) Any item which appears to violate this section may be seized and disposed of in accordance with s. DOC 303.10.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; emerg. cr. (3), eff. 1–22–94, cr. (3), Register, May, 1994, No. 461, eff. 6–1–94.

DOC 303.48 Unauthorized use of the mail. (1) Any inmate who uses the U.S. 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 ss. DOC 303.42 to 303.47, he or she may not have in his or her possession, is guilty of an offense. Items in safekeeping may be sent out at the inmate's expense. Some items which were seized may be sent out at the inmate's expense, in accordance with s. DOC 303.10.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

Subchapter VII — Movement Offenses

DOC 303.49 Punctuality and attendance. Inmates shall attend and be on time for all events, classes, meetings, meals, appointments and the like for which they are scheduled. Any inmate who intentionally violates this section is guilty of an offense, unless:

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

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

(3) The inmate is authorized to skip the event.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.50 Loitering. Inmates shall walk at a normal pace, following a normal route, and without delay when going to and from all events, classes, meetings, meals, appointments and their quarters. Any inmate who intentionally violates this section is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.51 Leaving assigned area. Any inmate who intentionally leaves a room or area where he or she is attending any scheduled activity such as a class, meal, religious service, group meeting or other event, or who leaves the immediate area of a work or school assignment before the event or the work or school assignment is over is guilty of an offense, unless:

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

(2) The inmate has a valid pass to go somewhere else at that time.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.511 Being in an unassigned area. Any inmate who, without a staff member's permission, intentionally enters or remains in a room or area other than the one to which he or she is assigned is guilty of an offense.

History: Cr. Register, April, 1985, No. 352, eff. 5–1–85.

DOC 303.52 Entry of another inmate's quarters. (1) Any inmate who enters the quarters of any other inmate or permits another to enter his or her quarters, is guilty of an offense, unless such entry is:

(a) Part of a work assignment and under the supervision of a staff member; or

(b) Allowed according to posted 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, August, 1980, No. 296, eff. 9–1–80.

Subchapter VIII — Offenses Against Safety And Health

DOC 303.54 Improper storage. (1) Food, toiletries, hobby materials, medications, cleaning supplies and certain other items shall be kept in the original containers, unless otherwise specified, and in their authorized place. Any inmate who intentionally stores any of these items in a different container or in an unauthorized place is guilty of an offense.

(2) Each institution may adopt specific procedures relating to the storage of items. Violation of these procedures is an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.55 Dirty quarters. Each institution or residence hall shall adopt and post specific procedures regulating the organization, neatness and cleanliness of inmates' quarters. Any inmate whose quarters do not comply with the posted procedures is guilty of an offense, provided that the inmate had knowledge of the condition of his or her quarters and had the opportunity to clean or rearrange it.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.56 Poor grooming. (1) Any inmate whose personal cleanliness or grooming is a health hazard to himself or herself, or 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 knowingly fails to shower at least once a week, unless the inmate has a medical excuse, is guilty of an offense.

(3) Inmates performing work assignments which may reasonably be considered to be hazardous may be required to maintain suitably cut hair, or to wear protective head gear or nets. Any inmate who fails to wear such required devices or who fails to maintain suitably cut hair is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.57 Misuse of prescription medication. Any inmate who knowingly 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 him or her; or

(4) and place where he or she is supposed to take it.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.58 Disfigurement. Any inmate who intentionally cuts, pierces, removes, mutilates, discolors or tattoos any part of his or her body or the body of another, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

Subchapter IX — Miscellaneous Offenses

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

(2) (a) When a test on a specimen of an inmate's breath, blood, stool or urine or a physical examination of an inmate indicates use of an intoxicating substance, and the test or examination was requested in accordance with s. DOC 306.16, the inmate is guilty of an offense, unless the use of the intoxicating substance was not intentional or was the result of legitimate use of prescription medication.

