

CR 81-139

CERTIFICATE

RECEIVED

STATE OF WISCONSIN)
)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

AUG 25 1982
4:05
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department, do hereby certify that the annexed rules relating to living conditions for youth at correctional institutions were duly approved and adopted by this department on August 24, 1982.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 24th day of August, A.D. 1982.



Donald E. Percy, Secretary
Department of Health and Social Services

SEAL:

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

RECEIVED

AUG 25 1982

Revisor of Statutes
Bureau

To create HSS 339, relating to living conditions for youth at correctional institutions.

Analysis Prepared by the Department of Health and Social Services

These rules regulate living conditions for youth at correctional institutions. They cover media access, mail, publications, visitation, public events, access to the judicial process, personal property, leisure time activities, food, personal hygiene, living quarters, funds, canteen, telephone calls, and education.

Pursuant to authority vested in the Department of Health and Social Services by s. 227.014(2), Stats., the Department hereby adopts rules interpreting s. 46.03 (1), (4), and (6), and ch. 48, Stats., as follows:

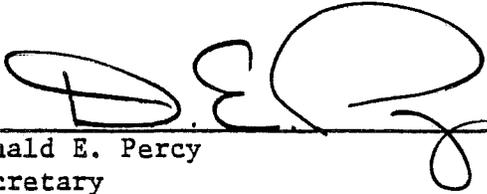
SECTION 1. Chapter HSS 339 of the Wisconsin Administrative Code is created to read:

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Dated: 8-24-82

Department of Health and Social Services

By:



Donald E. Percy
Secretary

SEAL:

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS

ADMINISTRATIVE RULES

CHAPTER HSS 339

Living Conditions at Correctional
Institutions for Youth

August, 1982

Chapter HSS 339

LIVING CONDITIONS AT CORRECTIONAL
INSTITUTIONS FOR YOUTH

- HSS 339.01 APPLICABILITY AND DEFINITIONS
- HSS 339.02 MAIL
- HSS 339.03 PUBLICATIONS
- HSS 339.04 NEWS MEDIA ACCESS TO YOUTH
- HSS 339.05 VISITORS
- HSS 339.06 PUBLIC EVENTS, EXHIBITS, GROUP VISITS, AND BANQUETS
- HSS 339.07 YOUTH ACCESS TO THE JUDICIAL PROCESS, LEGAL SERVICES, AND LEGAL
MATERIALS
- HSS 339.08 PERSONAL PROPERTY
- HSS 339.09 LEISURE TIME ACTIVITIES
- HSS 339.10 FOOD
- HSS 339.11 CLOTHING
- HSS 339.12 PERSONAL HYGIENE
- HSS 339.13 LIVING QUARTERS
- HSS 339.14 FUNDS AND ACCOUNTS
- HSS 339.15 TELEPHONE CALLS
- HSS 339.16 EDUCATION PROGRAMS

HSS 339.01 APPLICABILITY AND DEFINITIONS

- (1) This chapter applies to the department of health and social services and all youth under its legal custody for correctional purposes. It interprets ch. 48, and s. 46.03(1), (4), and (6), Stats.

- (2) For purposes of this chapter:
 - (a) The definitions under chs. HSS 331, HSS 333, and HSS 337, Wis. Adm. Code, apply.

 - (b) "Account" means an account established to receive youth pay, allowances under s. 46.064, Stats., pensions, disability payments, and gifts from family, and from which disbursements may be made while the youth is in an institution.

HSS 339.02 MAIL

- (1) Youth are permitted and encouraged to communicate with their families, friends, and others concerned with their welfare, including government officials and courts. Written correspondence between youth and their families, friends, government officials, courts, and other people concerned with the welfare of youth is permitted. Such communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate youth by contributing to high morale and to the security of youth and staff.

- (2) (a) A youth shall be permitted to correspond with anyone, including residents in other institutions subject to par. (b). A reasonable number of letters, but not less than one per week, may be sent at state expense as determined by the superintendent. If a youth buys his or her own stamps, there is no limit on the number of letters that may be sent by the youth.

(b) The division shall notify the parents of minors with whom a youth corresponds to determine if the parents object to their child receiving such correspondence. If the parents object, the superintendent shall decide whether the youth may correspond with the minor.

- (3) Institution staff may not inspect or read correspondence between youth and:
 - (a) The governor of Wisconsin;

- (b) Members of the Wisconsin legislature;
 - (c) Members of the United States Congress or the president of the United States;
 - (d) The secretary, department of health and social services;
 - (e) The administrator, division of corrections;
 - (f) The bureau directors of the division of corrections;
 - (g) The grievance mediator as defined in ch. HSS 340, Wis. Adm. Code;
 - (h) The attorney general or assistant attorneys general of Wisconsin;
 - (i) The clerk or judge of any state or federal court;
 - (j) The superintendent of any state correctional institution;
 - (k) Juvenile offender review program; and
 - (l) Attorneys, except that correspondence between attorney and youth may be opened to inspect for contraband on reasonable grounds and in the presence of the youth, but may not be read.
- (4) Except as provided in sub. (3), the following restrictions apply to all youth correspondence:
- (a) Incoming mail addressed to youth may be opened, inspected for contraband, monitored, and delivered only if the youth consents in writing to receive mail through institution mail services. If the youth does not give consent, the institution shall return to the post office, unopened, incoming mail addressed to the youth and marked, "refused." Letters shall be delivered if the sender is not put on the denied list, but any contraband shall be

seized. If a letter has no return address, it may be opened to identify the sender to see if the sender is on the denied list.

If the sender cannot be identified, staff shall ask the youth if he or she can identify the sender.

(b) Outgoing mail shall be opened and inspected for contraband.

(c) Incoming and outgoing mail may be opened and read only if the superintendent has reasonable grounds to believe that mail should not be delivered under par. (d), if the correspondence is between youth confined to institutions, or if the correspondence is between youth and staff of the department, unless listed in sub. (3).

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

1. Threatens criminal activity or physical harm to any person;
2. Threatens blackmail or extortion;
3. Concerns sending contraband in or out of an institution;
4. Concerns plans to escape;
5. Concerns activity which, if completed, would violate the laws of Wisconsin or of the United States;
6. Is in code. This does not apply to letters written in a foreign language;
7. Solicits gifts from a person other than a family member;
8. Is obscene. Material is obscene if the average person, applying contemporary community standards for the state of Wisconsin, would find that the work, taken as a whole:

- a. Appeals to the prurient interests;
 - b. Depicts or describes, in a patently offensive way, acts involving necrophilia, masochism, sadism, bestiality, or an unnatural preoccupation with excrement; and
 - c. Lacks serious literary, artistic, political, personal, or scientific value; or
 - d. Violates s. 944.25, Stats.
9. Contains information which, if communicated, would create a clear danger of physical or mental harm to any person.
 10. Contains information that the youth is entering into a contract.
- (e) A record of any mail which is read shall be kept for each youth. It shall include the name of the sender and receiver, the date, and the reason for reading it.
- (f) A record of any mail which is not delivered shall be kept for each youth. It shall include the name of the sender and receiver, the date, and the reason for not delivering it.
1. If it is incoming mail, the letter and a written notice stating why the letter was not delivered shall be sent to the sender. The youth to whom the letter was sent shall be

given a written notice that the letter was not delivered, the reason for non-delivery, and the identity of the sender.

2. If the letter is outgoing mail, the youth shall receive a notice stating why the letter was not delivered. The person to whom the letter was sent shall receive a notice stating that a letter had been sent to him, the identity of the youth who sent the letter, and the reasons why the letter was not delivered. The letter may be kept by correctional staff for a maximum of 30 days before it is returned to the youth.

