

account); and holy books. The same diet as provided to the general population at the institution shall be provided.

(3) **OTHER PROPERTY.** Inmates in adjustment segregation may have material pertaining to legal proceedings and books provided by the institution librarian in adjustment segregation.

(4) **VISITS AND TELEPHONE CALLS.** Inmates in adjustment segregation shall be permitted visitation and telephone calls in accordance with ch. HSS 309.

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

(6) **SHOWERS.** Inmates in adjustment segregation shall be permitted to shower at least once every 4 days.

(7) **SPECIAL PROCEDURES.** No property is allowed in the cell except that describe in subs. (1), (2) and (3), and letters received while in adjustment segregation. Smoking is forbidden. Each institution may establish specific procedures relating to talking. No yelling or whistling is permitted.

(8) **LEAVING CELL.** Inmates in adjustment segregation may not leave their cells except for urgent medical or psychological attention, showers, visits and emergencies endangering their safety in the cell.

(9) **GOOD TIME.** An inmate shall not earn extra good time while he or she is in adjustment segregation. Wages are not paid to inmates in adjustment segregation.

(10) **OBSERVATION.** A person placed in observation while in adjustment segregation receives credit toward the penalty being served.

(11) **TRANSFER.** An inmate may be transferred from one institution to another while in adjustment segregation in accordance with ch. HSS 302.

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

HSS 303.70 Major penalties: program segregation. (1) **CONDITIONS.** Program segregation may not exceed the period specified in HSS 303.84. It may only be imposed for a major offense by the adjustment committee or the hearing officer. Only one person shall be kept in each segregation cell, unless overcrowding prevents it. Each cell must meet the following minimum standards: clean mattress, sufficient light to read by at least 12 hours per day, sanitary toilet and sink and adequate ventilation and heating.

(2) **NECESSITIES.** The following shall be provided promptly upon request for each inmate in program segregation: adequate clothing and bedding; a toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use his or her own such hygiene supplies; paper, envelopes, stamps and pens (the cost of stamps may be deducted from the inmate's account); and holy books. The same diet as provided to the general population at the institution shall be provided.

(3) **PROPERTY.** (a) Inmates in program segregation may have in their cells documents and other materials pertaining to legal proceedings as well as books provided by the institution librarian.

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(b) Inmates in program segregation may not have electronic equipment or typewriters in their cells except as permitted in accordance with written policy of the institution. Every institution shall have a written policy providing for incentives for inmates in program segregation to earn the privilege of having personal electronic equipment or typewriters in program segregation. The director of the bureau of adult institutions shall approve each institution's policy before it takes effect to ensure that it is reasonable. Each institution shall post its approved policy and implementation procedures within 30 days after the effective date of this subsection.

(c) This subsection applies to all program segregation status imposed for conduct committed before, on or after the effective date of this subsection.

(4) VISITS AND TELEPHONE CALLS. Inmates in program segregation shall be permitted visitation and telephone calls in accordance with ch. HSS 309.

(5) MAIL. Inmates in program segregation may receive and send mail in accordance with departmental rules relating to mail.

(6) SHOWERS. Inmates in program segregation shall be permitted to shower at least once every 4 days.

(7) SERVICES AND PROGRAMS. Social services, clinical services and program and recreation opportunities shall be provided as possible but must be provided at the individual's cell, unless otherwise authorized by the security director. A program of exercise shall be provided for inmates in program segregation.

(8) LEAVING CELL. Inmates in program segregation may not leave their cells except for medical or clinical attention, showers, visits, exercise and emergencies endangering their safety in the cell.

(9) GOOD TIME AND PAY. Inmates in program segregation earn neither extra good time nor compensation.

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

(11) SPECIAL RULES. Smoking is permitted if no hazard is thereby caused. Talking is permitted in a normal tone during approved times. No yelling or whistling is permitted.

