

NOTICE OF HEARING
DEPARTMENT OF CORRECTIONS
PERMANENT RULE

NOTICE IS HEREBY GIVEN that pursuant to section 227.11(2), Stats., and interpreting §§ 301.03(2), 302.04, 302.07, 302.08 and 302.11(2), Stats., the Department of Corrections will hold public hearings to consider:

Proposed permanent rule DOC 303, relating to discipline of inmates.

Hearing information:

<u>Date & Time</u>	<u>Location</u>
April 28, 2011 10:00 a.m.	Conference Room 116 State Office Building 819 North 6 th Street Milwaukee, Wisconsin
April 28, 2011 2:30 p.m.	Yahara Conference Room-First Floor Department of Administration 101 East Wilson Street Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by Friday, May 6, 2011. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, email kathryn.anderson@wisconsin.gov, telephone (608) 240-5049 by April 20, 2011.

PERMANENT RULE: CLEARINGHOUSE RULE

WISCONSIN DEPARTMENT OF CORRECTIONS
PROPOSED RULE MAKING ORDER

INTRODUCTORY CLAUSE

The Wisconsin Department of Corrections proposes an order to repeal and recreate DOC 303, relating to discipline of inmates, to amend DOC 302.17 (11) (c), 302.21 (3) (b) 1., 302.33 (1) (b), 302.34 (1) (a), 302.35 (1) (a), 304.04 (2), 306.05 (4) (a), 308.03 (4) (intro), (b), and (d), 308.04 (4) (e) 5., (5) (a) 2., and (10), 308.04 Note to sub. (4), 309.02 (5), 309.04 (4) (e) 2. and (6), 309.20 (4) (a) 5., (4) (b) 3., (4) (c) 3., (4) (d) 2., and (7), 309.65 (5) (c) 2., 310.08 (3), 310.10 (7), 303 APPENDIX DOC 310.16, PARA 3, 311.07 (2) (f) 3., 313.08 (10), 324.12 (1) (j), 324.13 (6), 327.09 (1) (a), (2) (intro), (2) (b), (2) (c), (2) (d) (intro), (2) (e) (intro), (2) (f), (2) (h), (2) (i), (2) (m) 1., (2) (q)

(intro), (2) (r), (2) (s), (2) (t), (2) (u), (2) (v), (2) (w), (2) (x) (intro), (2) (y), (2) (z) (intro), (3), 327.13 (intro), (2), (3), (4), (5), (6), (7), (8), (9), and (10), to repeal DOC 308.03 (6) and (8), 309.02 (13), 309.55 (e) 4., 5., and 6., 327.09 (2) (g), (j), and (n), and to create DOC 308.03 (8m), 309.55 (4) (e) 4. and 5.

RULE SUMMARY

A. Statutes interpreted: ss. 301.03 (2), 302.04, 302.07, 302.08 and 302.11 (2), Stats.

B. Statutory Authority to Promulgate the Rule: ss. 227.11 (2), Stats.

C. Explanation of agency authority

The department of corrections is responsible for the supervision of all inmates, including their discipline for violations of institution and department regulations.

D. Related statute or rule

Chapters DOC 302, 304, 306, 308, 309, 310, 311, 313, 314, 316, 324, 325, 326, and 327, relating to the supervision of inmates.

E. Plain Language Analysis

The rule:

1. Reorganizes and updates the rule chapter.
2. Repeals the following definitions: administrative committee, bodily injury, consent, disruptive conduct, fight, inmate gang, public, riot, staff, and steals.
3. Amends the following definitions: authorized, case record, communicate, contraband, gambling, intoxicating substance, possession, and sexual contact,
4. Creates the following definitions: bodily harm, body specimen, close family member, corporal punishment, department policy, disciplinary committee, disciplinary separation, disturbance, employee, great bodily harm, member of a household, personally identifiable information, record, security threat group, serious mental illness, stalking, substantial bodily harm, substantial involvement, suffer serious emotional distress, targeted person, and victim.
5. Moves definitions which were in the body of the rule into the definition section: contraband, evidence, and gambles.
6. Repeals the following offenses: battery, fighting, inciting a riot, participating in a riot, arson, causing an explosion or fire, creating a hazard, and violation of institution policies and procedures.
7. Creates the following offenses: assault, aggravated assault, assault on staff, sexual contact or intercourse, sexual assault, sexual assault aggravated, stalking, endangering safety, inciting a disturbance, participating in a disturbance, taking a hostage, possession of tobacco, and possession of electronic communication or data storage devices.
8. Modifies the table of automatic major offenses to reflect changes in practice and technologies.
9. Modifies the schedule of penalties to allow more flexibility and use of disciplinary segregation in place of adjustment segregation.
10. Requires the retention of property until a final decision is made on a complaint.
11. Modifies the current rule to allow Temporary Lock up (TLU) to await placement in appropriate security level.
12. Changes battery and fighting to assault, aggravated assault and assault on staff to increase consistency in application of the rule and ensure decision makers have accurate information about dynamics of the offense.
13. Changes charges related to sexual behavior and assault to sexual conduct, sexual

contact or intercourse, sexual assault, and sexual assault aggravated to more accurately reflect changes related to PREA and improve communication of actual dynamics of the offense.

14. Creates the offense of stalking to clearly identify inmate misconduct.
15. Creates the offense of taking a hostage in response to inmate conduct that was not currently addressed.
16. Modifies the elements of "disruptive conduct" as a violation to better capture behaviors that are disruptive to the orderly operation of facilities.
17. Modifies the elements of "unauthorized forms of communication" to better identify problematic conduct.
18. Modifies the elements of "possession, manufacture, or use of weapons" to include the use of an otherwise allowable property item as a weapon as a violation.
19. Creates the offense of "possession of tobacco" to reflect the ban on smoking and use of tobacco products.
20. Creates the offense of "possession of electronic communication or data storage devices" to address the added threat to security that the possession of this type of property poses.
21. Expands the elements of the offense of "unauthorized use of the mail" to include sending any item not allowed under this chapter and falsifying the name of the receiver or address.
22. Expands the coverage of the misuse of medications to include both prescription and nonprescription medications.
23. Requires consideration of an inmate's serious mental illness during due process hearings and disposition stage.
24. Clarifies how to impose a requirement for restitution when the actual amount is not known at the time of disposition.
25. Deletes the use of program segregation and adjustment segregation as penalties. The loss of good time associated with these penalties has not had a sufficient deterrent effect to warrant the extra work to recalculate release dates and the deletion eliminates a liberty interest and simplifies due process requirements.
26. Modifies the processes and terminology for disciplinary transactions from summary through full due process. Permits summary disposition for major violations. Modifies minor hearing process to be more similar to summary disposition. Limits inmate statements to 500 words on 2 sheets of paper. More clearly describes what an inmate may appeal.
27. Corrects references to DOC 303 in other DOC chapters.

F. Summary of and Comparison with Existing or Proposed Federal Regulations that are intended to address the activities to be regulated by the proposed rule

There are no federal regulations that regulate the activities addressed by the proposed rule.

G. Comparison of similar rules in adjacent states:

1. Illinois

Illinois rules concerning discipline apply to both incarcerated adults and juveniles. The rules in some cases have different requirements, depending on whether they apply to adults or juveniles. For example, disciplinary proceedings against an adult must be commenced within 8 days of service of a disciplinary report but only 4 days against a juvenile offender. (20 ILAC 504.30 (f)) Wisconsin has a separate set of rules which addresses incarcerated juveniles.

Illinois prohibits corporal punishment and disciplinary restrictions on diet, medical or sanitary facilities, mail, or access to legal materials. (730 ILCS 5/3-8-7 (b) (1); 20 ILAC 504.20 (c))

Wisconsin rules prohibit corporal punishment. (DOC 306.07 (1)) Illinois rules also require that the disciplinary restrictions on visitation, work, education, or program assignments and use of the library be as closely related as practicable to the abuse of such privileges. But the Illinois rule specifically excludes the applicability of this section to segregation or isolation of offenders for purposes of institutional control. (20 ILAC 504.20 (d))

Illinois requires that disciplinary actions resulting in the loss of good time credit or the eligibility to earn good time credit or disciplinary actions resulting in the imposition of disciplinary segregation and isolation are heard by a disciplinary board appointed by the director of prisons. Other disciplinary actions are heard at the institution level. (730 ILCS 5/3-8-7 (d) and (e)) Illinois prohibits any person who initiated a disciplinary charge from determining the disposition of the charge. (730 ILCS 5/3-8-7 (e) (1)) Wisconsin prohibits any person who has substantial involvement in the incident which is the subject matter of the hearing from serving on the disciplinary committee. (DOC 303.85 (2))

Illinois rules specify in detail the content of a disciplinary report. (20 ILAC 504.30 (d)) Wisconsin rules provide a more general description of the content of a conduct report. (DOC 303.67) The department has policies and procedures which specify the content of the report.

Illinois rules require service of the disciplinary report on the inmate within 8 days of the incident giving rise to the report. (20 ILAC 504.30 (f)) Wisconsin rules require service of a conduct report for a major offense within 2 working days of the security director's approval of the report. (DOC 303.80)

Illinois rules require that an inmate placed in temporary lockup (TLU) be reviewed within 3 days following placement. Illinois also requires that the inmate be interviewed regarding the placement within 14 days. The maximum period of time in TLU is 30 days. (20 ILAC 504.05 (b) and (c) (3) and (4)) Wisconsin requires a review of a TLU placement within 2 working days. The maximum period of time in TLU status is 21 days. This period may be extended by an additional 21 days by the administrator of the division of adult institutions. The status of an inmate placed in TLU must be reviewed every 7 days by the security director. (DOC 303.10)

Illinois rules require that if an inmate is found not guilty of a disciplinary offense, placement in TLU shall be terminated and the disciplinary report expunged from the inmate's records. A copy of the report shall be maintained in an expungement file. (20 ILAC 504.50 (4)) There is a comparable provision requiring the expungement of the disciplinary report following a hearing and a finding that the inmate did not commit the offense. (20 ILAC 504.80 (k) (1)) Wisconsin does not have a similar provision. (cf. DOC 303.88 (1) (b))

Illinois rules have a different procedure for inmates at correctional centers. (20 ILAC 504.60) Wisconsin does not have a similar provision.

Illinois rules provide for the composition of its adjustment committee ("to extent possible, a person representing the counseling staff; and at least one minority staff") and the composition of its program unit (employees who serve as hearing officers) ("at least one member of the unit shall be a minority staff member"). (20 ILAC 504.70) Wisconsin has no similar provision.

Illinois rules require that a disciplinary hearing be commenced within 14 days after commission of the offense unless the inmate is unable to participate in the hearing. (20 ILAC 504.80 (a)) Wisconsin requires that the hearing be held between 2 working days following the inmate being served with the approved or amended conduct report and 21 calendar days. The 21 calendar day period may be extended for any reason by the security director. (DOC 303.80 (3))

Illinois rules provide that questioning of witnesses is done by the submission of written questions which the hearing officer asks. Questions which are cumulative, irrelevant, or a threat to the safety of individuals or the security of the institution are not allowed. Similarly, an inmate's request to call witnesses may be denied if the testimony is deemed to be cumulative, irrelevant, or would jeopardize the safety or disrupt the security of the institution. (20 ILAC 504.80 (h) (2), (4), and (5)) Wisconsin permits the direct questioning of witnesses and the submission of written questions but prohibits repetitive, disrespectful, or irrelevant questions. (DOC 303.80 (5))

Illinois rules specifically state that an inmate is not entitled to retained or appointed counsel. Also, an inmate may only request the assistance of a staff member in the preparation of his or her defense if the inmate is illiterate or does not speak English or when other circumstances exist that preclude the inmate from adequately preparing his or her defense. (20 ILAC 504.80 (i)) Wisconsin does not limit the assignment of staff representatives. (DOC 303.83)

Illinois rules specify that the provisions dealing with penalties following a hearing do not restrict or limit the Illinois department of corrections from administratively changing an inmate's job, educational, program, or housing assignment, to restrict privileges, or to transfer the inmate to another institution. (20 ILAC 504.80 (k) (5)) Wisconsin has a similar provision.

Illinois rules provide for the director, deputy director or chief administrative officer to remand a decision to the administrative committee for new proceedings if the proceedings are found to be defective due to: procedural error, lack of impartiality, improper exclusion of witnesses, failure to provide exonerating information to the inmate prior to the hearing. In addition, a new proceeding may be ordered in other circumstances as determined by one of the named officials. Finally, one of the named officials may request clarification, correction, or additional information. (20 ILAC 504.90) Wisconsin has no similar provision. However, Wisconsin provides for an inmate appeal process (DOC 303.82). In addition, if an inmate is not satisfied with the decision following appeal, the inmate may file an inmate complaint (Ch. DOC 310). At any time, the warden may review the conduct report (DOC 303.91).

Illinois rules limit the penalty for multiple offenses arising out of one incident to the maximum penalty for the most serious offense of which the inmate is found guilty. (20 ILAC 504.110 (a)). Wisconsin has a similar provision (DOC 303.87(2)).

Illinois has a provision for the placement of an inmate into indeterminate segregation. (20 ILAC 504.115) Wisconsin has a provision for administrative confinement which is a non-punitive status (Ch. DOC 308).

Illinois rules provide for credit against the term of segregation placement for the time spent in TLU. (20 ILAC 504.120 (a)) Wisconsin specifically does not permit the crediting of time spent in TLU. (DOC 303.87 (2) (f)) Wisconsin has a process to reduce time spent in segregation based on adjustment.

Illinois rules provide for the reduction in grade for inmates in centers who are found guilty of a disciplinary offense. (20 ILAC 504.130) Wisconsin has no similar provision.

Illinois rules list offenses in Appendix A and penalties in Appendix B. (20 ILAC 504 App. A and B) Wisconsin lists and defines offenses and sets maximum penalties based on major and minor offenses.

2. low a

low a statutes have one provision which addresses inmate disciplinary procedures. ICA s. 904.505 (1) provides that inmates who disobey disciplinary rules of the institution shall be punished in accordance with the following: (1) to ensure that sanctions are imposed only at such times and to such a degree as is necessary to regulate inmate behavior and to promote a safe and orderly institution; (2) to control inmate behavior in an impartial and consistent manner; (3) to ensure that disciplinary procedures are fair and that sanctions are not capricious or retaliatory; (4) to prevent the commission of offenses through the deterrent effect of available sanctions; (5) to define the elements of each offense and the penalties which may be imposed for violations, in order to give a fair warning of prohibited conduct; and (6) to provide procedures for preparation of report or disciplinary actions, for conducting disciplinary hearings, and for processing of disciplinary appeals.

ICA s. 904.505 (2) requires the warden to maintain a register of all penalties imposed on inmates and the penalties imposed.

ICA s. 904.505 (4) provides that a reasonable administrative fee for filing a report of a major disciplinary rule infraction for which an inmate is found guilty may be charged. The fee must be deposited in the general fund of the state.

low a does not have administrative rules which govern the discipline of inmates in prison. The low a department of corrections has issued a policy and procedure which addresses rules and discipline in institutions. (Policy Number IO-RD-01 (eff. 4/2009))

3. Michigan

Michigan rules provide that a violation of department rules by an inmate is classified as a major or minor misconduct on the basis of the seriousness of the act and the disciplinary sanction imposed. (Mich. Admin. Code R. 791.5501 (1)) Wisconsin has a similar provision. An inmate charged with a major misconduct is entitled to a formal hearing. An inmate charged with a minor misconduct is entitled to a fact-finding hearing. (Mich. Admin. Code R. 791.5501 (2)) The Michigan department of corrections has a hearings division which conducts administrative hearings regarding inmates. (Mich. Admin. Code R. 791.3301) Wisconsin also differentiates between the processes for handling major and minor violations.

All hearings have two phases: fact determination phase and disposition phase. (Mich. Admin. Code R. 791.3305) At a fact finding hearing, an inmate shall be permitted to be present and speak on his or her own behalf and to receive a copy of any department document specifically relevant to the hearing unless disclosure of the document would threaten the order and security of the institution or a person. An inmate may waive the fact finding phase. (Mich. Admin. Code R. 791.3310) While Wisconsin's rules are not identical, there is a similarity between the two processes.

At least 24 hours prior to a formal hearing, an inmate shall receive written notice of a formal disciplinary hearing. The notice shall include the charges, a description of the circumstances giving rise to the hearing, and the date of the hearing. The inmate shall identify necessary witnesses the inmate wishes to have interviewed, request documents specifically relevant to the issue for the hearing, and request assistance of a staff investigator to gather evidence or speak for the inmate. An inmate may waive the 24 hour notice requirement in writing. (Mich. Admin. Code R. 791.3315 (1) – (3))

At a formal hearing the inmate has the right to be present and offer evidence, to compel disclosure of documents specifically relevant to the issue being heard, unless disclosure poses a threat to safety and security, to call witness who can give necessary, relevant, and material evidence, unless to do so would be unduly hazardous to institutional or safety goals, to present the report of the staff investigator, to submit questions to the hearing officer to ask

of witnesses, and to request disqualification of a hearing officer for personal bias based on affidavits containing specific evidence of personal bias. (Mich. Admin. Code R. 791.3315 (6)) The hearing officer shall render a written decision or recommendation in every case, setting forth the reasons for the decision, a statement of facts, and the evidence relied upon, and any sanctions imposed. Within 48 hours of the conclusion of a hearing on a major misconduct charge the decision shall be posted for staff information the name of the inmate charged, the violations charged and whether the inmate was found guilty. The information should be posted in an area accessible to staff but not usually accessible to inmates. (Mich. Admin. Code R. 791.3315 (8) and (9))

An inmate may appeal a determination made at a fact finding or informal hearing. The inmate must indicate orally his or her intention to appeal at the conclusion of the hearing and within 24 hours of receiving the written decision file a written appeal. The procedures are found in policies and procedures, not the rules. (Mich. Admin. Code R. 791.3320 (1)) An inmate may appeal a determination made at a formal hearing within 30 days of the determination. Appeals shall be reviewed based on a written summary or record of the hearing. The decision may be affirmed, reversed, or remanded for a new hearing. (Mich. Admin. Code R. 791.3320 (2) and (4))

Michigan rules provide for the earning of good time and disciplinary credit. Violations of prison rules may result in the forfeiture of additional earned and special good time and disciplinary credits. (Mich. Admin. Code R. 791.5513 (1)) In addition, an inmate may be subject to disciplinary time when he or she is found guilty of a violation of prison rules. The range of time includes: all disciplinary time for a homicide; 180 days of disciplinary time for any act that constitutes a felony under state law, assault resulting in serious physical injury, escape, possession of a weapon, inciting a riot or a strike or rioting or striking, and sexual assault; 35 days of disciplinary time for assault and battery, creating a disturbance, possession of dangerous contraband, possession of money, substance abuse, failure to disperse; 15 days of disciplinary time for bribery, fighting, sexual misconduct, threatening behavior, and smuggling; 10 days disciplinary time for destruction or misuse of property with value of \$10.00 or more, disobeying a direct order, insolence, theft or possession of stolen property, and unauthorized occupation of a cell or room; 7 days of disciplinary time for failure to maintain employment, gambling or possession of gambling paraphernalia, interference with the administrative rules, out of place, possession of forged documents or forgery. (Mich. Admin. Code R. 791.5515 (2))

If an inmate is found guilty of more than one violation arising from the same incident, the disciplinary time must run concurrently. (Mich. Admin. Code R. 791.5515 (3)) Disciplinary time may be reduced for exemplary good conduct. However, the director of the department of corrections must establish the amount of disciplinary time that may be reduced for exemplary good conduct. (Mich. Admin. Code R. 791.5515 (4)) If an inmate is subsequently found guilty of a major misconduct, the some portion of the reduced time may be restored. (Mich. Admin. Code R. 791.5515 (5))

4. Minnesota

Minnesota statutes permit the imposition of a sanction on an inmate who refuses to perform an available work assignment either through the loss of good time or by the serving of disciplinary confinement period. (MSA s. 243.18) Minnesota statutes also permit the development of disciplinary sanctions for an inmate who submits a frivolous or malicious claim to a court or licensing agency or who is determined by a court or licensing agency to have testified falsely or to have submitted false evidence. The sanctions may include loss of privileges, punitive segregation, loss of good time, or adding discipline confinement time. (MSA s. 244.035) The department of corrections operating statute authorizes the

commissioner of corrections to enact rules and procedures that govern the operations of prisons. (MSA s. 241.01)

Minnesota does not have administrative rules which govern the discipline of inmates in prison. The Minnesota department of corrections has issued a policy which addresses rules and discipline in prisons. (Policies, Directives and Instructions Manual, Policy 303.010 (eff. 9/1/2005))

- H. Summary of the factual data and analytical methodologies that DOC used in support of its determination of the rule's fiscal effect on small businesses under s. 227.114, Stats.

The department of corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

- I. Any analysis and supporting documents that DOC used in support of the department's determination of the proposed rule's effect on small businesses or that was used when the DOC prepared an economic impact report.

Not applicable.

- J. Effect on small businesses

Not applicable.

- K. Agency contact person

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(608) 240-5049; FAX (608) 240-3306
Kathryn.Anderson@Wisconsin.gov

- L. Place where comments are to be submitted and deadline for submission

Written comments on the proposed rule will be accepted and receive consideration if they are received by May 6, 2011. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

TEXT OF RULE

SECTION 1. DOC 303 is repealed and recreated to read:

Chapter DOC 303

DISCIPLINE

Subchapter I — General Provisions

- DOC 303.01 Applicability and purposes.
DOC 303.02 Definitions.
DOC 303.03 Lesser included offenses.
DOC 303.04 Conspiracy.
DOC 303.05 Attempt.

- DOC 303.06 Aiding and abetting.
- DOC 303.07 Institutional regulations and procedures.
- DOC 303.08 Notice of disciplinary rules.
- DOC 303.09 Seizure and disposition of contraband.
- DOC 303.10 Temporary lockup: use.

Subchapter II — Offenses Against Bodily Security

- DOC 303.11 Assault.
- DOC 303.12 Aggravated assault.
- DOC 303.13 Assault on staff.
- DOC 303.14 Sexual conduct.
- DOC 303.15 Sexual contact or intercourse.
- DOC 303.16 Sexual assault.
- DOC 303.17 Sexual assault-aggravated.
- DOC 303.18 Threats.
- DOC 303.19 Stalking.

Subchapter III — Offenses Against Institutional Security

- DOC 303.20 Endangering safety.
- DOC 303.21 Inciting a disturbance.
- DOC 303.22 Participating in a disturbance.
- DOC 303.23 Taking a hostage.
- DOC 303.24 Group resistance and petitions.
- DOC 303.25 Cruelty to animals.
- DOC 303.26 Escape
- DOC 303.27 Disguising identity.

Subchapter IV — Offenses Against Order

- DOC 303.28 Disobeying orders.
- DOC 303.29 Disrespect.
- DOC 303.30 Soliciting staff.
- DOC 303.31 Lying.
- DOC 303.32 Lying about staff.
- DOC 303.33 Disruptive conduct.
- DOC 303.34 Unauthorized forms of communication.
- DOC 303.35 False names and titles.
- DOC 303.36 Enterprises and fraud.

Subchapter V — Offenses Against Property

- DOC 303.37 Theft.
- DOC 303.38 Damage or alteration of property.
- DOC 303.39 Misuse of state or federal property.
- DOC 303.40 Unauthorized transfer of property.
- DOC 303.41 Counterfeiting and forgery.

Subchapter VI — Contraband Offenses

- DOC 303.42 Possession or use of money or negotiable instruments.
- DOC 303.43 Possession of intoxicants.
- DOC 303.44 Possession of drug paraphernalia.
- DOC 303.45 Possession, manufacture or use of weapons.
- DOC 303.46 Possession of tobacco.
- DOC 303.47 Possession of contraband—miscellaneous.
- DOC 303.48 Possession of electronic communication or data storage devices.
- DOC 303.49 Unauthorized use of the mail.

Subchapter VII — Movement Offenses

- DOC 303.50 Punctuality and attendance.
- DOC 303.51 Loitering.

- DOC 303.52 Leaving assigned area.
- DOC 303.53 Being in an unassigned area.
- DOC 303.54 Entry into another inmate's assigned living area.

Subchapter VIII — Offenses Against Safety And Health

- DOC 303.55 Improper storage.
- DOC 303.56 Dirty assigned living area.
- DOC 303.57 Poor personal hygiene.
- DOC 303.58 Misuse of medication.
- DOC 303.59 Disfigurement.

Subchapter IX — Miscellaneous Offenses

- DOC 303.60 Use of intoxicants.
- DOC 303.61 Gambling.
- DOC 303.62 Refusal to work or attend school.
- DOC 303.63 Inadequate work or school performance.
- DOC 303.64 Violating conditions of leave.

Subchapter X — Disciplinary Procedure And Penalties

- DOC 303.65 Disciplinary violation dispositions.
- DOC 303.66 Offenses that do not require a conduct report.
- DOC 303.67 Conduct report.
- DOC 303.68 Review by security office.
- DOC 303.69 Minor offenses.
- DOC 303.70 Minor penalties.
- DOC 303.71 Major offenses.
- DOC 303.72 Major penalties.
- DOC 303.73 Major penalties: disciplinary separation.
- DOC 303.74 Controlled segregation.
- DOC 303.75 Other penalties.
- DOC 303.76 Referral for prosecution.
- DOC 303.77 Uncontested minor disposition.
- DOC 303.78 Contested minor disposition.
- DOC 303.79 Uncontested major disposition.
- DOC 303.80 Contested major disposition.
- DOC 303.81 Contested major disposition: waiver of due process hearing.
- DOC 303.82 Appeal of contested major disposition or contested major waiver.
- DOC 303.83 Due process: staff representative.
- DOC 303.84 Due process hearing: witnesses.
- DOC 303.85 Disciplinary committee.
- DOC 303.86 Disposition considerations.
- DOC 303.87 Dispositions and schedule of penalties.
- DOC 303.88 Recordkeeping.
- DOC 303.89 Evidence.
- DOC 303.90 Harmless error.
- DOC 303.91 Warden initiated review.
- DOC 303.92 Administrative assignment or transfer.

Subchapter I — General Provisions

DOC 303.01 Applicability and purposes. (1) Pursuant to authority vested in the department of corrections by s. 227.11 (2), Stats., the department adopts this chapter which applies to all inmates in its legal custody regardless of the inmates' physical custody. This subsection does not preclude another jurisdiction that has physical custody of the inmate from enforcing its rules related to inmate behavior. This section implements ss. 301.03 (2), 302.04, 302.07, 302.08 and 302.11 (2), Stats. The rules

governing inmate conduct under this chapter describe the conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) Discipline includes the dispositions described in s. DOC 303.70 and DOC 303.72. The objectives of the disciplinary rules under this chapter are the following:

- (a) The maintenance of order in correctional facilities.
 - (b) The maintenance of a safe setting in which inmates can participate in constructive programs.
 - (c) The rehabilitation of inmates through the development of their ability to live with others, within rules.
 - (d) Fairness in the treatment of inmates.
 - (e) The development and maintenance of respect for authority, the correctional system, and for our system of government through fair treatment of inmates.
 - (f) Punishment of inmates for misbehavior.
 - (g) Deterrence of misbehavior.
- (3) Corporal punishment of inmates is prohibited.

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DOC 303.02 Definitions. In this chapter:

- (1) "Administrator" means an administrator of a division of the department, or designee.
- (2) "Authorized" means any of the following:
 - (a) According to departmental rules.
 - (b) According to policies, procedures and handbooks.
 - (c) According to the direction of an employee.
 - (d) According to established institution custom.
 - (e) With permission from the appropriate employee.
- (3) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.
- (4) "Body specimen" means biological specimen, including but not limited to a sample of urine, breath, blood, stool, hair, finger nails, saliva, semen, skin cells, or DNA.
- (5) "Case record" means a method of storing information which is accessible by the use of an individual inmate's name or number.
- (6) "Close family member" means natural, adoptive, step and foster parents; spouse, domestic partner, children, grandparents, grandchildren, or siblings. A parent surrogate is within the definition of parent if it is substantiated that a claimed surrogate did in fact act as a parent, although the parent surrogate was not an adoptive, foster, or stepparent.
- (7) "Communicate" means to express verbally, in writing, or by means of a gesture or other action, to include electronic transmission.
- (8) "Contraband" means any of the following:
 - (a) Any item which inmates may not possess under this chapter or is not authorized by policy or procedure.
 - (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 means or is required to be on the inmate's property list and is not.
 - (d) Stolen property.
 - (e) Damaged or altered property
 - (f) Items deemed contraband by the disciplinary committee or hearing officer.
 - (g) Items directly or indirectly derived from or realized through the commission of any offense under this chapter.
 - (h) Item used in the commission of any offense under this chapter.
- (9) "Corporal punishment" means the deliberate infliction of pain as retribution for an offense or requiring the performance of tasks meant to humiliate or degrade.
- (10) "Department" means the department of corrections.
- (11) "Department policy" means any department or division policy, facility procedure, inmate or unit

Commented [DU1]: Should this include reference to the State Id # as well?

handbook, or other official notice available to the inmate.

(12) "Disciplinary committee" means a committee of one, two or three employees appointed by the warden to conduct disciplinary hearings. At least one member of every disciplinary committee shall be a supervisor.

(13) "Disciplinary separation" means a punitive, segregated status which is the result of a major penalty.

(14) "Disturbance" means a riot or other disturbance to institutional order caused by a group of two or more inmates that may include one of the following:

- (a) An assault on any person by two or more inmates
- (b) The taking of one or more hostages.
- (c) The destruction of state property or the property of another by two or more inmates.
- (d) The refusal by two or more inmates, acting in concert, to comply with an order.
- (e) Any words or acts which incite or encourage inmates to do any of the above.

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

(16) "Employee" means any current department employee/staff member, an employee of a contract facility, an independent contractor, or a volunteer of the department or institution.

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

(18) "Gambling" means betting 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.

(19) "Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

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

(21) "Institution" means a correctional institution or correctional facility defined under s. 302.01, Stats.

(22) "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.

(23) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions.

(24) "Member of a household" means a person who regularly resides in the household of another or who within the previous 6 months regularly resided in the household of another.

(25) "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.

(26) "Personally identifiable information" means information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

(27) "Possession" means on one's person, in any assigned area, or under one's control.

(28) "Record" means any material on which written, drawn, printed, spoken, visual, electromagnetic, electronic or other information recorded or preserved, regardless of physical form or characteristics, which as been created or is being kept by an authority.

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

(30) "Security threat group" means a group of individuals which threatens, intimidates, coerces or harasses others or engages in activities which violates or encourages the violation of statutes, administrative rules or departmental policies or institutional procedures

(31) "Serious mental illness" means a diagnosed major mental disorder (e.g., schizophrenia, bipolar disorder, major depressive disorder) that is usually characterized by psychotic symptoms and/or significant functional impairments.

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

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

(b) 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.

(33) "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.

(34) "Stalking" is an act by an inmate with the purpose of causing that person to suffer emotional distress or to fear bodily injury or death of himself or herself or a member of his or her family or household.

(35) "Substantial bodily harm" means bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

(36) "Substantial involvement" means direct involvement with an alleged infraction, such as being a witness or victim or serving as an investigator of an incident.

(37) "Suffer serious emotional distress" means to feel terrified, intimidated, threatened, harassed, or tormented. For an offense to be proved, it is not required that a victim has received or will receive treatment from a mental health professional in order to prove that the victim suffered serious emotional distress.

(38) "Targeted person" means a person who is the subject of stalking. Targeted person includes close family member, friend, co-worker or household member of the targeted person.

(39) "Temporary lock up" or "TLU" means a temporary nonpunitive segregated status allowing an inmate to be separated from the general population pending further administrative action.

(40) "Victim" means a person, other than the actor, against whom a violation under this chapter or a crime has been committed.

(41) "Warden" means the warden of an institution, or designee.

(42) "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 act, conduct, or other matter, to which the victim consented.

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

DOC 303.03 Lesser included offenses. (1) If an offense is a lesser included offense of another and the reporting employee charges an inmate with the greater offense, the inmate is also charged with the lesser included offense.

(2) The disciplinary committee may find an inmate guilty of a lesser included offense even if the reporting employee did not expressly charge the inmate with the lesser included offense.

(3) The disciplinary 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 disciplinary 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
303.11 Assault	303.33 Disruptive conduct
303.12 Aggravated Assault	303.11 Assault
	303.33 Disruptive conduct
303.13 Assault on staff	303.33 Disruptive conduct
303.16 Sexual assault	303.14 Sexual conduct
	303.12 Aggravated Assault
	303.11 Assault
303.17 Sexual assault--aggravated	303.16 Sexual assault
	303.14 Sexual conduct
	303.15 Sexual contact or intercourse
	303.45 Possession, manufacture or use of weapons
303.19 Stalking	303.18 Threats
	303.34 Unauthorized forms of communication
	303.49 Unauthorized use of the mail
303.20 Endangering safety	303.47 Possession of contraband—miscellaneous
	303.38 Damage or alteration of property
	303.39 Misuse of state or federal property
303.21 Inciting a disturbance disturbance	303.22 Participating in a
	303.24 Group resistance and petitions
	303.33 Disruptive conduct
303.22 Participating in a disturbance	303.24 Group resistance and petitions
	303.33 Disruptive conduct
303.26 Escape	303.52 Leaving assigned area
	303.53 Being in an unassigned area
303.37 Theft	303.40 Unauthorized transfer of property
	303.47 Possession of contraband—miscellaneous

303.42 Possession or use of money or negotiable instruments . . .	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 or use of weapons.	303.47 Possession of contraband—miscellaneous
303.46 Possession of tobacco	303.47 Possession of contraband—miscellaneous
303.48 Possession of electronic communication or	303.34 Unauthorized forms of communication data storage devices
	303.47 Possession of contraband—miscellaneous
303.58 Misuse of medication	303.40 Unauthorized transfer of property
	303.47 Possession of contraband—miscellaneous
Any substantive offense	303.04 Conspiracy
	303.05 Attempt
	303.06 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.

DOC 303.04 Conspiracy. (1) If 2 or more inmates or others plan or agree to commit one or more acts which are prohibited under this chapter, all inmates may be guilty of an offense.

(2) An inmate who plans or agrees with individuals to commit one or more 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 conspiracy, in recordkeeping and conduct reports, shall be the number of the offense plus the suffix C.

DOC 303.05 Attempt. (1) An inmate is guilty of attempt to violate a rule if either of the following is true:

(a) The inmate planned to commit one or more acts which would have been a rule violation if actually committed.

(b) The inmate committed one or more acts which showed a plan to violate the rule when the act or acts occurred.

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

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

303.87.

DOC 303.06 Aiding and abetting. (1) An inmate who does any of the following is guilty of aiding and abetting a rule violation:

- (a) Directs, requests, 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.
- (e) Has knowledge of a major violation under this chapter that may also violate a criminal law and fails to report such information to an employee.

(2) The reporting employee may charge and the disciplinary 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.

(3) The disciplinary committee may impose the same penalty for aiding and abetting as for the substantive offense. See Table DOC 303.87.

(4) The penalty for aiding and abetting shall be based on an appropriate assessment of the facts and the individual's involvement and need not be the same for all participants.

(5) The number used for aiding and abetting, in recordkeeping and conduct reports, shall be the offense's number plus the suffix B.

DOC 303.07 Institutional regulations and procedures. (1) Institutions may make specific rules and procedures for the operation of the facility. Inmates may be disciplined for violations of institution regulations or procedures.

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

DOC 303.08 Notice of disciplinary rules. (1) The department shall provide inmates with a copy of this chapter when they enter the prison system.

(2) The department shall provide notice of any published changes to this chapter.

DOC 303.09 Seizure and disposition of contraband. (1) SEIZURE. Any employee 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 department policy.

(2) **DISPOSITION.** The disciplinary committee or security director shall dispose of items in accordance with department policy and facility procedure. If an inmate files a complaint under ch. DOC 310 regarding the seizure or disposition of property, the institution shall retain the property until the final decision is made on the complaint. Contraband funds shall be transmitted to the state general fund.

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

DOC 303.10 Temporary lockup: use. (1) A security supervisor, security director, correctional center superintendent or warden may place an inmate in TLU.

(2) If the security supervisor places an inmate in TLU, the security director or correctional center superintendent 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 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 as soon as practicable.

Commented [DU2]: Is this accurate that forfeited funds go to the general fund?

(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 or correctional center superintendent 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 or retain an inmate in TLU for one or more of the following reasons:

- (a) The inmate's presence in general population may impede a pending investigation or disciplinary action.
- (b) The inmate's presence in general population may be disruptive to the operation of the institution.
- (c) The inmate's presence in general population may create a danger to the physical safety of the inmate or another.
- (d) The inmate's presence in general population may create a risk that the inmate will try to escape from the institution.
- (e) If the inmate completes disciplinary separation or administrative confinement and is awaiting placement at the appropriate security level or status.

(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 ch. DOC 313.

(7) If 1983 Wis. Act 528 does not apply to the inmate, the inmate shall continue to earn extra good time credit. Inmates who are eligible for positive adjustment time may earn positive adjustment time while in this status.

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

Subchapter II — Offenses Against Bodily Security

DOC 303.11 Assault. An inmate who does any of the following is guilty of assault: (1) Causes bodily harm to another.

(2) Engages in a physical altercation with another person.

DOC 303.12 Aggravated Assault. An inmate who does any of the following is guilty of aggravated assault: (1) Causes substantial bodily harm or great bodily harm to another.

(2) Impedes the normal breathing or circulation of blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

(3) Spits, throws or uses body fluids or waste or any substance on another.

(4) Causes the death of another.

(5) Uses any item as a weapon to cause bodily harm to another.

DOC 303.13 Assault on Staff. An inmate who does any of the following is guilty of assault on staff: (1) Causes bodily injury or harm to a staff member.

(2) Impedes the normal breathing or circulation of blood by applying pressure on the throat or neck or by blocking the nose or mouth of a staff member.

(3) Spits, throws or uses bodily fluids or waste or any substance on a staff member.

(4) Causes the death of a staff member.

(5) Uses any item as a weapon to cause bodily harm to a staff member.

DOC 303.14 Sexual conduct. (1) An inmate who does any of the following is guilty of sexual conduct:

(a) Requests, hires or tells another person to have sexual intercourse, sexual contact, or engage in

sexual conduct.

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

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

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

(e) Simulates a sexual act while observable by another.

(f) Kissing, hand holding, hugging, stroking or other physical displays of affection except for that allowed under DAI policy or facility procedure.

(2) Consensual acts are prohibited under this section.

DOC 303.15 Sexual contact or intercourse. (1) An inmate who does any of the following is guilty of sexual contact or intercourse:

(a) Has sexual intercourse.

(b) Has sexual contact.

(c) Commits an act of sexual gratification with another person.

(2) Consensual acts are prohibited under this section.

DOC 303.16 Sexual assault. An inmate who does the following is guilty of sexual assault:

(1) With force or threat of force has sexual intercourse, sexual contact or commits an act of sexual gratification with another person.

(2) Consensual acts are prohibited under this section.

DOC 303.17 Sexual assault-aggravated. An inmate who does any of the following is guilty of sexual assault-aggravated. **(1)** Causes physical injury as a result of a sexual assault.

(2) Uses a weapon in the commission of a sexual assault.

(3) Has sexual contact or sexual intercourse with a person who has not attained the age of 16 years.

(4) Consensual acts are prohibited under this section.

DOC 303.18 Threats. An inmate who communicates intent to do any of the following is guilty of threats:

(1) Physically harm, harass or intimidate that person or another;

(2) Cause damage to or loss of that person's or another person's property.; or

(3) Make an accusation he or she knows is false.

DOC 303.19 Stalking. An inmate who engages in, causes, or requests a person to engage in any of the acts described in subs. (1) to (13) directed at a targeted person is guilty of stalking:

(1) Maintaining a visual or physical proximity to the targeted person.

(2) Approaching or confronting the targeted person.

(3) Appearing at the targeted person's residence, place of employment, or places they frequent

(4) Contacting the targeted person, the person's neighbors, friends, co-workers, household member or family members.

(5) Causing the targeted person's telephone to ring repeatedly or continuously, regardless of whether a conversation ensues.

(6) Contacting in any way any person outside the institution not acquainted with the inmate who did not request such communication.

(7) Photographing, videotaping, audio taping, or, through any other means, monitoring, recording, or logging the activities of the targeted person, regardless of where the act occurs and regardless of

the means by which the monitoring, recording, or logging is conducted.

(8) Sending material by any means to the targeted person.

(9) Making information available about the targeted person by any means, whether true or false, to any person or in a manner in which the information would become available to any person.

(10) Touching or placing an object on or delivering an object to property owned, leased, or occupied by the targeted person.

(11) Seeking out in any way or possessing documents with personal identifying information pertaining to the targeted person.

(12) Possessing a photograph of, or media article pertaining to a targeted person whom the inmate has previously been found guilty of stalking. This section shall not apply to an inmate who possesses a photograph of or media article pertaining to the inmate's child, so long as it is not otherwise prohibited.

(13) Falsely representing himself or herself as the current or former spouse, boyfriend, girlfriend, close family member, relative, or household member of the targeted person.

Subchapter III — Offenses Against Institutional Security

DOC 303.20 Endangering safety. An inmate who endangers the health or safety of staff, inmates, others, or property by any means is guilty of endangering safety.

DOC 303.21 Inciting a disturbance. An inmate who encourages, directs, commands, coerces or signals one or more other persons to participate in a disturbance is guilty of inciting a disturbance.

DOC 303.22 Participating in a disturbance. An inmate who participates in a disturbance, or who remains in a group where some members of the group are participating in a disturbance, is guilty of participating in a disturbance.

DOC 303.23 Taking a hostage. An inmate who seizes, confines, or restrains one or more persons is guilty of taking a hostage.

DOC 303.24 Group resistance and petitions. An inmate who does any of the following is guilty of group resistance and petitions:

(1) Participates in any group activity which is not approved by the warden or is contrary to provisions of this chapter.

(2) Joins in or solicits another to join in any group petition or statement. The following activities are not prohibited:

(a) Authorized activity by groups approved by the warden

(b) Group petitions to the courts.

(c) Complaints properly prepared under ch. DOC 310.

(3) Participates in any activity associated with any security threat group or possesses any written materials, symbols or symbolism related to a security threat group.

DOC 303.25 Cruelty to animals. An inmate who causes bodily injury or the unauthorized death of an animal is guilty of cruelty to animals.

DOC 303.26 Escape. (1) An inmate who does any of the following without permission is guilty of escape:

(a) Leaves an institution.

(b) Leaves the custody of an employee or law enforcement personnel 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.

(e) Leaves a work or study release site.

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

(3) Any inmate who removes restraints or tampers with doors, locks, or other security devices while outside the institution is guilty of an offense.

DOC 303.27 Disguising identity. Any inmate who conceals or disguises the inmate's usual appearance is guilty of an offense.

Subchapter IV — Offenses Against Order

DOC 303.28 Disobeying orders. (1) Any inmate who disobeys a verbal or written directive or order from any employee, directed to the inmate or to a group of which the inmate is or was a member is guilty of an offense.

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

(3) Any inmate who violates any department policy, facility procedure or rule is guilty of an offense.

DOC 303.29 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 derogatory or profane writing, remarks or gestures, name calling, yelling, and other acts which are made outside the formal complaint process, which are expressions of disrespect, and which have a reasonable potential to negatively affect institution security, safety, order, and/or inmate discipline.

DOC 303.30 Soliciting staff. An inmate who does any of the following is guilty of an offense:

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

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

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

(4) Requests a staff member, an acquaintance of a staff member, or family of a staff member to purchase anything for the inmate. This subsection does not apply to anything authorized by these rules or department policy.

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

DOC 303.31 Lying. Any inmate who makes a false written or oral statement which may affect the orderly operation, safety or security of the institution is guilty of an offense.

DOC 303.32 Lying about staff. Any inmate who makes a false written or oral statement about a staff member outside the complaint review system is guilty of an offense.

DOC 303.33 Disruptive conduct. Any inmate who engages in, causes or provokes disruptive conduct, or whose actions disrupt the orderly operation of the institution, is guilty of an offense.

Disruptive conduct includes physically resisting an employee, horseplay, arguing, any behavior which is loud, offensive or vulgar, or passive behavior which disrupts the orderly operation of the institution.

DOC 303.34 Unauthorized forms of communication. Any inmate who does any of the following is guilty of an offense:

- (1) Communicates with another person by a method or with a device not authorized by the institution.
- (2) Communicates with persons where a court order exists prohibiting contact.
- (3) Communicates with persons whom the department has prohibited contact.
- (4) Communicates with a victim of a crime for which the inmate has been convicted, or a read-in offense, or victim's family unless approved by the warden.
- (5) Communicates in a manner that harms, harasses or intimidates any person.
- (6) Communicates with any person that has not attained the age of 18 unless the person is on the approved visiting list, is approved by the warden, is the inmate's minor child, or is the minor child of a close family member and the person is not the victim of the inmate's crime.
- (7) Communicates in a manner that is intended to be in code or in a manner that hinders staff's ability to readily translate, understand or interpret the communication.

DOC 303.35 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.
- (3) The legally changed name without including the name by which the inmate was committed to the department.

Commented [DU3]: With the use of fingerprinting should this include the ability to use a given name if they are committed under an alias?

DOC 303.36 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 situations:

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.

An inmate may write and seek publication of works in accordance with these rules and department policies.

- (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 obtains anything of value through any of the following is guilty of an offense.
 - (a) Violating federal or state laws, local ordinances or the rules of the department.
 - (b) The fraudulent use of information.
- (4) Any inmate who provides or possesses information that could be used to receive access to telephone or other telecommunication services that are not authorized for use by the Department is guilty of an offense.
- (5) Any inmate who provides or possesses false, fraudulent or unauthorized information that could be used to obtain money, property items, or other services of value, is guilty of an offense.
- (6) Any inmate who obtains or possesses personally identifiable information of any other person with the intent to fraudulently acquire goods or services, or to cause loss or harm, is guilty of an offense.

Subchapter V — Offenses Against Property

DOC 303.37 Theft. Any inmate who steals the property of another person or of the state is guilty of an offense.

DOC 303.38 Damage or alteration of property. (1) Any inmate who damages, destroys or alters any property of the state or of another person without written authorization by staff is guilty of an offense.

(2) Any inmate who damages, destroys, alters, or disposes of the inmate's own property, contrary to department policy is guilty of an offense.

DOC 303.39 Misuse of state or federal property. Any inmate who uses government property in an unauthorized manner is guilty of an offense.

DOC 303.40 Unauthorized transfer of property. Any inmate who gives, receives, sells, buys, exchanges, barter, lends, borrows or takes any property from another inmate or someone not on the inmate's approved visiting list without prior written authorization by the Warden is guilty of an offense.

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 or use of money or negotiable instruments. Except as specifically authorized, any inmate who has in the inmate's possession or who uses any of the following is guilty of an offense:

- (1) Coins or paper money.
- (2) A check.
- (3) A money order.
- (4) A savings bond.
- (5) A credit card, debit card, gift card, phone card, or information allowing access to or use of such cards or accounts.
- (6) Any other negotiable instrument.

DOC 303.43 Possession of intoxicants. Except as specifically authorized, any inmate who possesses any intoxicating substance is guilty of an offense.

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 or intended for use in taking an intoxicating substance into the body, is guilty of an offense.

DOC 303.45 Possession, manufacture or use of weapons. (1) Any inmate who makes or alters an item making it suitable for use as a weapon is guilty of an offense.

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

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

(4) Any inmate who uses an item as a weapon is guilty of an offense.

DOC 303.46 Possession of tobacco. (1) Any inmate who possesses a tobacco product is guilty of an offense.

(2) Any inmate who possesses materials to facilitate the use of tobacco is guilty of an offense.

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

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

- (a) Items which are not allowed.
- (b) Items in excess of the quantity allowed.

- (c) 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.
- (e) Personally identifiable information relating to any employee or the employee's close family member.

Commented [DU4]: Of employee or of inmate?

DOC 303.48 Possession of electronic communication or data storage devices. Except as specifically authorized, any inmate who possesses any electronic communication, data storage device or related accessories is guilty of an offense.

DOC 303.49 Unauthorized use of the mail. Any inmate who does any of the following is guilty of an offense:

- (1) Uses a postal service to communicate with a person with whom the inmate has been denied correspondence privileges.
- (2) Sends through the mail anything which the inmate may not have in the inmate's possession under this chapter.
- (3) Makes or alters any postage stamp or alters or erases a postal cancellation mark or possesses any postage stamp that has been altered.
- (4) Mails any letter or parcel on which is affixed a canceled postage stamp.
- (5) Uses a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.
- (6) Attempts to circumvent the rules under s. DOC 309.04 related to mail by sending a letter to a destination with the intent it be forwarded to a destination other than the address on the mailing envelope.
- (7) Sends food through the mail.
- (8) Sends a foreign substance, body fluids, or body wastes, including hair, through the mail.
- (9) Sends correspondence which harms, harasses or intimidates any person.
- (10) Falsifies the identity or location of the actual recipient of a letter or parcel.
- (11) Mailing or attempting to mail items using a non-institution mailbox or mail collection.

Subchapter VII — Movement Offenses

DOC 303.50 Punctuality and attendance. Inmates shall attend and be on time for scheduled activities. An inmate who violates this section is guilty of an offense, unless one of the following exists:

- (1) The inmate is sick and reports this fact as required by department policy.
- (2) The inmate is authorized to be in another location.
- (3) The inmate is authorized to be absent from the activity.

DOC 303.51 Loitering. Inmates shall proceed at a normal pace and without stopping or delay, following a designated route when going to and from all activities. Any inmate who violates this section or department policy relating to this section is guilty of an offense.

DOC 303.52 Leaving assigned area. Any inmate who leaves a room or area either inside or outside the institution where the inmate is required to be is guilty of an offense, unless one of the following exists:

- (1) The inmate receives permission to leave from an employee supervising the activity.
- (2) The inmate has authorization to be elsewhere at that time.

DOC 303.53 Being in an unassigned area. Any inmate who, without an employee's permission, enters or remains in a room or area either inside or outside the institution other than the one to which the inmate is assigned is guilty of an offense.

DOC 303.54 Entry into another inmate's assigned living area. Any inmate who reaches, leans or puts any object or part of the body into the assigned living area of another inmate or permits another to do the same in their assigned living area, is guilty of an offense, unless such entry is the result of one of the following:

- (1) Part of a work assignment and under the supervision of an employee.
- (2) Allowed according to department policy.

Subchapter VIII — Offenses Against Safety And Health

DOC 303.55 Improper storage. Any inmate shall keep toiletries, hobby materials, medications, cleaning supplies, food and any other items in the original containers, and in a designated area. Any inmate who stores any of these items in a different container or in an unauthorized area is guilty of an offense.

DOC 303.56 Dirty assigned living area. Any inmate who does not comply with department policy for orderly and clean assigned living area is guilty of an offense, provided the inmate had knowledge of the condition of their assigned living area and had the opportunity to clean or rearrange it.

DOC 303.57 Poor personal hygiene. (1) Any inmate whose personal hygiene is a health risk 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 comply with department policy regarding personal hygiene is guilty of an offense.

DOC 303.58 Misuse of medication. Any inmate who does any of the following is guilty of an offense:

- (1) Takes more of a prescription medication than prescribed.
- (2) Takes a prescription medication more often than 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 specified by the department.
- (5) Improperly stores or disposes of medication.
- (6) Deceives or attempts to deceive staff as to whether medication has been consumed.
- (7) Takes a non prescribed medication more often than recommended by the medications label or Health Service Unit employees.
- (8) Gives to or receives from a person any medication without authorization.
- (9) Uses or takes medication in a manner that is not prescribed or intended.

DOC 303.59 Disfigurement. (1). Any inmate who disfigures, cuts, pierces, removes, mutilates, discolors or tattoos any part of their or another person's body, is guilty of an offense.

- (2) Any inmate who possesses any item which has been used, altered, or intended to be used to disfigure cut, pierce, remove, mutilate, discolor or tattoo is guilty of an offense.

Subchapter IX — Miscellaneous Offenses

DOC 303.60 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 in accordance with department policy.

(c) 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 fails to provide a body specimen within a prescribed time frame, refuses to provide a body specimen, submit to a physical examination, or a breathalyzer test, substitutes or attempts to substitute the specimen, or introduces or attempts to introduce a foreign substance into the specimen, is guilty of an offense.

DOC 303.61 Gambling. Any inmate who gambles, is involved in gambling, or possesses any gambling material is guilty of an offense.

DOC 303.62 Refusal to work or attend school. Any inmate who refuses to perform a work assignment or attend school, is guilty of an offense.

DOC 303.63 Inadequate work or school performance. Any inmate whose work fails to meet the standards set for performance on a work assignment, including a work release placement and project crew, or school program, including study release, and who has the ability to meet those standards, or an inmate who fails to follow work/school rules or safety standards, is guilty of an offense.

DOC 303.64 Violating conditions of leave. Any inmate who violates conditions of leave imposed under ch. DOC 326 is guilty of an offense.

Subchapter X — Disciplinary Procedure And Penalties

DOC 303.65 Disciplinary violation dispositions. The institution may deal with a violation of ss. DOC 303.11 to 303.64 in the following ways:

(1) If an employee determines that a conduct report is not required, the employee may counsel and warn the inmate under s. DOC 303.66.

(2) The employee may dispose of a minor violation under s. DOC 303.77 and 303.78.

(3) Employees may refer any violation to the security director by writing a conduct report as provided under s. DOC 303.67 or an incident report if further investigation is necessary. The security director may deal with these reports as follows:

(a) Dismiss, alter or correct the conduct report as provided under s. DOC 303.68.

(b) Refer the matter to a supervisor to be disposed of in accordance with s. DOC 303.77 or 303.78 if the violation is a minor one.

(c) Refer the matter to a hearing officer to be disposed of in accordance with ss. DOC 303.79 to 303.81 if the violation is a major one.

(d) Assign the report for further investigation.

(4) The security director may refer violations of criminal law to law enforcement authorities. The institution may continue the disciplinary process under this chapter regardless of action taken by law enforcement.

(5) If the disciplinary committee finds an inmate guilty, the disciplinary committee may refer the inmate to classification to review the inmate's custody level, or location.

DOC 303.66 Offenses that do not require a conduct report. (1) The department does not require employees to write conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, employees may inform the inmate that the inmate's behavior is against the rules, discuss the inmate's behavior, offer an informal resolution 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 employee shall write a conduct report if an inmate commits a major offense listed under s.

DOC 303.71.

DOC 303.67 Conduct report. (1) Except as provided under s. DOC 303.66, any employee who observes or becomes aware of a rule violation will verify that a violation has occurred and will write a conduct report. If more than one employee knows of the same incident, only one of them will write a conduct report.

(2) In the conduct report, the employee shall describe the facts and list the sections of this chapter which were allegedly violated.

(3) If more than one conduct report is written for an inmate for the same incident, the institution shall only complete the disciplinary process on one conduct report.

DOC 303.68 Review by security office. (1) The security director shall review any conduct report not processed under ss. DOC 303.77 or 303.78 within 5 working days and do any of the following:

(a) Dismiss a conduct report.

(b) Strike any section number if the statement of facts could not support a finding of guilty of violating that section.

(c) 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) Refer a conduct report for further investigation.

(e) Determine whether the conduct report should be processed as a major or minor offense. 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:

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

2. Whether the inmate has recently been warned about the same or similar conduct.

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.

5. The value of the property involved.

6. Whether the alleged violation created a risk of serious financial impact.

7. Psychological services input for seriously mentally ill inmates.

(2) The security office shall treat any alleged violation of a rule which may result in a suspension of visiting or correspondence privileges, work or study release, or leave, as a major offense.

(3) The security office shall treat any conduct report containing at least one charge of a major offense as a major offense, even if it also includes minor offenses.

(4) The security director shall only process one conduct report for an inmate for the same incident.

(5) The security director's decision under sub. (1) is final.

DOC 303.69 Minor offenses. A minor offense is any violation of a disciplinary rule which is not a major offense under s. DOC 303.71 or which the security director has not classified as a major offense.

DOC 303.70 Minor penalties. Minor penalties are limited to one or more of the following:

(1) Reprimand

(2) Loss of recreation privileges for 1 to 60 calendar days for an inmate in general population

(3) Loss of recreation privileges for 1 to 8 calendar days for inmates in segregation

(4) Building confinement for 1 to 30 days

(5) Room/cell confinement for 1 to 15 days

(6) Loss of a specific privilege for 1 to 60 days or for 1 to 8 days for inmates in disciplinary separation.

(7) Extra duty for up to 80 hours,

(8) Restitution in accordance with ss. DOC 303.75 (5) and 303.87 (1) (i).

DOC 303.71 Major offenses. (1) A major offense is a violation of a disciplinary rule for which a major penalty may be imposed.

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

Section	Title
DOC 303.11	Assault.
DOC 303.12	Aggravated assault.
DOC 303.13	Assault on staff.
DOC 303.14	Sexual conduct.
DOC 303.16	Sexual assault.
DOC 303.17	Sexual assault—aggravated.
DOC 303.19	Stalking.
DOC 303.20	Endangering safety.
DOC 303.21	Inciting a disturbance.
DOC 303.22	Participating in a disturbance.
DOC 303.23	Taking a hostage.
DOC 303.25	Cruelty to animals.
DOC 303.26	Escape.
DOC 303.27	Disguising identity.
DOC 303.30	Soliciting staff.
DOC 303.43	Possession of intoxicants.
DOC 303.44	Possession of drug paraphernalia.
DOC 303.45	Possession, manufacture or use of weapons.
DOC 303.46	Possession of tobacco.
DOC 303.48	Possession of electronic communication or data storage devices.
DOC 303.58	Misuse of medications.
DOC 303.59	Disfigurement
DOC 303.60	Use of intoxicants

(3) Except for an offense listed under sub. (2), an offense may be designated as either a major or a minor offense.

DOC 303.72 Major penalties. A major penalty is limited to one or more of the following:

- (1)** Loss of earned good time.
- (2)** Extension of mandatory release date under s. DOC 303.87.
- (3)** Disciplinary separation under s. DOC 303.73.
- (4)** Room/cell confinement of 16 to 30 calendar days.
- (5)** Loss of recreation privileges for over 60 calendar days for inmates in the general population.
- (6)** Loss of out of cell recreation privileges for over 8 calendar days for inmates in disciplinary separation.
- (7)** Building confinement for over 30 calendar days.
- (8)** Loss of specific privileges for over 60 calendar days for inmates in the general population.
- (9)** Loss of specific privileges for over 8 calendar days for inmates in disciplinary separation.

DOC 303.73 Major penalty: disciplinary separation. (1) CONDITIONS. Disciplinary separation may not exceed the period specified in s. DOC 303.87 (2). The disciplinary committee or the hearing officer may impose disciplinary separation for a major offense. The institution shall provide inmates in 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 allow the following for each inmate in 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) Religious texts.
 - (d) Meals that are nutritionally adequate.
- (3) **OTHER PROPERTY.** The institution may allow inmates in disciplinary separation access to material pertaining to legal proceedings, law books, and other property allowed by the institution.
- (4) **VISITS AND TELEPHONE CALLS.** The institution shall permit inmates in disciplinary separation visitation and telephone calls in accordance with ch. DOC 309.
- (5) **CORRESPONDENCE.** (a) Inmates in disciplinary separation may receive and send first class mail in accordance with departmental rules relating to mail.
 - (b) Indigent inmates in disciplinary separation may, upon request, receive writing materials and postage in accordance with s. DOC 309.51 and department policy.
- (6) **SHOWERS.** The institution shall allow inmates in disciplinary separation to shower at least once every 4 calendar days.
- (7) **SERVICES AND PROGRAMS.** The institution shall provide social services, psychological and medical services, program opportunities and an opportunity to exercise for inmates in 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 disciplinary separation may not leave their cells except as needed for urgent medical or psychological attention, showers, visits, recreation and emergencies endangering their safety in the cell or other reasons as authorized by the warden. The warden may require inmates in disciplinary separation to wear mechanical restraints, as defined in s. DOC 306.02 (13), while outside their cells.
- (9) **GOOD TIME.** Inmates in disciplinary separation continue to earn good time.
- (10) **PAY.** Inmates in disciplinary separation shall not earn compensation.
- (11) **CANTEEN.** Inmates in disciplinary separation may have approved items brought in from the canteen but may not go to the canteen in person.
- (12) **SPECIAL PROCEDURES.** Institutions may establish procedures for the orderly operation of facilities for inmates in disciplinary separation.
- (13) **REVIEW OF DISCIPLINARY SEPARATION.** The warden may review an inmate's status in disciplinary separation at any time and may place the inmate in the general population at any time. The warden shall review inmates in disciplinary separation at least every 30 days.

DOC 303.74 Controlled segregation. (1) USE. A security supervisor may order into controlled segregation any inmate in segregated status who exhibits disruptive, destructive, or out of control behavior. Employees shall not place an inmate in controlled segregation unless a conduct report or incident 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 out of control behavior.

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

(2) **CONDITIONS.** The institution shall provide inmates in controlled 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.
- (e) Clothing consistent with the level of risk.

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- (f) Essential hygiene supplies.
- (g) Nutritionally adequate meals.
- (h) While an inmate is acting in a disruptive manner, the institution shall maintain close control of all property in par. (a), (e), and (f).

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(3) VISITS. Inmates in controlled segregation may not receive visits, except from their attorney or with permission from the security director or warden.

(4) SPECIAL RULES. (a) The inmate may not possess any property in the cell except that described in subs. (2) and (3), letters received while in controlled segregation, legal materials, and writing materials as long as the property does not pose a security risk. Institutions may establish procedures for the orderly operation of the facilities 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 or warden. The warden may require inmates in controlled segregation to wear mechanical restraints, as defined in s. DOC 306.02 (13), 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.

(5) GOOD TIME. If 1983 Wis. Act 528 does not apply to the inmate, the inmate shall continue to earn extra good time credit. Inmates who are eligible for positive adjustment time may earn positive adjustment time while in this status.

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(6) PAY. An inmate in controlled segregation shall earn compensation if the inmate earned compensation in the previous status.

(7) RECORDS. Staff shall visually check inmates in controlled segregation at least once every 30 minutes and make a written record or log entry at each such interval noting the condition of the inmate.

(8) CREDIT. The institution shall give an inmate in controlled segregation credit toward a term of disciplinary separation during such period of confinement.

DOC 303.75 Other penalties. The disciplinary committee, hearing officer or supervisor may impose any of the following penalties in addition to or in lieu of the penalties in ss. DOC 303.72 and 303.87:

(1) REPRIMAND. A reprimand is any oral statement to an inmate when the inmate is found guilty of an offense. The disciplinary committee, hearing officer or supervisor shall only record the reprimand if no other penalty is given.

(2) LOSS OF RECREATION PRIVILEGES. (a) 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) 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 disciplinary separation.

(3) ROOM / CELL CONFINEMENT. 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.

(4) LOSS OF A SPECIFIC PRIVILEGE. 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 that may be taken away include but are not limited to: use of inmate electronics, phone calls; participation in off grounds activities; eating meals in the dining area; and canteen privileges.

(5) RESTITUTION. Full or partial restitution may be imposed as a penalty. Restitution is payment to reimburse for the replacement or repair of stolen, destroyed and damaged property, medical bills, expenses related to an escape, or any expenses caused by the inmate's actions. Restitution will be taken from an inmate's account to satisfy the requirements to make restitution. When the amount of restitution is unknown at the time of the hearing, the hearing officer may impose an estimated

maximum restitution amount. If the actual amount of restitution is less than the estimated amount only the actual amount will be assessed. Restitution may not exceed the estimated amount.

(6) **EXTRA DUTY.** An inmate may be assigned extra work or school duty for a maximum of 80 hours or be required 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.** Building confinement may be imposed 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 period 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, and other areas as authorized.

DOC 303.76 Referral for prosecution. Notwithstanding the provisions of this chapter, the department shall work with local law enforcement and the district attorney so that violations of criminal statutes may be investigated and appropriately referred for prosecution.

DOC 303.77 Uncontested minor disposition. An employee may write a conduct report and summarily find an inmate guilty and punish the inmate for minor rule infractions in accordance with this section.

(1) **Notice.** Before an inmate is found guilty and punished under this section, an employee shall do the following:

- (a) Inform the inmate of the nature of the alleged infraction and the contemplated disposition.
- (b) Inform the inmate that a supervising officer will review the contemplated disposition, and may impose a different disposition.
- (c) Inform the inmate that the incident may be handled under this section or s. DOC 303.78.
- (d) Inform the inmate that a disposition under this section must be agreed to and is not appealable.

(2) **Procedure.** (a) If the inmate consents to the disposition, the employee shall obtain the oral or written approval of the supervisor. If the supervisor approves, the inmate shall be notified and sign the conduct report agreeing to the disposition.

(b) If the supervisor disapproves of the disposition under this section, the supervisor may do one of the following:

1. Recommend a different disposition.
2. Refer the alleged infraction for review under s. DOC 303.68.

(c) If the supervisor approves of a different disposition, the employee will inform the inmate of the supervisor's recommendation. If the inmate agrees to the disposition the inmate shall sign the conduct report.

(d) If the inmate disagrees, the report will be disposed of under s. DOC 303.78.

(3) If the matter is not referred for processing under s. DOC 303.78, the employee shall then impose the disposition or dispositions approved by the supervisor and agreed to by the inmate in accordance with s. DOC 303.70.

(4) The reporting employee shall document dispositions under this section in the record indicating the disposition and approval by the supervisor.

(5) Uncontested minor dispositions are not appealable.

DOC 303.78 Contested minor disposition

(1) An employee may process a conduct report for a minor rule infraction in accordance with this section when an inmate refuses to accept an uncontested minor disposition.

(2) The employee shall:

(a) Inform the inmate of the nature of the alleged infraction.

(b) Inform the inmate the conduct report will be forwarded to the supervisor for review and determination of disposition.

(c) Offer the inmate an opportunity to provide a statement documented by the employee on the appropriate form.

(3) The supervisor will render a decision and notify the inmate within 5 working days.

(4) If there is a finding of guilt, the supervisor will impose one or more dispositions in accordance with s. DOC 303.70.

(5) The inmate may appeal the disposition to the security director within 10 days after the inmate receives a copy of the decision. The decision of the security director is final.

DOC 303.79 Uncontested major dispositions. An employee may write a conduct report and a supervisor may summarily find an inmate guilty and discipline the inmate for major rule infractions in accordance with this section.

(1) Notice. Before an inmate is found guilty and disciplined under this section, a supervisor shall do the following:

- (a) Inform the inmate of the nature of the alleged infraction and the contemplated disposition.
- (b) Inform the inmate that the security director will review the contemplated disposition, and may impose a different disposition.
- (c) Inform the inmate that a disposition under this section must be agreed to and is not appealable.

(2) Procedure. (a) If the inmate consents to the disposition, the supervisor shall obtain the written approval of the security director. If the security director approves, the inmate shall be notified and sign the conduct report agreeing to the disposition.

(b) If the security director disapproves of the disposition under this section, the security director may do one of the following:

1. Recommend a different disposition.
2. Refer the alleged infraction for review under s. DOC 303.68.

(c) If the security director approves of a different disposition, the supervisor will inform the inmate of the security director's recommendation. If the inmate agrees to the disposition, the inmate shall sign the conduct report.

(d) If the inmate disagrees, the report will be disposed of under s. DOC 303.80.

(3) The supervisor shall document dispositions under this section in the record indicating the disposition and approval by the security director.

(4) Uncontested major dispositions are not appealable.

DOC 303.80 Contested major dispositions. (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 303.68, staff shall give the inmate a copy of the conduct report within 2 working days after review. Anytime prior to the hearing, the security director may amend the conduct report to either correct or add information or evidence to be considered at the hearing. 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 dispositions that may be imposed or other results that may occur, including but not limited to removal from programming or work release.
- (c) The right the inmate has to a full due process hearing or to waive this right in writing.
- (d) If the inmate waives the right to a full due process hearing, the inmate will be given a hearing under s. DOC 303.81.

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

1. The inmate may present oral, documentary and physical evidence, and testimony from witnesses in accordance with this section and s. DOC 303.84. No written statement from a witness may be submitted unless the person has been approved as a witness under s. DOC 303.84 and the person is unavailable to testify. No written statement by the accused inmate may be submitted. Any written statement by a witness presented in lieu of testimony must be legibly printed on no more than two sheets of paper. The disciplinary committee will reject any written statement that fails to conform to this specification and return the statement to the inmate.

2. The inmate may have the assistance of a staff representative in accordance with this section and s. DOC 303.83.

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

4. The disciplinary committee may prohibit repetitive, disrespectful or irrelevant questions.

5. If the inmate refuses to attend a hearing or is disruptive, the disciplinary 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 s. DOC 303.81. 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 notice of disciplinary hearing rights and a copy of either the approved conduct report or amended conduct report, whichever is later. Unless otherwise authorized by the security director, the institution may not hold the hearing more than 21 calendar days after the inmate receives the hearing rights notice and conduct report. 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 also 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 be held in person, by telephone, video conferencing or other virtual communication means at the discretion of the hearing officer.

(5) **HEARING.** The disciplinary committee shall conduct the due process hearing by doing all of the following:

- (a) Read the conduct report aloud.
 - (b) Permit the questioning of approved witnesses.
 - (c) Permit the offering of relevant physical evidence.
 - (d) Permit relevant direct questions or require the inmate or the inmate's staff representative to submit questions to the disciplinary committee to be asked of the witness.
 - (e) Prohibit repetitive, disrespectful or irrelevant questions.
 - (f) Mark all documentary and physical evidence received into evidence from the accused as "Submitted By The Inmate."
 - (g) If an inmate refuses to attend the hearing or disrupts the hearing and is removed, the inmate forfeits the right to present a defense or to call witnesses. The disciplinary committee will administratively review the conduct report and render a decision based upon the evidence available.
- (6) **DECISION.** After the hearing the disciplinary committee:
- (a) May deliberate in private.
 - (b) Shall consider all relevant information.
 - (c) Shall establish guilt based on a finding that it was more likely than not that the inmate committed the act.
 - (d) May find the inmate guilty or not guilty on each charge and impose a disposition if found guilty. A committee of three may make a decision if at least two of the three members agree. If the committee is comprised of two members, the decision must be unanimous.
 - (e) May refer the matter to the warden for a decision if the disciplinary committee members do not agree on a finding of guilt or a disposition.
 - (f) Shall consider any of the inmate's defenses or other mitigating factors.
 - (g) Shall inform the inmate of the decision.
 - (h) Provide the accused inmate and the inmate's staff representative, if any, a written copy of the decision with reasons for the decision.

DOC 303.81 Contested major dispositions: waiver of due process hearing. (1) NOTICE. If an inmate has waived a due process hearing under s. DOC 303.80 and the violation is not disposed of in accordance with s. DOC 303.79, the institution shall dispose of it in accordance with this section.

(2) **TIME LIMITS.** The institution may not hold the hearing until at least 2 working days after the inmate receives notice of disciplinary hearing rights and a copy of either the approved conduct report or amended conduct report, whichever is later. Unless otherwise authorized by the security director, the institution may not hold the hearing more than 21 calendar days after the inmate receives the hearing rights notice and conduct report. 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 also 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.

(3) HEARING OFFICER. The warden shall appoint one or more employees 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. The inmate has no right to a staff representative, to confront witnesses or to have witnesses testify on the inmate's behalf. The hearing officer shall conduct the hearing by doing all of the following:

(a) Read the conduct report aloud.

(b) Shall provide the inmate with an opportunity to respond to the report and make a verbal statement about the alleged violation. No written statement by the accused inmate may be submitted.

(c) Permit the offering of relevant evidence.

(d) Mark all documentary and physical evidence received into evidence from the accused as "Submitted By The Inmate."

(5) If an inmate refuses to attend the hearing or disrupts the hearing and is removed, the inmate forfeits the right to provide a statement or evidence. The hearing officer will administratively review the conduct report and render a decision based upon the evidence available.

(6) PLACE. The due process hearing may be held in person, by telephone, video conferencing or other virtual communication means at the discretion of the hearing officer.

(7) DECISION. After the hearing the hearing officer:

(a) Shall consider all relevant information.

(b) Shall render a decision on each charge.

(c) Determines guilt based on a finding that it was more likely than not that the inmate committed the act.

(d) Shall consider any of the inmate's defenses or other mitigating factors.

(e) Shall inform the inmate of the decision.

(f) Provide the accused inmate a written copy of the decision with reasons for the decision.

DOC 303.82 Appeal of contested major disposition or contested major waiver. (1) The inmate may appeal a disciplinary decision under s. DOC 303.80 or 303.81, including procedural errors, to the warden within 10 days after the inmate receives a copy of the decision.

(2) 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.

(3) The warden's decision shall be one or more of the following:

(a) Affirm the disciplinary committee or hearing officer's decision.

(b) Modify all or part of the disciplinary committee or hearing officer's decision.

~~(b)~~(c) Reverse the disciplinary committee or hearing officer's decision, in whole or in part.

~~(c)~~(d) Return the case to the disciplinary committee or hearing officer for further consideration, to complete or correct the record, to correct any procedural error, or for rehearing.

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

DOC 303.83 Due process: staff representative. (1) (a) At each institution, the warden shall designate employees to serve as staff representatives for inmates in disciplinary hearings at the institution.

(b) If an inmate or staff representative demonstrates to the warden that there is a conflict of interest in the case that would impair an staff representative's ability to perform his or her duties, the warden may assign a different employee to serve as the inmate's staff representative.

(2) The staff representative'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 staff representative may speak on behalf of the accused inmate at a disciplinary hearing or may help the inmate prepare to speak.

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DOC 303.84 Due process hearing: witnesses. (1) The accused inmate may make a request to the security director for no more than two identified witnesses in addition to the reporting employee and shall explain the relevance of the witness testimony. The inmate shall make this request within two days of the service of notice of major disciplinary hearing rights. The security director may waive the two day time limit 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 disciplinary committee may consider a legibly printed written statement limited to 500 words on no more than two sheets of paper, a transcript of an oral statement, or a 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 an employee.

(5) If the security director finds that testifying would pose a risk of harm to the witness, the disciplinary committee may consider a corroborated, confidential statement signed under oath from that witness without revealing the witness's identity or a corroborated signed statement from an employee getting the statement from that witness. The disciplinary committee shall reveal the contents of the statement to the accused inmate, except the disciplinary committee may edit or summarize the statement to avoid revealing the identity of the witness. The committee may question the witnesses, if they are available. A statement can be corroborated in any of the following ways:

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

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

(c) Two confidential statements by different persons may be used to corroborate each other.

(6) If it is not possible to get a signed statement in accordance with subs. (4) and (5), the disciplinary committee 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 employees may not attend hearings but the staff representative with the disciplinary committee's permission may contact them. The disciplinary committee may designate an employee to interview any such witness and report to the committee.

(9) The disciplinary committee may call additional witnesses as deemed necessary.

(10) After a decision has been reached by the disciplinary committee, and if a finding of guilt results, the disciplinary committee shall forward restricted or confidential information to the security director for retention in a restricted file.

DOC 303.85 Disciplinary committee. (1) A disciplinary committee shall conduct due process disciplinary hearings. At least one member of every disciplinary committee shall be a supervisor.

(2) No person who has substantial involvement in the 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) A disciplinary committee may hold a hearing even if the inmate has waived due process.

DOC 303.86 Disposition considerations. (1) In deciding the disposition for a violation or group of violations, the supervisor making uncontested dispositions or the disciplinary committee or hearing officer who is holding the hearing may consider any of the following:

(a) The inmate's overall disciplinary record, especially during the previous 12 months.

(b) The inmate's disciplinary record of the same or similar offenses.

(c) The risk of serious disruption at the institution or in the community caused by the violation.

- (d) The risk of serious injury created by the violation.
 - (e) The value of the property involved.
 - (f) The risk of serious financial impact caused by the violation
 - (g) Whether the inmate was actually aware that the inmate was committing a crime or offense at the time of the offense.
 - (h) The motivation for the offense.
 - (i) The inmate's attitude toward the offense and toward the victim, if any.
 - (j) Mitigating factors, such as coercion, family difficulties which may have created anxiety and any special circumstances.
 - (k) Psychological input as appropriate regarding mental health status of seriously mentally ill inmates at the time of the behavior.
 - (l) The risk to the security of the institution, inmates, employees or the community caused by the violation.
 - (m) Any other relevant factors.
- (2) A minor penalty may be imposed for a violation where a major penalty could be imposed.
- (3) Restitution may be imposed in addition to any other penalty.
- (4) Any combination of penalties may be imposed.

DOC 303.87 Dispositions and schedule of penalties. (1) When an inmate is found guilty of one or more violations of the disciplinary rules, one or more of the following dispositions shall be imposed, except as provided in sub. (2) and subject to the limitations under ss. DOC 303.70 and 303.72:

- (a) Reprimand.
 - (b) Loss of recreational privilege.
 - (c) Room /cell confinement.
 - (d) Building confinement.
 - (e) Loss of a specific privilege.
 - (f) Extra duty without pay.
 - ~~(g)~~ Disciplinary separation.
 - (h) 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, 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, or an inmate subject to s. 302.113 (3), Wis. Stats.
 - (i) Restitution.
- (2) The maximum disposition which may be imposed is the most severe disposition the inmate could receive for any individual offense of which the inmate is found guilty. The duration of a penalty may not exceed the duration shown in Table 303.87.

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TABLE DOC 303.87

SCHEDULE OF PENALTIES

(Maximum in days)

	Disciplin arv	Good Time	Extension of MR Date Under 1983
Offenses against bodily			
303.11 Assault	360	20	40
303.12 Aggravated assault	360	20	40
303.13 Assault on staff	360	20	40
303.14 Sexual conduct	360	20	40
303.16 Sexual assault	360	20	40
303.17 Sexual assault-	360	20	40
303.18 Threats	180	15	30
303.19 Stalking	360	20	40
Offenses against institutional			
303.20 Endangering safety	360	20	40
303.21 Inciting a disturbance	360	20	40
303.22 Participating in a	360	20	40
303.23 Taking a hostage	360	20	40
303.24 Group resistance and	360	20	40
303.25 Cruelty to animals	360	20	40
303.26 Escape	360	20	40
303.27 Disguising identity	180	15	30
Offenses against order			
303.28 Disobeying orders	360	15	30
303.29 Disrespect	180	15	30
303.30 Soliciting staff	360	20	40
303.31 Lying	180	15	30
303.32 Lying about staff	360	20	40
303.33 Disruptive conduct	360	20	40
303.34 Unauthorized forms of	360	20	40
303.35 False names and titles	180	15	30
303.36 Enterprises and fraud	360	20	40
Offenses against property			
303.37 Theft	360	20	40
303.38 Damage or alteration of	360	20	40
303.39 Misuse of state or federal	180	10	20
303.40 Unauthorized transfer of	180	10	20
303.41 Counterfeiting and forgery	360	20	40
Contraband offenses			
303.42 Possession or use of	360	20	40
303.43 Possession of intoxicants	360	20	40
303.44 Possession of drug	360	20	40
303.45 Possession, manufacture or use of weapons	360	20	40
303.46 Possession of	360	20	40
303.47 Possession of contraband -	180	10	20
303.48 Possession of electronic	360	20	40
303.49 Unauthorized use of the	360	20	40

Movement offenses

303.50 Punctuality and	180	10	15
303.51 Loitering	180	10	15
303.52 Leaving assigned area	180	15	30
303.53 Being in unassigned area	180	15	30
303.54 Entry of another inmate's	360	20	40

Offenses against safety and

303.55 Improper storage	90	5	10
303.56 Dirty quarters	90	5	10
303.57 Poor personal hygiene	90	5	10
303.58 Misuse of medication	360	20	40
303.59 Disfigurement	360	20	40

Miscellaneous

303.60 Use of intoxicants	360	20	40
303.61 Gambling	180	15	30
303.62 Refusal to work or attend	90	5	10
303.63 Inadequate work or school	120	10	20
303.64 Violating conditions of	360	20	40
303.04 Conspiracy	Maximum for completed		
303.05 Attempt	Maximum for completed		
303.06 Aiding and abetting	Maximum for completed		

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

(b) Disciplinary separation shall be given for a specific term of 1 to 30 days, and thereafter in increments of 30 days not to exceed the maximum penalty under Table 303.84.

(c) More than one minor or major disposition may be imposed for a single offense and both a major and minor disposition 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 disposition only where the violation is listed as a major offense under s. DOC 303.68 (2) or is designated as a major offense by the security director because of its nature or the inmate's prior record.

(e) 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

(f) For those inmates to whom 1983 Wis. Act 528 or s. 302.113(3) Wis. Stats. applies, the number of days the mandatory release date or term of confinement portion of a bifurcated sentence 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 or term of confinement extended but shall not exceed the following:

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

(g) TLU time may not be considered as time served for disciplinary disposition purposes.

DOC 303.88 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 uncontested disposition procedure.

(b) If the inmate was found guilty by a supervisor, hearing officer or disciplinary committee.

(c) The department shall make necessary corrections to the record as required by appeal.

(d) The department shall take necessary steps to remove any record of a conduct report if there is an order to expunge.

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(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 release decisions, nor may the department include them in any inmate's case record.

DOC 303.89 Evidence. (1) 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.

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

(b) A disciplinary committee may refuse to hear or admit relevant evidence for any of the following reasons:

1. The evidence is not reliable.
2. The evidence, even if true, would be of marginal relevance.
3. The evidence is unduly cumulative or repetitious.
4. The evidence is requested more than two days after the service of notice of major disciplinary hearing rights.

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

DOC 303.90 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.

DOC 303.91 Warden-initiated review. The warden may at any time initiate a review of the decision and disposition of a conduct report and act on it unilaterally.

DOC 303.92 Administrative assignment or transfer. Notwithstanding any action taken under this chapter, the department may administratively change an inmate's work, program, or housing assignment, restrict privileges, or transfer the inmate to another institution.

SECTION 2. DOC 303 Appendix is repealed.

SECTION 3. DOC 302.17 (11) (c), 302.21 (3) (b) 1., 302.33 (1) (b), 302.34 (1) (a), 302.35 (1) (a), 304.04 (2), 306.05 (4) (a), 308.03 (4) (intro), (b), and (d), 308.04 (4) (e) 5., (5) (a) 2., and (10), 308.04 Note to sub. (4), 309.02 (5), 309.04 (4) (e) 2. and (6), 309.20 (4) (a) 5., (4) (b) 3., (4) (c) 3., (4) (d) 2., and (7), 309.65 (5) (c) 2., 310.08 (3), 310.10 (7), 303 APPENDIX DOC 310.16, PARA 3, 311.07 (2) (f) 3., 313.08 (10), 324.12 (1) (j), 324.13 (6), 327.09 (1) (a), (2) (intro), (2) (b), (2) (c), (2) (d) (intro), (2) (e) (intro), (2) (f), (2) (h), (2) (i), (2) (m) 1., (2) (q) (intro), (2) (r), (2) (s), (2) (t), (2) (u), (2) (v), (2) (w), (2) (x) (intro), (2) (y), (2) (z) (intro), (3), 327.13 (intro), (2), (3), (4), (5), (6), (7), (8), (9), and (10), are amended to read:

DOC 302.17 (11) (c) Referral by the ~~institution adjustment committee~~ disciplinary committee as defined in s. DOC ~~302.21(4)~~ 303.02(12).

DOC 302.21 (3) (b) 1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, unless that date is extended pursuant to s. ~~DOC 303.84~~ DOC 303.87.

DOC 302.33 (1) (b) The inmate has not received a major penalty under s. ~~DOC 303.68 (1) (a)~~ DOC 303.72.

DOC 302.34 (1) (a) The inmate has not received a major penalty under s. ~~DOC 303.68 (1)~~ DOC 303.72.

DOC 302.35 (1) (a) The inmate has not received a major penalty under s. ~~DOC 303.68 (1)~~ DOC 303.72 on any day counted toward positive adjustment time.

DOC 304.04 (2) Inmates who otherwise meet the eligibility requirements of this section may be assigned to the secure work program as a disciplinary disposition under s. ~~DOC 303.72 (9)~~ DOC 303.75 (6).

DOC 306.05 (4) (a) Inmates in protective confinement shall have privileges and property at least equivalent to privileges and property allowed to inmates in program segregation under s. ~~DOC 303.70~~ DOC 303.73.

DOC 308.03 (4) (intro) "Disturbance" means a riot or other disturbance to institutional order caused by a group of 2 or more inmates that may include one ~~any~~ of the following:

DOC 308.03 (4) (b) The taking of a one or more hostage hostages ~~by an inmate~~.

DOC 308.03 (4) (d) The refusal by 2 or more inmates, acting in concert, to comply with an order, ~~to return to cells or rooms~~.

DOC 308.04 (4) (e) 5. The right to assistance of ~~an advocate~~ staff representative in accordance with s. ~~DOC 303.78~~ DOC 303.83.

DOC 308.04 (5) (a) 2. Attempt to obtain a signed statement under oath from the witness and determine that the statement is corroborated in accordance with s. ~~DOC 303.86 (4)~~ DOC 303.84 (5) if the designated staff member finds a significant risk of bodily injury.

DOC 308.04 (10) An inmate's progress in administrative confinement shall be reviewed by the ACRC at least every 6 months following the procedures for review under this section. Monthly progress will be reviewed consistent with the segregation review process as outlined in s. ~~DOC 303.70 (12)~~ DOC 303.73 (13).

DOC 308.04 Note to sub. (4). Sub (4) gives the inmates certain rights. It requires that adequate written notice of the review be given the inmate. If necessary, a verbal explanation of the notice should be made in accordance with the inmate's needs. The rights also include the right to present and question a witness in the same manner as for due process hearings, s. ~~DOC 303.84~~ DOC 303.84.

DOC 309.02 (5) Contraband has the meaning given in s. ~~DOC 303.10~~ DOC 303.02(8).

DOC 309.04 (4) (e) 2. If the letter is outgoing mail, the department shall provide the sender a notice stating why the letter was not delivered. Correctional staff shall dispose of the letter consistent with s. ~~DOC 303.10~~ DOC 309.20 (4).

DOC 309.04 (6) The department shall dispose of contraband found through inspections conducted pursuant to this section in accordance with s. ~~DOC 303.10~~ DOC 309.20 (4).

DOC 309.20 (4) (a) 5. Unclaimed property shall be held for a one year period after the date of release, after which time the property shall be disposed of in accordance with s. ~~DOC 303.10 (3)~~ DOC 303.09 (2). The institution shall not be responsible for damage due to prolonged storage.

DOC 309.20 (4) (b) 3. Unclaimed property shall be held for a one year period after the date of death, after which time the property shall be disposed of in accordance with s. ~~DOC 303.10 (3)~~ DOC 303.09 (2). The institution shall not be responsible for damage due to prolonged storage.

DOC 309.20 (4) (c) 3. Unclaimed property shall be held for a one year period after the date of death, after which time the property shall be disposed of in accordance with s. ~~DOC 303.10 (3)~~ DOC 303.09 (2).

DOC 309.20 (4) (d) 2. Items which are contraband shall be disposed of in accordance with s. ~~DOC 303.10~~ DOC 303.09 (2).

DOC 309.20 (7) Contraband. The institution shall consider items not permitted at an institution or permitted but not on an inmate's property list under sub (2) contraband and subject the items to seizure and disposition under s. ~~DOC 303.10~~ DOC 303.09 (2). The institution may subject an inmate to discipline for possessing contraband under ss. DOC 303.43 through ~~303.48~~ 303.49.

DOC 309.65 (5) (c) 2. A group that he or she has reasonable grounds to believe is a ~~inmate gang~~ security threat group as defined in s. ~~DOC 303.02 (9)~~ DOC 303.02 (30).

DOC 310.08 (3) After exhausting the appeal process in s. DOC 302.18, ~~303.75,~~ ~~303.76~~ 303.78, 303.80, 308.04, or 326.06, an inmate may use the ICRS to challenge only the procedure used in the program review process, the disciplinary process, the administrative confinement review process, or by any decisionmaker acting on a request for authorized leave.

DOC 310.10 (7) The department shall not consider group complaints filed in accordance with this section a group petition within the meaning of s. ~~DOC 303.20~~ DOC 303.24 and shall not subject the complainants to discipline under that section.

DOC 303 APPENDIX DOC 310.16, PARA 3 This is not to say that inmates are free to make threatening or false statements about staff, knowing they are false, especially if those false statements are made public. There have been malicious lies about staff corruption and sexual behavior made in the ICRS. This rule does not prohibit disciplinary action for the bad faith use, or rather abuse, of the ICRS under ~~DOC 303.274~~ DOC 303.32.

DOC 311.07 (2) (f) 3. The right to ~~an advocate~~ a staff representative in accordance with s. ~~DOC 303.78~~ DOC 303.83.

DOC 313.08 (10) Reporting for work or while at work manifesting any evidence of having used or being under the influence of an intoxicating substance, as defined in s. ~~DOC 303.02 (14)~~ DOC 303.02 (23), or in possession of an intoxicating substance or drug paraphernalia or device ~~as defined in~~ under s. DOC 303.44.

DOC 324.12 (1) (j) Failure to report or return from a work or study placement may be referred for prosecution as an escape under s. 946.42(3), Stats., and may be administratively charged with an escape under s. ~~DOC 303.22~~ DOC 303.26.

DOC 324.13 (6) A hearing shall be conducted in accordance with the procedures under ss. ~~DOC 303.75 to 303.84~~ DOC 303.78, 303.80 to 303.87, modified as follows:

(a) In accordance with s. ~~DOC 303.84~~ DOC 303.80 with the permission of the hearing officer, the work release coordinator shall interview employers or school officials who have relevant evidence and report to the hearing officer.

(b) A penalty listed in s. ~~DOC 303.84~~ DOC 303.87 need not be imposed as a result of a finding of guilt.

DOC 327.09 (1) (a) An inmate may not possess or use any form of alcohol, or other intoxicating substance as defined under s. ~~DOC 302.02 (14)~~ DOC 303.02 (23) except as authorized and directed by an approved physician.

DOC 327.09 (2) (intro) All offenses listed in ss. ~~DOC 303.42 to 303.634~~ DOC 303.11 to 303.64 apply to inmates in community residential confinement placement with the following exceptions, substitutions and modifications;

DOC 327.09 (2) (a) Section ~~DOC 303.45~~ DOC 303.14 on sexual conduct does not apply.

DOC 327.09 (2) (b) The following is substituted for s. ~~DOC 303.48~~ DOC 303.21 on inciting a riot disturbance: Any inmate who intentionally encourages, directs, commands, coerces or signals one or more other persons to participate in a riot disturbance is guilty of an offense. "Disturbance" ~~means a serious disturbance caused by a group of 2 or more persons which creates a serious risk of injury to persons or property~~ has the meaning given in s. DOC 303.02 (14).

DOC 327.09 (2) (c) Section ~~DOC 303.20~~ DOC 303.24 on group resistance and petitions does not apply.

DOC 327.09 (2) (d) (intro) The following is substituted for s. ~~DOC 303.05~~ DOC 303.04 on conspiracy:

DOC 327.09 (2) (e) (intro) The following is substituted for s. ~~DOC 303.22~~ DOC 303.26 on escape:

DOC 327.09 (2) (f) The following is substituted for s. ~~DOC 303.27~~ DOC 303.31 on lying: Any inmate who knowingly makes a false written or oral statement to a staff member is guilty of an offense.

DOC 327.09 (2) (h) Section ~~DOC 303.30~~ DOC 303.34 on unauthorized forms of communication does not apply.

DOC 327.09 (2) (i) The following is substituted for s. ~~DOC 303.32~~ DOC 303.36 on enterprises and fraud: Any inmate who offers to buy or orders any item with the intention of not paying for it or incurs debt without permission is guilty of an offense.

DOC 327.09 (2) (m) 1. Except as specifically authorized by CRC staff, any inmate who knowingly has in his or her possession any intoxicating substance as defined under s. ~~DOC 303.02(14)~~ DOC 303.02(23) is guilty of an offense; ~~and~~.

DOC 327.09 (2) (q) (intro) The following is substituted for s. ~~DOC 303.49~~ DOC 303.50 on punctuality and attendance: Inmates shall attend and be on time for all events, classes, meetings, appointments, job and other activities for which they are scheduled. Any inmate who violates this section is guilty of an offense, unless one of the following applies:

DOC 327.09 (2) (r) Section ~~DOC 303.50~~ DOC 303.51 on loitering does not apply;

DOC 327.09 (2) (s) The following is substituted for s. ~~DOC 303.54~~ DOC 303.52 on leaving assigned area: Any inmate who leaves an area where he or she is attending a scheduled activity other work or school assignment before the activity or the work or school assignment is over is guilty of an offense, unless absence from the assigned area has been approved by an appropriate CRC member;

DOC 327.09 (2) (t) Section ~~DOC 303.52~~ DOC 303.50 entry of into another inmate's ~~quarters~~ assigned living area does not apply.

DOC 327.09 (2) (u) Section ~~DOC 303.54~~ DOC 303.55 on improper storage does not apply.

DOC 327.09 (2) (v) Section ~~DOC 303.55~~ DOC 303.56 on dirty ~~quarters~~ assigned living area does not apply.

DOC 327.09 (2) (w) Section ~~DOC 303.56~~ DOC 303.57 on poor ~~grooming~~ personal hygiene does not apply.

DOC 327.09 (2) (x) (intro) The following is substituted for s. ~~DOC 303.57~~ DOC 303.58 on misuse of ~~prescription~~ medication: Any inmate who knowingly does any of the following is guilty of offense:

DOC 327.09 (2) (y) Section ~~DOC 303.59~~ DOC 303.60 on use of intoxicants applies except that subs. (2) and (3) are modified to include tests, examinations and specimens requested in accordance with this chapter.

DOC 327.09 (2) (z) (intro) The following is substituted for s. ~~DOC 303.63~~ DOC 303.28 (3) on violations of institution policies and procedures:

DOC 327.09 (3) In addition to the rules listed under sub. (1) and the list of offenses under ss. ~~DOC 303.12 to 303.63~~ DOC 303.11 to 303.64 as affected by sub. (2), CRC

staff may develop additional written rules and specific conditions for an inmate's CRC placement. These specific rules and conditions may be modified at any time with written notice to the inmate.

DOC 327.13 (intro) Disciplinary procedure and penalties. The due process fact finding hearing to determine if the inmate has committed a violation under s. DOC 327.12 shall be conducted in accordance with the procedures under ss. ~~DOC 303.64 to 303.87~~ DOC 303.65 to 303.92.

DOC 327.13 (2) Under s. ~~DOC 303.67~~, DOC 303.68 on review by the security office the person who wrote the conduct report shall send it to the department supervisory staff person designated to review conduct reports in his or her area within 24 hours after writing the conduct report. The staff person who is designated to review the conduct report shall review it under s. ~~DOC 303.67~~ DOC 303.68 within 24 hours after receipt.

DOC 327.13 (3) Under s. ~~DOC 303.68 (3)~~ DOC 303.71(2) in addition to the listed offenses, the violation of any of the following sections is a major offense: s. DOC 303.43 on possession of intoxicants; s. DOC 303.44 on possession of drug paraphernalia; s. ~~DOC 303.54~~ DOC 303.52 on leaving assigned area; and s. ~~DOC 303.54~~ DOC 303.53 on being in an unassigned area.

DOC 327.13 (4) Under ~~DOC 303.76(4)~~ DOC 303.80(1) on hearing procedure for major violations, a copy of the approved conduct report shall be given to the inmate within 4 working days after approval under s. ~~DOC 303.67~~ DOC 303.68.

DOC 327.13 (5) Under ~~DOC 303.76 (4)~~ DOC 303.80 (5) the due process hearing may take place at the CRC residence, any state correctional institution, a county jail or other facility designated by the department.

DOC 327.13 (6) Section ~~DOC 303.78(4)~~ DOC 303.83 is modified to read: The superintendent may designate or hire staff members to serve as ~~advocates~~ staff representatives for inmates in disciplinary hearings at the institution, or staff members may volunteer to serve as ~~advocates~~ staff representatives. The superintendent shall assign ~~advocates~~ staff representatives to inmates. If an inmate objects to the assignment of a particular ~~advocate~~ staff representative because the ~~advocate~~ staff representative has a known and demonstrated conflict of interest in the case, the superintendent shall assign a different staff member to serve as the inmate's ~~advocate~~ staff representative.

DOC 327.13 (7) Under s. ~~DOC 303.84 (3)~~ DOC 303.84 (4), if an inmate witness must be transported to another institution or facility to testify, the inmate does not have to attend the disciplinary hearing. However, the hearing officer shall attempt to get a signed statement from the witness to be used at the disciplinary hearing or the ~~advocate~~ staff representative shall attempt to interview the witness and report on the testimony to the committee in lieu of a personal appearance by the witness.

DOC 327.13 (8) Under ss. ~~DOC 303.75 (3)~~ and ~~303.82~~ DOC 303.78 and 303.85, any department staff member designated by the superintendent may serve on an ~~adjustment disciplinary committee~~ or serve as a hearing officer.

DOC 327.13 (9) A penalty listed in s. ~~DOC 303.84~~ DOC 303.87 need not be imposed as a result of a finding of guilt.

DOC 327.13 (10) Under ~~ss. DOC 303.69 and 303.70~~ s. DOC 303.73 adjustment segregation or program segregation may be served in any state correctional institution, a county jail or other facility designated by the department to hold CRC adjustment segregation or program segregation status.

DOC 327.15 (6) (d) Items not permitted under this section or under an inmate's special conditions of CRC placement are contraband. They may be seized in accordance with s. ~~DOC 303.40~~ DOC 303.09. An inmate may be subject to discipline for possessing contraband.

SECTION 4. DOC 308.03 (6) and (8), 309.02 (13), 309.55 (e) 4., 5., and 6., 327.09 (2) (g), (j), and (n) are repealed.

SECTION 5. DOC 308.03 (8m), 309.55 (4) (e) 4. and 5. are created to read:

DOC 308.03 (8m) "Security threat group" means a group of individuals which threatens, intimidates, coerces or harasses others or engages in activities which violates or encourages the violation of statutes, administrative rules or departmental policies or institutional procedures

DOC 309.55 (4) (e) 4. Disciplinary separation under s. DOC 303.73.

DOC 309.55 (4) (e) 5. Controlled segregation under s. DOC 303.74.

SECTION 6. Effective date: 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.

EFFECTIVE DATE: 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.

FISCAL ESTIMATE: See attached.