

Chapter HSS 309

RESOURCES FOR INMATES

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Note: Several sections in chapter HSS 309 have explanatory notes. This information can be found in the appendix after the last section.

HSS 309.01 Applicability. This chapter applies to the department of health and social services, to its division of corrections, and to all adult inmates in the legal custody of the department. It is promulgated pursuant to authority conferred by ss. 46.03 (1) and (6) and 227.11 (2), Stats., and interprets ss. 46.064, 46.065, 46.07, 53.07, 53.08, 53.12, 56.01, and 56.065, Stats.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; correction made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1987, No. 378.

HSS 309.02 Definitions. As used in this chapter:

(1) "Adjustment committee" means the adjustment committee authorized under the departmental disciplinary rules to impose disciplinary measures for inmate misconduct.

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(2) "Close family member" under ss. HSS 309.45 - 309.52 means the inmate's natural, adoptive, step, and foster parents; spouse, children, grandparents, grandchildren, or siblings. A parent surrogate is within the definition of parent if investigation substantiates that a claimed surrogate did in fact act as a parent to the inmate, although the parent surrogate was not an adoptive, foster, or stepparent.

(3) "Department" means the department of health and social services.

(4) "Director of the bureau of adult institutions" or "bureau director" means the director of a bureau of the division of corrections, or designee.

(5) "Division" means the department of health and social services, division of corrections.

(6) "Clinical services unit supervisor" means the clinical services unit supervisor at an institution, or designee.

(7) "General account" means an account established to receive an inmate's pay, pensions, disability payments, or gifts from family; and from which disbursements may be made while an inmate is in the legal custody of the department.

(8) "Institution business manager" means the person designated to receive and disburse money and property at each institution or that person's designee.

(9) "Photograph" means an image on film, video tape, or electronic transmission.

(9m) "Release account" means an account established for an inmate in which a percentage of the inmate's income is deposited, in accordance with s. HSS 309.466 so that the inmate has sufficient funds when released from the institution to purchase release clothing, out-of-state transportation, and other items and services needed on release.

(10) "Representatives of the news media" means any person 18 years old or older who is a member of the press, including broadcast or journalism, who visits an institution for the purpose of investigation and reporting.

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

(12) "Segregated account" means an account established for the receipt and disbursement of funds received by inmates for participation in a work or study release program under ch. HSS 324 and certain institution educational programs. Such funds include, but are not limited to, social security, veterans administration, and railroad retirement funds.

(13) "Superintendent" means the superintendent at an institution, or designee.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; emerg. cr. (9m), eff. 5-15-86; cr. (9m), Register, September, 1986, No. 369, eff. 10-1-86.

HSS 309.03 News media access to inmates. (1) Representatives of the news media shall be permitted to visit correctional institutions. Visits and interviews by media representatives with correctional staff and inmates can foster the public's understanding of the qualities, problems, and needs of inmates and institutions. Such understanding helps to de-

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velop community acceptance and support of correctional objectives, including the objective of successful reintegration of offenders into the community.

(2) News media representatives shall be permitted to interview individual inmates, unless:

(a) The superintendent believes that an interview will:

1. Jeopardize the safety or order of the institution; or
2. Be detrimental to the welfare of the inmate;

(b) The clinical services unit supervisor believes that the inmate is mentally ill;

(c) The inmate is confined in segregation. The director of the bureau of institutions may approve in writing an interview of an inmate confined in segregation in extraordinary circumstances; or

(d) The inmate refuses to be interviewed. A superintendent may require the refusal to be in writing.

(3) Representatives of the news media who visit correctional institutions are subject to the same rules as other visitors. They will not be counted against any limits as to the number of visitors permitted, unless they are on an inmate's visiting list.

(4) With the written permission of the inmate, news media representatives may photograph the inmate. The permission shall include the date of the photo and the use to be made of it.

(5) All visits and interviews conducted pursuant to this section shall be subject to regulation by the superintendent as to time, location, length, and equipment used. Such regulation is not to discourage visits and interviews.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.05 Inmate mail (1) The division of corrections encourages communication between inmates and their families, friends, government officials, courts, and other people concerned with the welfare of inmates. Such communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate inmates and thus contributes to high morale and to the security of inmates and staff.

(2) (a) Incoming mail addressed to inmates may be opened, examined, censored, and delivered under this section only if the inmate consents in writing to receive mail through institution mail services.

