of law. The department presumes that the following persons are incapable of consent but the presumption may be rebutted by competent evidence:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table DOC 303.03

Greater offense	Lesser included offense

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DOC 303.08 Institutional policies and procedures.

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

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

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

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

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

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

DOC 303.10 Seizure and disposition of contraband.

(1) "Contraband" means any of the following:

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

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

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

(d) Stolen property.

(e) Property that is damaged or altered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter II - Offenses Against Bodily Security

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter III - Offenses Against Institutional Security

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

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

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

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

DOC 303.20 Group resistance and petitions. **(1)** Any inmate who participates in any group activity which is not approved under s. DOC 309.22 or is contrary to provisions of this chapter is guilty of an offense.

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

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

(b) Group petitions to courts.

(c) Authorized activity by groups approved by the warden under s. DOC 309.22 or legitimate activities required to submit a request under s. DOC 309.22 (3) or (4).

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

(3) Any inmate who participates in any activity with an inmate gang, as defined in s. DOC 303.02 (11), or possesses any gang

literature, creed, symbols or symbolisms is guilty of an offense. An inmate's possession of gang literature, creed symbols or symbolism is an act which shows that the inmate violates the rule. Institution staff may determine on a case by case basis what constitutes an unsanctioned group activity.

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

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

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

(a) Leaves an institution.

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

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

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

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

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

DOC 303.23 Disguising identity. Any inmate who conceals or disguises the inmate's usual appearance to interfere with or prevent identification is guilty of an offense.

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

Subchapter IV - Offenses Against Order

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

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

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

DOC 303.25 Disrespect. Any inmate who shows disrespect to any person is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes, but is not limited to, derogatory or profane writing, remarks or gestures, name-calling, yelling, and other acts made outside the formal complaint process which are expressions of disrespect for authority.

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

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

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

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

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

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

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

(6) Conveys affection to, or about staff verbally or in writing whether personally written or commercially written or by drawings; or asks for addresses, phone numbers, favors or requests special attention of a staff member or acquaintance or family of a staff member.

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

DOC 303.27 Lying. Any inmate who makes a false written or oral statement which may affect the integrity, safety or security of the institution is guilty of an offense.

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

DOC 303.271Lying about staff. Any inmate who makes a false written or oral statement about a staff member which may affect the integrity, safety or security of the institution or staff, and makes that false statement outside the complaint review system is guilty of an offense.

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

DOC 303.28 Disruptive conduct. Any inmate who engages in, causes or provokes disruptive conduct is guilty of an offense. "Disruptive conduct" includes physically resisting a staff member, or overt behavior which is loud, offensive or vulgar.

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

DOC 303.30 Unauthorized forms of communication. Any inmate who communicates with another person by a method not authorized by the institution is guilty of an offense.

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

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

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

(2) A name other than the name by which the inmate was committed to the department unless the name was legally changed.

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

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

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

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

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

(3) Any inmate who misrepresents facts to another to obtain items of value is guilty of an offense.

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

Subchapter V-Offenses Against Property

DOC 303.34 Theft. Any inmate who steals the property of another person or of the state is guilty of an offense. "Steals" means obtains or retains possession of or title to the property of another, without consent of the owner.

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

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

(2) Any inmate who damages, destroys, alters, or disposes of the inmate's own property without the permission of the staff of the inmate's own living unit is guilty of an offense.

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

DOC 303.36 Misuse of state or federal property. Any inmate who uses any government property in any way that is not authorized is guilty of an offense.

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

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

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

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

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

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

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

DOC 303.40 Unauthorized transfer of property. Any inmate who gives, receives, sells, buys, exchanges, barters, lends, borrows or takes any property from another inmate without authorization is guilty of an offense.

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

DOC 303.41 Counterfeiting and forgery. Any inmate who makes, uses, possesses, or alters any document so it appears that the document was made or signed by a different person; or that the document was signed at a different time or with different provisions is guilty of an offense.

Subchapter VI - Contraband Offenses

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

(a) Coins or paper money.

(b) A check.

(c) A money order.

(d) A savings bond.

(e) Any other negotiable instrument.

(f) A credit card.

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

DOC 303.43 Possession of intoxicants. Except as specifically authorized, any inmate who has in the inmate's possession any intoxicating substance is guilty of an offense.

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

DOC 303.44 Possession of drug paraphernalia. Any inmate who possesses any device used in the manufacture of an intoxicating substance or any device used to take an intoxicating substance into the body, is guilty of an offense.

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

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

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

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

(4) Any inmate who possesses an item which could be used in the manufacture of a weapon is guilty of an offense.

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

DOC 303.47 Possession of contraband—miscellaneous.

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

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

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

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

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

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

(e) Personal written information relating to any staff of the department, including a staff's or staff's immediate family home address or telephone number.

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

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

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

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

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

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

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

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

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

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

(7) Any inmate who sends correspondence which harms, harasses or intimidates any person is guilty of an offense.

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

Subchapter VII - Movement Offenses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Allowed according to institution policies and procedures.

(2) Reaching, leaning, or putting any object or part of the body into another inmate's quarters is included in "entering."

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

Subchapter VIII - Offenses Against Safety And Health

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter IX - Miscellaneous Offenses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter X - Disciplinary Procedure And Penalties

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

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

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

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

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

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

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

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

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

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

DOC 303.65 Offenses that do not require a conduct report. (1) The department does not require staff members to make official conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, staff may merely inform the inmate that the inmate's behavior is against the rules and discuss the inmate's behavior and give a warning if:

(a) The inmate is unfamiliar with the rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DOC 303.68 Major and minor penalties and offenses. (1) (a) A "major penalty" is adjustment segregation as defined in ss. DOC 303.69 and 303.84, program segregation as defined in ss. DOC 303.70 and 303.84, loss of earned good time or extension of mandatory release date under s. DOC 303.84, disciplinary separation under s. 303.70, room confinement of 16

to 30 days, loss of recreation privileges for over 60 days for inmates in the general population, loss of recreation privileges for over 8 days for inmates in segregation, building confinement for over 30 days, and loss of specific privileges for over 60 days. The adjustment committee may impose a minor penalty for a violation where a major penalty could be imposed. The adjustment committee may impose restitution in addition to or in lieu of any major penalty and may impose any combination of penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DOC 303.69 Major penalties: adjustment segregation.

