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 division 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.

HSS 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 bureau director, 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. If the inmate had been earning compensation, he or she shall continue to earn compensation. If 1983 Wisconsin 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. HSS 306.09 (1), while outside the cell if the superintendent or his or her 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.

Code of inmate offenses introductory note

The purposes of the disciplinary system, including the substantive rules, are addressed in HSS 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 HSS 303.13 and 303.14 define two 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 his or her disciplinary offenses

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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.

HSS 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 HSS 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. See HSS 303.68.

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

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

(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.

HSS 303.68 Major and minor penalties and offenses. (1) (a) A "major penalty" is adjustment segregation as defined in ss. HSS 303.69 and 303.84, program segregation as defined in ss. HSS 303.70 and 303.84, loss of earned good time or extension of mandatory release date under s. HSS 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. HSS 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
HSS 303.12	Battery
HSS 303.13	Sexual assault—intercourse
HSS 303.14	Sexual assault—contact
HSS 303.18	Inciting a riot
HSS 303.19	Participating in a riot
HSS 303.22	Escape
HSS 303.23	Disguising identity
HSS 303.37	Arson
HSS 303.41	Counterfeiting and forgery
HSS 303.45	Possession, manufacture and alteration of weapons
HSS 303.57	Misuse of prescription medication
HSS 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. HSS 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 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.

HSS 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 adjustment 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 and telephone calls in accordance with ch. HSS 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 describe 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. HSS 306.09 (1),

while outside their cells if the superintendent or his or her 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. HSS 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.

HSS 303.70 Major penalties: program segregation. (1) CONDITIONS. Program segregation may not exceed the period specified in HSS 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 director of the bureau of adult institutions 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 the effective date of this subsection.

(c) This subsection applies to all program segregation status imposed for conduct committed before, on or after the effective date of this subsection.

(4) VISITS AND TELEPHONE CALLS. Inmates in program segregation shall be permitted visitation and telephone calls in accordance with ch. HSS 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. HSS 306.09 (1), while outside their cells if the superintendent or his or her 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.

HSS 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 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 his or her designee. They may be required to wear mechanical restraints, as defined in s. HSS 306.09 (1), while outside their cells if the superintendent or his or her 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 Wisconsin 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 ajustment 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.

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

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(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.

HSS 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. HSS 303.68-303.72:

(a) Reprimand;

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

(c) Room confinement for 1-10 days;

(d) Building confinement for 1-30 days;

(e) Loss of a specific privilege for 1-30 days for the first offense, for 1-60 days for the second offense and permanently for the third, and mail and visiting privileges as provided in the departmental rules relating to mail and visiting;

(f) Adjustment segregation for 1-8 days;

(g) Extra duty without pay for 1-10 days;

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

(i) Loss of good time for an inmate whose crime was committed before June 1, 1984, and who did not choose to have 1983 Wisconsin 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 Wisconsin Act 528 apply to them; or

(j) 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 303.84.

TABLE 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 303.84 — Schedule of Penalties (Maximum in days) — continued

		Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983 Wisconsin Act 528*
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
303.53	Posted policies and procedures related to movement	6	120	10	20
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. HSS 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 Wisconsin 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 Wisconsin 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 Wisconsin 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 (b), (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.

HSS 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 (See HSS 303.74); or

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

HSS 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, for example: 1) 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. 2) 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.

lice enforcement policies be made public in the form of administrative rules in order to provide public input and review of the policies, to increase uniformity of application, to provide guidelines to individual officers, and to provide notice to the public of the standard of behavior expected of them. K. Davis, *Police Discretion* (1975); H. Goldstein, *Policing a Free Society* (1977). This section also conforms to the *ACA*, standard 4315:

> Written guidelines should specify misbehavior that may be handled informally. All other minor rule violations and all major rule violations should be handled through formal procedures that include the filing of a disciplinary report.

Although this section limits the officer's discretion (for example, an officer may not handle a major offense, such as fighting, informally), there is still considerable scope for the officer's judgment, for example, in deciding whether the inmate is likely to commit the offense again. The officer's experience can guide him or her in making this judgment better than a detailed rule could. Also, even if the officer *may* handle a rule violation informally, this section does not require the officer to do so when in his or her judgment discipline is needed.