(b) If an inmate does not consent under par. (a), the institution shall return incoming mail addressed to the inmate to the post office unopened marked, "refused."

(c) An inmate shall be permitted to correspond with anyone, including inmates in other institutions. There shall be no limit on the length or number of letters received or sent by any inmate.

(3) Correspondence sent by an inmate to the corrections complaint examiner may not be opened for inspection or read by institution staff. Correspondence received by an inmate in connection with a complaint

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filed by the inmate with the inmate complaint review system under ch. HSS 310, from the secretary of the department, the administrator of the division, the corrections complaint examiner or the superintendent of any state correctional institution, may not be opened for inspection or read by institution staff. Correspondence received by an inmate from any of these parties in connection with the inmate complaint review system shall be readily identifiable as from the inmate complaint review system.

(4) Correspondence sent by an inmate to any of the parties listed below may not be opened for inspection or read by institution staff. Correspondence received by an inmate from any of these parties may be opened by institution staff in the presence of the inmate. Institution staff may direct the inmate to remove the contents of the envelope, shake out the envelope and show the contents, page by page, to staff so that staff can inspect the contents to determine whether it contains contraband. Institution staff may not read correspondence received by an inmate from any of these parties except that if the correspondence contains an arrest record or any document of identification, staff may read the document but only to the extent necessary to determine who is the subject of the document. If correspondence contains contraband or if the inmate refuses to show the contents of the envelope to institution staff, institution staff may confiscate the correspondence. Confiscated correspondence shall be processed in accordance with sub. (6) (e) (intro.) and 1, (f) and (g). This subsection applies to the following parties:

- (a) An attorney, if the correspondence is readily identifiable as being from an attorney;
- (b) The governor of Wisconsin;
- (c) Members of the Wisconsin legislature;
- (d) Members of the United States congress;
- (e) The secretary of the department, except for correspondence in connection with the inmate complaint review system;
- (f) The administrator of the division, except for correspondence in connection with the inmate complaint review system;
- (g) A bureau director of the division;
- (h) The administrator of the department's division of care and treatment facilities;
- (i) The director of the department's bureau of correctional health services;
- (j) The superintendent of any state correctional institution, except for correspondence in connection with the inmate complaint review system;
- (k) The parole board;
- (l) The attorney general of Wisconsin or an assistant attorney general;
- (m) Any sheriff's office or police department; or
- (n) An agency of the federal government.

(5) Correspondence sent by an inmate to the clerk or judge of any state court or federal court may not be opened for inspection or read by institution staff. Correspondence received by an inmate from any of these parties may not be opened for inspection or read by institution staff unless the inmate is in segregation. If an inmate is in segregation, correspondence received by an inmate from any of these parties may be opened by institution staff in the presence of the inmate. Institution staff may direct the inmate to remove the contents from the envelope, shake out the envelope and show the contents, page by page, to staff so that staff can inspect the correspondence to determine whether it contains contraband. Institution staff may not read correspondence received by an inmate from any of these parties except that if the correspondence contains an arrest record or a document of identification, staff may read the document but only to the extent necessary to determine who is the subject of the document. If correspondence contains contraband or if the inmate refuses to show the contents of correspondence to staff, the correspondence may be confiscated. Confiscated correspondence shall be processed in accordance with sub. (6) (e) (intro.) and 1., (f) and (g).

(6) Except as provided in subs. (3), (4) and (5), the following restrictions apply to all inmate correspondence:

(a) Incoming and outgoing mail may be opened and inspected for contraband. It shall not be delivered if it contains contraband.

(b) Incoming and outgoing mail may be read only if the security director has reasonable grounds to believe that mail should not be delivered pursuant to par. (c) or if the correspondence is between inmates. If the correspondence is between inmates and concerns joint legal matters, it shall not be read and shall be submitted for transmittal without delay.