(g) The decision to refuse to deliver a letter may be appealed in writing to the superintendent who shall decide the appeal.

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

(i) If the inspection or reading of mail reveals an attempt to send contraband in or out of an institution or to secure delivery of mail which may not be delivered under par. (d), the superintendent may order that mail to or from the youth or sender shall be opened and read for a reasonable period of time.

(5) Parcels, packages, and any other incoming or outgoing items other than letters which are mailed or delivered to a youth may be opened for inspection for contraband.

- (6) Contraband found through inspections conducted pursuant to this section shall be disposed of under ch. HSS 333, Wis. Adm. Code.
- (7) If a youth is alleged to have committed a violation under this section, a conduct report shall be written and disposed of under ch. HSS 333, Wis. Adm. Code. For such a violation, the penalty may include suspension of mail privileges with a specific person for a specific period, subject to the following:
- (a) A suspension of 3 months or less may be imposed by the hearing officer and appealed to the superintendent.
 - (b) A suspension of more than 3 months may be appealed to the superintendent and thereafter to the administrator and the secretary.
- (8) If a member of the public is alleged to have committed a violation under these rules, the superintendent or designee shall investigate and decide if such a violation occurred. If such a violation occurred, the superintendent or designee may suspend the youth's mail privileges with that person for a specific period. Suspension of mail privileges may be appealed under sub. (7).

NOTE: HSS 339.02 regulates mail to and from youth confined in correctional institutions. Subsection (1) identifies many of the values of the free exchange of information and ideas to the youth, correspondents, and the public. Contact

with family and others in the community is crucial to successful reintegration. Mail is one method of communication that can develop and strengthen family and community ties. Contact with those outside the institution helps motivate youth by contributing to morale. This enhances their involvement in correctional programs and the security of youth and staff.

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

Subsection (2) affirms the right of youth to correspond with anyone, absent a prohibition under this section. It also indicates that there are no limits as to number or length of letters. This is in accord with Procunier v. Martinez, 416 U.S. 396 (1974) which requires that limitations on correspondence further a substantial governmental interest unrelated to the suppression of expression. It is also in substantial accord with American Correctional Association's Manual of Standards for Juvenile Training Schools and Services (1979) (hereinafter "ACA Juvenile Standards") standard 9380 and Institute of Judicial Administration/American Bar Association Juvenile Justice Standards (1980) (hereinafter "IJA/ABA"), standard 7.6(c). Subsection (3) reflects the view that there is no proper correctional value served by inspecting or reading mail between youth and those identified. Access to government officials, including the courts, should not be impeded by restrictions on correspondence. This is in accord with the ACA Juvenile Standards standard 9386.

Under subsection (3)(1), attorney mail may be inspected in the presence of the youth but not read. There is a need to inspect, chiefly because attorneys, by the nature of their work, sometimes send items like checks directly to their clients. Such items should be sent to the youth's account; attorneys are often not aware of this. This regulation is to ensure that such unknowing acts do not introduce unauthorized items into institutions. It is in accord with ACA Juvenile Standards, standard 9342.

Subsection (4) identifies restrictions that are placed on correspondence. These restrictions are made in compliance with U.S. Postal Service Mail Manual requirements and because they are of substantial correctional interest. The effort is to draw them in a way that is not unnecessarily broad. Of course, the United States Supreme Court has indicated that correctional agencies have some latitude in making such restrictions and need not show with certainty that adverse consequences will flow from the failure to restrict. Procunier at 414-415. However, experience in juvenile corrections in Wisconsin teaches that the restrictions in subsection (4) are important. Some commentators urge that restrictions be specifically drawn. That is what is attempted here. See ACA Juvenile Standards, standard 9381 and 9379.

Subsection (4)(b) permits inspection for contraband. The dangers created by contraband are great and every reasonable effort must be made to control it. Mail containing contraband is not delivered and notification is provided for in subsection (4)(c). See ACA Juvenile Standards, standards 9381 and 9382 and IJA/ABA, standard 7.6(c).

Subsection (4)(d) states other substantive criteria for restricting mail. While there may be overlap among categories, this is tolerable in the interest of clarity. Important correctional objectives are furthered by preventing youth

involvement in crime, whether as victims or perpetrators. Among the objectives are maintaining a secure, crime-free environment which protects youth and staff and permits programs to flourish and the development of attitudes that assist in reintegration. And, of course, the protection of the public is furthered by preventing crimes committed by youths in which members of the public are involved. Preventing harassment of the public is another important objective.

Communication in code, by its nature, can create a danger. Its restriction was specifically approved by the United States Supreme Court. Restrictions imposed in subsection (4)(d)1. through 5. and 9. have been approved, though, in more general language. Procurier at 412-413. What specific limits are permissible is rarely addressed by commentators. Typically, the limits are phrased generally in terms of "security." The effort in this section is to be more specific.

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

Subsection (4)(d)8. restricts obscene communication. The development of appropriate attitudes towards oneself and others is an important correctional objective. To permit youth to mail obscene letters to others is not only a violation of the law but also a possible source of harassment to others. To receive such correspondence does not develop feelings of self-respect and also involves use of the mails illegally. The Miller test and s. 944.25, Stats., are relied on to define obscenity. Miller v. California, 413 U.S. 15 (1972).

Subsection (4)(c) states the standard by which mail may be read. Random reading is not permissible. Reasonable grounds to believe that the substantive criteria are satisfied must exist before opening and reading. Because of the possible danger of escape created by mail between youth in institutions, it may systematically be opened and read. A requirement for search warrants would unnecessarily use scarce resources which can be used in better ways.

Subsection (5) permits the inspection of incoming and outgoing parcels and packages which is necessary to control contraband.

Subsections (7) and (8) provide for suspension of mail privileges. Because of the significance of mail, such a decision must be preceded by a full due process hearing if a youth is alleged to have violated the rules or regulations.

Such a hearing is not possible if a member of the public is alleged to have violated policy requirements. Then, a thorough investigation must precede suspension. Appeals are also provided. See the note to HSS 339.05.

This section substantially satisfies the requirements of ACA Juvenile Standards, standards 9379-9382, 9386, and 9342.

5D/tp

HSS 339.03 PUBLICATIONS

- (1) Youth are permitted and encouraged to read publications, including books, magazines, newspapers, and pamphlets, and the division shall facilitate access to publications. Reading fosters correctional objectives by educating youth and by keeping them informed of events and issues in the community.
- (2) Youth may not possess, receive, or read publications which:
 - (a) Teach or advocate violence;
 - (b) Teach or advocate behavior which violates the law or the policies and procedures of the institutions;
 - (c) Teach or describe the manufacture or use of weapons, explosives, drugs, or intoxicating substances;
 - (d) Are obscene as defined under s. HSS 339.02(4)(d)8; or
 - (e) Teach or describe the manufacture or use of devices which create a substantial danger of physical harm to others.
- (3) If a publication is not delivered under sub. (2), the youth shall be notified of the name and address of the sender, the date, and reason for nondelivery. The sender shall be notified.

- (4) If correctional institutions subscribe to publications for circulation to youth, they shall establish procedures for making such publications available to youth.

NOTE: HSS 339.03 regulates youth access to publications. Such access fosters the goals identified in the note to HSS 339.02.

Subsection (2) states the limits on youth access to publications. The attempt is, as with mail, to be specific and to limit access only in furtherance of important correctional objectives. Procunier v. Martinez, 416 U.S. 396 (1974); ACA Juvenile Standards, standard 9380.

Access is limited to publications which create specific security risks or which interfere with treatment goals and does not limit access to publications with discussions of legitimate social issues. Advocating or teaching violence, criminal or delinquent behavior, and the manufacture or use of things which are impermissible in an institution directly threaten youth and staff. See the note to HSS 339.02 and the authorities cited for further reference.