Sub. (1) (d) refers to the purposes of the individual sections and the rules generally in HSS 303.01. A statement of the purpose of each disciplinary rule in this chapter can be found in the note to that section. These notes in some cases give examples of situations where the rule should normally not be enforced. For example, the note to HSS 303.40, Unauthorized transfer of property, states that: "[C]onduct reports [should] not [be] written for petty and harmless violations of this section, such as exchanging single cigarettes, when there is no evidence that the exchange is related to any abuse such as those mentioned earlier."

Note: HSS 303.66. If an officer has decided, using the guidelines in HSS 303.65, that counseling or warning an inmate is not the best response to a particular infraction, the next step is to write a conduct report. The contents of the conduct report are described in sub. (2). A conduct report is the first step for all 3 types of formal disciplinary procedures: summary punishment, minor offense hearing and major offense hearing.

If the officer did not personally observe the infraction, sub. (1) requires that he or she investigate any allegation to be sure it is believable before writing a conduct report. An informal investigation by the reporting officer can save the time of the adjustment committee by weeding out unsupported complaints, and can also provide additional evidence to the adjustment committee if any is found. Also, it is fairer to the inmate to spare him a hearing when the officer cannot uncover sufficient evidence.

Sub. (3) provides that there should be a conduct report for each action which is alleged to violate the sections. If one action violates 3 sections only one report is required. Presumably, the report would list the sections violated and state the relevant facts. This is an effort to avoid unnecessary use of forms.

There is no "statute of limitations" for writing the report. Rather, the guiding factor, when there is time between the alleged offense and the conduct report, should be whether the inmate can defend himself or herself and not be unfairly precluded from doing so due to the passage of time.

Note: HSS 303.67. A conduct report is the initial step in the formal disciplinary process. It can be written by any correctional staff member. Unless the accused inmate admits the charges and submits to summary punishment (see HSS 303.74), the next step is review by the security office. The purpose of the review is to improve the consistency of the reports so that the rules are used in the same way in all reports, and to check the appropriateness of the charges in light of the narrative description section of each report. The review is not a substitute for continuing supervision and training of officers to make sure they all use the rules in the same way; however, it can serve as a tool in the supervision of officers while at the same time making sure that an inmate is not forced to go through a hearing based on an inappropriate charge, or conversely is not let off because the violation charged was under the wrong section.

If summary disposition of the case has already occurred, the security office also reviews the conduct report. The same type of review for the appropriateness of charges should be made, as well as a review of the appropriateness of writing a conduct report (see HSS 303.65) and of the appropriateness of the sentence imposed. The security director may reduce the punishment or charges, if a violation has been treated summarily but may not add to them, since summary punishment is based on consent of the inmate and the inmate has only admitted the charges which were originally written on the conduct report. Only if the conduct report and the punishment are approved may a record of the violation be included in the inmate's files.

Note: HSS 303.68. For the reasons given in the note to HSS 303.64 and in *Wolff v. Mc Donnell*, 418 U.S. 539 (1974), greater procedural safeguards are used when a greater punishment is possible. The dividing line between the 2 types of formal hearing is the same as the one used in *Wolff, supra*. If segregation, extension of the mandatory release date or loss of good time

is imposed, then all of the *Wolff* safeguards apply. If other lesser punishments are used, then a less formal procedure is used. In order to preserve the option of using a major punishment, the security office will designate a conduct report as containing a "major offense" whenever it seems possible that segregation, extension of the mandatory release date or loss of good time will be imposed by the adjustment committee. Some offenses must *always* be considered major offenses; these are listed in sub. (3). Violations of other sections will be considered individually and it is left to the security director's discretion whether to treat an offense as major or minor. However, guidelines for the exercise of this discretion are given in sub. (4).

When a security director treats an offense as a major offense, as allowed by sub. (4), the security director should indicate in the record of the disciplinary action some reason for that decision based on the criteria enumerated under sub. (4).

Note: HSS 303.69. This section reflects the conditions in adjustment segregation as they already exist at most institutions. The purpose of this section is to promote uniformity among all the institutions, to make sure minimum standards are met and to inform inmates what to expect.