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

(a) Clean mattress.

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

(c) Sanitary toilet and sink.

(d) Adequate ventilation and heating.

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

(a) Adequate clothing and bedding.

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

(c) Writing materials and stamps.

(d) Holy books.

(e) Meals, which shall be nutritionally adequate.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Clean mattress.

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

(c) Sanitary toilet and sink.

(d) Adequate ventilation and heating.

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

(a) Adequate clothing and bedding.

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

(c) Writing materials and stamps.

(d) Holy books.

(e) Meals, which shall be nutritionally adequate.

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

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

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

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

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

(8) LEAVING CELL. Inmates in program segregation and disciplinary separation may not leave their cells except as needed for urgent medical or psychological attention, showers,

visits, exercise and emergencies endangering their safety in the cell or other reasons as authorized by the warden. The warden may require inmates in program segregation or disciplinary separation to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells.

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

(b) Program segregation is concurrent to all segregation or disciplinary separation time. Program segregation starts the day of the disposition. When concurrent to disciplinary separation, the rules for program segregation apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) BUILDING CONFINEMENT. The adjustment committee or hearing officer may impose building confinement for a period of 1 to 30 days as a minor penalty and for a period of over 30 days as a major penalty. Building confinement is confinement to the building in which the inmate resides. During the hours of confinement, the inmate may not leave the building without specific permission. The warden may grant permission for attendance at religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The inmate may have the assistance of a staff advocate in accordance with this section and s. DOC 303.79.

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

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

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

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

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

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

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

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

(a) Shall read the conduct report aloud.

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

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

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

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

(a) Shall consider all relevant information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80; r. and recr. Register, April, 1985, No. 352, eff. 5-1-85.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (1) to (4) and (8), Register, April, 1985, No. 352, eff. 5-1-85.

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

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

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

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

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

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

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

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

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

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

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

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

(7) The motivation for the offense.

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

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

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

(11) Any other relevant factors.

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

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

(a) Reprimand.

(b) Loss of recreational privilege.

(c) Room confinement.

(d) Building confinement.

(e) Loss of a specific privilege.

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

(g) Adjustment segregation.

(h) Extra duty without pay.

(i) Program segregation or disciplinary separation.

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

(k) Restitution.

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

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

TABLE DOC 303.84
SCHEDULE OF PENALTIES
(Maximum in days)

		Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983Wisconsin Act 528*	Disciplinary Separation
Offenses against bodily security						
303.12	Battery	8	360	20	40	360
303.13	Sexual assault—intercourse	8	360	20	40	360
303.14	Sexual assault—contact	8	360	20	40	360
303.15	Sexual conduct	8	180	10	20	180
303.16	Threats	5	180	10	20	180
303.17	Fighting	8	360	20	40	360
Offenses against institutional security						
303.18	Inciting a riot	8	360	20	40	360
303.19	Participating in a riot	6	360	10	20	360
303.20	Group resistance and petitions	4	360	10	20	360
303.21	Cruelty to animals	8	360	20	40	360
303.22	Escape	8	360	20	40	360
303.23	Disguising identity	8	180	20	40	180
Offenses against order						
303.24	Disobeying orders	6	180	10	20	180
303.25	Disrespect	8	180	10	20	180
303.26	Soliciting staff	8	360	20	40	180
303.27	Lying	5	180	10	20	180
303.271	Lying about staff	8	360	20	40	180
303.28	Disruptive conduct	5	360	10	20	180
303.30	Unauthorized forms of communication	5	60	10	20	60
303.31	False names and titles	4	180	0	0	180
303.32	Enterprises and fraud	6	120	5	10	120
Offenses against property						
303.34	Theft	8	360	20	40	360
303.35	Damage or alteration of property	8	180	15	30	180
303.36	Misuse of state property	4	60	0	0	60
303.37	Arson	8	360	20	40	360
303.38	Causing an explosion or fire	6	180	15	30	180
303.39	Creating a hazard	6	120	10	20	120
303.40	Unauthorized transfer of property	5	120	0	0	120
303.41	Counterfeiting and forgery	8	360	20	40	360
Contraband offenses						
303.42	Possession of money	8	360	20	40	360
303.43	Possession of intoxicants	8	360	20	40	360
303.44	Possession of drug paraphernalia	8	360	20	40	360
303.45	Possession, manufacture & alteration of weapons	8	360	20	40	360
303.47	Possession of contraband-miscellaneous	6	120	10	20	120
303.48	Unauthorized use of the mail	8	360	20	40	260
Movement offenses						
303.49	Punctuality and attendance	5	120	5	10	120

303.50	Loitering	4	120	5	10	120
303.51	Leaving assigned area	6	180	10	20	180
303.511	Being in unassigned area	6	180	10	20	180
303.52	Entry of another inmate's quarters	8	360	20	40	360
Offenses against safety and health						
303.54	Improper storage	4	60	5	10	60
303.55	Dirty quarters	4	60	0	0	60
303.56	Poor grooming	4	60	0	0	60
303.57	Misuse of prescription medication	8	360	20	40	360
303.58	Disfigurement	5	120	10	20	120
Miscellaneous						
303.59	Use of intoxicants	8	360	20	40	360
303.60	Gambling	4	180	5	10	180
303.61	Refusal to work or attend school	4	60	5	10	60
303.62	Inadequate work or study performance	4	60	5	10	60
303.63	Violation of institutional policies and procedures	6	180	10	20	180
303.631	Violating conditions of leave	8	360	20	40	360
303.05	Conspiracy		Maximum for completed offense			
303.06	Attempt		Maximum for completed offense			
303.07	Aiding and abetting		Maximum for completed offense			

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: See DOC 303.74.

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

Note: See DOC 303.79.

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

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

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

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

Note: For example: an inmate is accused of threatening another inmate. Testimony that the accused inmate and the other inmate had a loud argument the day before is relevant. It indicates a possible motive for a threat and makes it appear more likely that a threat occurred. An officer testifies that the accused inmate has lied to the officer on previous occasions. This is relevant if the testimony of the accused inmate varies from the conduct report.

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

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

1. The evidence is not reliable.

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

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

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

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

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

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

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

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

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

(6) The institution shall place the original conduct report and all due process documents in the inmate's

case record. However, the institution shall place restricted informant reports only in the security department restricted file.