5D/tp

HSS 339.04 NEWS MEDIA ACCESS TO YOUTH

- (1) It is the policy of the division of corrections to permit visits to correctional institutions by representatives of the news media. Visits and interviews by media representatives with correctional staff and youth can foster the public's understanding of the qualities, problems, and needs of youth and institutions. Such understanding helps to develop community acceptance and support of correctional objectives which enhances their achievement, including the objective of reintegration into the community.

- (2) If a news media representative has a valid court order requiring the division to acknowledge that the youth is staying there, the representative may be permitted to interview the youth but the interview may be refused if:
 - (a) The superintendent determines that an interview will:
 1. Jeopardize the safety or order of the institution; or
 2. Be detrimental to the welfare or treatment of an individual youth or group of youth;

 - (b) The clinical services unit supervisor believes that the youth has emotional problems which are likely to be exacerbated by an interview;

- (c) The youth is in room confinement or a secured unit. The director of the bureau of juvenile services may approve in writing an interview of a person confined in room confinement or a secured unit in extraordinary circumstances;
 - (d) The youth refuses to be interviewed; or
 - (e) The parents, after being contacted by the institution and the news media representatives involved, object to the interview.
- (3) Representatives of the news media are subject to the same rules as other visitors.
- (4) News media representatives may not photograph any youth in a manner which would reveal the identity of the youth.
- (5) All visits and interviews conducted under this section are subject to specific policies and procedures of the superintendent as to time, location, length, staff presence, and the equipment used. A staff member designated by the superintendent may terminate the interview at any time. Reasons for specific policies and procedures shall be given upon request.
- (6) All news media representatives granted interviews under this section shall agree in advance not to reveal the identity of any youth or to disclose information that would lead to the youth's identity.

- (7) The superintendent may permit media representatives to interview groups of youth or anonymous individual youth without a court order, but subject to the other limitations of this section.

NOTE: Access to correctional institutions, staff, and youth by the news media furthers several important public policy objectives. It also presents some problems not present in adult institutions.

The objectives include the free exchange of information and ideas about correctional policy; the provision of information about correctional policy to the public; the development of public support for appropriate correctional objectives, including reintegration of youths into the community; and the important values which inevitably flow from openness in public institutions and from the exercise of freedom of expression. See T. Emerson, Toward a General Theory of the First Amendment (1963), T. Emerson, The System of Freedom of Expressing (1970).

It is through the exchange of information and ideas that an understanding of the public of the difficult correctional issues comes. Such understanding furthers the correctional process.

For these reasons and because of the fundamental nature of freedom of expression, HSS 339.04 permits media access to correctional institutions, youth, and staff. This access cannot be unlimited, however. Subsection (2) identifies the circumstances in which this access is restricted in the case of an individual youth or a group of youth. In weighing the necessity for such limitations, due consideration was given to other forms of access by youth to

the media. See HSS 339.03. It should be apparent that the limitations in subsection (2) are not substantial in the light of other means of access. See: Pell v. Procunier, 417 U.S. 817 (1974); Saxbe v. Washington Post Co., 417 U.S. 843 (1974); Procunier v. Martinez, 416 U.S. 405 (1974).

The limitation of subsection (2)(a)1. is to preserve order in the institution. There may be situations in which media access must be restricted because of an existing security problem that prevents safe access or because access may exacerbate or create such a problem. That such limitation is proper is acknowledged in the Pell case. See the discussion of the problems created by excessive media attention to adult inmates who become public figures and severe disciplinary problems. Pell v. Procunier, 417 U.S. 817, 831-832 (1974). These same problems are present in youth institutions.

Subsection (2)(a)2. permits the superintendent to limit access for the benefit of an individual youth or group of youth. An example of a situation in which such a limit may be appropriate is when a youth has recently arrived at an institution and requires time to adjust, free from media attention.

Subsection (2)(c) limits interviews of those in room confinement or security cottages. There are three reasons for this. First, a purpose of room confinement or secured discipline is to permit the youth to reflect on his or her problems without interruption. This is not furthered by media access. Second, it is a burden on limited resources to permit such interviews, because of the security actions that must be undertaken when a youth leaves a secure area or when an outsider enters it. Finally, there is a danger that if a youth who has disciplinary problems becomes notorious, others will follow his or her example.

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

Subsection (4) regulates the taking of photographs. It is intended to protect the privacy rights of youths and to comply with s. 48.78, Stats., which prevents the release of juvenile records to the public. A photograph may be considered a record.

SD/tp

HSS 339.05 VISITORS

- (1) GENERAL POLICY. Youth are permitted and encouraged to have visitors. The division shall facilitate and accommodate the visits of youth by family members, friends, and other people who provide support to youth. In some cases, space limitations or treatment goals may necessitate limitations.
- (2) VISITING LIST. (a) There shall be an approved visitors list for each youth.
 - (b) Except as otherwise provided in this chapter, only visitors on the youth's approved list will be permitted to visit the youth. To the extent compatible with treatment goals, each youth shall be permitted to receive visits from natural and foster parents, stepparents, grandparents, brothers, sisters, and the spouses of each. Other relatives, friends, or interested persons may also visit if prior approval is granted by the institution.
 - (c) A youth's approved visiting list shall show the name and address of all requested visitors, relationship to the youth, whether the visitor was approved or denied and the reason for the decision, and whether the visitor was removed from the approved list and the reason for this.
 - (d) For a visitor to be approved for visiting, the following may be required:

1. The youth or person wishing to visit shall submit a written request to the designated staff member asking that the person be added to the list;
 2. A visitor questionnaire may be sent to the prospective visitor for completion and return to the institution. If the questionnaire is not returned the request may not be approved. A copy of the visiting rules shall be sent; and
 3. A returned questionnaire shall be evaluated by the designated staff member. A field investigation may be requested if further information is necessary.
- (e) In determining whether a person should be approved for visiting, the following shall be the only criteria:
1. A proposed visitor may not be approved if any of the following circumstances exist:
 - a. There are reasonable grounds to believe the visitor has attempted to bring contraband into the institution;
 - b. There are reasonable grounds to believe the visitor by his or her visiting, poses a direct threat to the safety and security of the institution youth and staff;

- c. The visit would be contrary to treatment goals and would promote improper conduct; or
 - d. There is a court order prohibiting a visit.
2. Approval of parolee, probationer, and ex-offender visitors may be made in accordance with this section if in the best interests of the youth.
3. The youth's reintegration would be hindered because of prior criminal involvement with the proposed visitor or because of the proposed visitor's poor adjustment or reputation in the community. This subsection is not intended to interfere with youth and visitors' pursuit of joint legal interests.
- (f) Consistent with available resources and treatment goals, the institution may place a reasonable limit on the number of persons on a youth's visiting lists. Youth shall be required to retain visitors on the visiting list for a minimum of 3 months from the date of approval, unless this provision is waived for cause by the institution.
- (g) Minors who visit a youth shall be accompanied by parents, grandparents, guardians, or other responsible adults unless prior approval is obtained.
- (h) If a person is not approved for visiting, the youth and the person shall be informed of the reasons for the disapproval in writing. A youth may appeal a disapproval through the youth

complaint procedure, ch. HSS 340, Wis. Adm. Code. The person denied visitation may appeal this decision to the director, bureau of juvenile services.

- (i) The superintendent may permit occasional visits by those not on the approved visiting list who live such a distance from the institution that frequent visiting is impossible.

(3) REGULATION OF VISITS TO YOUTH IN THE GENERAL INSTITUTION POPULATION.