(c) Incoming and outgoing mail shall not be delivered if it:

1. Threatens criminal activity or physical harm to any person;
2. Threatens blackmail or extortion;
3. Concerns sending contraband in or out of an institution;
4. Concerns plans to escape;
5. Concerns activity that, if completed, would violate the laws of Wisconsin or the United States or the administrative rules of the division of corrections;
6. Is in code;
7. Solicits gifts from a person other than a family member or a person on the visiting list;
8. Is obscene. Material is obscene if the average person, applying state contemporary community standards, would find that the work, taken as a whole:
 - a. Appeals to the prurient interest;
 - b. Depicts or describes, in a patently offensive way, acts involving necrophilia, masochism, sadism, bestiality, or an unnatural preoccupation with excrement; and
 - c. Lacks serious literary, artistic, political, or scientific value;

9. Contains information that, if communicated, would create a clear danger of physical or mental harm to any person.

(d) A record of any mail that is read shall be kept by the security director. It shall include the name of the sender and receiver, the date, the reason for reading it, and the name of the reader. Inmate questions regarding mail inspection shall be addressed to the security director.

(e) A record of any mail that is not delivered shall be kept by the security director. It shall include the name of the sender and intended receiver, the date, and the reason for not delivering it.

1. If it is incoming mail, the letter and a written notice stating why the letter was not delivered shall be sent to the sender, unless the sender was an inmate. The inmate to whom the letter was sent shall be given a written notice that the letter was not delivered and the identity of the sender.

2. If the letter is outgoing mail or if it is incoming and the sender is an inmate, the sender and the person to whom the letter was sent shall receive a notice stating why the letter was not delivered and the identity of the sender and intended receiver. The letter shall be kept by correctional staff.

(f) The security director's decision to refuse to deliver a letter may be appealed to the superintendent, who shall decide the appeal in accordance with these sections.

(g) A record of cash, checks, money orders, and any negotiable instruments shall be made. It shall include the name of the sender and receiver, the amount, and date.

(h) If the inspection or reading of mail reveals an attempt to send contraband in or out of an institution or to secure delivery of mail that may not be delivered pursuant to par. (c), the security director may order that mail to or from the inmate or sender shall be opened and read for a reasonable period of time.

(7) Parcels, packages, and any other incoming or outgoing items other than correspondence that are mailed or delivered to an inmate may be opened for inspection for contraband. If, upon opening, the contents are found to be damaged, the inmate should be notified.

(8) Contraband found through inspections conducted pursuant to this section shall be disposed of in accordance with the departmental rules.

(9) For violations of administrative rules or policies and procedures made by institutions relating to mail, mail privileges may be suspended by the security director or adjustment committee.

(10) If an inmate is alleged to have violated these rules or institution policies and procedures relating to mail, a conduct report shall be written and disposed of in accordance with the rules providing for disciplinary procedures for major offenses. For such violation, the penalty may include suspension of mail privileges with a specific person for a specific period, subject to the following:

(a) A suspension of 6 months or less may be imposed by the adjustment committee and appealed to the superintendent; and

(b) A suspension of more than 6 months may be appealed to the superintendent and thereafter the administrator and the secretary.

(11) If a member of the public is alleged to have violated these sections or institution policies and procedures relating to mail, the security director shall investigate and decide if such a violation occurred. If such a violation occurred, the security director may suspend mail privileges with a specific person for a specific period. Suspension of mail privileges may be appealed in accordance with sub. (9).

(12) If mail is opened or read inadvertently, the inmate shall be so notified.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; corrections in (5) (b) and (h) made under s. 13.93 (2m) (b) 4, Stats., Register, June, 1987, No. 378; emerg. r. and recr. (3) and (4), eff. 7-15-87; r. and recr. (3) and (4), renum. (5) to (11) to be (6) to (12) and am. (6) (intro.), cr. (5), Register, March, 1988, No. 387, eff. 4-1-88.

HSS 309.06 Publications. (1) The division shall encourage and facilitate inmate reading of publications, including books, magazines, newspapers, and pamphlets. Reading generally fosters correctional objectives by educating inmates and by keeping them informed of events and issues in the community.

(2) HSS 309.05 applies to publications. In addition, the receipt of publications by inmates is subject to the following restrictions:

(a) Publications must be received directly from the publisher or other recognized commercial sources in their packages;