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

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

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

Note: DOC 303.01. These rules apply to all inmates in the legal custody of the department regardless of whether the inmate is housed in a prison, jail, half-way house, or any other facility. It is the Department's policy and practice not to impose discipline on an inmate if the inmate has been subjected to a formal due process procedure in another jurisdiction for the same actions. See DOC 303.08 and 303.63. Differences among institutions make some differences in specific policies and procedures relating to conduct necessary. Delegating authority to permit these differences, limited though they are, is provided for under this chapter. Chapter DOC 303 sets forth the procedure for inmate discipline. It structures the exercise of discretion at various decision making stages in the disciplinary process, including the decision to issue a conduct report, the decision to classify an alleged violation as major or minor, and sentencing. Codifying the rules of discipline in a clear, specific way serves important objectives by itself.

Having specific, written rules which deal with prison discipline thus has the advantages of stating clearly what conduct is prohibited, of eliminating unnecessary discretion, increasing equality of treatment, increasing fairness, and raising the probability that inmates will follow the rules. In addition, there are advantages to the formal rulemaking process: (1) Rules are made by top officers and administrators in consultation with line staff and others, rather than ad hoc by correctional officers. Thus, greater experience can be brought to bear on the decision-making. This is superior to following unquestioned tradition. (3) The rulemaking process results in public input. The "sunshine" effect results in the elimination of abuses and can also provide new perspectives on more subtle questions. Also, corrections officers are public servants and rulemaking, by exposing their decision-making process to the public, is more democratic than a system of following unwritten or at least unpublished traditional policies.

Note: DOC 303.03. The concept of a lesser included offense is derived from the theory of the same name in the criminal law. In these rules, it serves 2 distinct functions. First, it serves to put the inmate on notice that, while charged in writing with one offense, is also charged and may be convicted of *either* the offense charged or a lesser included offense.

The second function is to insure that an inmate is not *punished* twice for a single act which satisfies the elements of more than one offense, where conviction for more than one offense is unfair.

If an inmate is charged with a lesser included offense and the committee considers the case, the inmate cannot be later charged with the greater offense. Similarly, if an inmate is charged and found

guilty of a higher offense, he or she cannot later be charged with a lesser included offense.

If an act violates more than one section, the offense which best describes the conduct should be charged. This would not prevent separate convictions for a series of related but distinct acts.

Note: DOC 303.05. A purpose of conspiracy statutes in general and of this section is to enable law enforcement and correctional officers to prevent *group* criminal or prohibited activities at an earlier stage than the stage of attempt. Group activities against the rules pose a greater risk than similar individual activities, and this justifies intervention at an earlier stage and punishment for acts which, if done by an individual, would not be against the rules.

The reason that conspiracy has been made a lesser included offense is the similarity between conspiracy and attempt. Both kinds of offenses provide a sanction against activity which is preparatory to an actual offense. If the offense is completed, however, conspiracy should be included in the other offense just as attempt is.

This section has some overlap with DOC 303.20, Group resistance. However, an inmate need not personally break any substantive rule to be guilty of conspiracy; if a group of inmates agree to participate and then one inmate starts to put the plan into effect, *all* are guilty of conspiracy. On the other hand, no plan or agreement need be shown to prove a violation of DOC 303.20. DOC 303.20 is intended to deal with nonviolent group activity of a public, disruptive type, such as group refusal to work, while DOC 303.21 is aimed at secret plans for violations of all types.

Conspiracy is a lesser included offense of the planned offense and also of DOC 303.07, Aiding and abetting.

Note: DOC 303.06. Under sub. (3), the maximum penalty for an attempt may be the same as for a completed offense. This is based on the belief that an event over which the actor had no control should not reduce liability so greatly, and on the knowledge that the perpetrator of an attempt is just as dangerous and just as much in need of a deterrent (punishment) as the perpetrator of a completed offense. Of course, the circumstances of an attempt may lead to mitigation in punishment.

Note: DOC 303.07 Sub. (3) states a principle which is followed in modern criminal law. In Wisconsin a person cannot be found guilty of

aiding and abetting *and* the offense itself based on the same incident. In factually ambiguous situations, however, sub. (3) leaves open the option of charging a person with both and letting the hearing officer or adjustment committee decide which is most appropriate.

Sub. (5) provides that the maximum sentence for aiding and abetting is the same as that provided for the offense itself in DOC 303.84. Obviously, however, in many cases the aider or abettor will not be as culpable as the actual perpetrator of the offense. In such cases, the committee or hearing officer should use its discretion to select an appropriate lower sentence.

Note: DOC 303.08. It is necessary to permit institutions to discipline inmates for violations of specific policies and procedures of the institution. For example, violation of work place policies or procedures regarding recreation may result in a penalty. Likewise, housing units may have policies and procedures necessary for the maintenance of order. These policies will vary from institution to institution and place to place within institutions.

Note: DOC 303.09. This section requires that the rules and notes pertaining to inmate discipline be published.

Due process and fundamental fairness require that inmates be given notice of the rules they are expected to follow. Major changes which require written notice to inmates include, an additional offense, a change in process or any change affecting MR date. In addition, awareness and understanding of the rules and of the sanctions for breaking them should increase compliance with them. Authorities on correctional standards agree that disciplinary rules should be made available to inmates in the form of a rulebook. See the note to DOC 303.01.

Note: DOC 303.10. In a prison it is necessary to regulate very carefully the property which may be kept by the inmates. See "Contraband offenses," DOC 303.42-303.48. This section provides the authority to deal with contraband in situations where no one is charged with an offense, as well as when someone is charged and found guilty.

Note: DOC 303.11. The main purpose of the section authorizing temporary lockup is to allow temporary detention of an inmate until it is possible to complete an investigation, cool down a volatile situation or hold a disciplinary hearing. The effort is to avoid punitive segregation without a prior hearing, while assuring that inmates can be separated from the general population when there is good reason to do so. The policy is to keep an inmate in TLU only as long as necessary and then either to release the inmate or put the inmate in segregation based on a disciplinary hearing

which conforms to the provisions of this chapter. The frequent reviews by high-ranking administrators and the 21-day limit, both provided by sub. (3), are designed to implement this policy, as well as to give the inmate an opportunity to be heard on the issue of whether TLU is appropriate.

Placement in TLU does not affect MR.