(b) The results of a test conducted under par. (a) on a specimen of an inmate's urine shall be confirmed by a second test if all of the following conditions are met:

1. The test under par. (a) is the sole evidence of use of intoxicants;

2. A major penalty as defined in s. DOC 303.68 (1) (a) will be imposed as a result of the test under par. (a);

3. The inmate does not admit the use of intoxicating substances; and

4. The inmate requests a confirmatory test.

(c) Any confirmatory test shall be conducted in accordance with department procedures and shall be a separate test approved by the state laboratory of hygiene using a chemical method different from the first test.

(d) An inmate who requests a confirmatory test shall pay for half the cost of the test. If the inmate does not have sufficient funds to pay for half 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 inmate shall be refunded any money he or she contributed to the cost of the confirmatory test.

(3) The refusal of an inmate to either provide a body fluids specimen or to submit to a physical examination or a breathalyzer test requested in accordance with s. DOC 306.16 is an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. Register, January, 1987, No. 373, eff. 2–1–87; emerg. r. and recr. (2), eff. 3–6–87; r. and recr. (2), Register, July, 1987, No. 379, eff. 8–1–87.

DOC 303.60 Gambling. (1) Any inmate who gambles 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.

(2) Any inmate who organizes a lottery or betting pool or game played for money or anything of value, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.61 Refusal to work or attend school. Any inmate who intentionally refuses to perform a work assignment or attend school, and who is physically able to do so, is guilty of an offense, unless he or she has specific permission to do so.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.62 Inadequate work or study performance. (1) 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.

(2) Each institution may adopt and post specific policies and procedures regulating the use of a shop, work area and classroom. Violation of these policies and procedures is an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.63 Violations of institution policies and procedures. (1) Each institution may make specific substantive disciplinary policies and procedures relating to:

(a) Visiting, including no–contact visiting;

(b) Recreation;

(c) Smoking;

(d) Movement within and outside the institution;

(e) Attire;

(f) Personal property;

(g) The use of institution facilities;

(h) Talking;

(i) Sale of craft items;

(j) Authorized enterprises; and

(k) Reporting illness or injury.

(2) Violations of any specific policies or procedures authorized under sub. (1) are offenses.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (1) (d) and r. (3), Register, April, 1985, No. 352, eff. 5–1–85; am. (1) (a), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.631 Violating conditions of leave. Any inmate who violates conditions imposed under s. DOC 326.07 (1) or (2) for leave is guilty of an offense.

History: Cr. Register, April, 1985, No. 352, eff. 5–1–85.

Subchapter X — Disciplinary Procedure And Penalties

DOC 303.64 Disciplinary violations—possible dispositions. A violation of ss. DOC 303.12 to 303.63 may be dealt with in the following ways:

(1) If a conduct report is not required, the inmate may be counseled and warned. Disposition in this manner is governed by s. DOC 303.65.

(2) A minor violation may be disposed of summarily. Disposition in this manner is governed by s. DOC 303.74.

(3) The violation may be referred to the security supervisor in writing by a conduct report. See s. DOC 303.66. Violations referred to the security supervisor may be dealt with as follows:

(a) The security supervisor may dismiss, alter or correct the report. See s. DOC 303.67.

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

(4) Violations of the criminal law may be referred to the sheriff for further investigation and to the district attorney for prosecution. See s. DOC 303.73.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.65 Offenses that do not require a conduct report. (1) Staff members are not required to make official conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, the officer may merely inform the inmate that his or her 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 recently (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) An offense which is always considered major, in accordance with s. DOC 303.68, may not be disposed of in accordance with this section. A conduct report must be written if a major offense occurs.

(3) No official report of dispositions in accordance with sub. (1) is required.

(4) The security director may strike a charge if he or she believes a conduct report is inappropriate, in accordance with s. DOC 303.67.

The decision by the security director not to strike or to strike is not reviewable by the hearing officer, adjustment committee or superintendent.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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 himself or herself that a violation occurred, and if he or she 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 told him or her, and list all sections which were allegedly violated, even if they overlap. Any physical evidence shall be included with the conduct report.