Adjustment segregation lasts a maximum of 8 days, so very spartan conditions are permissible. However, visiting and mail rights are protected by the first amendment. See *Procunier v. Martinez*, 416 U.S. 396 (1974); *Mabra v. Schmidt*, 356 F. Supp. 620 (W.D. Wis. 1973).

While extra good time is not earned in this status, fractions of days are not deducted. See the departmental rules on extra good time and compensation.

Note: HSS 303.70. This section reflects the conditions in program segregation as they already exist at at least one institution. The purposes of this section are to promote uniformity among all the institutions, to make sure minimum standards, possibly required by the elghth amendment's "cruel and unusual punishment" clause are met and to inform inmates what to expect.

Subsection (3) clarifies what personal property inmates in program segregation may keep in their cells. Inmates may not keep electronic equipment or typewriters in their cells except as allowed by a particular institution's written policy. Each institution is expected to have a policy designed to motivate inmates to improve their behavior in segregated statuses so that they will be permitted to move into the general population of the institution.

Since program segregation may last for almost one year (or longer if a new offense is committed), the conditions are not as spartan as in adjustment segregation. In particular, more personal property is allowed and there is an opportunity to take advantage of programs. Sub. (7). A person's stay in program segregation may not be extended and he or she may be released at any time through the procedure established under this section.

Note: HSS 303.71. Controlled segregation is not intended as punishment but, as its name implies, it is to be used where it has been impossible to control a person in segregation. The purpose of the section is to promote uniformity in the use of controlled segregation and make sure minimum standards are met. In particular, incoming and outgoing mail is still allowed as if the inmate were not in segregation. This is a logical extension of *Procunier v. Martinez*, 416 U.S. 396, (1974). See also *X v. Gray*, 378 F. Supp. 1185 (E.D. Wis. 1974), aff'd 558 F. 2d 1033; *Vienneau v. Shanks*, 425 F. Supp. 676 (W.D. Wis. 1977).

Note: HSS 303.72. This section describes each of the minor penalties which may be imposed. The purpose of this section is to standardize the punishments used so that an inmate's disciplinary record is easier to understand, and to inform inmates of what to expect. There should be no referral to the program review committee for reclassification if a minor penalty is imposed, unless there has been a recent accumulation of such penalties.

Note: HSS 303.73. A number of rules cover conduct which is sometimes a criminal offense. However, many petty matters would probably not be prosecuted by the district attorney even if brought to his attention—for example, gambling. Also, in most cases, even outbreaks of violence are handled through disciplinary procedures rather than by prosecution. This section requires the superintendent to work with the district attorney in developing a policy on prosecution of crimes committed within the institution. The frustration and waste of time involved in referring cases which are dropped can be avoided, as well as the possibility of failing to refer a case which ought to be prosecuted. Naturally, the final decision is left up to the district attorney (sub. (2) (b)).

In developing the policy on referrral, it will become obvious that the disciplinary rules do not follow the criminal statutes exactly. Some crimes are not covered by the disciplinary rules. These are generally "white collar" crimes which are unlikely to be committed in prison. Some rules cover both criminal and non-criminal activities. An example is HSS 303.43, Possession of intoxicants, which covers possession of alcohol as well as prescribed drugs. The

notes to the individual sections explain the differences between each rule and the similar criminal statute.

Sub. (3) provides that disciplinary procedure can go forward even if the case will also be prosecuted as a criminal offense. This option is often needed for control because criminal procedure takes a long time and because a criminal conviction merely lengthens an inmate's sentence without changing the conditions of confinement. For some inmates, a longer sentence is very little deterrent. Also, it provides no protection to potential victims because the offender is not segregated from the general population. There is no double jeopary in having both a disciplinary hearing and a criminal trial on the same matter. See *Baxter v. Palmigiano*, 425 U.S. 308 (1976).