The policy is to use TLU only for an appropriate reason. Where TLU is no longer appropriate, it should be discontinued. There are situations, however, when its use for periods up to 21 days, or an additional period of time, is justified. This period may be extended. It is anticipated that such extensions will be relatively rare.

Sub. (4) identifies the situations in which TLU may be appropriate.

It must be emphasized that there are dangers in correctional institutions that may not exist outside them. For example, an inmate who encourages others to defy authority may create an immediate and real danger. If TLU cannot be relied on to isolate such an individual, it is likely that measures have to be taken against the group, though the group is not culpable.

Likewise, an inmate who is intimidating a witness should be restricted, rather than the victim of the intimidation. This may be the only choice available to correctional officers. Sub. (4) (a). Also, an inmate's presence in the general population may greatly inhibit an investigation because the inmate may destroy evidence not yet discovered by authorities. Temporary isolation until the evidence is found is required. Sub. (4) (a).

During evening recreation, the staff is small, yet large numbers of inmates may be outside their cells. Unless the authority exists to temporarily isolate one who is trying to create a disturbance, it will be necessary to cut short recreation for everyone to prevent trouble. This seems unfair, yet would result if an inmate who was encouraging defiance were not isolated in such a situation. Sub. (4) (b).

Some inmates need to be temporarily isolated for their own protection. For example, an inmate may be endangered by virtue of having cooperated in an investigation. The threat may be such that the only effective way to protect him or her is through TLU. Sub. (4) (c).

Sometimes TLU is necessary to prevent escape. For example, an inmate in a camp who has committed an infraction that is ultimately going to affect an expected parole may panic and try to escape. Sub. (4) (d).

Note: DOC 303.12. This section and DOC 303.17, Fighting, have considerable overlap. An inmate should not be found guilty of violating both sections based on a single incident. If it is possible to determine the aggressor in a fight, this section rather than DOC 303.17 should be used.

Lesser-included offenses: DOC 303.17, Fighting and DOC 303.28 Disruptive Conduct.

Note: DOC 303.13. Most of the various situations covered by s. 940.225, Stats., such as intercourse with a child, are not relevant to the prison situation. Therefore, the only distinction in these sections is between non-consensual intercourse and all other types of non-consensual sexual contact. Intercourse is considered to be the more serious offense.

Lesser included offenses: DOC 303.14, Sexual assault-contact; DOC 303.15, Sexual conduct.

Note: DOC 303.14. Examples of violations of this section are kissing or handholding, grabbing or touching another person's breast, buttocks or genitals (even through clothing), rubbing one's genitals against another person (even through clothing). If the other person consents to the contact, this section is not violated, but *both* persons have violated DOC 303.15, Sexual conduct.

Violation of this section is less serious than violation of DOC 303.13, and this section is a lesser included offense of that one. See DOC 303.03 on lesser included offenses. However, where an inmate has violated this section in an attempt to rape the other person, a charge of attempted sexual assault-intercourse would be appropriate. See ch. DOC 309 for permissible displays of affection during visits.

Lesser included offense: DOC 303.15, Sexual conduct.

Note: DOC 303.15. It is not always possible to prove lack of consent to sexual activity in situations where it is likely that one inmate is taking advantage of another. Thus, prohibiting consensual sexual contact helps to prevent sexual assault. This section also forbids consensual sex between married people. See chapter DOC 309 for permissible displays of affection during visits.

Note: DOC 303.16. As with all of the offenses against persons, the purpose of this section is the protection of the safety and security of inmates, staff and the public.

DOC 303.28, Disruptive conduct and DOC 303.25, Disrespect,

are related offenses.

Note: DOC 303.18. In order that the record of an inmate more accurately reflects the seriousness of his or her acts, there are three distinct offenses. DOC 303.18 is the most serious and should be used against "ringleaders" of a serious disturbance which involves violence. DOC 303.20 is designed for a non-violent disturbance—for example, a sit-down strike.

Lesser included offenses: DOC 303.19, Participating in a riot; DOC 303.20, Group resistance and petitions; DOC 303.28, Disruptive conduct.

Note: DOC 303.19. See the note to DOC 303.18.

Lesser included offenses: DOC 303.20, Group resistance and petitions;
DOC 303.28, Disruptive conduct.

Note: DOC 303.20. DOC 303.20 (1) differs from conspiracy (DOC 303.05) in that under this section each individual must actually disobey a rule or participate in unauthorized group activity, while under DOC 303.05 an inmate may be punished for merely planning an offense. Also, under DOC 303.05 a plan or agreement is required, while under sub. (1) spontaneous group action can be punished. Finally, punishment under this section can be added to punishment for the particular rule violated, while punishment for conspiracy cannot, because conspiracy is a lesser included offense of the planned offense.

The inmate complaint review system in sub. (2) is the appropriate method for bringing group complaints. To permit such complaints or statements outside the system could seriously disrupt a prison. Experience has proven that it is important that there be as few opportunities as possible for coercion of one inmate by another. Unrestricted rights to petition in groups generate intimidation and coercion as inmates try to force others to join them. The authorized methods are thought to protect inmates' rights to petition and to express their views.

The complaint system provides a structured way to investigate and respond to complaints. It requires, for example, time limits for responses, to insure that the complaints are addressed. It requires that complaints be signed. Without this, adequate investigation is usually
impossible.

Reliance on the complaint system seems to restrict first amendment rights only as is necessary to permit the maintenance of order
in institutions.

Sub. (2) prohibits petitions only within an institution. There is no intention to limit petitions addressed
to those outside an institution. Typically, this activity is a letter signed
by more than one inmate to a newspaper or public official.

Sub. (3) makes it an offense to identify with a gang by some

overt act such as signing. Gangs pose a serious threat to institutions. Like many prison rules, this one is aimed at conduct which taken alone might not seem serious to people without experience in corrections.
In Wisconsin, the experience has been that permitting such activity creates significant problems and can contribute to the erosion of authority which leads to serious prison disturbances. States that have permitted such activity have uniformly had major problems in their institutions.

See the notes to DOC 303.18 and 303.05.

Note: DOC 303.21. Cruelty to animals can evoke strong emotional and physical reactions by inmates who either commit or witness the act. Not only is this behavior unacceptable, but it can also lead to physically violent retaliation among inmates which compromises the security and safety of both inmates and staff. The purpose of this section is to prevent incidents of animal cruelty and retaliatory action while ensuring a greater level of security in the institution.