- (a) Each institution shall set forth in writing specific policies and procedures approved by the director, bureau of juvenile services, concerning:

1. The time for visits;
2. Weekday, weekend, and night visits;
3. The duration of visits;
4. The number of visits;
5. The number of visitors permitted on each visit;
6. Immediate termination of a visit for a violation of this chapter;
7. Property which may be brought into the institution during a visit; and
8. The place of visits.

- (b) Each institution shall permit visits on weekends and on weekday nights.

- (c) Each institution shall permit visits on weekdays consistent with scheduled activities and available resources.
 - (d) Each institution shall permit a youth in the general institution population to be visited at least 9 hours per week in visits of such duration as the institution specifies under par. (a).
 - (e) Specific policies adopted under this section may include requirements necessary to manage the visiting population within the physical space and staff limitations of the institution.
- (4) VISITS TO YOUTH IN SECURED PROGRAMS AND ROOM CONFINEMENT.
- (a) Youth in secured programs, room confinement or control status may be permitted visits in accordance with this chapter. Limits may be imposed under par. (b).
 - (b) Each institution shall set reasonable specific policies and procedures regulating visits to youth in secured programs, room confinement, or control status consistent with resources and security needs.
 - (c) Visits to youth under this subsection may be limited if the superintendent determines that the visit poses an immediate threat to the youth or to someone else.
- (5) SPECIAL VISITS. (a) Public officials and members of private and public organizations who provide services to youth may visit with the

approval of the superintendent. Arrangements for such visits shall be made in advance with the superintendent to minimize interference with normal operations and activities. The superintendent may limit such visits in duration and restrict visitors to certain areas of the institution for security reasons.

(b) Attorneys for youth and clergy shall be permitted to visit their clients to assist them through professional services. An attorney's aide and law students shall be permitted the same visitation privileges only if the attorney has informed the institution in writing that an aide or law student will visit. Visiting attorneys, their aides, law students, and clergy shall not count against the allowable number or hours of visits of the youth. Such conversations shall be unmonitored.

(c) Visits under this subsection are subject to the visiting times established under sub. (3) unless approval for different hours is obtained from the superintendent. Visits under this subsection do not count against the total number of visitation hours allowed.

(6) INTER-INSTITUTION VISITS BY FAMILY MEMBERS. Spouses, parents, and children who are residents of different institutions may visit each other if the visit is approved by staff members of each institution. The criteria for approval are the same as for other visitors, as set forth in sub. (2).

(7) CONDUCT DURING VISITS. (a) Visitors are required to obey the department's administrative rules and specific policies and procedures of the institution relating to visiting.

(b) Inappropriate physical contact between youth and visitors is forbidden.

(c) Youth and visitors may not pass or exchange items during a visit, unless authorized to do so.

(8) SUSPENSION OF VISITING PRIVILEGES. (a) For violations of this chapter or specific policies and procedures made by the institutions relating to visiting, a visit may be terminated and the disciplinary authority may suspend visiting privileges under pars. (b) and (c).

(b) If a youth is alleged to have violated rules during a visit, the allegation shall be written and disposed of in accordance with ch. HSS 333, Wis. Adm. Code. The youth's penalty may include suspension of visiting privileges with a specific visitor for a specific period, subject to the following:

1. A suspension may be imposed by the disciplinary hearing authority and appealed to the superintendent; and
2. A suspension appealed to the superintendent may be appealed within a reasonable time to the administrator and the secretary.

- (c) If a visitor is alleged to have violated the department's rules or the specific policies or procedures relating to conduct during a visit, the superintendent shall investigate and decide if such a violation occurred. If such a violation occurred, the superintendent may suspend visiting privileges with the specific visitor. Suspension of visiting privileges may be appealed under par. (b), by either the youth or the visitor.

NOTE: The successful adjustment of a youth to a correctional institution and the ultimate reintegration of a youth into the community depend upon the maintenance of family and community ties. Personal contact through visitation greatly assists in the maintenance of these ties. Visitation also enhances the exchange of ideas and information between youth and the public. See Holt and Miller, Explorations in Inmate-Family Relationships, 42-3 (1972).

Visitation by family serves the legislative purpose under s. 48.01(1)(b), Stats., of preserving the unity of the family whenever possible.

Subsection (2) regulates the method for applying for visitation and the criteria for approval. Each youth is to have an approved visiting list as a matter of managing treatment of the youth and security for the institution.

Visitors are limited according to their relationship to the youth. Under this section, visiting is encouraged for immediate family members and there are limits on nonfamily members. Such a system has the virtue of contributing to the preservation of family ties, a legislative purpose under s. 48.01(1)(b), Stats. On the other hand, youth without large families object, because their visitors are limited. In these cases, allowing additional visitors is encouraged.

Subsection (2)(d) states the procedure for additions to the approved list and the criteria for approval. A written request and the completion of a questionnaire are required. The questionnaire supplies information necessary to evaluate the application. Subsection (2)(e) states the criteria for approval. Because of the importance of maintaining family ties, immediate family are routinely approved. In considering the family ties, emphasis should be on the actual relationship that exists, rather than on blood lines. For example, if a youth lived with a parent surrogate for most of his or her life, that person should be approved as a parent even though there is no blood relation.

Applicants will be disapproved only for the reasons stated in subsection (2)(e)1. For example, past attempts to bring contraband into the institution may result in disapproval.

Subsection (2)(e)2. and 3. address specific issues that have arisen in the past. There seems to be no useful purpose served by exclusion of the persons identified. The concerns in subsection (2)(e) are substantially in accord with ACA Juvenile Standards, standard 9390.

Subsection (2)(f) limits the administrative burden that results from frequent changes in visiting lists.

Subsection (2)(g) is for the protection of young men and women and because security problems are created when young people visit correctional institutions, unless they are accompanied by an adult.

Subsection (3) regulates some aspects of visiting by requiring institutions to make specific policies and procedures. There is a great need for flexibility in the rules relating to visitation times. This is so because of the variety among

institutions and because of the need to be able to alter visitation times to accommodate special circumstances. This section directs each institution to make specific policies and procedures and set some minimal requirements. It is in substantial conformity with ACA Juvenile Standards, standard 9389.

Subsection (4) provides for and permits visits to youth in secured discipline or room confinement. There are differences in institution's capacity to permit such visits and subsection (4)(b) allows institutions to set their own policies. For example, the length of visits or number of people visiting at one time consistent with security needs and resources. Because youth in controlled status are usually acting in a disturbed manner and are not easily calmed down, visits to such youth may be disapproved. This is substantially in accord with ACA Juvenile Standards, standards 9390 and 9393.

It is important that there be access to correctional institutions for state officials and the public. Subsection (5) governs those visits. Such access develops an understanding of the correctional process, may dispel misconceptions, and encourages the exchange of ideas and information among leaders and members of the public, youth, and correctional staff. Such visits are subject to the restrictions of sub. (3). Such visitors may have access to all parts of the institutions subject to the approval of the superintendent. Staff and visitors should be sensitive to the fact that youth desire privacy and try to be as unobtrusive as possible.

Attorneys and clergy are permitted access to their clients anytime during visiting hours. This same access is accorded law students and aides who have written authorization from their referring attorney. Pell v. Procunier, 417 U.S. 817 (1974). This subsection substantially satisfies ACA Juvenile Standards, standard 9393, 9341, and 9342.

Subsection (6) reflects the view that such visits are good for morale and motivation, help keep families together, and ultimately assist in reintegration.

Such visits do put a strain on staff resources. For this reason, the number of such visits are limited. And, residents must be in the general population to be permitted such visits. Staff approval is required for such visits. The criteria for approval are the same as for other visitors.

Subsection (7) requires visitors to obey visiting rules. If they fail to do so, visiting privileges may be suspended pursuant to subsection (8).