Note: HSS 303.74. The availability of summary disposition avoids the necessity of a disciplinary hearing when the inmate agrees to summary disposition. Summary disposition is only allowed in relatively minor cases, those where the punishment is only one of the punishments listed in sub. (5). To further limit the possibility of abuse, any summarily-imposed punishment must be approved by the shift supervisor. Sub. (4). Also, summary punishments must be reviewed and approved by the security office before being entered in the inmate's disciplinary record or other files. See HSS 303.67.

In the recent past, summary disposition has not been used extensively. A hearing was held on all offenses. This section thus streamlines disciplinary procedure in minor, uncontested cases. One purpose of the section is to encourage summary disposition, where appropriate.

Note: HSS 303.75. The hearing procedure for minor violations, often called an "informal hearing," has several safeguards to protect the inmate from an erroneous or arbitrary decision. It is used in the following situations: (1) When the inmate did not agree to summary disposition, because he or she contested the facts or for some other reason; (2) When the appropriate punishment, if the inmate is found guilty, is more severe than permitted on summary disposition but not so severe as to require a full due process hearing; and (3) When the inmate waives a due process hearing.

The protections present in the minor hearing procedure are: subsection (1)—notice of charges; subsection (2)—specific time limits for the hearing and opportunity to waive them; subsection (3)—an impartial hearing officer; subsection (4)—opportunity for the inmate to explain or deny the charges; subsection (5)—a decision based on the preponderance of the evidence; subsection (6)—the right to appeal; and HSS 303.85—no records are kept in any offender-based file if the inmate is found not guilty.

The *ACA*, standard 4334, Discussion, draws the line between "major" and "minor" violations in a different place: "Minor violations usually are those punishable by no more than a reprimand or loss of commissary, entertainment or recreation privileges for not more than 24 hours." Because minor penalties as defined in HSS 303.68 include several which are more severe, the minor offense disciplinary procedure is somewhat more formal than that recommended by the *ACA*.

Note: HSS 303.76. HSS 303.76, 303.78, and 303.82 prescribe a hearing procedure for major offenses which complies with the requirements of *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974).

Subsection (1) concerns notice. With respect to notice, the Supreme Court said:

> We hold that written notice of the charges must be given to the disciplinary-action defendant in order to inform him of the charges and to enable him to marshal the facts and prepare a defense. At least a brief period of time after the notice, no less than 24 hours, should be allowed to the inmate to prepare for the appearance before the Adjustment Committee.

In accordance with *Taylor v. United States*, 414 U.S. 17 (1973), the inmate is informed that if he or she refuses to attend the hearing, the hearing may be held without the inmate being present.

Subsection (2) concerns waiver. When an inmate waives a hearing for a major due process violation, he or she waives all rights associated with that type of hearing and has only the rights associated with hearings for minor violations. Waiver includes waiving the right to question or confront witnesses. Just as a criminal defendant may waive his or her right to a trial, so an inmate accused of a disciplinary offense can waive his or her right to a due process hearing. In that case, a hearing of the type used for minor offenses is held. The inmate still has an opportunity to make a statement, there is an impartial hearing officer, a decision is based on the evidence, and an entry in the records is made only if the inmate is found guilty. See s. HSS 303.75 and Note.

To ensure that any waiver is a knowing, intelligent one, the inmate must be informed of his or her right to a due process hearing and what that entails; be informed of what the hearing

will be like if he or she waives due process; and be informed that the waiver must be in writing.

A waiver is not an admission of guilt.

Subsection (3) concerns time limits, which are the same as those under s. HSS 303.75.

Subsection (4) allows the hearing to be held at one of a number of places. In the past, disciplinary hearings were held only at the institution to which the inmate was assigned at the time of the misconduct. Transfer brought disciplinary proceedings to an end. This was undesirable for a variety of reasons. Therefore, this section provides for hearings at the new location.

Generally, it is desirable to provide hearings where the violation occurred. This practice is current division policy. Sometimes, this is impossible, particularly in the camp system. When it is impossible, fairness requires that the inmate have the same protections where the hearing is held as he or she would have at the institution where the violation is alleged to have occurred.

Subsection (5) prescribes a hearing procedure for major offenses which complies with the requirements of *Wolff v. McDonnell*, 418 U.S. 539 (1974). Those requirements are:

(a) "A written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action." *Morissey v. Brewer*, 408 U.S. 471, 489 (1972).

(b) The inmate is allowed to call witnesses and present documentary evidence in his or her defense if permitting him or her to do so will not jeopardize institutional safety or correctional goals.

(c) The inmate has no constitutional right to confrontation and cross-examination in prison disciplinary proceedings. Such procedures in the current environment, where prison disruption remains a serious concern, must be left to the discretion of the prison officials.

On cross-examination and confrontation of adverse witnesses, the court said:

In the current environment, where prison disruption remains a serious concern to administrators, we cannot ignore the desire and effort of many states, including Nebraska, and the Federal Government to avoid situations that may trigger deep emotions and that may scuttle the disciplinary process as a rehabilitation vehicle. To some extent, the American adversary trial presumes contestants who are able to cope with the pressures and aftermath of the battle, and such may not generally be the case of those in the prisons of this country. At least the Constitution, as we interpret it today, does not require the contrary assumption. Within the limits set forth in this opinion we are content for now to leave the continuing development of measures to review adverse actions affecting inmates to the sound discretion of corrections officials administering the scope of such inquiries. *Id.* at 568.

Subsection (5) does not greatly limit the Adjustment Committee's discretion to prohibit cross-examination and confrontation, as it appears to do, because of the fact that the witness need not be called at all. The committee may rely on hearsay testimony if there is no reason to believe it is unreliable. See HSS 303.86, Evidence.

Subsection (6) requires that the committee give the inmate and his or her advocate a written copy of the decision. The Supreme Court stated about this requirement:

> We also hold that there must be a "written statement by the factfinders as to the evidence relied on and reasons" for the disciplinary action. *Morrissey*, 408 U.S. at 489, 92 S. Ct. at 2604. Although Nebraska does not seem to provide administrative review of the action taken by the Adjustment Committee, the actions taken at such proceedings may involve review by other bodies. They might furnish the basis of a decision by the Director of Corrections to transfer an inmate to another institution because he is considered "to be incorrigible by reason of frequent intentional breaches of discipline," Neb. Rev. Stat. s.83-185(4) (Cum. Supp. 1972), and are certainly likely to be considered by the state parole authorities in making parole decisions. Written records of proceedings will thus protect the inmate against collateral consequences based on a misunderstanding of the nature of the original proceeding. Further, as to the disciplinary action itself, the provision for a written record helps to insure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly. Without written records, the inmate will be at a severe disadvantage in propounding his own cause or defending himself from others. It may be that there will be occasions when personal or institutional safety is so implicated that the statement may properly exclude certain items of evidence, but in that event the statement should indicate the fact of the omission. Otherwise, we perceive no

conceivable rehabilitative objective or prospect of prison disruption that can flow from the requirement of these statements.

Wolff v. McDonnell, 418 U.S. 539, 564-65 (1974).

Subsection (7) gives the inmate the right to appeal an adverse decision. Appeal is not required by *Wolff v. McDonnell;* in fact, an opportunity for appeal is not even an element of required due process in a criminal proceeding. *Griffen v. Illinois*, 351 U.S. 12 (1956). Appeal or review is one of three ways of controlling discretion, according to Kenneth Culp Davis. The other 2 are limiting discretion by placing outer limits on it, and structuring discretion by listing guidelines or factors to be considered. Appeal increases uniformity in decision-making, may eliminate or reduce abuses of discretion, and provides an opportunity for the superintendent to review the work of his or her subordinates in handling disciplinary cases.

Note: HSS 303.78. Subsection (1) provides the inmate in a disciplinary hearing with a limited choice of advocates to permit avoidance of conflict-of-interest problems. The choice of an advocate, however, is not the inmate's constitutional right. Paragraph (b) provides a procedure for giving inmates a choice of advocates in institutions that use volunter or assigned advocates who are regular staff members. Paragraph (c) provides for a different procedure in institutions that employ permanent advocates. This rule allows the institution to assign advocates and to regulate their caseloads. If an inmate objects to the assignment of a particular advocate because that advocate has a known and demonstrable conflict of interest in the case, the institution should assign a different advocate to the inmate. An inmate has no due process or other right to know the procedure by which a particular advocate is selected in a particular case.

Note: HSS 303.81. The inmate facing a disciplinary proceeding for a major violation should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals. Ordinarily, the right to present evidence is basic to a fair hearing; but the unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution. We should not be too ready to exercise oversight and put aside the judgment of prison administrators. It may be that an individual threatened with serious sanctions would normally be entitled to present witnesses and relevant documentary evidence; but here we must balance the inmate's interest in avoiding loss of good time against the needs of the prison, and some amount of flexibility and accommodation is required. Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other documentary evidence.

This new rule requires the adjustment committee or hearing officer to state on the record its reason for determining that a witness need not be called. It is hoped that stating on the record the reasons for refusing to call a witness will facilitate review of disciplinary proceedings. The adjustment committee may determine that a witness should not be called because the testimony would be irrelevant, unnecessary, or due to other circumstances in an individual case.

The decision of whether to allow a witness to testify has been delegated to a hearing officer. Sub. (2). The time for making requests is limited under sub. (1), in order to give the hearing officer an opportunity to consider the request prior to time for the hearing, which normally must be held within 21 days. See HSS 303.76 (3).

Sub. (3) lists the factors to be considered in deciding whether to call a requested witness.

Subs. (4), (5) and (6) indicate that signed statements are preferable to other hearsay, but other hearsay may be relied on if necessary.

Subs. (7) and (9) provide that the same hearing officer who considers the requests for witnesses is also the person to schedule the hearing and notify all participants. There is a time limit on the hearing—it must be 2 to 21 days after notice to the inmate. See HSS 303.76 (3).

Sub. (8) forbids interviewing members of the public and requesting their presence at hearings without the hearing officer's permission. Members of the public are not permitted to attend hearings. Such people are usually employes and school officials who are involved in work and study release. There is no authority to compel their involvement in hearings. More importantly, requesting their involvement or permitting adversary interviewing seriously jeopardizes the programs by making the people unwilling to cooperate. It also creates the possibility that there will be harassment of such people. Instead, the work release coordinator should get whatever information these people have and provide it to the committee.

Note: HSS 303.82. *Wolff v. McDonnell*, 418 U.S. 539 (1974), requires that the adjustment committee members be impartial in the sense that they should not have personally observed or

been a part of the incident which is the basis of disciplinary charges. However, the court specifically held that a committee member could be "impartial" even if he or she was a staff member of the institution. Nevertheless, this section encourages some diversity on panels with 2 or 3 members.

The use of one and 2 member committees is a recent development. There are 2 principal reasons for it. The camp system has never held due process hearings because of the fact that the staff is small and it is impossible to involve staff from distant institutions. For example, some camps have as few as 4 staff members. To provide a 3 person committee and an advocate and to prevent the complainant from being one of these people is impossible. Of course, there would be no one to supervise the camp during the hearing, either. The conflict between the desire to have due process hearings at the camps and limited resources is resolved by permitting smaller committees.

The problem of available staff also exists at larger institutions. So many staff can be tied up in the process that other important functions are neglected. It is thought that fairness can be achieved by relying on smaller committees while other correctional objectives are also achieved.

Note: HSS 303.83. This section sets out the considerations which are actually used in deciding, within a range, how severe an inmate's punishment should be. It does not contain any formula for deciding the punishment. The actual sentence should be made higher or lower depending on the factors listed. For instance, if this is the fourth time the inmate has been in a fight in the last year, his or her sentence should be greater than average, unless other factors balance out the factor of the bad record.

The purpose of this section is to focus the committee's or officer's attention on the factors to be considered, and to remind them not to consider other factors such as personal feelings of like or dislike for the inmate involved.

Note: HSS 303.84. There are 2 limits on sentences which can be imposed for violation of a disciplinary rule: (1) A major penalty cannot be imposed unless the inmate either had a due process hearing or was given the opportunity for one and waived it; and (2) only certain lesser punishments can be imposed at a summary disposition. Major penalties are program and adjustment segregation, loss of good time for those inmates to whom 1983 Wisconsin Act 528 does not apply, and extension of mandatory release date for those inmates who committed offenses on or after June 1, 1984, and other inmates who chose to have 1983 Wisconsin Act 528 apply to them. See HSS 303.74. This section limits both the types and durations of penalties.

In every case where an inmate is found guilty of violating a disciplinary rule, one of the penalties listed in sub. (1) must be imposed. More than one penalty may be imposed. For example, if adjustment segregation is imposed, program segregation may also be imposed. Loss of good time or extension of mandatory release date, whichever is applicable, may be imposed in conjunction with either or both of these penalties. The inmate will then serve his or her time in each form of segregation and lose good time or have his or her mandatory release date extended. Similarly, more than one minor penalty may be imposed for a single offense. A major and minor penalty may be imposed for a major offense.

Sentences for program segregation may only be imposed for specific terms. The possible terms are 30, 60, 90, 120, 180 and in some cases, 360 days. This is contrary to, for example, adjustment segregation where terms from 1-8 days may be imposed. The specific term represents the longest time the inmate will stay in segregation unless he or she commits another offense. However, release prior to the end of the term is possible. HSS 303.70 provides that a placement in program segregation may be reviewed at any time and must be reviewed at least every 30 days.

The terms in sub. (2) (a) are maximums and should rarely be imposed.

The limits on loss of good time or extension of the mandatory release date which are found in sub. (2) (c) are required by s. 53.11 (2), Stats. Prior to the 1983 amendments, this statute limited the number of days of good time which could be lost to 5 for the first offense, 10 for the second, and 20 for each subsequent offense. Those limitations are still applicable to inmates who committed offenses before June 1, 1984, and did not choose to have 1983 Wisconsin Act 528 apply to them.

1983 Wisconsin Act 528 amended s. 53.11 (2), Stats., in three specific ways. First, it replaced the concept of "good time" with extension of the mandatory release date. Second, it allowd an extension of an inmate's mandatory release date by not more than 10 days for the first offense, 20 for the second, and 40 for each subsequent offense. The adjustment committee must impose this extension of the mandatory release date. The third change the statute made was the mandatory extension of an inmate's mandatory release date by a number of days equal to 50% of the number of days spent in segregation. This number must be calculated

when the inmate is released from segregation, since the inmate may not spend the full amount of time in segregation to which he or she was sentenced. 1983 Wisconsin Act 528 applies to inmates who committed offenses on or after June 1, 1984, and other inmates who chose to have the act apply to them.

Section 53.11, Stats., follows current practice by limiting loss of good time or extension of the mandatory release date to major offenses.

Note: HSS 303.86. This section makes clear that the rules of evidence are not to be strictly followed in a disciplinary proceeding. Neither the officers nor the inmates have the training necessary to use the rules of evidence, which in any case were developed haphazardly and may not be the best way of insuring the reliability of evidence. Thus, a more flexible approach is used. The main guidelines are that the hearing officer or committee should try to allow only reliable evidence and evidence which is of more than marginal relevance. Hearsay should be carefully scrutinized since it is often unreliable; the statement is taken out of context and the demeanor of the witness cannot be observed. However, there is no need to find a neatly labeled exception; if a particular piece of hearsay seems useful, it can be admitted.

Subs. (3) and (4) address the problem of the unavailable witness. Sub. (3) contemplates that the statement and the identity of the maker will be available to the accused. Sub. (4) permits the identity of the witness to be withheld after a finding by the committee or hearing officer that to reveal it would substantially endanger the witness. This is not often a problem, but it does arise, particularly in cases of sexual assault. To protect the accused, it is required that there be corroboration; that the statement be under oath; that the content of the statement be revealed, consistent with the safety of the inmate. In addition, the committee or hearing officer may question the people who give the statements.

Sub. (5) deals with the handling of information received from a confidential informant. This information will not be placed in the inmate's case record where it would be accessible to him or her, but will be filed only in the security office.

Note: HSS 303.87. This rule is to make clear that technical, non-substantive errors on the part of staff in carrying out the procedures specified in this chapter, may, if harmless, be disregarded. For example, if an inmate is not served with an approved conduct report within the time specified, this would be harmless unless it affected the inmate's right to present a defense in a meaningful way. This rule conforms to present practices.