Note: DOC 303.22. Since escape is an extremely serious offense (it is one
of the few disciplinary offenses which is frequently prosecuted), it is important to define it carefully.

If an inmate is off grounds on work or study release or on furlough, physical deviation from his or her assigned location is enough to prove escape. Of course, an inmate who deviated from a prescribed route or left an area would probably be guilty of violating DOC 303.24, Disobeying orders.

An inmate may be prosecuted in criminal court and also for a rule violation for the same incident.

Lesser included offense: DOC 303.51, Leaving assigned area.

Note: DOC 303.23. The purpose of this section is to help prevent more serious offenses, such as escape, and to promote identification of the
offender in other cases.

Note: DOC 303.24. Because of the close proximity of large numbers of people
in a prison, prompt obedience to orders is necessary for orderly operation.
Obedience is also an important aspect of learning self-discipline.

Under this section, the staff member giving the order need not say, "I am giving a direct order," although this is frequently a desirable
practice.

Note: DOC 303.25. Disrespectful behavior of the type prohibited by this section can lead to a breakdown of authority or a serious disturbance. This section is directed at conduct within the institution which is potentially disruptive or which erodes authority, not at activity outside the institution.

Note: DOC 303.26. This section forbids all types of contacts between inmates and staff which could lead to favoritism or bribery. Just as theft would be very difficult to control in a prison without a rule prohibiting *all* transfer of property (See DOC 303.40), so bribery and favoritism would be difficult to control in the absence of a rule prohibiting all exchanges between staff and inmates. Also, the appearance of impropriety may be as destructive to inmate or staff morale as would actual impropriety. The existence of unwritten exceptions tends to undermine respect for the rule as a whole because it may appear to the inmates to represent either half-hearted or arbitrary enforcement.

Note: DOC 303.27. Purposes of this section are to help maintain orderly and efficient operation of the institution and to encourage people to tell the truth. On the outside, lying is only punished as a criminal offense if the lie was made under oath. However, in prison the contacts between inmates and state authorities are much more pervasive and a false statement, even one not made under oath, can have serious consequences.

Note: DOC 303.271. Lying about staff can hurt the staff member and affect staff morale generally. There have been several instances in which inmates deliberately made false allegations concerning corruption and sexual misconduct by staff. The nature of the allegations and the fact that, upon investigation, it became evident the inmate was trying to injure the staff member, led to the conclusion that this behavior should subject inmates to punishment. The inmate complaint review system will not insulate inmates from all liability. However, if the inmate does not reveal the false statement to persons outside the complaint system, and actual harm to the staff member is minimized. Since the implicated staff member can write the conduct report, the likelihood of retaliation against inmates for legitimate use of the complaint system is reduced.

Note: DOC 303.28. This section is intended to help preserve a reasonably quiet and orderly environment for the benefit of all inmates and staff. Its counterpart offense outside the institution setting is "disturbing the peace."

Note: DOC 303.30. This is another example of a rule which prohibits action which in itself is not harmful; however, the rule is necessary as an aid in controlling more dangerous behavior. In this case, controlling secret means of communication helps prevent conspiracies and escapes. If at any

time a deaf or mute person is an inmate at an institution, this section should not be applied to use of sign language by or to that person.

Note: DOC 303.31. This section is intended to protect members of the public from being misled by an inmate concerning his or her identity or status, and to avoid confusion of staff members concerning the identity of inmates. This section should not be interpreted to forbid use of common and recognizable nicknames, initials, or a shortened form of the first or last name.

Note: DOC 303.32. The purposes of this section are to prevent inmates who set up businesses from taking advantage of any member of the public; to prevent any state liability upon contracts entered into by inmates; and to prevent fraud on the public by inmates who order items and do not pay. If inmates were allowed to conduct businesses by mail from inside an institution, this would greatly increase the amount of mail and supervision required. Furthermore, it is possible an unsuspecting outsider would pay for something the inmate could not supply, leading to the unsatisfactory alternatives of a victim who has lost money, or state liability. Inmates have opportunities to work in institutional jobs and on work release, and to sell hobby items through official channels. These opportunities plus the exception provide sufficient ways for inmates to work, make money, and learn skills.

Note: DOC 303.34. Most cases of theft in prison are minor and criminal sanctions are not an effective means of deterring theft. In fact, this section alone is not considered enough to control theft without the addition of other sections such as DOC 303.40, Unauthorized transfer of property; DOC 303.50, Loitering; and DOC 303.52, Entry of another inmate's quarters.

Lesser included offense: DOC 303.40, Unauthorized transfer of property.

Note: DOC 303.35. A purpose of this section is to protect the property of inmates, staff, and the state. There is a parallel criminal statute, s. 943.01, Stats., but except in extreme cases, violations of this section will probably be handled through the disciplinary process rather than by prosecution.

Inmates may only destroy their own property with specific authorization. "Authorization" is defined under DOC 303.02. Inmates may not authorize damage or alteration of property. This is because it is important to monitor such destruction. Without current property lists, it is impossible to keep track of property in institutions.

Note: DOC 303.36. See the notes to DOC 303.35 and 303.37.

Note: DOC 303.37. The purpose of this section is to protect the property and safety of inmates and staff and the property of the state. Because of the dangerous potential of fires, arson is punishable even if no damage to property occurs (see DOC 303.35). If damage does occur, an inmate could be punished for violating both this section and DOC 303.35. In addition, starting a fire or creating a fire hazard is punishable even where not done intentionally (see DOC 303.39). Violation of this section is more serious than violation of DOC 303.39.

Lesser included offenses: DOC 303.38, Causing an explosion or fire; DOC 303.39, Creating a hazard; DOC 303.47, Possession of contraband—miscellaneous.

Note: DOC 303.38. The purpose of this section is to protect the property and safety of inmates and staff and the property of the state. Because of the dangerous potential of explosions; intentionally causing an explosion is punishable even if no damage occurs, and if damage does occur an inmate could be punished for violating both this section and DOC 303.35. Also, negligently causing an explosion is punishable under DOC 303.39, if a hazard is thereby created.

Note: DOC 303.39. The purpose of this section is to protect the property and personal safety of inmates and staff, and to protect state property. Because of the high density living situation in a prison, carelessness can endanger large numbers of people and create a very serious risk. Therefore, the standard of care of reasonable people must be enforceable through the disciplinary process.