(3) There should be 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, only one conduct report is necessary.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.67 Review by security office. (1) Each working day, the security director shall review all conduct reports written since the previous working day.

(2) Conduct reports which resulted in summary disposition must be reviewed and approved prior to entry in any of the inmate's records.

(3) Conduct reports should be reviewed for the appropriateness of the charges.

(a) The security director may dismiss a conduct report if he or she believes that, according to s. DOC 303.65, it should not have been written.

(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) If no section numbers remain, a conduct report must be destroyed.

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

(4) The security director shall divide all remaining conduct reports into major and minor offenses.

(a) Minor offenses shall be disposed of in accordance with s. DOC 303.75.

(b) Major offenses and conduct reports charging both major and minor offenses shall be disposed of in accordance with ss. DOC 303.76 to 303.84.

(5) Following the review described in this section, the security director shall sign all reports he or she has approved.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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, or all 3 where imposed as a penalty for violating a disciplinary rule. Any minor penalty may be imposed for a violation where a major penalty could be imposed. Restitution may be imposed in addition to or in lieu of any major penalty.

(b) A "minor penalty" is a reprimand, loss of recreation privileges, building confinement, room confinement, loss of a specific privilege, extra duty, and restitution in accordance with ss. DOC 303.72 and 303.84. Restitution may be imposed in addition to or in lieu of any other minor penalty.

(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 303.22	Escape
DOC 303.23	Disguising identity
DOC 303.37	Arson
DOC 303.41	Counterfeiting and forgery
DOC 303.45	Possession, manufacture and alteration of weapons
DOC 303.57	Misuse of prescription medication
DOC 303.59	Use of intoxicants

(4) An alleged violation of any section other than ones listed in sub. (3) may be treated as either a major or minor offense. The security director shall decide whether it should be treated as a major or minor offense, if the offense has not been disposed of summarily in accordance with s. DOC 303.74. 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; and

(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) Any conduct report containing at least one charge of a major offense shall be handled as a major offense, even if it also includes minor offenses.

(6) Any alleged violation of a rule which may result in a suspension of visiting or correspondence privileges, work or study release, or leave or which may result in imposition of no–contact visiting shall be treated as a major offense, although the inmate may waive this.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (1) (d), renum. (2) to (5) to be (3) to (6) and am. (4) (intro.), cr. (2), Register, April, 1985, No. 352, eff. 5–1–85; am. (1) (a), Register, February, 1987, No. 374, eff. 3–1–87; am. (6), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.69 Major penalties: adjustment segregation. (1) CONDITIONS. Adjustment segregation may not exceed 8 days. It may only be imposed for a major offense by the adjust-

ment committee or the hearing officer. Only one person shall be kept in each segregation cell, except when overcrowding prevents it. Each cell must meet the following minimum standards: clean mattress, sufficient light to read by at least 12 hours per day, sanitary toilet and sink, and adequate ventilation and heating.

(2) NECESSITIES. The following shall be provided promptly upon request for each inmate in adjustment segregation but may not necessarily be kept in the cell: adequate clothing and bedding; a toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use his or her own such hygiene supplies; paper, envelopes, stamps and pens (the cost of stamps may be deducted from the inmate's account); and holy books. The same diet as provided to the general population at the institution shall be provided.

(3) OTHER PROPERTY. Inmates in adjustment segregation may have material pertaining to legal proceedings and books provided by the institution librarian in adjustment segregation.

(4) VISITS AND TELEPHONE CALLS. Inmates in adjustment segregation shall be permitted visitation, including no–contact visiting, and telephone calls in accordance with ch. DOC 309.

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

(6) SHOWERS. Inmates in adjustment segregation shall be permitted to shower at least once every 4 days.

(7) SPECIAL PROCEDURES. No property is allowed in the cell except that described in subs. (1), (2) and (3), and letters received while in adjustment segregation. Smoking is forbidden. Each institution may establish specific procedures relating to talking. No yelling or whistling is permitted.