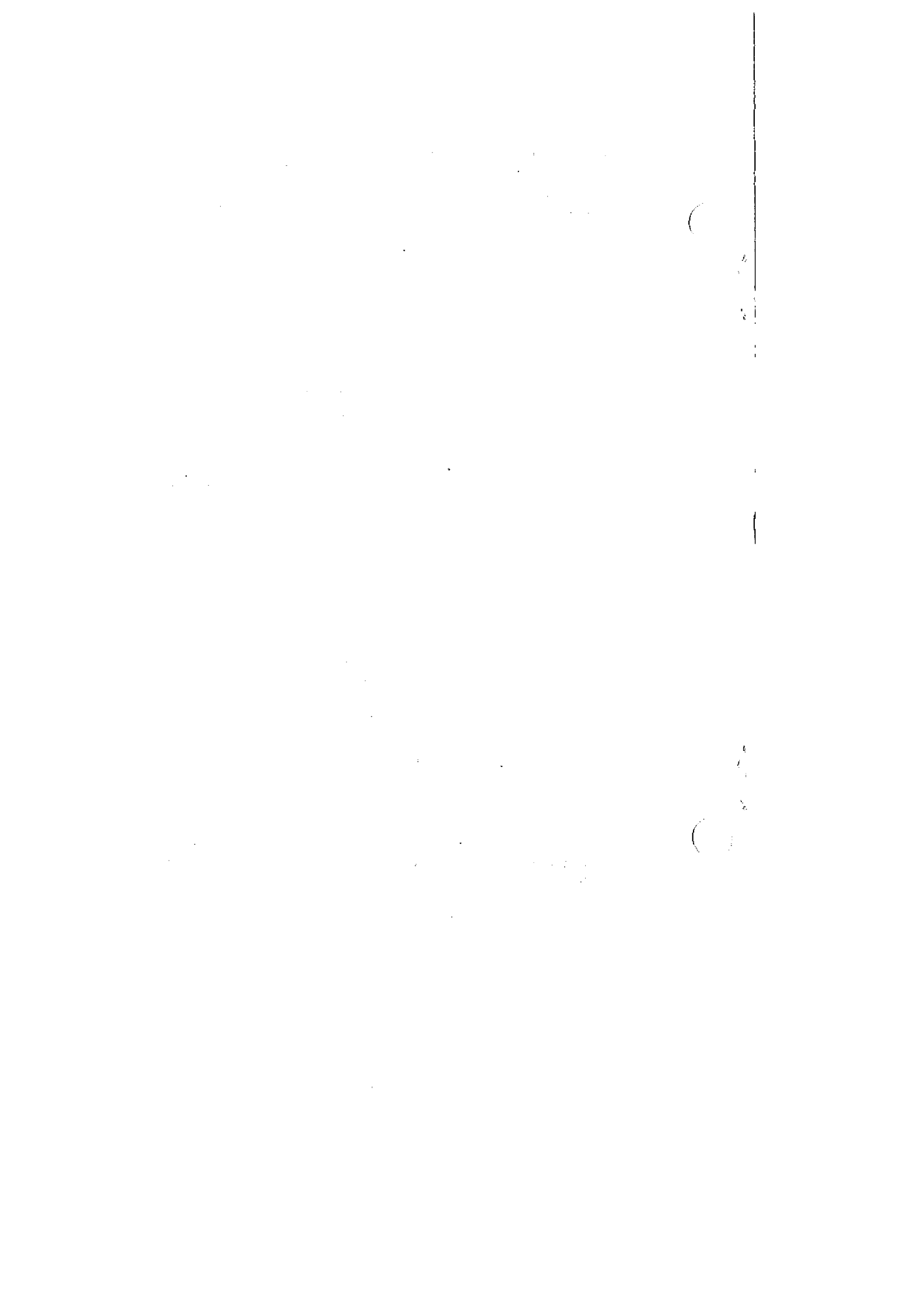
(b) Inmates shall not receive publications that:

1. Teach or advocate violence and present a clear and present danger to institutional security and order;
2. Teach or advocate behavior that violates the law of the state or the United States or the rules of the division of corrections;
3. Teach or describe the manufacture or use of weapons, explosives, drugs, or intoxicating substances;
4. Are obscene as defined in HSS 309.05 (5) (c) 8; or
5. Teach or describe the manufacture or use of devices that create a substantial danger of physical harm to others;

(c) A publication shall not be prohibited on the basis of its appeal to a particular ethnic, racial, or religious audience or because of the political beliefs expressed therein.

(3) If a publication is not delivered pursuant to sub. (2), the inmate shall be notified of the name and address of the sender, the date, and the reason for nondelivery. The sender shall be similarly notified, and the

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The limitation of sub. (2) (a) 1 is to preserve order in the institution. There may be situations in which media access must be restricted because of an existing security problem that prevents safe access or because access may exacerbate or create such a problem. That such a limitation is proper is acknowledged in the *Pell* case, which also discusses the problems created by excessive media attention to inmates who become public figures and severe disciplinary problems. *Pell* at 831-32.

Subsection (2) (a) 2 permits the superintendent to limit access for the benefit of a particular inmate. An example of a situation in which such a limit may be appropriate is when an inmate has recently arrived at an institution and requires time to adjust, free of media attention about the crime for which he or she was convicted. If the inmate's trial received a great deal of attention, continued media interviews can create a strain on the inmate. The institution has an obligation to assist inmates under such pressure.

Subsection (2) (b) permits the clinical services unit supervisor to restrict interviews of the mentally ill. This is for the protection of the inmate and to enable treatment to proceed.

For 3 reasons, sub. (2) (c) limits interviews of those in segregation. First, a purpose of segregation is to permit the inmate to reflect on his or her problems without interruption. This is not furthered by media access. Second, it is a burden on limited resources to permit such interviews because of the security actions that must be undertaken when an inmate leaves the segregation area or when an outsider enters it. Finally, there is a danger that if an inmate who has disciplinary problems becomes notorious, others will follow his or her example. The way is left open however to such visits in extraordinary situations, for example, the furtherance of an investigation of charges of mishandling of persons in segregated status or some situation not arising from the action which resulted in segregation and which cannot await the person's return to general population status.

In promulgating these restrictions, the division of corrections is mindful of the fact that access to confined persons by the public should never be eliminated. Other rules, particularly those relating to visitation, mail, and access to legal services, do permit access of the public to all inmates.

Subsection (4) regulates the taking of photographs. It is intended to protect the privacy rights of inmates.

Visits and interviews are regulated as to duration, time, location, and equipment by sub. (5). *Pell*, 417 U.S. at 826.

This section is substantially consistent with existing policy and is substantially in accord with the National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (1973) (hereinafter "*National Advisory Commission*"), standard 2.17, and complies with American Correctional Association's *Manual of Standards for Adult Correctional Institutions* (1977) (hereinafter "*ACA*"), standard 4024.

Note: HSS 309.05. HSS 309.05 regulates mail to and from inmates of correctional institutions. Subsection (1) identifies many of the values to the inmate, correspondents, and the public of the free exchange of information and ideas. Contact with family and others in the community is crucial to successful reintegration. Mail is one method of communication that can develop and strengthen family and community ties. Contact with those outside the institution helps motivate inmates and contributes to morale. This enhances inmates' involvement in correctional programs and the security of inmates and staff.

Of course, broader values are served by free expression. It contributes to individual self-fulfillment; it is a means of attaining the truth; it is a method of securing participation by members of society in social decision making; and it is a means of maintaining the necessary balance between stability and change in society. T. Emerson, *Toward a General Theory of The First Amendment* (1963).

Subsection (2) requires each inmate to consent in writing to receive mail through the institution mail service. Without this consent, the institution will return mail unopened to the sender as required in the U.S. Postal Service Domestic Mail Manual, ch. 115.97. Subsections (3), (4) and (5) reflect the view that no proper correctional purpose is served by institution staff reading the mail an inmate receives from any of the listed parties, for access to these government officials and other parties should not be unduly impeded by restrictions on correspondence. Accordingly, outgoing mail to the parties listed in subs. (3), (4) and (5), and incoming mail in connection with the inmate complaint review system (ICRS) or from a court, if addressed to an inmate in the general population, may not be opened at all by institution staff. Incoming mail from the parties listed in sub. (4) as well as incoming mail from the parties listed in sub. (5) when address to an inmate in segregation may be opened in the presence of the inmate. The opened mail will be handed to the inmate who will be directed to remove the contents. The inmate will be directed to shake out the envelope and show the contents of the mail, page by page, to institution staff so that staff can determine whether the mail contains contraband. Institution staff are not permitted to read the mail, except that if the mail contains a rap sheet or similar document or a document of identification such as a social security card or driver's license, staff will be allowed to read the document but only to the extent necessary to determine who is the subject of it.

There is need for inspection of incoming mail under sub. (4) and mail from courts to inmates in segregation under sub. (5) because government officials and attorneys sometimes send

checks directly to an inmate rather than to the inmate's account, and stationery from the listed offices and the courts may be obtained by unauthorized persons. Courts often secure documents with large metal fasteners that can be fashioned into weapons by inmates. If correspondence contains contraband that can be removed easily, such as checks or large metal fasteners, the item should be removed and the correspondence returned to the inmate. However, if the correspondence contains such contraband as drugs, the correspondence should be confiscated. Currency and confiscated correspondence should be processed in accordance with sub. (6) (e) (intro.) and 1, (f) and (g).

Subsection (5) identifies restrictions that are placed on correspondence. These restrictions are made because they are thought to further a substantial correctional interest. The effort is to draw them in a way that is not unnecessarily broad. Of course, the U. S. Supreme Court has indicated that correctional agencies have some latitude in making such restrictions and need not show with certainty that adverse consequences will flow from the failure to restrict. *Procunier*, 416 U.S. at 414-15. However, experience in corrections in Wisconsin teaches that the restrictions in sub. (5) are important. Some commentators urge that restrictions be specifically drawn. That is what is attempted here. See ABA, standard 6.1. Others urge that there be no restrictions. *National Advisory Commission*, standard 2.17.

Subsection (5) (a) permits inspection for contraband. The dangers created by contraband are great, and every reasonable effort must be made to control it. See the discussion of dangers in the note to HSS 303.48. Mail containing contraband is not delivered, and notification is provided for in (5). *Model Rules*, rules 1D-1, 1C-2.

Subsection (5) (c) states the other substantive criteria for restricting mail. While there may be overlap among categories, this is tolerable in the interest of clarity. Important correctional objectives are furthered by preventing inmate involvement in crime, whether as victims or as perpetrators. Among the objectives are maintaining a secure, crime-free environment which protects inmates and staff and permits programs to flourish and the development of attitudes that assist in reintegration. And, of course, the protection of the public is furthered by preventing inmates from committing crimes in which members of the public are involved. Preventing harassment of the public is another important objective. These are the objectives of the restrictions specified in sub. (4) (c) 1-5 and 9.

Communication in code, by its nature, can create a danger. Its restriction was specifically approved by the United States Supreme Court. Restrictions imposed in sub. (4) (c) 1-5 and 9 have been approved, though, in more general language. *Procunier*, 416 U.S. at 412-13. The specific limits that are permissible is rarely addressed by commentators. Typically, the limits are phrased generally in terms of "security." See, e.g., ABA, standard 6.1. The effort in this section is to be more specific.

Restrictions on solicitation of gifts are necessary, primarily because such solicitation is often linked to a threat to another inmate who is related to or a friend of the person being solicited. General solicitation is undesirable because it impedes the development of independence and the willingness and ability to sustain oneself.

Subsection (5) (c) 8 restricts obscene communication. The development of appropriate attitudes towards oneself and others is an important correctional objective. To permit inmates to mail obscene letters to others is not only a violation of the law but also a possible source of harassment of others. To receive such correspondence does not develop feelings of self-respect and also involves illegal use of the mails. The *Miller* test is relied on to define obscenity. *Miller v. California*, 413 U.S. 15 (1972).

Subsection (5) (b) states the standard by which mail may be opened and read. Random opening and reading are not permissible. Reasonable grounds to believe that the substantive criteria are satisfied must exist before mail is open and read. Because of the possible danger of escape created by mail among inmates, it may systematically be opened and read. Some commentators urge that search warrants be obtained before inspection is permitted. *Model Rules*, rule 1C-2; ABA, standard 6.1 (a). Such a requirement would unnecessarily use scarce resources which can be used in better ways.

Subsection (5) (d) provides for keeping of records of mail opened and read. This permits review of the practice should questions arise about it.

Subsection (5) (e) provides for a record of mail not delivered either because it contains contraband or because it violates sub. (5) (c). It also provides for notification of the people affected. Subsection (5) (f) permits appeal to the superintendent of the decision not to deliver. Subsection (5) (g) is to ensure that money that arrives by mail is handled properly.

Subsection (5) (h) permits monitoring of mail for a reasonable period if these rules are violated. This is to prevent further violations. Serious violation may lead to suspension of specific correspondence privileges.

Subsection (6) permits the inspection of incoming and outgoing parcels and packages. This is necessary to control contraband. Subsection (6) provides for the disposal of the contraband.

Subsections (8) - (10) provide for suspension of mail privileges. Because of the significance of mail, such a decision must be preceded by a full due process hearing if an inmate is alleged to have violated the rules or institution policies and procedures.