Note: DOC 303.40. This section is designed to aid in the prevention of a variety of other offenses or undesirable activities: theft (or forced "borrowing," or unfair "sales"); gambling; selling of favors by inmates with access to supplies, equipment, information, etc.; and the selling of sexual favors.

Most property items of significant value are easily recognizable (inmates are not allowed to keep money in their possession), so if an item belonging to one inmate is found in the possession of another, a violation

of this section is easy to prove even though it may be impossible to prove
that theft, gambling or some other offense took place.

The sections on contraband (DOC 303.42-303.47) cover unauthorized acceptance of gifts from outsiders. Unauthorized transfers involving staff members are covered by DOC 303.26, Soliciting staff. DOC 303.36 covers unauthorized use of state property, Misuse of state property. Therefore, this section only covers transfers between inmates. Misuse of state or federal property is a lesser included offense of DOC 303.34, Theft, DOC 303.43, Possession of Intoxicants, and of DOC 303.57, Misuse of Prescription Medicine.

Note: DOC 303.41. In the prison setting almost any writing is of potential
legal significance, since letters are sometimes monitored, many memos are
put into inmates' files, and notes might be used as evidence in disciplinary
proceedings. Also, the smooth and fair operation of the prison depends on
the reliability of records such as canteen books, passes, orders, prescriptions and files.

This section is not a lesser included offense of theft; if a forged
document is successfully used to obtain someone else's property, the inmate has violated both DOC 303.34, Theft, and this section.

Note: DOC 303.42. Circulation of money is not permitted within the institutions for the same reasons that transfer of property is not allowed.
See the note to DOC 303.40. Since unlike other types of personal property, money is not readily identifiable, it would be impossible to prevent transfer of money if inmates were allowed to keep it in the institution. Accounts
have been set up for all inmates in which they can deposit their money and
from which they can send money to friends, relatives or persons selling goods. See departmental rules relating to inmate accounts.

Lesser included offense: DOC 303.47, Possession of contraband-miscellaneous.

Note: DOC 303.43. The purposes of this section are to prevent intoxicating
substances from being brought into institutions, to protect inmates and staff from intoxicated persons and to prevent escape. People under the influence of intoxicants often act abnormally and may injure themselves
or others. In a prison, intoxicants are particularly troublesome because
acting without inhibition can be dangerous to others. Many inmates who try
to escape and who attack staff and other inmates are under the influence.
It is important to control such conduct by controlling the substances

which create the risks.

See DOC 303.02 regarding the definitions of "authorization" and "intoxicating substance."

Lesser included offenses: DOC 303.40, Unauthorized transfer of property and DOC 303.47, Possession of contraband-miscellaneous.

Note: DOC 303.44. This section is designed to help carry out the same purposes described in the note to DOC 303.43 as the purposes for a rule against possession of intoxicating substances. It is easier to control the use of the forbidden substances if the means for making or using the substances are unavailable.

Lesser included offense: DOC 303.47, Possession of contraband-miscellaneous.

Note: DOC 303.45. The purpose of this section is to protect the safety of inmates and staff by taking dangerous items away from inmates whenever it appears that an inmate is planning to use an item as a weapon, and by making possession of weapons a punishable offense.

Many items which an inmate may legitimately possess could also be used as weapons. For example, possession of a razor blade which is located in a razor or in a box of blades and with other toiletry items would not, in itself, be an offense. But carrying around a single razor blade, especially outside the cell, would probably be an offense.

Sub. (1) deals with items which are still in their original form and which have both a legitimate use and use as a weapon. Examples are knives, kitchen utensils, matches, cigarettes, tools and heavy objects. On the other hand, sub. (2) deals with items which have been altered from their original form. Examples include a spoon or table knife which has been sharpened and a razor blade which has been taped or fitted to a handle. If an inmate makes or alters such an item, there is no need to show that he or she intened to use it as a weapon.

Finally, sub. (3) deals with items which have no other purpose than to be used as weapons. Examples include guns, explosives, switchblade knives and many of the homemade items which are also covered by sub. (2). Inmates are not allowed to have such items under any circumstances and they will be confiscated.

Lesser included offense: DOC 303.47, Possession of contraband-miscellaneous.

Note: DOC 303.47. The purposes of controlling the types and quantities of

property which inmates may have with them are: (1) to prevent trading, and more serious offenses associated with it, among inmates (see DOC 303.40 and note); (2) to simplify storage; (3) to keep out items which are likely to be misused; and (4) to keep out extremely valuable items which may create jealousy among inmates. Items in sub. (2) (b)-(d) are included in order to help prevent trading and theft.

Items which are covered by this section and are not covered by any of the more specific sections are items which are not, in themselves, dangerous. Therefore, even when an inmate is guilty because he or she failed to register an item, had a prohibited item or had too many of one kind of item, the inmate's property is not confiscated. Property is disposed of or returned in accordance with DOC 303.10.

The types of items allowable vary from institution to institution, so no actual listing is given here. Rather, a listing of all allowable property should be posted at each institution in accordance with department policies relating to personal property. This section gives notice that the posted lists exist and that violation of them is a disciplinary offense. Possession of Contraband—Miscellaneous is a lesser included offense of DOC 303.37, Arson, DOC 303.42, Possession of Money, DOC 303.43, Possession of Intoxicants, DOC 303.44, Possession of Drug Paraphernalia, DOC 303.45, Possession, Manufacture, and Alteration of Weapons, and of DOC 303.46, Possession of Excess Smoking Materials.

Note: DOC 303.48. Use of the mails is an important right of prisoners which is protected by the first amendment to the U.S. Constitution and may not be abridged except under the following circumstances:

First, the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression. Second, the limitation of First Amendment freedoms must be no greater than necessary or essential to the protection of the particular governmental interest involved.

Chapter DOC 309 governs the use of the mail by inmates. Basically, inmates may correspond with anyone unless the inmate or the correspondent abuses the privilege. Then, the right to correspond with a particular person may be terminated pursuant to ch. DOC 309 or as part of a disciplinary hearing. Sub. (1) only comes into play if the right to correspond with a particular person has already been terminated. If the inmate nonetheless corresponds with that person, for example by enclosing a message inside a letter or package to someone else, the inmate has violated this section.