Subsection (7)(b) forbids inappropriate physical contact. Visitors and youth often wish to display affection. This, of course, is appropriate. Excessive sexual contact is not appropriate in a place for visiting. Physical contact is not prohibited. The opportunity for informal communication and some physical contact is considered essential by ACA Juvenile Standards, standard 9391.

Subsection (8) provides for the suspension of a youth's privilege to have a particular person visit. Such an action may be the result of violation of these administrative rules, federal or state law, or the rules of discipline by a visitor or youth.

5D/tp

HSS 339.06 PUBLIC EVENTS, ART EXHIBITS, GROUP VISITS, AND BANQUETS

- (1) Public events, art exhibits, group visits, and banquets may be held in correctional institutions with participation by persons from outside the institution. Each superintendent shall regulate such events, exhibits, visits, and banquets as to time, place, size, and manner in which they are conducted.

- (2) In regulating such events, exhibits, visits, and banquets, the superintendent shall consider:
 - (a) Any threat to security posed by the activity;
 - (b) The benefit to the public and to youth by the activity; and
 - (c) Staff and other resources available to regulate the activity.

NOTE: The capacity of each institution to have such activities varies, so each institution must regulate them as to time, place, size, and manner. Subsection (2) identifies the criteria to be used in regulating such activities. While there are benefits from such activities, they may create security problems or a strain on resources. The benefits have already been discussed. See the note to HSS 339.04 and 339.02.

HSS 339.07 ACCESS TO JUDICIAL PROCESS, LEGAL SERVICES, AND LEGAL MATERIALS

(1) GENERAL POLICY. Access by youth to the judicial process, legal services, and legal materials is permitted and shall be facilitated by the division. Access is guaranteed by the United States Constitution and serves important objectives of the correctional system. These include but are not limited to:

(a) Assurance that the youth is being and has been dealt with fairly;

(b) Enabling the youth to return to the community free of unnecessary legal complications which may lead to return to the institution;

(c) Ensuring that the youth is dealt with in accordance with constitutional and other legal requirements and that there are effective procedures for raising and resolving complaints about institutional practices and policies; and

(d) Developing a sense among youth that youth have been and are being dealt with fairly in the courts and correctional system.

(2) ACCESS TO COURTS. (a) Youth shall have access to courts.

(b) Institutions may make reasonable specific policies and procedures which relate to access to courts but such regulations may not unduly delay or adversely affect the outcome of a youth's claim

or defense or discourage youth from seeking judicial consideration of their claims.

- (c) Legal documents may not be read, censored, or altered by correctional staff, nor may their delivery be delayed.
- (d) No reprisals may be permitted when a youth decides to seek judicial or administrative relief.

(3) ACCESS TO LEGAL ASSISTANCE. (a) The division of corrections shall make reasonable efforts to ensure that adequate legal services are available to youth covering the full range of legal concerns a youth may have.

(b) The attorney-client privilege applies between attorneys who provide legal services to youth. The privilege also applies to the work of aides and law students to the same extent it would apply to them in their work with non-residents, under the rules regulating student practice promulgated by the Wisconsin Supreme Court.

(c) This section does not require the division to use its resources to provide legal services.

NOTE: This section attempts to ensure that youth have access to the legal system in an effective way. It must, of course, be noted that the resources available to the division of corrections are limited. Priorities are constantly set and reevaluated so that the goals of the correctional system can be realized.

Correctional institutions for youth in Wisconsin do not have law libraries. This is because experience shows that there is very little expressed interest on the part of the youth to utilize legal materials. Furthermore, the reading level of most youth is not high, and very few youth have the ability to understand the written material in a law library. Consequently, the division has not made the massive investment that would be necessary to provide law libraries to youth in institutions. The division does, however, act as a facilitator by providing youth with the names and addresses of attorneys and groups that help youth with their legal problems, and if a youth has a request for particular legal materials the institution library will make efforts to loan it.

This subsection is in accord with ACA Juvenile Standards, standard 9341.

Subsection (2)(a) reaffirms the policy of effective access. Bounds v. Smith, 430 U.S. 817 (1977).

Subsection (2)(b) permits institutions to make regulations regarding such access. Such regulations might include rules providing for orderly access to legal materials and lawyers. The principle that such regulations not unduly delay or adversely affect claims and defenses is not in need of further explanation except to point out that there is delay in every person's access to the courts and, given limited resources, youth cannot expect instantaneous access to the process.

See IJA/ABA, standard 7.6(N) and ACA Juvenile Standards, standard 9340.

No effort is made in subsection (3) to define what efforts the division of corrections must make nor to elaborate on what is adequate. Such matters are

not susceptible to easy definition, nor are numbers and ratios necessarily helpful in evaluating the quality of services provided. Furthermore, the division is dependent upon the ability and willingness of other agencies to provide legal services on the full range of legal concerns available. Roughly, these fall into three categories:

- (1) Matters relating to the fact or duration of confinement;
- (2) Civil matters, including economic and family problems; and
- (3) Matters relating to the conditions of confinement.

Subsection (3)(b) provides that the lawyer-client privilege applies to the providers of service and client relationship. While this is presently true, it is possible that in the future attorneys might be hired directly by the division. If legal services are to keep their integrity, the providers and youth must be treated in the manner that any attorney-client relationship would be in the private sector. To do less would confuse the clients and inhibit assistance to them by legally trained people.

HSS 339.08 PERSONAL PROPERTY

- (1) Youth are permitted to have personal property in their possession in an institution in accordance with this section and specific policies and procedures made by the institution under this section.
- (2) Each institution shall keep a written list of the personal property items permitted at that institution. This list shall be reviewed and, if appropriate, revised every 6 months. The list and any changes in it shall be approved by the director, bureau of juvenile services.
- (3) Youth may obtain personal property by:
 - (a) Purchase from canteen;
 - (b) Purchase from approved retail outlets;
 - (c) Gifts from friends and relatives brought in on visits or sent in by mail; and
 - (d) Other methods approved by the institution.
- (4) Each institution shall make written specific policies and procedures, approved by the director, bureau of juvenile services, which:
 - (a) Provide the approved methods for youth to obtain personal property at the institution;
 - (b) Provide for records of youths' personal property; and
 - (c) Provide for the secure storage of personal property.

- (5) The policies under sub. (4) may specify limitations as to the value, specifications, and number of particular items.
- (6) Items not permitted at an institution or which are permitted but not on the youth's property list are contraband. They may be seized in accordance with this chapter. A youth may be subject to discipline under ch. HSS 333, Wis. Adm. Code, for possessing contraband.
- (7) The institution is not financially liable for personal property unless it is negligent. If the institution has been negligent, financial reimbursement shall be replacement cost minus depreciation as determined by the committee that deals with resident property.
- (8) Additions to property lists may be approved by the superintendent if they further treatment goals.

NOTE: Personal property can give youth a sense of their own individuality and self-esteem. All people enjoy having personal property, and in correctional institutions it can be a welcome link to one's family, friends, and community.

Personal property creates three major problems. First, administratively, it may be difficult to clean and keep track of such property. Second, such property can create security problems. These problems may be direct, i.e., the item may be fashioned into a weapon, or indirect, i.e., the item may be bartered, sold, or stolen. Third, each institution has a different capacity to store and keep records of property, as well as distinct security and program requirements. For these and other reasons each institution is required to make specific policies and procedures regarding personal property. This permits the desired

flexibility. The list of permitted property and other regulations must be approved by the director, bureau of juvenile services.

Subsection (4)(b) is adopted to help prevent property from being lost or exchanged. Subsection (4)(c) reflects the fact that institutions have varying capacities to store property. Some may have to be sent to a youth's home upon transfer to an institution with limited storage capacity.

Subsection (5) gives institutions authority to regulate the value, specifications, and number of items. Examples of such specifications may be the size of television sets, radios, or phonographs or the value of items. See ACA Juvenile Standards, standard 9452.

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HSS 339.09 LEISURE TIME ACTIVITIES

- (1) The division shall provide as much leisure time activity as possible for youth, consistent with available resources and attendance by youth at school, scheduled programs, and work.

- (2) Each institution shall encourage youth to participate in positive leisure time activities.

NOTE: Leisure time activity is free time outside the room during which the youth may be involved in activities such as recreational reading, sports, film and television viewing, handicrafts, and the like. Involvement in such activities serves important correctional objectives, in that it is intellectually enriching, develops self-discipline and a sense of cooperation, contributes to self-development, and is an outlet for energy and anxiety.

Subsection (2) does not set a minimum number of hours per week for activity outside a room. This is because of the differences between institutions and their resources, as well as the fact that it is usually possible to permit more activity in spring, summer, and fall than in winter. Of course, leisure time activities should not interfere with school, work, and other programs.

HSS 339.10 FOOD

- (1) The division shall provide nutritious food for all youth. Meals shall satisfy the standards of nutrition of the department's division of management services. These meet or exceed the recommended dietary allowances of the Food and Nutrition Board, National Academy of Sciences--National Research Council.
- (2) Each institution shall have specific written policies and procedures regulating eating outside the dining area. Institutions may forbid taking certain foods into living quarters and out of the dining room.
- (3) The menu for each institution shall be posted in advance of the meal.
- (4) Youth for whom medical staff prescribe a special diet for health reasons shall be provided such a diet.
- (5) A youth may abstain from any foods which violate his or her religion. Consistent with available resources, such a youth may substitute other similarly nutritious available foods.

NOTE: The preparation of food for large numbers of people always presents problems. And, given the fact that taste varies, there will always be different views of the adequacy of diet. Whatever differences may exist, there must be no doubt that food must be nutritious and prepared under sanitary conditions. Subsection (1) requires this.

Subsection (2) requires each institution to regulate eating outside the dining room and permits institutions to forbid eating certain foods in the living quarters. This is to take into account the differences among institutions and the fact that size alone sometimes creates unmanageable sanitation problems.

Subsection (3) is adopted to give youth notice of what is to be served so that they may supplement their diet if they so choose. One week advance notice is recommended by ACA Juvenile Standards, standard 9249.

Subsection (4) provides for a special diet for health reasons. Providing such a diet requires the cooperation of the division of health. This subsection is substantially in conformity with ACA Juvenile Standards, standard 9245 and IJA/ABA, standard 7.6(4).

Subsection (5) permits abstention by youth for religious reasons and provides for substitution, if the food is available. This is typically done on religious occasions. See ACA Juvenile Standards, standards 9338 and 9245.

5E/tp

HSS 339.11 CLOTHING

- (1) Each youth shall be provided with adequate clothing. Youth are required to maintain this clothing in clean and neat condition. Worn clothing shall be replaced or repaired.
- (2) Each institution shall make specific policies and procedures relating to wearing personal clothing. These regulations must be approved by the director, bureau of juvenile services.
- (3) Youth shall dress in a clean, neat, and appropriate manner.

NOTE: The sizes of institutions and living units, the amount of storage space, the type of programs available, laundry resources, and differing security requirements dictate that each institution have its own specific policies and procedures relating to personal clothing. In camps, where youth have contact with the community, it is desirable to permit personal clothing. See IJA/ABA, standard 7.6(I). Personal clothing is also allowed in many of the cottages within institutions. See ACA Juvenile Standards, standard 9354.

Under subsection (2), the institution not only may regulate the wearing of personal clothing, but may require certain types of institutional clothing. For example, an institution may require the youth to wear jumpsuits without pockets for security reasons (to prevent the hiding of contraband) or they may require that the clothing be color coded to facilitate identification.

Under subsection (3), staff may consider a T-shirt and shorts as inappropriate outdoor clothing during cold winter weather.

HSS 339.12 PERSONAL HYGIENE

- (1) Each institution shall encourage the maintenance of good personal hygiene standards for its youth. Personal cleanliness shall be a shared responsibility of each youth and the division. Adequate facilities shall be provided for this purpose.

- (2) Institutions shall provide a minimum of three bathing periods per week for each youth. Clean undergarments, shirts, and stockings shall be available at least three times a week. Youth whose work or other activity makes it desirable shall be allowed more frequent bathing and changes of clothing.

- (3) Grooming shall be regulated as follows:
 - (a) Policies concerning hairdressing, use of cosmetics, and personal hygiene shall be made by each institution.

 - (b) Except as provided in par. (d), there shall be no limit on the growth of mustaches, beards, or the length of the hair.

 - (c) Youth assigned to food preparation and serving areas shall be required to wear hairnets or other suitable hair covering.

 - (d) Youth performing work assignments which may reasonably be considered to be hazardous should be required to maintain suitably cropped hair or wear protective appliances or headgear for safety purposes.

- (e) Use of hair pins, barrettes, or curlers are permitted under specific policies and procedures established by the superintendent.

- (f) New identification photographs may be required of any youth whose appearance changes or is altered significantly during confinement as a result of change in hair style, hair length, facial hair growth or removal.

NOTE: HSS 339.12 recognizes that good hygiene is important not only for the individual, but also for the whole youth population and staff. The danger of the spread of disease in a correctional institution must be minimized by healthy living conditions.

Grooming regulations are controversial. Subsection (3) establishes a flexible code for grooming which attempts to provide for the variety of tastes that exist, the need for hygiene, and the need to be able to identify youths whose appearance may change dramatically over the course of several weeks. See IJA/ABA, standard 7.6(I) and ACA Juvenile Standards, standards 9351 and 9352.

HSS 339.13 LIVING QUARTERS

- (1) Single rooms shall be used for housing in institutions except when other housing is desirable for positive program reasons or when overcrowded or emergency conditions as defined in ch. HSS 336, Wis. Adm. Code, prevail. In such cases, multiple occupancy, temporary housing, or dormitory facilities may be utilized for as long as necessary. In other housing facilities, housing shall be consistent with the design of the facility.
- (2) All youth shall keep assigned quarters neat, clean, and sanitary. Cleaning materials shall be made available for this purpose.
- (3) Bed sheets, pillow cases, and towels shall be changed at least once a week. Each youth shall be provided with a standard issue of blankets and similar items necessary for physical comfort. Youth shall be responsible for their proper care.
- (4) The superintendent may establish other appropriate regulations to assure maintenance of adequate standards.
- (5) There shall be no discrimination in assignment of living quarters on the basis of race or religion.

NOTE: HSS 339.13 regulates the housing of youth. The population of institutions vary. Ideally, institutions house one youth in each room unless positive program reasons dictate otherwise. For example, Ethan Allen School has an honor unit which is a dormitory. A youth is placed in this unit as a reward

for good conduct. Another example of positive program purpose may be to allow two brothers to double up. Except for positive program purposes the goal is single rooms.

When overcrowding prevails, resort must be made to dormitories and doubling up. Doubling up in rooms designed for one person may be intolerable for any prolonged period.

Sleeping rooms designed for single occupancy are in conformity with IJA/ABA, standard 7.6(J).

5E/tp

HSS 339.14 FUNDS AND ACCOUNTS

- (1) GENERAL POLICY. The division's authority to manage youth funds and permit and forbid spending shall be exercised to achieve the following objectives:
- (a) To promote the eventual reintegration of youth through a policy designed to ensure that a youth will have money upon release and can manage it responsibly;
 - (b) To prevent the exchange of contraband and victimization within institutions by prohibiting youth, with the exception of youth staff aides with approval, from carrying money, and by requiring all youth funds to be deposited in accounts for the youth;
 - (c) To permit youth to obtain personal property in accordance with s. HSS 339.08; and
 - (d) To give youth the opportunity to manage their funds in a manner consistent with this chapter.
- (2) YOUTH ACCOUNTS. (a) All money in any form delivered to any institution for the benefit of youth shall be turned over to the institution. The institution shall credit the youth's account and give the youth a receipt.

(b) Each youth shall be provided, upon reasonable request, with information regarding his or her account showing receipts, disbursements, and the balance of the account. Institutions are encouraged to provide monthly statements. If the youth has funds in the division savings program, a statement of the savings account shall be provided at least quarterly.

(3) DISBURSEMENTS. (a) Each institution shall set forth in writing a procedure whereby youth may request the disbursement of funds. This procedure shall be consistent with this chapter and shall include the following information:

1. How and to whom requests must be made;
2. What information requests shall include;
3. Who investigates requests;
4. That all decisions shall be in writing with reasons why the decision is consistent with sub. (1) together with the underlying facts upon which the decision was made;
5. Time limits for decisions; and
6. The procedure for appeal of any decision to the superintendent.

(b) 1. Youth may request to have account funds disbursed for any reason.

2. Funds in excess of the amount specified for canteen under sub. (5) shall be disbursed by the superintendent. All disbursements shall be consistent with the purposes under sub. (1).
- (c) Upon release to aftercare supervision youth funds may be managed by the youth's agent or county worker.
- (4) FUNDS FOR LEGAL CORRESPONDENCE AND COPYING. (a) Except as provided in par. (b), legal correspondence may not be denied because a youth is unable to pay for such correspondence. A youth without sufficient funds in his or her account to pay for paper, photocopy work or postage may receive a loan advance. Any amount advanced shall be charged to the youth's account for future repayment.
- (b) If the superintendent determines that charges for legal correspondence substantially exceed the youth's ability to pay, the superintendent may grant a subsidy from institution funds to the youth. No subsidy may exceed \$25.
- (5) CANTEEN. (a) 1. Each institution shall maintain a canteen accessible directly or indirectly by youth to facilitate purchase of property approved under s. HSS 339.08. Institution staff are encouraged to consult with youth at the institution in selecting stock for the canteen.

2. The bureau of juvenile services shall establish, in writing, the maximum amount of money which may be spent during a specified period of time. The bureau is encouraged to adjust this amount periodically to reflect the impact of inflation on purchasing power.

3. A current list of approved and available merchandise including the price of each item, shall be conspicuously posted at each canteen or priced items shall be made available to youth at display counters. Copies shall be made available to youth who do not have direct access to the canteen.

4. Institutions shall permit youth to purchase approved personal property not carried in the canteen. The procedures to be followed shall be written and available to youth. The procedures shall permit purchases from a sufficient number of enterprises to ensure a reasonable selection and a competitive price.

(b) Each institution canteen shall maintain an identification and bookkeeping system for withdrawal of funds from the youth's general account for purchases made through the canteen. No canteen may accept money as a means of exchange from youth, but visitors and staff may spend money at the canteen.

NOTE: The objectives of HSS 339.14 are designed to meet the security needs of the institution, encourage responsible money management on the part of youth, preserve money for the youth upon release and allow youth to manage funds and

make purchases while in the institution. These broad objectives may sometimes conflict with one another. It is difficult to manage funds in a way that meets all the objectives. When there is a conflict, staff must exercise sound judgment in assigning priorities. In such situations, the requirements that reasons be given for decisions under HSS 339 is important.

The differences among needs and obligations provides an explanation of why the objectives are broad. The objectives set forth in this section are factors to consider in weighing the different demands on and amount of youth funds. They are not a priority list for management of these funds and it would be an incorrect interpretation to give undue emphasis to one over the other. Rather, they should all be considered in light of the specific circumstances surrounding each youth's financial position. For example, subsection (1)(a) states the objective of assuring that youth have money in an institution controlled account upon release. This is not a requirement, but is a goal that should be considered whenever a request for disbursement is made.

Subsection (1)(c) and (d) recognizes the desirability of giving youth the opportunity to control their financial resources. Generally, youth have the opportunity to make deposits or withdrawals, except where reasons consistent with paragraphs (a) to (c) justify otherwise. This subsection gives the institutions the flexibility to deal with youth requests in much the same way as a parent would.

In an institutional setting it is desirable to have all money kept in an account for the benefit of the youth, rather than to allow youth to carry money.

Subsection (2) eliminates problems with exchange of contraband and victimization that could result from youth carrying money. It is in substantial accord with ACA Juvenile Standards, standards 9069 and 9384.

The procedure for submitting requests and approval is not the same for all institutions so subsection (3)(a) outlines common information each institutional procedure must contain.

Subsection (3)(b) governs the use of general account funds, and acknowledges the superintendent's discretion to allow or forbid spending of funds for any reason that is consistent with meeting the objectives of sub. (1). This subsection is in substantial accord with ACA Juvenile Standards, standards 9384 and 9069.

Subsection (4) authorizes loans and subsidies to youth for expenses related to legal correspondence. The funds are not intended for actual legal services but for expenses for postage, paper or photocopying. This section is necessary so no youth is denied the benefit of access to the legal process due to lack of funds. For a discussion of the importance of the legal process to people in correctional institutions, see HSS 339.07 and the note. See also, ACA Juvenile Standards, standard 9343, which this section complies with.

5D/tp

HSS 339.15 TELEPHONE CALLS

- (1) GENERAL POLICY. The division shall encourage youth to communicate with their families, government officials, courts, and people concerned with the welfare of youth. Communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate youth and thus contributes to morale and to security.
- (2) OUTGOING CALLS.
 - (a) 1. Each institution shall have a written policy available to youth that contains a specific procedure for permitting telephone calls and that sets time limits for calls. The procedure shall be consistent with this chapter.
 2. The superintendent may make exceptions to any limits on calls consistent with the policy of this chapter.
 - (b) Youth may be permitted to call close family members, as defined under s. HSS 339.05(2)(b), or other interested persons important to them as provided in this chapter. If the youth has no close family members, he or she may be permitted to call others on the approved visiting list.
 - (c) Each youth shall be permitted to make a minimum of one telephone call per month. Where resources permit, more than one telephone call may be permitted and is encouraged.

1. Telephone calls not made during the month may not be banked for use at a later date.
2. A youth may be prohibited from calling under this section if segregated from the general population for control purposes.

(d) Institutions shall determine who shall pay for calls.

(e) Institutions shall permit calls to be at least 5 minutes in duration.

(3) INCOMING AND EMERGENCY CALLS. (a) Because of the difficulty of reaching youth for incoming calls, a person calling a youth shall be asked to leave a message when the call is from family or another approved caller. The message shall be delivered to the youth as soon as practicable.

(b) In the case of emergencies, including but not limited to critical illness or death of a close family member of a youth, a special telephone call should be permitted regardless of the security status of the youth or the number of calls already made during that month.

(4) CALLS BETWEEN YOUTH AND ADULT INMATES. A youth may be permitted to make phone calls to a spouse or parent committed to another Wisconsin correctional institution. Such calls may be permitted only after prior arrangements through appropriate staff have been made.

The institution may regulate payment for calls between youth and inmates. Calls between spouses or a youth and parent are subject to the limits under sub (2)(c) and s. HSS 309.59, Wis. Adm. Code. Calls between siblings may be approved by the institution.

(5) TELEPHONE CALLS TO ATTORNEYS. (a) Youth may call attorneys to discuss legal matters with the permission of the appropriate staff members. Such calls may be made regardless of security status. Calls are subject to staff approval as to timing and duration.

(b) A youth's telephone calls to an attorney are not subject to a maximum limit in number, and an attorney's name need not be on the approved visiting list.

(c) Telephone calls to attorneys shall be made collect.

(d) Staff shall give permission for calls to attorneys for the following reasons:

1. To allow a youth to return a call from an attorney;
2. When there is a statutory time limit that would be missed and the youth needs to convey information to the attorney;
3. When it is in the best interests of the youth;
4. When a youth is unable to write; or
5. When an emergency exists.

NOTE: Subsection (2)(a) allows the superintendent to grant permission for a youth to place a telephone call regardless of any other limitation in this chapter. This is consistent with the policy of HSS 339.15(1) because the superintendent may find that communication by a telephone call is necessary and desirable even when other provisions of this chapter would prohibit it.

Subsection (2)(b) and (c) require the division of corrections to permit at least one telephone call per month to immediate family or others if there are no close family members. Each institution is encouraged to allow more calls, but it is not required because some institutions do not have resources to accommodate larger numbers of calls.

The resource problems associated with telephone calls in a correctional setting are numerous. Youth must be supervised to some extent by staff while they are making calls and while they are being moved to an area where the calls are made.

The large number of youth in institutions requires a substantial commitment just to permit each youth to make one telephone call each month. Some cottages with lower security populations may not need close supervision.

The policy on telephone calls substantially conforms to ACA Juvenile Standards, standard 9394.

Subsection (3)(a) requires that staff ask for messages from approved incoming callers and that the messages be delivered to the youth. Reaching youth for each incoming call would be impracticable. The policy permits staff to plan for youth telephone calls. This preserves order and fosters more efficient use of staff time.

Phone calls between spouses committed to Wisconsin correctional institutions fosters the correctional goal of maintenance of family relations. However, such calls involve separate institutions and, thus, may require additional arrangements to assure the security concerns of both institutions are met. Therefore, subsection (4) was adopted specifying that the prior arrangements be made.

A telephone call to an attorney can be necessary if the mail is inadequate and a youth must contact an attorney with reference to a case. Telephone contact with attorneys furthers access to the judicial process, legal services, and legal materials. HSS 339.07 and the note following that section contain a discussion of the benefits of such a policy. The policy is not only beneficial because it serves correctional goals, but because access to the legal process is guaranteed by the U.S. Constitution. The policy of effective access is articulated in Bounds v. Smith, 430 U.S. 817 (1977), and HSS 339.07.

Several commentators have supported a policy which assists youth in making confidential contact with attorneys via the telephone. See: ACA Juvenile Standards, standard 9342; National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1973), standard 2.2; Krantz et al., Model Rules and Regulations on Prisoners' Rights and Responsibilities (1973), rule IC-5; and American Bar Association's Tentative Draft of Standards Relating to the Legal Status of Prisoners (1977), part IV, standard 6.1(c).

The requirement that calls be with permission of appropriate staff recognizes that some formal arrangement may be necessary for security or other reasons before a youth has access to a telephone and it may take time for such arrangements to be made. It also prevents youth from making unnecessary phone calls. Although, a youth may call an attorney only with permission of staff, that permission may not be unreasonably withheld if a need exists under subsection (5)(d).

A more difficult problem is created if attorneys indicate to institutional staff that they do not wish to receive calls from particular youth or they repeatedly refuse to accept calls. Staff must permit youth access to the legal process, yet must respect the wishes of lawyers who do not wish to be contacted by telephone.

Staff need to exercise sound judgment in such situations. Frequently, the best course to follow is to have the youth contact one of the legal service programs that serves youth. This enables the youth to talk to a lawyer who either can help or who can bring about contact with another lawyer.

HSS 339.16 EDUCATION PROGRAMS

(1) GENERAL PROGRAM. (a) The following educational and related programs shall be made available to youth in correctional institutions and shall comply with applicable state and federal statutes:

1. High school equivalency programs (GED);
2. Traditional diploma programs;
3. Training in independent living skills;
4. Special education and related services for handicapped students as mandated by ch. 115, Stats., and Public Law 94-142;
5. Basic and remedial education;
6. Pre-vocational and vocational education including work experience;
7. ESEA Title I programs as defined by federal guidelines;
8. Counseling and testing; and
9. Reintegration services at the time the youth is released from the institution including transfer of records and consultation with education staff.

- (b) Teachers and staff shall meet state licensing or training requirements from the department of public instruction or the vocational, technical and adult education board. Training programs should be offered to meet special needs of youth.
 - (c) Every youth shall have the opportunity to participate in an education program. Youth may be required to enroll in a specific education program and to attend programs in which they are enrolled.
- (2) WRITTEN PLAN. There shall be a written plan for each education program developed under sub. (1). Plans are subject to the following requirements:
- (a) The written plan shall state, as specifically as possible, the objectives of the program, including what youth will be taught, how the program is expected to benefit youth, and what certificate, diploma, or degree credit will be earned, if any, upon successful completion of the program.
 - (b) The written plan shall specifically state:
 - 1. The program's entrance requirements, including:
 - a. Release eligibility (if necessary);
 - b. Residence at a particular institution;
 - c. Housing status (if any required);

- d. Educational or basic skill prerequisites;
 - e. Time elapsed since suspension from the same or another education program; and
 - f. Any other requirements.
2. The work and progress expected of youth participating in the program;
 3. The criteria for suspension from or modification of the program;
 4. Any statutory requirements of the program;
 5. The training and continuing education requirements for program and teachers; and
 6. The requirements for successful completion of the program.

(c) Plans written under this section shall be updated annually.

NOTE: HSS 339.16(1) provides for education programs that contribute to successful reintegration into the community upon release. Education is important in society and is provided to every youth in youth corrections. A youth cannot effectively cope in the community without the ability to read, write, or do basic mathematics. Yet most youth in the correctional system do not have these skills. Because almost every youth in the custody of the department is under the age of 18, the department has the responsibility to provide traditional diploma programs. Youth have a variety of educational

needs. Some may require basic training while others may be interested in and qualified to do more advanced work. Still others may have exceptional educational needs. The division's goal is to provide for and encourage youth participation in education programs according to their needs, interests, and abilities.

Typically, the bureau of program resources, in cooperation with the educational directors, superintendents, and the bureau of juvenile services make the education programs available for youth.

Subsection (2) requires that each education program developed to meet the requirements under subsection (1) shall have a written plan or description. It would be impractical to describe each education program in the rules, particularly since the number, kind, and offerings of the programs are, and should be, flexible to meet the individual educational needs of youth. Describing the programs, however, helps assure that they will in fact be designed to satisfy specific needs and will be useful to youth. It also helps youth and their counselors to decide whether a particular program might be useful for a particular youth. Also, the written plan assists staff member decision makers by providing them with a framework for understanding a program as part of their evaluation processes. A written plan provides for maximum efficiency and understanding between those who approve of youth participation in education programs and those who actually supply the education services.

Subsection (2)(a) requires that the plan include general statements regarding the objectives of the program to include the subject material, the anticipated benefits to the youth for participation in the program (i.e., give them the prerequisites for further training, or satisfy apprenticeship requirements

necessary for employment upon release), and any award earned upon successful completion of the program.

Subsection (2)(b) requires that the plan include a number of specific criteria that are important. These criteria are essential, because it is important to have clear, uniformly applied standards to assure fairness and so that youth know what is required for entrance, and it is also useful to identify what is expected of youth and teachers participating in the program. If programs are licensed or accredited or there are staff licensing or accreditation standards that are or are not yet being met, this should also be stated in the plan.

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