(8) LEAVING CELL. Inmates in adjustment segregation may not leave their cells except for urgent medical or psychological attention, showers, visits and emergencies endangering their safety in the cell. They may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the superintendent or designee determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(9) GOOD TIME. An inmate shall not earn extra good time while he or she is in adjustment segregation. Wages are not paid to inmates in adjustment segregation.

(10) OBSERVATION. A person placed in observation while in adjustment segregation receives credit toward the penalty being served.

(11) TRANSFER. An inmate may be transferred from one institution to another while in adjustment segregation in accordance with ch. DOC 302.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; emerg. am. (8), eff. 11–18–85; am. (8), Register, May, 1986, No. 365, eff. 6–1–86; am. (4), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.70 Major penalties: program segregation.

(1) CONDITIONS. Program segregation may not exceed the period specified in s. DOC 303.84. It may only be imposed for a major offense by the adjustment committee or the hearing officer. Only one person shall be kept in each segregation cell, unless overcrowding prevents it. Each cell must meet the following minimum standards: clean mattress, sufficient light to read by at least 12 hours per day, sanitary toilet and sink and adequate ventilation and heating.

(2) NECESSITIES. The following shall be provided promptly upon request for each inmate in program segregation: adequate clothing and bedding; a toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use his or her own such hygiene supplies; paper, envelopes, stamps and pens (the cost of stamps may be deducted from the inmate's account); and holy books. The same diet as provided to the general population at the institution shall be provided.

(3) PROPERTY. (a) Inmates in program segregation may have in their cells documents and other materials pertaining to legal proceedings as well as books provided by the institution librarian.

(b) Inmates in program segregation may not have electronic equipment or typewriters in their cells except as permitted in accordance with written policy of the institution. Every institution shall have a written policy providing for incentives for inmates in program segregation to earn the privilege of having personal electronic equipment or typewriters in program segregation. The administrator shall approve each institution's policy before it takes effect to ensure that it is reasonable. Each institution shall post its approved policy and implementation procedures within 30 days after January 1, 1985.

(c) This subsection applies to all program segregation status imposed for conduct committed before, on or after January 1, 1985.

(4) VISITS AND TELEPHONE CALLS. Inmates in program segregation shall be permitted visitation, including no–contact visiting, and telephone calls in accordance with ch. DOC 309.

(5) MAIL. Inmates in program segregation may receive and send mail in accordance with departmental rules relating to mail.

(6) SHOWERS. Inmates in program segregation shall be permitted to shower at least once every 4 days.

(7) SERVICES AND PROGRAMS. Social services, clinical services and program and recreation opportunities shall be provided as possible but must be provided at the individual's cell, unless otherwise authorized by the security director. A program of exercise shall be provided for inmates in program segregation.

(8) LEAVING CELL. Inmates in program segregation may not leave their cells except for medical or clinical attention, showers, visits, exercise and emergencies endangering their safety in the cell. They may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the superintendent or designee determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(9) GOOD TIME AND PAY. Inmates in program segregation earn neither extra good time nor compensation.

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

(11) SPECIAL RULES. Smoking is permitted if no hazard is thereby caused. Talking is permitted in a normal tone during approved times. No yelling or whistling is permitted.

(12) REVIEW OF PROGRAM SEGREGATION. An inmate's status in program segregation may be reviewed at any time and he or she may be placed in the general population at any time by the superintendent. Such status must be reviewed every 30 days by the superintendent. Such review shall include a recommendation by the security director as to whether the inmate should remain in program segregation and an evaluation of the inmate by either the crisis intervention officer or the adjustment program supervisor, or both. In deciding whether an inmate should be removed from program segregation and placed in the general population, the superintendent shall consider:

(a) The offense, including:

1. Its nature and severity;
2. Mitigating factors;
3. Aggravating factors; and
4. Length of sentence to program segregation;

(b) Motivation and behavior of the inmate, including:

1. Attitude toward himself or herself and others and changes in his or her attitude;
2. Goals of the inmate;
3. Physical and mental health; and
4. Attempt to resolve emotional and mental disorders;

(c) Institutional adjustment, including:

1. Disciplinary record;

2. Program involvement;

3. Relationship to staff and inmates; and

4. Security problems created by release;

(d) Programs, including:

1. Social and clinical services available to help the inmate; and

2. Any programs available to help the inmate.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; emerg. r. and recr. (3), eff. 7–24–84; r. and recr. (3) and (10), Register, December, 1984, No. 348, eff. 1–1–85; emerg. am. (8), eff. 11–18–85, am. (8), Register, May, 1986, No. 365, eff. 6–1–86; am. (4), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.71 Controlled segregation. (1) USE. Any inmate in TLU or segregation of any kind who exhibits loud and seriously disruptive behavior or destructive behavior toward the contents of the cell or himself or herself may be put into controlled segregation upon order of the shift supervisor. No inmate may be placed in controlled segregation unless a conduct report is written for the conduct giving rise to the use of controlled segregation. The adjustment committee shall review the report to determine if disciplinary action is appropriate. Controlled segregation normally lasts for not more than 72 hours for a single inmate, but the security director may extend the placement for uncontrollable behavior. Extensions shall be reviewed every 24 hours. When the behavior is brought under control, the inmate shall be removed from this status.

(2) CONDITIONS. Only one person shall be kept in each segregation cell, except in emergencies. Each cell must meet the following minimum standards: 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 following shall be provided for each inmate in controlled segregation: adequate clothing, essential hygiene supplies upon request, and the same diet as provided to the general population. While an inmate is acting in a disruptive manner, close control of all property shall be maintained.

(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) MAIL. Inmates in controlled segregation may receive and send mail in accordance with departmental rules relating to mail. Correspondence materials may be provided if they do not pose a threat to anyone.

(6) SPECIAL RULES. (a) No property is allowed in the cell except that described in subs. (2) and (3), letters received while in controlled segregation and legal materials. Smoking is forbidden. Talking is permitted in a normal tone. No yelling or whistling is permitted.

(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 or designee. They may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the superintendent or designee determines that 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 earns compensation if he or she earned compensation in the previous status. If 1983 Wis. Act 528 does not apply to the inmate, he or she earns extra good time if he or she earned extra good time in the previous status.

(8) RECORDS. Inmates in controlled segregation shall be visually checked every half hour. A written record or log entry shall be made at each such interval noting the emotional condition of the inmate.

(9) CREDIT. An inmate in controlled segregation receives credit toward a term of program segregation and adjustment segregation during such period of confinement.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (1), Register, April, 1985, No. 352, eff. 5–1–85; emerg. am. (6) (b), eff. 11–18–85; am. (6) (b), Register, May, 1986, No. 365, eff. 6–1–86; am. (7), Register, February, 1987, No. 374, eff. 3–1–87; am. (4), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.72 Minor penalties. Minor penalties in accordance with ss. DOC 303.68 and 303.84 shall include:

(1) REPRIMAND. 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 reprimand should only be recorded if no other penalty is given.

(2) LOSS OF RECREATION PRIVILEGES. Recreation privileges include sports or exercise periods, movies, and leisure activities outside the cell, either on grounds or off grounds.

(3) ROOM AND CELL CONFINEMENT. Room and cell confinement may be imposed at any time for a maximum of 10 days. During the hours of confinement, the inmate may not leave his or her quarters without specific permission. Permission may be granted for attendance at religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement. Any or all electronic equipment may be removed from an inmate's quarters if room confinement is imposed.

(4) LOSS OF A SPECIFIC PRIVILEGE. Specific privileges which may be lost if abused 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. These privileges may be taken away for up to 30 days for the first offense, for up to 60 days for the second, and permanently for the third. However, visiting and mail may be suspended for periods of time in accordance with ss. DOC 309.05 and 309.17. No–contact visiting may be imposed in accordance with ss. DOC 309.16 and 309.165.

(5) RESTITUTION. Restitution is payment to the owner for the replacement or repair of stolen, destroyed and damaged property or for medical bills. Property for which restitution is ordered shall be valued at the cost of replacing or repairing such property, whichever is less. An inmate may be ordered to make full or partial restitution. Money may be withheld from earnings or taken from an inmate's account to satisfy the requirements to make restitution.

(6) EXTRA DUTY. An inmate may be assigned extra work or school duty for a specific number of hours without pay or be required to report as ordered to a school or a work assignment for as long as 10 days.

(7) BUILDING CONFINEMENT. This is confinement to the building in which the inmate resides.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (3) and (4), Register, April, 1985, No. 352, eff. 5–1–85; am. (4), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.73 Referral for prosecution. (1) The superintendent of each institution shall, in conjunction with the local district attorney, develop a policy stating which offenses should be referred for prosecution. The policy should cover the following points:

(a) Which statutory crimes should be considered for prosecution;

(b) The amount of evidence needed before prosecution should be considered;

(c) The circumstances in which, even though a violation of the criminal statute can be proved, there should not be prosecution (for instance, less serious battery); and

(d) Which disciplinary offenses may include a crime which is referred for prosecution.

(2) When one of the offenses mentioned in sub. (1) (d) above is alleged in a conduct report, the security director shall review the conduct report in light of the policy to determine if the case should be referred to the district attorney.

(a) If necessary, the security director shall order an investigation to determine if sufficient evidence exists for referral to the district attorney.

(b) If the security director refers the offense to the district attorney, the district attorney shall decide whether to bring charges against an inmate.

(3) Whether or not the review described in sub. (2) results in prosecution being started, the incident may be handled as a disciplinary offense.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

DOC 303.74 Summary disposition procedure. (1) An inmate may be summarily found guilty and punished for minor rule infractions in accordance with this section.

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

(a) Shall inform the inmate of the nature of the alleged infraction and the contemplated penalty; and

(b) Shall 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.

(4) Before imposing the punishment, the staff member shall get the oral or written approval of the shift supervisor. If the shift supervisor disapproves of the summary disposition, the alleged infraction shall either be handled through the formal disciplinary process or the disposition shall be altered so that it is approved by the shift supervisor.

(5) Punishments imposed pursuant to this section shall not exceed the following:

(a) Reprimand;

(b) Loss of a specific privilege for 1 to 15 days, except visits, including no–contact visiting, and mail;

(c) Two nights in room confinement;

(d) Loss of recreation privilege for 1 to 15 days;

(e) Extra duty beyond the normal work day; or

(f) Building confinement.

(6) A record of dispositions made pursuant to this section shall be written on an appropriate form indicating that summary disposition has been made and approved by the shift supervisor.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (5) (b), Register, April, 1994, No. 460, eff. 5–1–94.

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.**

DOC 303.78 Due process hearing: advocates.

(1) (a) At each institution, the superintendent may designate or hire staff members to serve as advocates for inmates in disciplinary hearings at the institution, or staff members may volunteer to serve as advocates.

(b) At institutions that do not employ permanent full–time advocates, the superintendent shall place the names of 3 staff members who are available to serve as advocates in a particular week on a list and shall give the list to the hearing officers. The inmate shall be permitted to choose an advocate from the list of 3, except that the caseloads of advocates may be regulated by the superintendent.

(c) At institutions that employ permanent full–time advocates, the superintendent shall 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 superintendent shall assign a different staff member to serve as the inmate's advocate.

(2) The advocate's purpose is to help the accused to understand the charges against him or her and to help in the preparation and presentation of any defense he or she has, including gathering evidence and testimony, and preparing the accused's own statement. The advocate may speak on behalf of the accused at a disciplinary hearing or may help the accused prepare to speak for himself or herself.

(3) A training program for advocates should be conducted as often as possible. The training program should cover the following subjects:

(a) Proper role of the advocate;

(b) Techniques of interviewing the accused;

(c) Conduct covered and not covered in each disciplinary rule including the significance of lesser included offenses;

(d) Techniques of factual investigation;

(e) The elements of violations in the rules; and

(f) Defenses.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; r. and recr. (1), Register, October, 1984, No. 346, eff. 11–1–84; renum. from HSS 303.79, Register, April, 1985, No. 352, eff. 5–1–85.

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 a committee of one, 2 or 3 staff members appointed by the superintendent. Persons eligible to serve on an adjustment committee are: the superintendent, assistant superintendents, supervisors, correctional officers, social workers, and any other equally responsible staff members. Efforts shall be made to place staff from diverse backgrounds on the multi–member adjustment committee. At least one member of every adjustment committee shall be a supervisor.

(2) No person who has personally observed or been a part of an incident which is the subject of a hearing may serve on the committee for that hearing. Committee members should find out 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. The security director who reviews the conduct report or classifies the offense, as required by ss. DOC 303.67 and 303.68, is not involved in the incident by reviewing the conduct report or classifying the offense to the extent that he or she is automatically disqualified from being on the adjustment committee.

(3) An adjustment committee may hold a hearing even if the inmate has waived due process, if it is more convenient for the committee to hold the hearing than to schedule a hearing before a hearing officer. In that case the committee should follow the procedure for a hearing before a hearing officer.

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

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (1) and (2), Register, April, 1985, No. 352, eff. 5–1–85.

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 shall consider 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 he or she 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 the like;

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

(11) The time he or she spent in TLU.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80.

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 ss. DOC 303.68 to 303.72:

(a) Reprimand;

(b) Loss of recreational privilege for 1 to 30 days;

(c) Room confinement for 1 to 10 days;

(d) Building confinement for 1 to 30 days;

(e) Loss of a specific privilege for 1 to 30 days for the first offense, for 1 to 60 days for the second offense and permanently for the third.

(f) Mail and visiting privileges and no–contact visiting as provided in the departmental rules relating to mail, visiting and no–contact visiting.

(g) Adjustment segregation for 1 to 8 days;

(h) Extra duty without pay for 1 to 10 days;

(i) Program segregation for a specific term of 30, 60, 90, 120, 180 or 360 days;

(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 him or her, 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; or

(k) Restitution.

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

(a) Adjustment segregation, program segregation 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 he or she is found guilty. The duration of a penalty may not exceed the duration shown in Table DOC 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*
Offenses against bodily security					
303.12	Battery	8	360	20	40
303.13	Sexual assault—intercourse	8	360	20	40
303.14	Sexual assault—contact	8	360	20	40
303.15	Sexual conduct	4	120	10	20
303.16	Threats	5	180	10	20
303.17	Fighting	8	180	20	40
Offenses against institutional security					
303.18	Inciting a riot	8	360	20	40
303.19	Participating in a riot	6	360	10	20
303.20	Group resistance and petitions	4	180	10	20
303.21	Conspiracy	Maximum for completed offense			
303.22	Escape	8	360	20	40
303.23	Disguising identity	8	180	20	40
Offenses against order					
303.24	Disobeying orders	6	180	10	20
303.25	Disrespect	8	180	10	20
303.26	Soliciting staff	8	360	20	40
303.27	Lying	5	60	10	20
303.271	Lying about staff	8	360	20	40
303.28	Disruptive conduct	5	360	10	20
303.29	Talking	4	60	0	0
303.30	Unauthorized forms of communication	5	60	10	20
303.31	False names and titles	4	60	0	0
303.32	Enterprises and fraud	6	120	5	10
303.33	Attire	4	60	0	0
Offenses against property					
303.34	Theft	8	360	20	40
303.35	Damage or alteration of property	8	180	15	30
303.36	Misuse of state property	4	60	0	0
303.37	Arson	8	360	20	40
303.38	Causing an explosion or fire	6	180	15	30
303.39	Creating a hazard	6	120	10	20
303.40	Unauthorized transfer of property	5	120	0	0
303.41	Counterfeiting and forgery	8	360	20	40
Contraband offenses					
303.42	Possession of money	8	360	20	40
303.43	Possession of intoxicants	8	360	20	40
303.44	Possession of drug paraphernalia	8	360	20	40

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*
Contraband offenses – Continued					
303.45	Possession, manufacture and alteration of weapons	8	360	20	40
303.46	Possession of excess smoking materials	4	60	0	0
303.47	Possession of contraband—miscellaneous	6	120	10	20
303.48	Unauthorized use of the mail	8	360	20	40
Movement offenses					
303.49	Punctuality and attendance	5	120	5	10
303.50	Loitering	4	120	5	10
303.51	Leaving assigned area	5	120	10	20
303.511	Being in unassigned area	5	120	10	20
303.52	Entry of another inmate's quarters	8	360	20	40
Offenses against safety and health					
303.54	Improper storage	4	60	5	10
303.55	Dirty quarters	4	60	0	0
303.56	Poor grooming	4	60	0	0
303.57	Misuse of prescription medication	8	360	20	40
303.58	Disfigurement	5	120	10	20
Miscellaneous					
303.59	Use of intoxicants	8	360	20	40
303.60	Gambling	4	60	5	10
303.61	Refusal to work or attend school	4	60	5	10
303.62	Inadequate work or study performance	4	60	5	10
303.63	Violation of institutional policies and procedures	6	180	10	20
303.631	Violating conditions of leave	8	360	20	40
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).

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

(b) 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.

(c) 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

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

(e) 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.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (1) (intro.) and (h), (2) (a) table, (am) and (b), Register, April, 1985, No. 352, eff. 5–1–85; emerg. r. and recr. (1) (i) and (2), eff. 9–10–86; r. and recr. (1) (i) and (2), Register, February, 1987, No. 374, eff. 3–1–87; renum. (1) (f), (g), (h), (i) and (j) to (1) (g), (h), (i), (j) and (k) and am. (1) (e) and cr. (1) (f), Register, April, 1994, No. 460, eff. 5–1–94.

DOC 303.85 Recordkeeping. (1) Records of disciplinary infractions may be included in an inmate's case record only in the following situations:

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

Note: See DOC 303.74.

(b) If the inmate was found guilty by a hearing officer or an adjustment committee. Records must be removed if an appeal is successful.

Note: See DOC 303.79.

(2) Records of alleged disciplinary infractions which have been dismissed or in which the inmate was found not guilty may be kept for statistical purposes, but they may not be considered in making program assignment, transfer, or parole release decisions, nor may they be included in any inmate's case record.

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; emerg. am. (1) (a), eff. 10–21–80; am. (1) (a), Register, March, 1981, No. 303, eff. 4–1–81; am. (1) (b), Register, April, 1985, No. 352, eff. 5–1–85.

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 he or she is accused.

Note: For example: an inmate is accused of threatening another inmate. Testimony that the accused 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 has lied to him or her on previous occasions. This is relevant if the testimony of the accused 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 this chapter 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, for example: opinions which are not supported by factual observation; hearsay (statements made outside of the hearing); reputation of the witness;

2. The evidence, even if true, would be of marginal relevance, for example: evidence of prior acts by the accused or a witness, to show that he or she is repeating a pattern; or

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, a written statement, a transcript of an oral statement, or a tape–recorded statement may be considered. 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.

(4) If a witness refuses to testify in person and if the committee finds that testifying would pose a significant risk of bodily harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity. The contents of the statement shall be revealed to the accused, though the statement may be edited 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; or

(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, restricted informant material shall then be forwarded to the security office for retention in the restricted security department file with all other copies of the entire hearing results.

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

History: Cr. Register, August, 1980, No. 296, eff. 9–1–80; am. (6), Register, April, 1985, No. 352, eff. 5–1–85.

DOC 303.87 Harmless error. If a procedural requirement under this chapter is not adhered to by staff, the error may be deemed harmless and disregarded if it does not substantially affect the rights of the inmate. Rights are substantially affected when a variance from a requirement prejudices a fair proceeding involving an inmate.

History: Cr. Register, April, 1985, No. 352, eff. 5–1–85.