The purposes of sub. (2) are the same as the purposes of DOC 303.42 and 303.46. See the notes to those sections. Inmates should not be allowed to send away, for safekeeping, items which were improperly acquired, such as money, drugs, weapons or the property of others. This section is only intended to apply to situations where the inmate personally puts items into an envelope or package. For example, if money from the inmate's account is sent out to pay for a purchase, there is no violation.

A person should not be charged with a violation of DOC 303.30 and this section for the same act.

Note: DOC 303.49 to DOC 303.52. In general, all of the sections concerning movement have the following purposes: (1) to prevent escape by monitoring inmates' movements; (2) to prevent fights, assaults and disturbances by preventing gathering of groups except in closely supervised situations; and (3) to permit the effective monitoring of inmate activity both in the institution and while the inmate is on work or study release. In addition, DOC 303.49, Punctuality and attendance, is intended to promote the smooth running of all programs of work, study and recreation, and to promote development of punctual habits by inmates. DOC 303.52 has the additional purposes of preventing theft and other illicit activity. DOC 303.50 is not intended to prohibit normal conversation between inmates who are walking.

Note: DOC 303.54. The purposes of this section are to aid in the enforcement of the contraband rules and to prevent possible poisoning or misuse of items due to improper labeling. The exact list of items which are covered by this section will be posted at each institution; this section only names the types of items which are likely to be covered.

Note: DOC 303.55. In the close living conditions of a prison, a messy or dirty room could become a breeding ground for bacteria or a haven for pests such as insects or mice, and thus threaten the health and safety of the inmate of that room and of others. Where two or more inmates share quarters, differences in habits of neatness could lead to arguments or to an unpleasant environment for one person. Finally, development of the habit of neatness is part of rehabilitation. For all of these reasons, neatness and cleanliness of rooms is regulated. However, since the layout of rooms, the laundry arrangements and the content of rooms varies greatly among institutions, the particular requirements are not contained in this section

but instead will be posted at each residence hall or institution. See DOC 303.08, Institutional policies and procedures.

The organization of living quarters is also important because it is essential for staff to be able to observe quarters and because rooms can be arranged in a way that creates a fire hazard. Thus, the organization of rooms is also subject to institution policies.

Violation of DOC 303.24, Disobeying orders, should not be charged when an inmate violates this section, unless the inmate has been warned and still refuses to clean up.

Note: DOC 303.56. The purpose of this section is to protect the health and safety of all inmates and staff.

Note: DOC 303.57. Use of prescription medications must be carefully monitored because many of the medications have mind-altering qualities and could be abused just as controlled substances such as heroin, cocaine, marijuana, or alcohol can be abused. See note DOC 303.43, Possession of intoxicants, for the reasons behind the policy of not allowing inmates to use any mind-altering drugs.

Because the very same policy explains DOC 303.43 and 303.59, and this section, inmates should not be found guilty of violating both this section and one of the others on a single occasion unless more than one type of drug was involved. Rather, the reporting officer, or the hearing officer or adjustment committee, should decide which of the sections is most appropriate.

Lesser included offense: DOC 303.40, Unauthorized Transfer of Property.

Note: DOC 303.58. The purpose of this section is to protect the safety and health of the inmates. Tattooing, ear piercing and other forms of self-mutilation can lead to serious infections. In addition, some forms of disfigurement could lead to identification problems.

This section is only intended to cover injury to oneself or to another person with that person's consent. Injury to another person without DOC 303.12, Battery, covers his or her consent.

Note: DOC 303.59. The reasons for the policy of not allowing inmates to use any kind of intoxicating drugs, including alcohol, are given in the note to DOC 303.43.

This section does not cover misuse of prescription medications because it is already an offense covered by DOC 303.57. For the purpose of

deciding which of the 2 sections applies, "prescription medication" means only drugs obtained properly or improperly, directly or indirectly, from pharmacy supplies at the institution. The fact that some doctor sometimes prescribes a particular drug somewhere does not make it a "prescription medication" for purposes of this section.

In sub. (2) use of intoxicating substances is proven by a positive test result performed on body contents specimens or breath or through physical examinations. The department uses reliable tests accepted by the scientific community and follows the standards suggested by the test authors or manufacturers. With respect to urinalysis, an inmate is considered to have refused to submit to a body fluids search if he or she does not provide a urine specimen within a reasonable time after the request.

Note: DOC 303.60. Gambling is forbidden for the following reasons: (1) it can result in some players being cheated or taken advantage of; (2) it can lead to serious debts which in turn lead to violence, intimidation and other problems; (3) even without cheating or large debts, it can create strong emotions leading to violence or other discipline problems; (4) some inmates have a psychological dependence on gambling (similar to alcoholism) which has been associated with criminal behavior in the past. Removing the opportunity for gambling could help such inmates to overcome this problem.

Thus, for example, betting a pack of cigarettes on the outcome of a TV football game is an offense. It would also violate DOC 303.40, Unauthorized transfer of property, if the bet was paid. The experience of staff is that even this type of betting can lead to serious problems for the reasons listed earlier.

Note: DOC 303.61. See the note to DOC 303.62.

Note: DOC 303.62. Performance of work assignments is vital to the operation of each institution. Laundry, food preparation, cleaning, and maintenance are among the tasks performed by inmates. Enforcement, through the disciplinary process, of the duty to work is necessary to the smooth running of the institution.

Even where an inmate is not assigned work which is vital to the institution's operation, the inmate must work or study if assigned to do so. These sections are designed to instill habits of dependability and responsibility which are important in getting and keeping jobs on the outside.

Note: DOC 303.63. Each institution, due chiefly to its unique physical facilities, security requirements and programs, must have the authority to regulate matters more specifically and frequently than is possible through the rulemaking process. This section provides the authority to do so. Violations of policies and procedures authorized under this section may be treated as violations permitting punishment. Such policies and procedures must be related to the objectives under DOC 303.01.

Note: DOC 303.64. This section gives an overview of the different ways a rule violation can be handled. In general, less serious offenses are handled by informal means, such as counseling, warning or summary punishment with consent of the inmate. More serious offenses are handled by more formal means, including a hearing by an impartial officer or committee at least 2 working days after notice is given, an opportunity to respond to the charges and an opportunity for appeal. In addition, in the most serious or "major" cases the accused may have the opportunity to call witnesses and present evidence, the opportunity to confront and cross-examine adverse witnesses and the assistance of a staff member in preparing for the hearing.

