APPENDIX

Note: HSS 302.01. HSS 302.01 requires that each newly arrived resident at a correctional institution participate in the A&E process. The rule applies to all correctional residents except those who have recently been evaluated in the A&E process. (Those individuals undergo a similar review through the program review procedure. See HSS 302.17-302.18). If an offender is sentenced or committed to an institution which does not have an established A&E Program, the offender usually will be transferred to an institution which has one, to complete A&E. Those who are not so transferred will have undergone A&E in the community.

Most of the residents who go through the A&E process have been sentenced recently under the criminal code. A few are people committed to the department under the Sex Crimes Act who have been transferred to a correctional institution. (s. 975.08 (1), Stats.)

Others required to go through A&E are people whose parole, mandatory release, or probation was revoked. Because there is sometimes a substantial change in the needs of these people since their status was last reviewed, it is required that they go through the A&E process. The elements of the A&E process are fully described in chapter HSS 302.

For helpful discussions of the elements of the classification process, see *American Correctional Association, Manual of Correctional Standards* (Third ed., 1966); *National Advisory Commission on Criminal Justice Standards and Goals, Corrections* (1973); *Krantz, et. al. Model Rules and Regulations on Prisoners' Rights And Responsibilities* (1973) (hereinafter "Klantz, et. al. Model Rules."); *American Bar Association; Tentative Draft of Standards Relating to the Legal Status of Prisoners* (1977) (hereinafter "*American Bar Association*); Commission on Accreditation For Corrections, Manual of Standards for Adult Correctional Institutions (1977) (hereinafter "*ACA Accreditation Standards*").

Note: HSS 302.02. Among the objectives of the correctional system are protection of the public through appropriate correctional supervision and the reassimilation of the offender into the community. These require an assessment of the offender's needs and objectives, assignment to an appropriate institution and program, motivation of the offender, and periodic review of the offender's progress. The A&E process is the initial effort to orient, classify and assign offenders in the Wisconsin correctional system. Its purposes are stated in HSS 302.02.

The American Correctional Association said the following about classification, a significant part of A&E.

> Classification . . . contributes to a smoothly, efficiently operated correctional program by the pooling of all relevant information concerning the offender, by devising a program for the individual based upon that information, and by keeping that program realistically in line with the individual's requirements. It furnishes an orderly method to the institution administrator by which the varied needs and requirements of each inmate may be followed through from commitment to discharge. Through its diagnostic and coordinating functions, classification not only contributes to the objective of rehabilitation, but also to custody, discipline, work assignments, officer and inmate morale and the effective use of training opportunities. Through the data it develops, it assists in long-range planning and development, both in the correctional system as a whole and in the individual institutions. *Handbook on Classification in Correctional Institutions*, American Correctional Association, New York, 1947, p. 10.

At present, A&E consists of a review of pertinent records, extensive individual conferences with the resident, a medical examination, psychological testing, testing for vocational aptitude and interest, and group conferences designed to provide the resident with information about the resources and requirements of the correctional system. A&E is conducted by specialized staff members who report to the bureau of institutions except at Fox Lake and Taycheedah where regular staff are utilized. These rules permit transferring residents from institutions which do not have established A&E programs to institutions which do. HSS 302.14 (3).

If the A&E process is centralized in the Wisconsin system, it is likely that specialized staff will conduct A&E for all residents. No effort is made to identify the particular tests to be administered, since it is thought that this is best left to correctional staff and because resources are not available to permit uniform testing at all institutions. This rule and other

rules in this chapter substantially fulfill the requirement of *ACA Accreditation Standards* 4356.

Note: HSS 302.03. Typically, the A & E process takes 4 weeks. Six weeks is set as the limit on the process to insure that it is done in a timely fashion, and to take into account that delay in the process is sometimes inevitable. While the appropriate duration of A & E has seldom been addressed by scholars or professional groups, 30 days is thought to be appropriate. See, e.g., *American Bar Association*, supra, Standard 3.5., *ACA Accreditation Standards* 4364.

Subsection (2) gives the authority to delay the starting time of the A&E process. "Unusual circumstances" may include a resident being committed to a mental health institution; when a work stoppage by employes makes the usual functioning of the institution impossible; or when a disturbance, emergency or natural disaster requires a suspension of normal routine.

Note: HSS 302.04. HSS 302.04 (1) provides that residents in the A&E process may be separated from the general population. The rule is designed to prevent the spread of communicable diseases, and to protect the particularly vulnerable. Given the large numbers of people who enter institutions, it is important to insure that any who pose a threat to the health of others because they are carriers of disease be isolated until the danger is over.

The second reason for separation set out in HSS 302.04 (1) may not be so apparent. Most newly convicted offenders sentenced to prison go to a maximum security institution. There, they may live among people who are stronger and more sophisticated. Such people may victimize the weak and unsophisticated. It is important for the authority to exist to separate the new arrivals, until they can be transferred to institutions that can take their needs into account. Such separation is not punitive and is not intended to include the loss of any privileges. For a general discussion of the importance of such segregation, see *Krantz, et. al. Model Rules*, supra at 82-85. See also, *ACA Accreditation Standards* 4360.

Subsection (2) gives the A&E director and security director the authority to screen residents at the beginning of A&E. It is intended that the authority in this rule be exercised only if A & E is centralized at one institution. The superintendent may order separation and restriction on movement based on the recommendation of the A&E director and security director. The resources are not presently available to do such screening. However, if the A & E process is centralized at one institution, it will be desirable to systematically screen residents at the beginning of A & E. This is so because of the large numbers of residents who will be in the A & E process at one time and because these people will have varying security needs. This subsection will permit adequate supervision of those who require it, while not unnecessarily restricting those who can move about more freely. It is not intended that the privileges of any residents be suspended by this rule, nor that decisions made for the duration of A&E be determinative of the security classification and program assignment made at the end of A&E. Rather, the purpose of HSS 302.04 (2) is to permit systematic initial screening to insure that the A&E process is conducted in a secure manner.

Note: HSS 302.05. HSS 302.05 and 302.06 indicate the minimal requirements for orientation of new residents.

The purposes of orientation are stated in subsection (1). A resident's first weeks in a correctional institution can be critical in forming attitudes and in motivating residents.

The American Correctional Association has indicated:

No time may be more important to the prisoner in determining his later attitudes and patterns of behavior than when he enters the institution. Few prisoners bring with them any reality-based understanding of the correctional program or any real hope of profiting from this experience. Most have erroneous preconceptions gained from other prisoners while in jail awaiting trial and commitment . . .

American Correctional Association,
Manual of Correctional Standards
(Third ed. 1966), p. 435.

It is essential that orientation and A & E begin the correctional process in a positive manner. This means that residents must be acquainted with appropriate correctional and personal objectives; they must understand the desire of the staff to help achieve them; and they must be motivated to become involved in the correctional process constructively. These purposes, of course, cannot be achieved in a short period of time. Rather it takes demonstrated commitment to them that changes attitudes and motivates offenders. Orientation is the appropriate place to begin to achieve these goals.

For a resident to make the most beneficial use of the corrections system, he or she must know the opportunities and institutions in the system. The resident cannot be meaningfully involved in A & E or classification unless this information is available, along with the criteria used in classification. Subsections (2) (a), (b), (c) and (g) provide for communication of this information to residents.

Sub. (2) (d) requires an explanation of the dates to which residents attach importance. While the actual dates for each resident are provided pursuant to HSS 302.21 (2), it is also important to explain how these dates are determined to enable the resident to check them.

Sub. (2) (e) and (f) require that the parole and MAP criteria and procedure be explained. Residents are quite naturally interested in release and often have misconceptions about the process and criteria. An explanation is helpful in clarifying these matters.

Sub. (2) (h) and (i) are designed to provide information about available resources in the system. Again, utilization requires information. Legal services are singled out because residents are often quite concerned about their availabilty. It is important if access to courts is to be effectuated, that residents be aware of the assistance available to them.

No mention is made in the rule about available medical services. This is because responsibility for medical and dental services for residents was placed in the division of health in the 1977 reorganization of the department of health and social services. It is anticipated that the availability of medical services will be addressed in a departmental rule.

Sub. (2) (j) provides that information about review of confinement be available to residents. In Wisconsin, the defendent's trial attorney is required to inform the client of what may be done to secure review of a conviction. Typically, a court clerk will also read the information to the offender at sentencing. *Whitmore V. State*, 56 Wis. 2d 706, 203 N.W. 2d 56 (1973). Unfortunately, the information is often communicated when the individual is preoccupied, having just been sentenced, or too hurriedly. To enable residents to exercise their appellate rights, it is required that the necessary information be given residents during orientation. See *American Bar Association, supra*, Standard 3.5.

At present, each resident is accorded the opportunity to be interviewed individually by a law student under the supervision of a lawyer as part of the Legal Assistance to Institutionalized Persons Program at the University of Wisconsin Law School. This typically occurs during A&E. At these interviews, residents are provided with information about possible legal concerns in an informal interview that is conducive to identifying their problems and answering any questions they may have about any legal concern. A dialogue between law student and the resident is effective because it provides the resident and student lawyer with an opportunity in an informal setting to identify matters that may interfere with adjustment to the institution and with ultimate reassimilation into the community. This satisfies the requirements of HSS 302.05 (2) (i) and (j). See *Krantz, et. al., Model Rules*, at 88-89.

Information about legal services is most helpful when it is accompanied by the offer of legal assistance, as is presently the case. Providing information and services at an early stage in the resident's confinement is an integral part of the A & E process. It also is designed to partially satisfy the requirements of *Bounds V. Smith*, 430 U.S. 817 (1977).

This rule provides for substantial compliance with *ACA Accreditation Standards* 4362-4363.

Note: HSS 302.06. HSS 302.06 provides that the information required to be provided in HSS 302.05 should be available in writing. A meaningful orientation process must include information communicated orally and in writing. Oral communication permits informal question and answer periods and also communicates to those who cannot read. It permits elaboration and provides an opportunity to stress particular points.

On the other hand, many residents because of the shock they experience upon confinement, are not attentive to oral presentation. Or, they may, upon reflection, desire to clarify points made at an oral orientation session. Therefore, it is desirable to have information available in writing. This is in substantial conformity with the Model Rules prepared by *Krantz, et. al.*, supra.

The rules of conduct are to be provided in writing. HSS 302.06 (1). Other institution rules are provided to residents, in the manner specified in HSS 302.07.

Note: HSS 302.07. HSS 302.07 is written to insure that handicapped residents receive adequate orientation in the correctional system. Rather than attempt to identify all the possible handicaps people in the correctional system may have, the requirement is stated in a

broad fashion to insure that all needs are met. For example, the needs of the developmentally disabled may be different from the needs of the blind. The rule requires that orientation be individualized in accordance with these different disabilities.

Note: **HSS 302.08.** Many residents are transferred at the end of A & E and at other times. HSS 302.08 provides that residents who are transferred are informed of the programs and rules at the institution to which they go. Many institutions provide more extensive orientation programs. Those provided for in the rule are the minimum that must be provided. The rule is not intended to discourage more extensive orientation programs at institutions where resources permit. Rules other than the rules of conduct are to be provided in accordance with HSS 302.06.

Note: **HSS 302.09.** HSS 302.09 is designed to make available to those who cannot read English the rules of conduct in the institution. These residents may be unable to read either because they are illiterate or because English is not their native language. People in the latter group usually are Spanish speaking, and some of these people have difficulty understanding English. To accommodate their needs, there will be recordings in Spanish.

Attempts should also be made to meet the needs of residents who understand neither English or Spanish. Recordings may not be the most effective way of doing so, and institutions are given the flexibility to devise methods in accordance with their resources and the needs of the residents.

Note: **HSS 302.10.** While A & E is conducted by correctional staff, residents sometimes conduct orientation for resident run programs. Alcoholics Anonymous is an example of such a program. At some institutions, resident groups such as the Para-legal Group, the Black Culture Group, the Latino Group and the members of the Reintegration Advisory Program have been offered the opportunity to hold orientation sessions. HSS 302.10 provides the A & E director and the superintendent with the authority to permit resident involvement in orientation. The rules for resident orientation are substantially in accord with *Krantz, et.al. Model Rules and Regulations On Prisoners' Rights and Responsibilities* (1973).

Note: **HSS 302.11.** HSS 302.11 states the broad purposes of what is generally referred to as "Classification," but which specifically is security classification and program assignment.

Classification gets to the very heart of the correctional process, because it is the assignment of a security classificattion which dictates the degree of supervision of particular residents and the assignment to programs designed to educate, train and treat residents.

It is through these means that the goals of social reintegration and protection of the public are realized.

The security classification and program assignment are integrated decisions in an integrated correctional system like Wisconsin's. While many programs are available at more than one correctional institution, many are not. It is necessary to have the appropriate security classification in order to reside at particular institutions and be involved in programs at those institutions. A resident otherwise qualified for an appropriate program may not be able to participate in it without the necessary security classification. Similarly, a resident with the appropriate security classification for a particular institution must also be qualified and admitted to a program there, to be transferred.

In these rules, neither treatment nor security is given priority. Rather, recognition is given to the fact that both proper security classification and program assignment are critical to the attainment of correctional objectives. It is through appropriate classification that the correctional objectives of the social reintegration of the offender and the protection of the public begin to be realized.

Of course, classification is only one step toward the realization of correctional objectives. By itself, it does not provide treatment or security. Adequate programs and a secure environment in which to conduct those programs are essential to the realization of correctional objectives. A good classification system is an empty promise without them. The rules relating to security and programs which follow are designed to prescribe and regulate programs and security.

Note: **HSS 302.12.** HSS 302.12 (1) identifies the five security classfications used in Wisconsin and the custody requirements for each one. The custody requirements are divided into four categories which are, for the most part, self-explanatory. "Supervision" refers to the general assignment of the resident. For Medium Outside and Minimum Security residents, this assignment may be outside the institution. Such an assignment is typically to a job or program. "Movement Within Institution" refers to the requirements when a resident moves from one assigned place to another. "Movement Outside Institution" refers to the transportation of a resident. This may be, for example, to another institution, to court, or

to an assignment in the community. "Programs" refers to the activities a resident may participate in if a particular classification is held.

The rules relating to the use of restraining devices reflect an intention to be flexible, while insuring that adequate security is maintained. Without such flexibility, programs would be affected unnecessarily. For example, at a medium security institution there are driver education classes. These classes are adequately supervised by correctional staff at all times, including while the class is off grounds. It would be impossible to have such a class if restraining devices were required while the residents were off grounds.

Likewise, residents in maximum security institutions sometimes attend church and other activities off grounds. It is more conducive to positive participation in such activities to provide adequate supervision by correctional staff, rather than by the use of restraining devices.

HSS 302.12 (2) specifies that a resident may not be kept at a custody level lower than the one to which he or she is assigned. In some instances, residents reside at more secure institutions than their custody rating permits to take advantage of particular programs or because of a shortage of space at less secure institutions. This is permitted by HSS 302.12.

Note: HSS 302.13. HSS 302.13 identifies the security ratings for each correctional institution. Residents may be assigned to a correctional institution only if they have the rating marked by an "X" required for the particular institution. They may be held in the custody classification they possess, or a higher one, but may not be in a lower one.

For example, no residents holding maximum security ratings may reside at the Wisconsin Correctional Institution at Fox Lake. Residents with medium, medium-outside or minimum ratings may reside there. A resident with a medium security rating who resides at Fox Lake must be kept in custody consistent with that rating and may not be accorded freedom of a person with a reduced security rating. Thus, the person could not be assigned to the camp system.

Residents in community services institutions like Shalom House in Green Bay remain assigned to an institution under the direction of the bureau of institutions. This rule does not affect that practice.

Note: HSS 302.14. HSS 302.14 states the only criteria permitted in the assignment of security classifications. While there is ample commentary about the desirability and the process for classification, little has been written about the substantive criteria that should be used. *Sirico, Prisoner Classification And Administrative Decision Making*, 1972 Texas L. Rev. 1229. Experience in Wisconsin teaches that the criteria stated in Rule 302.14 are the only helpful ones. See *ACA Accreditation Standards* 4377. While they are for the most part self-explanatory, some elaboration on them is desirable.

HSS 302.14 (1) makes the nature of the offense relevant and identifies factors relevant to seriousness. These factors are not inclusive and others may be relevant and should be considered in individual cases. It should also be noted that the absence of the factors is relevant. So, for example, if an offense posed no physical danger to another or if the offender did something to avoid or diminish the physical danger to another, this should be considered.

Subsection (2) makes the offender's criminal record relevant. The issue of what specifically may be considered as the offender's record is addressed in another section of these rules.

The length of sentence is of importance in assigning a security classification, as is the amount of time already served for the offense. These criteria are in subs. (3) and (10). A resident who is close to release, either because he has served closed to the expiration of sentence or because of the duration of sentence, may be less of an escape risk or may not need as close supervision as an offender with a substantial period of confinement ahead of him or her.

On the other hand, the fact that an individual is serving a long sentence does not necessarily mean that the person must remain in a maximum security institution. Experience teaches, for example, that some people with life sentences can appropriately reside in less than maximum security institutions. When this is consistent with security and program assignment, length of sentence should not bar assignment to such an institution and transfer among such institutions.

The motivation for the crime and the resident's attitude are also relevant. If the resident's motivation was anger and he or she continues to be angry and shows no remorse, that person may require closer supervision than a person motivated by acute economic need who is sorry for having committed the offense. Subsections (4) and (5) permit these factors to be taken into account.

Subsection (6) explicitly recognizes that physical assaults occur in correctional institutions and that this is relevant to classification. Sometimes, vulnerability may dictate close supervision for the resident's protection. In other cases, minimum supervision will be necessary, because the resident is not exposed to assaultive residents in such a setting.

Subsection (7) takes into account the fact that prior conduct is sometimes an indicator of future conduct. While this is not always so, a resident's prior record, particularly with respect to escape, is properly considered.

Subsection (8) recognizes that the period of time in a particular security setting and institution is relevant to security classification.

It may be necessary, in some cases, to observe people in a maximum security setting before lowering their rating, although other factors suggest immediate lowering of rating is possible. This might be true in a situation in which there is difficulty in deciding the appropriate classification and a short trial period with the resident is desirable.

On the other hand, if a resident has demonstrated over a long period of time that he or she has no difficulty in a particular setting, it may be desirable to decrease the level of supervision or transfer the person to a different institution. This enables the resident to accept more responsibility and to avoid the unnecessary boredom that may accompany confinement in the same place for a long period of time.

In some cases, the medical needs of a resident greatly affect his or her security rating. For example, some institutions are not staffed to administer particular medication. It is necessary to keep an individual requiring such medication where it can be properly administered. This is provided for in Subsection (9).

Subsection (11) makes community reaction a relevant criteria for security classification. While this criterion is not often used, it is true that community reaction to particular offenders sometimes must be considered. For example, if there is hostility to an offender in a particular place such that adjustment to a nearby institution would be made difficult, it may not be desirable to place the individual in that institution. This adds unnecessarily to the pressures on the resident.

Subsection (12) makes the resident's conduct in the institution relevant. A resident who is aggressive or who is in constant disciplinary trouble may thereby require close supervision. On the other hand, some residents have difficulty in maximum security institutions where the environment is quite structured, but have few problems in minimum security institutions. This subsection permits these facts to be taken into account.

Subsection (13) makes past program performance relevant. Past performance is usually an indicator of the future. The correctional system is committed to helping people improve. It is important to recognize that people can change for the better.

Subsection (14) states that detainers are relevant to the security classification decision. However, the rule states that detainers by themselves shall not prevent a resident from receiving any particular security classification. This is in conformity with *Reddin V. Israel*, 445 F. Supp. 1215 (1978) (E.D. Wis. filed Sep. 21, 1978).

Detainers are particularly troublesome to residents and to correctional officials because they make correctional planning difficult. It is not generally understood that detainers frustrate residents as well as correctional authorities. Detainers make program and parole planning difficult because of the uncertainty they create. Correctional authorities are reluctant to use scarce resources in planning for a person's future, if the planning may go for naught because a detaining authority takes custody upon parole release.

Understandably, residents are frustrated by this. It does not encourage them to constructively involve themselves in programs that will help them upon release, if the time and place of release is so uncertain. The uncertainty may also have adverse psychological consequences for the resident.

Rarely is anyone, including the authority who filed the detainer, certain about the disposition of whatever underlies the warrant. Indeed, detainers are sometimes filed for non-criminal matters like non-support and, in criminal matters, without serious or informed consideration of whether the matter will be pursued when the resident is available. Whether the authority which filed the detainer eventually takes custody of the resident may depend upon the sentence being served, a fact the authority has no information about. For discussions of the effects of detainers, see *Dickey and Remington, Legal Assistance for Institutionalized Persons—An Overlooked Need,* 1976 So. Ill. L.R. 175, 184; *D. Wexler, The Law of Detainers* (U.S. Department of Justice Monograph, 1973); *L. Abramson, Criminal Detainers* (forthcoming publication by West Publishing Co.).

Subsection (14) requires several things before a detainer can be considered in classification. It has several purposes: (1) to permit the corrections staff to consider the alleged facts underlying the detainer; (2) to permit the resident to know what those alleged facts are; (3) to permit the resident to make known additional or contradictory facts; (4) to inform the authority which filed the detainer as to the resident's offense and sentence and any other relevant information so that a more informed decision as to whether to maintain the detainer can be made; (5) to insure that the importance attached to the detainer is made clear. This last point may enable a resident, through the social worker or directly, to raise with the authority which placed the detainer the desirability of maintaining it, in the light of its effect.

While dealing with detainers effectively may require legal assistance, it is important for the division to inform the detaining authority of the continuing effect of detainers. For this reason, the resident's social worker should be kept informed about the detainer and is required to communicate with the detaining authority about the detainer. HSS 302.14 (14) (c) and (d). This may encourage the exchange of information that will enhance the correctional process.

Note: HSS 302.15. HSS 302.15 states the general rule for eligibility for program assignments. Residents are afforded the opportunity to participate in programs by this rule. The work and study release progam is an example of a program which has special eligibility requirements, which are set out in a separate section.

Subsection (3) reflects a change in the policy of the division of corrections. Heretofore, residents, including women, could not participate in programs or A & E at men's institutions. Nor did men participate in programs at institutions other than the one's at which they reside. This is now permitted, if the residents are otherwise qualified for the program and have the security classification that permits daily commuting to other institutitions. Such progamming is not likely to be extensive, given the cost involved. The rule does reflect the effort to make more programs available to residents, particularly women. Given the possible costs created by such changes, implementation of the principle is likely to be incremented.

This rule does not permit co-educational institutions for residential purposes.

Implicit in subsection (2) is the goal of having sufficient resources so that every resident can have the opportunity for a job or program. The rule recognizes, however, that population pressures and particular security needs may occasionally make this impossible.

Note: HSS 302.16. HSS 302.16 identifies the only criteria which may be used to assign residents to job, school, vocational or other programs. There is little written about the specific criteria appropriate for program assignment. Most commentators simply suggest that some criteria are appropriate. *See, e.g., ACA Accreditation Standard* 4377.

The medical needs of the resident may preclude particular assignments. For example, a resident with particular physical disabilities may thereby be precluded from a job requiring heavy physical labor. This is reflected in subsection (1).

Subsection (2) reflects staff experience that a resident's needs, aptitude, motivation and interests are important in classification. Indeed, they are among the most important factors in program assignment. It is desirable that residents be involved in programs for which they have an interest and aptitude. This raises performance and confidence. The subsection also recognizes that people continue to develop and that future interests and human potential ought also be considered. Subsection (2) also makes past performance and general institutional adjustment relevant. Experience teaches that these are important in evaluating a resident's potential for programs, though they are by no means conclusive.

Subsection (3) recognizes that particular programs may be better suited for the physically vulnerable than others. See the note to HSS 302.04.

Subsection (4) recognizes that the number of residents who might appropriately be placed in particular programs may exceed the resources. In the note to HSS 302.02, the importance of diagnosing a resident's needs was pointed out. Such diagnosis is meaningful only if the resources are available to meet needs. See, *Krantz, et. al., Model Rules and Regulations On Prisoners' Rights and Responsibilities* at 83.

Subsection (5) states that institution needs may be considered in program assignments. Correctional institutions are small communities with a significant degree of interdependennce. This sometimes requires that residents be placed in jobs for the good of the community. This should only be done if the job is not detrimental to the individual. For example, an institution may need a cook. To avoid transferring a person from a job that suits his or her needs, it is usually desirable to place a person without a job or in an inappropriate job or awaiting assignment in the cook position.

An effort should be made to avoid placing a resident in a program that is inconsistent with his or her needs. So, for example, it would be inappropriate to transfer a person with an appropriate program assignment in an institution near his or her home to an institution that is far away simply because of that institution's needs. Rather, institution needs should be a secondary factor in program assignment and should be applied only when also consistent with the resident's needs.

Subsection (6) states that a resident's security classification is relevant to program assignment. This means only that a resident may not be assigned to a program in an institution unless the resident has the requisite security classification for the institution.

Note: HSS 302.17. HSS 302.17 states the procedure and decision making authority for assignment to a job, vocational, educational or other program at the conclusion of the A&E process. The authority of staff to classify and transfer residents is broad. *Meachum V. Fano,* 427 U.S. 215 (1976); *Montayne V. Haymes,* 427 U.S. 236 (1976). Commentators agree that this process should have several essential elements to insure that the decisions are made in a fair, informed way. *American Correctional Association; Manual of Correctional Standards* (1966); *National Advisory Commission On Criminal Justice Standards and Goals, Corrections* (1973); *Krantz, et. al., Model Rules And Regulations On Prisoners Rights And Responsibilities* (1973); *American Bar Association; Tentative Draft of Standards Relating To The Legal Status of Prisoners* (1977).

These elements are:

(1) A decision making process that involves staff who are most informed about the resident. In Wisconsin, this includes the A&E committee and director, as provided in HSS 302.17 (1).

(2) Centralized decision making for the whole correctional system. HSS 302.17 (1).

(3) Notice of the criteria and facts relied on. This is provided by HSS 302.05 to 302.07, 302.12, and 302.14.

(4) An opportunity for the resident to be heard on the issues being addressed. HSS 302.17 (5).

(5) An explanation of the decision to the resident. This is provided orally at the staffing and in writing in the A&E packet. HSS 302.17 (5) and (6).

(6) Timely monitoring of the decision. HSS 302.17 (2).

There is one additional requirement of the rule, that the A&E committee be made up of permanent, designated members, subs (3) and (4). It is desirable to require that there be continuity in the decision making process and that all staff be experienced in the process. This helps to avoid arbitrariness and insures uniformity in decision making. Centralizing final decision making authority in the classification chief is also helpful in these respects.

Some commentators urge that the classification process should be an adversary one, with a right of the inmate to call witnesses, call and cross-examine adverse witnesses and legal assistance. *American Bar Association, supra,* Standard 3.5 (9). It is certainly desirable that the resident be involved in the classification process, for he or she may have essential information and such involvement develops amenability to correctional treatment. It is also important that the decisions be based on accurate facts.

The rule reflects a conscious effort to design a fair decision making process that provides to the resident notice of what is being considered, an opportunity to be heard on the issue being decided and the decision with reasons for it. This is the essence of "due process." Experience teaches that these are important, but that an unduly adversary process is not in the best interests of either the resident or the correctional system. An unnecessarily adversary process can seriously detract from the correctional process which the resident is just beginning and frustrate appropriate correctional goals, including successful reintergration of the offender into the community.

The rule seeks to achieve these goals without relying on an adversary process that might detract from the overall adjustment of the resident and unnecessarily tax already scarce resources. It should be apparent from the rule that all relevant information is welcome in the decision making process, from whatever source.

Note: HSS 302.18. HSS 302.18 provides for the review of the program assignment and security classification of each resident. This includes residents in the general population, as well as those in any administrative or segregated confinement. Such review must occur within 6 months of the last review. Continued monitoring of these decisions is an essential feature

of correctional treatment. Six months is typical limit for such review. *American Bar Association,* supra, Standard 3.5 (6).

A review may occur at any time at the designation of the PRC or at the request of the resident. To avoid abuse of the process, there must be a change in relevant circumstances to compel early review at a resident's request. For example, early completion of a program or a modification of sentence would be a relevant change. HSS 302.18 (3). Such requests are typically granted.

The purposes of the review are stated in HSS 302.18 (2) and are self-explanatory. See note to HSS 302.02. Sometimes, effective review may require additional testing. If so, the PRC should refer the resident to an appropriate testing site.

HSS 302.18 (4) and (5) require every institution and camp to have a program review committee. Because it is essential that the review be meaningful and that there be experienced decision makers, it is required that members of the PRC be permanent and hold relatively high rank. The members of the PRC in the camp hold lower rank, only because staff there are limited. Because there is a single social services supervisor for the camp system, that member typically votes by telephone on PRC decisions and recommendations.

To insure permanence, HSS 302.18 (6) limits the use of alternates. Each PRC member may designate only one permanent alternate who should sit only in unusual circumstances. The phrase "consistent with available staff" is used to permit small institutions to vary from the single alternate requirement. This is necessary to avoid having the same staff member sit on the adjustment committee and PRC, when the case was referred to PRC by the adjustment committee. It is also necessary to avoid requiring a resident's social worker from sitting on the PRC at small institutions.

Note: HSS 302.19. HSS 302.19 provides the procedure for the review and change of classification and program assignment. The classification chief shall have final decision making authority for all security classification changes and transfers. HSS 302.19 (4). The PRC has this authority for program assignments. HSS 302.19 (5).

Typically, the classification chief's decision is made on the recommendation of the PRC. If recommenations for transfer or change of security classification are not unanimous, all recommendations are considered. HSS 302.19 (8).

If there is not unanimity as to the change in security classification, transfer or approval for work or study release, or if there is a tie vote as to program assignment, the A & E director and the superintendent or assistant superintendent have the authority to decide the question of program assignment and make a recommendation as to the security classification and placement in an institution. If they cannot agree, the issues go to the classification chief without recommendation.

The same principles discussed in the note to HSS 302.16 dictate the procedure for program review. There is no need to repeat them here, except to make sure that there are additional requirements. The resident's social worker must inteview the resident and make a recommendation. This is desirable to insure continued review of the resident's status by the social worker.

The resident has the option to appear before PRC. In the camp system, the distance of the resident from the PRC may require that the personal appearance be before a single member of the committee. This should occur as infrequently as possible. The resident must appear before a change in security classification or a transfer may be made. HSS 302.19 (1).

The procedure for decision making at the end of the A & E process and, periodically thereafter by the progam review committee may seem cumbersome. However, the assignments made at these stages have a substantial impact upon the quality of life of a resident and upon parole release decisions. For example, a person at a minimum security institution is accorded more freedom than a person at a maximum security institution. Successful adjustment at a camp might influence the parole release decision. So, correctional authorities and residents have a substantial interest in insuring that classification decisions are made in a careful way, by experienced people after a thorough development and review of the facts.

With roughly 3500 residents in the Wisconsin correctional system, review of each every 6 months means that there are seven thousand reviews per year, exclusive of reviews due to changed circumstances. This large volume of work means that responsibility must be delegated at each institution. Yet uniformity is also desirable. For these reasons, decision making is structured to include staff at the institutional level while leaving final authority in the classification chief.

The procedure has obvious strengths and is designed to prevent the possible abuses pointed out by Kenneth Culp Davis on institutional decision making:

An institutional decision of an administrative agency is a decision made by an organization and not by an individual or solely by agency heads. A trial judge's decision is personal; the judge hears evidence and argument and decides the case. In the administrative process, evidence may be taken before an examiner, the examiner or other subordinates may sift the evidence, various kinds of specialists of the agency's staff may contribute to the writing of the initial or recommended decision, and the agency heads may in fact lean so heavily on the work of the staff as to know little or nothing about the problems involved in many of the cases decided in the agency's name. In the institutional decision lie elements of special strength and elements of special weakness of the adminstrative process. The strength springs from the superiority of group work—from internal checks and balances, from cooperation among specialists in various disciplines, from assignment of relatively menial tasks to low-paid personnel so as to utilize most economically the energies of high-paid personnel, and from capacity of the system to handle huge volumes of business and at the same time maintain a reasonable degree of uniformity of policy determinations. The weaknesses of the institutional decision lie in its anonymity, in its reliance on extra-record advice, in frustration of parties' desire to reach the men who influence the decision behind the scenes, and in the separation of the deciding function from the writing of the opinion or report.

Decision making throughout these rules is structured to insure fairness and thoroughness.

Note: HSS 302.20. Typically, inter-institution transfers will be made routinely as part of the A & E and program review process. This is stated in HSS 302.20 (1). The transfer decision is part of the A&E and PRC process.

While it is true that there is wide discretion vested in correctional authorities to transfer residents, in Wisconsin this may only be done consistent with the overall review of a resident's status. *Meachum V. Fano*, 427 U.S. 215 (1976); *Montayne V. Haymes*, 427 U.S. 236 (1976).

When a resident is alleged to have violated a disciplinary rule and this may require review of his security classification and program assignment, the procedure set forth in HSS 302.20 must be followed. It is designed to insure that there is a factual basis for the transfer and the finding of a disciplinary infraction, to give the resident an adequate opportunity to be heard on the issue of whether an infraction occurred and whether transfer is desirable, and to insure that all facts relevant to program assignment and security classification are considered. Thus, a disciplinary infraction is only one factor to be considered in reviewing these matters. This substantially conforms to the suggestions of the *American Bar Association*, supra and *Krantz, et. al., Model Rules and Regulations On Prisoners' Rights And Responsibilities*.

Several provisions of the rule require comment. Subsection (4) permits segregation of the resident pending review by the PRC. This is apart from any segregation which is imposed for the violation. Three working days is adequate time to provide for a decision as to program and security classification.

Sub. (5) requires the disciplinary hearing to be held within 3 working days of service of the report of the infraction, with the permission of the resident, if he or she is in a county jail. Such confinement is necessary because camps are unable to segregate residents due to a lack of facilities. Rather than require transfer to a more secure institution, it is thought more desirable to permit the resident to reside in a couty jail until the outcome of the disciplinary hearing and program review. This permits the resident to have the hearing and review in a place where he or she can call on witnesses and a staff advocate familiar with the setting in which the infraction is alleged to have occurred, if they are necessary. Less hardship is visited on the resident by having the resident remain close by if a transfer does not ultimately occur.

If 3 working days is insufficient time for the resident to prepare for the hearing, the resident may be transferred to a more secure institution. This is because county jails are usually unwilling to hold residents for more than 3 working days. If a particular jail is willing to hold a person for longer than 3 working days, transfer should be unnecessary.

Subsections (6) and (7) provide for emergency transfers. If a resident's physical or mental health requires transfer or if there is a major security problem, it is necessary to have the authority for emergency transfers. A review of the resident's program assignment and security classification is required within 7 days of such a transfer. A "security emergency" is defined in note to HSS 302.03.

Note: HSS 302.21. HSS 302.21 (1), (2), and (3) require the computation of 3 critical dates in a resident's life and notice to the resident of them. They are the parole eligibility date, the projected mandatory release date and the projected discharge date. The latter 2 are "projected" because they may be altered.

Newly sentenced offenders are distinguished from others by HSS 302.21 (1) and (2). Because registrars have the necessary information to determine the dates for those recently sentenced, they can provide the information within 10 days.

Residents whose discretionary parole and mandatory release parole has been revoked must await a determination as to how much good time is forfeited before the dates can be set. Residents whose probation was revoked but whose sentence was withheld must await sentencing before the dates are detemined. After sentencing, they are informed of the dates pursuant to subsection (1).

Parole eligibility, except for crimes with a mandatory parole eligibility date, is one-half the minimum sentence. Parole eligibility should not be equated with a grant of parole. Eligibility simply means the person may be considered for parole. It does not mean the person will be granted parole, necessarily. The minimum is one year for felonies for purposes of parole eligibility. Wis. Stat. 57.06; 973.01; *Edelman V. State,* 62 Wis. 2 613, 215 N.W. 2d 386 (1973). The requirement that a resident serve 60 days in a state institution before eligibility was recently enacted. Wis. Stat. s. 57.06 (1) (a) (1977).

A resident with a 5 year sentence for burglary is eligible for parole after 6 months. A resident who receives 2 consecutive 5 year sentences imposed at the same time is eligible for parole after serving one year. The resident begins satisfying parole eligibility requirements on the second sentence upon satisfying eligibility requirements on the first. HSS 302.21 (4).

The projected mandatory release date is reached by crediting the resident with state good time in the amount of one month for the first year, 2 for the second and so on to a maximum of 6 months for the sixth year and every year thereafter; and by crediting extra good time at the rate of one day for every 6 of satisfactory work or study. A resident receives state good time but not extra good time for county jail time. The resident does not receive extra good time for the period by which his or her sentence is reduced by state good time. ss. 53.11 and 53.12, Stats. *State ex. rel. Hauser V. Carballo,* 82 Wis. 2d 51, 261 N.W. 2d 133 (1978).

The discharge date is reached by taking the beginning date of the sentence, reduced by county jail time and projecting the maximum period imposed by the court.

A few examples help explain this process. A resident with a single five-year sentence which had a beginning date of 5-16-74 has a projected discharge date of 5-16-79. Such a person may earn one year, three months of state good time pursuant to Wis. Stat. s. 53.11 and six months, 13 days of extra good time pursuant to Wis. Stat. s. 53.12. Thus, the resident's projected mandatory release date would be 8-3-77. Parole eligibility would be reached on 11-16-74.

If the same resident had 2 concurrent 5-year sentences imposed on the same date, the parole eligibility, projected mandatory release and projected discharge dates would be the same. HSS 302.21 (8).

If a resident received 2 terms of 5 years to be served consecutively for a total sentence of 10 years, and these sentences were both imposed on 5-16-74, the projected maximum discharge date would be 5-16-84. The resident could earn 3 years, 9 months of state good time and 10 months, 22 days of extra good time. The projected mandatory release date would be 9-24-79. Parole eligibility would be 5-16-75. HSS 302.21 (10).

If a resident with a single 5-year sentence imposed on 5-16-74 received a second 5-year concurrent sentence imposed 3 months later on 8-16-74, the resident's new projected maximum discharge date would be 8-16-79. The resident's new projected mandatory release date would be 11-3-77. Parole eligibility would be reached on 2-16-75. HSS 302.21 (9).

A resident with a single five-year term imposed on 5-16-74 who received a second five-year term to be served consecutively to the first three months later on 8-16-74 would have a new projected maximum discharge date of 5-16-84. The new projected mandatory release date would be 10-20-80. The new parole eligibility date would be 5-16-75. HSS 302.21 (11). It should be noted that the resident can receive only one month of state good time on the second sentence during its first year, two during its second year and so on. Wis. Stat. 53.11. *State ex. rel., Gergenfurtner V. Burke,* 7 Wis. 2d 668, 97 N.W. 2d 517 (1959). *State ex. rel., Stenson V. Schmidt,* 22 Wis. 2d 314, 125 N.W. 2d 634 (1964).

Note: HSS 302.22. HSS 302.22 requires the registrar to notify the court and resident if there is uncertainty as to what sentence or sentences were imposed. It is sometimes difficult to understand the terms of a sentence, particularly when there are multiple convictions and when a resident is sentenced as a repeater. The rule also requires that special notice be given to the resident of legal services, because the issue usually arises early in the A & E process, before the resident has been seen by a law student.

Note: HSS 302.23. HSS 302.23 deals with credit toward sentence for people whose discretionary parole is revoked. The resident receives credit for the whole period under supervision. State and extra good time may be subject to forfeiture, but only so much as has been earned to the date of violation. Wis. Stat. s. 53.11, 53.12, 57.07 (2). *State ex. rel., Hauser V. Carballo,* 82 Wis. 2d 51, 261 N.W. 2d 133 (1978). HSS 302.23 (1).

Sub. (2) requires that credit be given for all periods in custody after violation, either pursuant to a "hold" or in connection with the course of conduct that leads to violation. For example, if a resident on parole were arrested for burglary on the date of the alleged offense and the resident's parole was revoked either after conviction for the burglary or because the burglary was a violation of parole, though there was no conviction, the resident would receive credit for all time in custody in connection with the burglary. cf. s. 973.155 (1) (a) Stats. (1977).

If the person were convicted of the burglary, even if it were in another state, and served a sentence for it in the other state, credit would be given toward the Wisconsin sentence for the whole period of custody in that other state. This is required by Wis. Stat. 57.072 (2) (1977) and Wis. Stat. 973.155 (1) (b) (1977).

Even if the person were not convicted of burglary, if parole was later revoked for it, the person would receive credit for all time in custody beginning when the parole was placed. Wis. Stat. 973.155 (1) (a) and (b) (1977).

Note: HSS 302.24. HSS 302.24 deals with credit toward sentence for people whose mandatory release parole is revoked. HSS 302.24 (1) puts into rule form the requirements of Wis. Stat. S. 53.11 (7) (b). Subsection (2) defines custody as it is defined in HSS 302.23 (2). See note to HSS 302.23 (2).

Subsection (3) puts into rule form the requirements of the *Hauser* case, supra.

Note: HSS 302.245. This rule deals with credit provisions for people whose probation is revoked who are sentenced to probation. People who have been sentenced prior to revocation are treated slightly differently from those whose sentencing is deferred until after revocation because this is required by Chapter 347, Laws of 1977 and Chapter 353, Laws of 1977. (Wis. Stat. 973.10, 57.072 (3), 973.15 and 973.155 (1977)).

Subsection (1) provides that if the probationer has been sentenced, the term begins when the probationer enters prison. Wis. Stat. s. 973.19 (2) (b). If sentencing was deferred, the term of the sentence begins on the date it is imposed unless is ordered consecutive.

This difference has a limited practical effect. The provisions of Wis. Stat. s. 973.155 give both categories of people identical credit. Therefore, the difference does not enlarge the total period of confinement. The practical effect is to limit the authority of a court which imposes a new sentence upon a new conviction after the revocation of probation. This is so because a court may not impose a sentence consecutive to another sentence unless the person is "then serving a sentence." Wis. Stat. 973.15 (2) (1977). *Guyton V. State*, 69 Wis. 2d 660, 230 N.W. 2d 726 (1975). *Drinkwater V. State*, 69 Wis. 2d 60, 230 N.W. 2d 126 (1975). *Juneau V. State*, 77 Wis. 2d 166, N.W. 2d (1977). Because a probationer who has already been sentenced for the original crime does not commence service of the sentence until he or she enters the prison, a court may not impose a sentence consecutive to the original sentence until after the probationer enters the prison. Wis. Stat. 973.10 (2) (b) and 973.15 (2) (1977).

Note: HSS 302.25. HSS 302.25 deals with credit provisions for escapes. It states that the person resumes receiving credit for the sentence from which he or she escapes when the person is taken into custody. Because a resident often has no control over when he or she is returned to a Wisconsin correctional institution, it is thought that fairness requires credit for all time in custody, unless the custody is pursuant to a sentence in a jurisdiction outside Wisconsin. Custody is thus defined differently than in HSS 302.23 and 302.245. This is based on Wis. Stat. 973.15 (7) (1977). cf. Wis. Stat. 57.072 (2) (1977). Therefore, while an escapee awaits extradition or return to the institution, credit is to be given.

Note: HSS 302.26. Residents occasionally wish to waive good time. Usually, this is to permit the service of a sentence imposed elsewhere in a Wisconsin institution or to enable the resident to remain in an institution for medical treatment.

The requirements of HSS 302.26 (1) are to enable the registrar to do the necessary administrative work for a waiver. The rule forbidding the waiver of more than 6 months of good time at once is to insure that the resident does not waive too much good time at once, because once waived the time may not be reinstated, except for good cause. Good cause would be shown if the circumstances which caused the waiver changed. HSS 302.26 (3). Circumstances might change and make a wholesale waiver of good time undesirable. For example, a sick resident might recover more rapidly than anticipated. The requirement that at least 30 days be waived at once is to avoid undue administrative burden. The requirement of a written waiver is to insure that proper records are kept. The requirement of consultation with a social worker or agent is to insure the resident or parolee understands the consequences of a waiver.