(12) REVIEW OF PROGRAM SEGREGATION. An inmate's status in program segregation may be reviewed at any time and he or she may be placed in the general population at any time by the superintendent. Such status must be reviewed every 30 days by the superintendent. Such review shall include a recommendation by the security director as to whether the inmate should remain in program segregation and an evaluation of the inmate by either the crisis intervention officer or the adjustment program supervisor, or both. In deciding whether an inmate should be removed from program segregation and placed in the general population, the superintendent shall consider:

(a) The offense, including:

1. Its nature and severity;

2. Mitigating factors;
 3. Aggravating factors; and
 4. Length of sentence to program segregation;
- (b) Motivation and behavior of the inmate, including:
1. Attitude toward himself or herself and others and changes in his or her attitude;
 2. Goals of the inmate;
 3. Physical and mental health; and
 4. Attempt to resolve emotional and mental disorders;
- (c) Institutional adjustment, including:
1. Disciplinary record;
 2. Program involvement;
 3. Relationship to staff and inmates; and
 4. Security problems created by release;
- (d) Programs, including:
1. Social and clinical services available to help the inmate; and
 2. Any programs available to help the inmate.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; Emerg. r. and recr. (3), eff. 7-24-84; r. and recr. (3) and (10), Register, December, 1984, No. 348, eff. 1-1-85.

HSS 303.71 Controlled segregation. (1) USE. Any inmate in TLU or segregation of any kind who exhibits loud and seriously disruptive behavior or destructive behavior toward the contents of the cell or himself or herself may be put into controlled segregation upon order of the shift supervisor. No inmate may be placed in controlled segregation unless a conduct report is written for the conduct giving rise to the use of controlled segregation. The adjustment committee shall review the report to determine if disciplinary action is appropriate. Controlled segregation lasts for not more than 72 hours for a single inmate. After an inmate has been in controlled segregation for a total of 72 hours, he or she must be returned to a regular segregation cell for at least 24 hours before he or she may be returned to controlled segregation.

(2) **CONDITIONS.** Only one person shall be kept in each segregation cell, except in emergencies. Each cell must meet the following minimum standards: clean mattress; sufficient light to read by for at least 12 hours per day, sanitary toilet and sink and adequate ventilation and heating.

(3) **NECESSITIES.** The following shall be provided for each inmate in controlled segregation: adequate clothing, essential hygiene supplies upon request, and the same diet as provided to the general population. While an inmate is acting in a disruptive manner, close control of all property shall be maintained.

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

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(5) **MAIL.** Inmates in controlled segregation may receive and send mail in accordance with departmental rules relating to mail. Correspondence materials may be provided if they do not pose a threat to anyone.

(6) **SPECIAL RULES.** (a) No property is allowed in the cell except that described in subs. (2) and (3), letters received while in controlled segregation and legal materials. Smoking is forbidden. Talking is permitted in a normal tone. No yelling or whistling is permitted.

(b) Inmates in controlled segregation may not leave their cells except in emergencies endangering the inmate's safety in the cell or with permission from the security director or his or her designee.

(7) **GOOD TIME.** An inmate in controlled segregation earns extra good time and compensation if he or she was doing so in the previous status.

(8) **RECORDS.** Inmates in controlled segregation shall be visually checked every half hour. A written record or log entry shall be made at each such interval noting the emotional condition of the inmate.

(9) **CREDIT.** An inmate in controlled segregation receives credit toward a term of program segregation and adjustment segregation during such period of confinement.

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

HSS 303.72 Minor penalties. Minor penalties in accordance with HSS 303.68 and 303.84 shall include:

(1) **REPRIMAND.** A reprimand is any oral statement by the committee or hearing officer to an inmate when the inmate is found guilty of a disciplinary offense. The reprimand should only be recorded if no other penalty is given.

(2) **LOSS OF RECREATION PRIVILEGES.** Recreation privileges include sports or exercise periods, movies, and leisure activities outside the cell, either on grounds or off grounds.

(3) **ROOM CONFINEMENT.** Room confinement may be imposed during non-school or non-work program hours, including weekends, for a maximum of 10 days. During the hours of confinement, the inmate may not leave his or her quarters without specific permission. Permission may be granted for religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement. Any or all electronic equipment may be removed from an inmate's quarters if room confinement is imposed.

(4) **LOSS OF A SPECIFIC PRIVILEGE.** Specific privileges which may be lost if abused include: use of inmate's own TV, radio or cassette player; phone calls; participation in off grounds activities; and having meals in the dining room. These privileges may be taken away for up to 30 days for the first offense, for up to 60 days for the second, and permanently for the third. However, visiting and mail may be suspended for periods of time in accordance with departmental rules relating to resources for inmates.

(5) **RESTITUTION.** Restitution is payment to the owner for the replacement or repair of stolen, destroyed and damaged property or for medical bills. Property for which restitution is ordered shall be valued at the cost of replacing or repairing such property, whichever is less. An inmate may be ordered to make full or partial restitution. Money may be withheld from earnings or taken from an inmate's account to satisfy the requirements to make restitution.

Wolff safeguards apply. If other lesser punishments are used, then a less formal procedure is used. In order to preserve the option of using a major punishment, the security office will designate a conduct report as containing a "major offense" whenever it seems possible that either segregation or loss of good time will be imposed by the adjustment committee. Some offenses must *always* be considered major offenses; these are listed in sub. (2). Violations of other sections will be considered individually and it is left to the security director's discretion whether to treat an offense as major or minor. However, guidelines for the exercise of this discretion are given in sub. (3).

Note: HSS 303.69. This section reflects the conditions in adjustment segregation as they already exist at most institutions. The purpose of this section is to promote uniformity among all the institutions, to make sure minimum standards are met and to inform inmates what to expect.

Adjustment segregation lasts a maximum of 8 days, so very spartan conditions are permissible. However, visiting and mail rights are protected by the first amendment. See *Procurier v. Martinez*, 416 U.S. 396 (1974); *Mobra v. Schmidt*, 356 F. Supp. 620 (W.D. Wis. 1973).

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

Note: HSS 303.70. This section reflects the conditions in program segregation as they exist at at least one institution. The purposes of this section are to promote uniformity among all the institutions, to make sure minimum standards, possibly required by the eighth amendment's "cruel and unusual punishment" clause are met and to inform inmates what to expect.

Subsection (3) clarifies what personal property inmates in program segregation may keep in their cells. Inmates may not keep electronic equipment or typewriters in their cells except as allowed by a particular institution's written policy. Each institution is expected to have a policy designed to motivate inmates to improve their behavior in segregated statuses so that they will be permitted to move into the general population of the institution.

Since program segregation may last for almost one year (or longer if a new offense is committed), the conditions are not as spartan as in adjustment segregation. In particular, more personal property is allowed and there is an opportunity to take advantage of programs. Sub. (7). A person's stay in program segregation may not be extended and he or she may be released at any time through the procedure established under this section.

Note: HSS 303.71. Controlled segregation is not intended as punishment but, as its name implies, it is to be used where it has been impossible to control a person in segregation. The purpose of the section is to promote uniformity in the use of controlled segregation and make sure minimum standards are met. In particular, incoming and outgoing mail is still allowed as if the inmate were not in segregation. This is a logical extension of *Procurier v. Martinez*, 416 U.S. 396, (1974). See also *X v. Gray*, 378 F. Supp. 1186 (E.D. Wis. 1974), aff'd 558 F. 2d 1033; *Viennau v. Shanks*, 425 F. Supp. 676 (W.D. Wis. 1977).

Note: HSS 303.72. This section describes each of the minor penalties which may be imposed. The purpose of this section is to standardize the punishments used so that an inmate's disciplinary record is easier to understand, and to inform inmates of what to expect. There should be no referral to the program review committee for reclassification if a minor penalty is imposed, unless there has been a recent accumulation of such penalties.

Note: HSS 303.73. A number of rules cover conduct which is sometimes a criminal offense. However, many petty matters would probably not be prosecuted by the district attorney even if brought to his attention—for example, gambling. Also, in most cases, even outbreaks of violence are handled through disciplinary procedures rather than by prosecution. This section requires the superintendent to work with the district attorney in developing a policy on prosecution of crimes committed within the institution. The frustration and waste of time involved in referring cases which are dropped can be avoided, as well as the possibility of failing to refer a case which ought to be prosecuted. Naturally, the final decision is left up to the district attorney (sub. (2) (b)).

In developing the policy on referral, it will become obvious that the disciplinary rules do not follow the criminal statutes exactly. Some crimes are not covered by the disciplinary rules. These are generally "white collar" crimes which are unlikely to be committed in prison. Some rules cover both criminal and non-criminal activities. An example is HSS 303.43, Possession of intoxicants, which covers possession of alcohol as well as prescribed drugs. The notes to the individual sections explain the differences between each rule and the similar criminal statute.

Sub. (3) provides that disciplinary procedure can go forward even if the case will also be prosecuted as a criminal offense. This option is often needed for control because criminal procedure takes a long time and because a criminal conviction merely lengthens an inmate's sen-

tence without changing the conditions of confinement. For some inmates, a longer sentence is very little deterrent. Also, it provides no protection to potential victims because the offender is not segregated from the general population. There is no double jeopardy in having both a disciplinary hearing and a criminal trial on the same matter. See *Baxter v. Palmigiano*, 425 U.S. 308 (1976).

Note: HSS 303.74. The availability of summary disposition avoids the necessity of a disciplinary hearing when the inmate agrees to summary disposition. Summary disposition is only allowed in relatively minor cases, those where the punishment is only one of the punishments listed in sub. (5). To further limit the possibility of abuse, any summarily-imposed punishment must be approved by the shift supervisor. Sub. (4). Also, summary punishments must be reviewed and approved by the security office before being entered in the inmate's disciplinary record or other files. See HSS 303.67.

In the recent past, summary disposition has not been used extensively. A hearing was held on all offenses. This section thus streamlines disciplinary procedure in minor, uncontested cases. One purpose of the section is to encourage summary disposition, where appropriate.

Note: HSS 303.75. The minor hearing procedure has several safeguards to protect the inmate from an erroneous or arbitrary decision. It is used in the following situations: (1) When the inmate did not agree to summary disposition, because he or she contested the facts or for some other reason; (2) When the appropriate punishment, if the inmate is found guilty, is more severe than permitted on summary disposition but not so severe as to require a full due process hearing; and (3) When a due process hearing was waived by the inmate.

The protections present in the minor hearing procedure are: sub. (1)—notice of the charges; sub. (2)—opportunity for the inmate to explain or deny the charges; sub. (4)—a decision based on the evidence and on a preponderance of the evidence; sub. (6)—an impartial hearing officer; and HSS 303.85—no records are kept in any offender-based file if the inmate is found not guilty.

The ACA, standard 4334, Discussion, draws the line between "major" and "minor" violations in a different place: "Minor violations usually are those punishable by no more than a reprimand or loss of commissary, entertainment or recreation privileges for not more than 24 hours." Because minor penalties as defined in HSS 303.68 include several which are more severe, the minor offense disciplinary procedure is somewhat more formal than that recommended in the ACA.

Note: HSS 303.76, HSS 303.76, 303.78-303.80, and 303.82 prescribe a hearing procedure for major offenses which complies with the requirements of *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974). With respect to notice, the subject of this section, the court said:

We hold that written notice of the charges must be given to the disciplinary-action defendant in order to inform him of the charges and to enable him to marshal the facts and prepare a defense. At least a brief period of time after the notice, no less than 24 hours, should be allowed to the inmate to prepare for the appearance before the Adjustment Committee.

See the note to HSS 303.77 concerning waiver of the right to a due process hearing.

See the note to HSS 303.78 on the other requirements of *Wolff, supra*.

Note: HSS 303.77. Just as a criminal defendant may waive his or her right to a trial, so an inmate accused of a disciplinary offense can waive his or her right to a due process hearing. In that case, a hearing of the type used for minor offenses is held. The inmate still has an opportunity to make a statement, an impartial hearing officer, a decision based on the evidence, and an entry in the record *only* if the inmate is found guilty. See HSS 303.75 and note.

To ensure that any waiver is a knowing, intelligent one, the inmate must be informed of his or her right to a due process hearing and what that entails (HSS 303.76 (4)); informed of what the hearing will be like if he or she waives due process (HSS 303.76 (5)); and the waiver must be in writing (HSS 303.76).

A waiver is *not* an admission of guilt.

Note: HSS 303.78. HSS 303.76, 303.78, 303.79, 303.80 and 303.82 prescribe a hearing procedure for major offenses which complies with the requirements of *Wolff v. McDonnell*, 418 U.S. 539 (1974). As summarized in the syllabus of the case, those requirements are:

(a) Advance written notice of charges must be given to the inmate, no less than 24 hours before an appearance before the adjustment committee.

(b) There must be "a written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action." *Morissett v. Brewer*, 408 U.S. 471, 489 (1972).

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