The goal of fairness is advanced by the procedural rules in several ways: (1) the hearing officer or adjustment committee is impartial; (2) the officer's or committee's decision must be based on all relevant information, and on a decision that it is more likely than not that the incident occurred; (3) various safeguards assure that the inmate's side of the story is fully presented. In some cases, any or all of the following are allowed: a staff member's help in preparing for the hearing, an opportunity to present evidence and witnesses, and an opportunity to confront and cross-examine adverse witnesses. In all cases, the inmate can make a statement on his or her own behalf; (4) the officer or committee is required to make a written report of the decision and reasons for it. This allows review of the decision; (5) there are guidelines set out to help the staff member make certain decisions, such as the decision whether to write a conduct report and the decision of what punishment to impose.

Note: DOC 303.65. This section recognizes that it is not desirable or necessary to handle all observed rule violations through the formal disciplinary process, and it provides guidelines for the exercise of discretion by staff members. This helps to increase uniformity and to increase understanding of the disciplinary rules and the enforcement policy among both inmates and staff.

Although this section limits the staff member's discretion (for example, a staff member may not handle a major offense, such as fighting, informally), there is still considerable scope for the staff member's judgment, for example, in deciding whether the inmate is likely to commit the offense again. The

staff member's experience can guide him or her in making this judgment better than a detailed rule could. Also, even if the staff member may handle a rule violation informally, this section does not require the staff member 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 DOC 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.

Note: DOC 303.66. If a staff member has decided, using the guidelines in DOC 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 staff member 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 staff member 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.

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: DOC 303.67. A conduct report is the initial step in the formal disciplinary process. Any staff member may write it. Unless the accused inmate admits the charges and submits to summary punishment (see DOC 303.74), the next step is review by the security office.

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 DOC 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. The security director 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.

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 are always major offenses; these are listed in sub. (3). The security director shall consider violations of other sections individually and determine 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: DOC 303.69. The purpose of this section is to promote uniformity among all the institutions in applying adjustment segregation, to make sure standards are met and to inform inmates what to expect.

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

Note: DOC 303.70. The purposes of this section are to promote uniformity among all the institutions of program segregation and disciplinary separation, to make sure standards are met and to inform inmates what to expect.

Sub. (3) clarifies what personal property inmates in program segregation and disciplinary separation may keep in their cells. Each institution may 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 and disciplinary separation 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, there is an opportunity to take advantage of programs. Sub. (7). An inmate's stay in program segregation and disciplinary separation may not be extended and the inmate may be released at anytime through the procedure established under this section.

DOC 303.70 provides for a new penalty—disciplinary separation. Disciplinary separation is being added to the major penalty selection as an alternative to program segregation. The difference is it is less

punitive for the first time offender or the offender who normally follows the rules. There is not an automatic extension of mandatory release date with disciplinary separation. Program segregation requires an extension of one day for every 2 days served.

Note: DOC 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 standards are met. In particular, incoming and outgoing mail is still allowed as if the inmate were not in segregation.

Note: DOC 303.72. This section describes other major and 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.

Note: DOC 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 limited to the punishments listed in sub. (5). To further limit the possibility of abuse, the supervisor must approve any summarily-imposed punishment. 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 DOC 303.67.

Note: DOC 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; and (2) 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 except as provided in DOC 303.85 (2), no records are kept in any offender-based file if the inmate is found not guilty.

The 21-day time limit is not intended to be jurisdictional in nature. This provision specifically overrules *State ex rel Jones v. Franklin*, 151 Wis. 2d 419, 444 N.W. 2d 738 (Ct. App. 1989).

Note: DOC 303.76. 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. 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 relevant information, and an entry in the records is made only if the inmate is found guilty. Failure to hold the hearing within the 21-day time limit is not intended to deprive the adjustment committee of competency to proceed with the hearing. This provision specifically overrules State ex rel Jones v. Franklin, 151 Wis. 2d 419, 444 N.W. 2d 738 (Ct. App. 1989).

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. DOC 303.75.

Subsection (4) allows the hearing to be held at one of a number of places.

Generally, it is desirable to provide hearings where the violation
occurred. Sometimes, this is impossible. 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) 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 DOC 303.86, Evidence.

Subsection (6) requires that the committee give the inmate and his or her advocate a written copy of the decision.

Subsection (7) gives the inmate the right to appeal an adverse decision. Appeal increases uniformity in decision-making, may eliminate or reduce abuses of discretion, and provides an opportunity for the warden to review the work of his or her subordinates in handling disciplinary
cases.

Note: DOC 303.78. allows the institution to assign advocates and to regulate their caseloads. The choice of an advocate, however, is not the inmate's constitutional right. 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: DOC 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 compromise 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. 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 rule requires staff to notify the inmate in writing which requested witnesses will be allowed to testify.

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

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: DOC 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.

Note: DOC 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, disciplinary separation, room confinement of 16 to 30 days, loss of recreational privileges for over 60 days for inmates in the general population, loss of recreation privileges for over 8 days for inmates in segregation, building confinement for over 30 days, loss of specific privileges for over 60 days, 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 DOC 303.72 and DOC 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 and disciplinary separation may only be imposed for specific terms. The possible terms are 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330 and in some cases, 360 days. 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. DOC 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 limits on loss of good time or extension of the mandatory release date which are found in sub. (2) (e) are required by s. 53.11 (2), Stats. (1981-82). 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 Wis. Act 528 apply to them.

1983 Wis. Act 528 amended s. 53.11 (2), Stats. (1981-82) (now s. 302.11 (2), Stats.), in three specific ways. First, it replaced the concept of "good time" with extension of the mandatory release date. Second, it allowed 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.

Sections 53.11, Stats. (1981-2) and 302.11, Stats., follow current practice by limiting loss of good time or extension of the mandatory release date to major offenses.

Note: DOC 303.86. This section makes clear that courtroom rules of evidence are
not to be strictly followed in a disciplinary proceeding. 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 institution that to reveal it would pose a risk of harm to 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.

Note: DOC 303.87. This rule is to make clear that staff errors which do not substantially affect a finding of guilt or the inmate's ability to provide a defense may be disregarded. For example, if an inmate were 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.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections