

CERTIFICATE

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

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Revisor of Statutes
Bureau

I, Timothy F. Cullen, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to inspection of mail to and from inmates of adult correctional institutions were duly approved and adopted by this Department on February 15, 1988.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the 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 15th day of February, 1988.



Timothy F. Cullen, Secretary
Department of Health and Social Services

SEAL:

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

To renumber HSS 309.05(5) to (11); to amend HSS 309.05(6)(intro.), as renumbered; to repeal and recreate HSS 309.05(3), (4) and Note (3rd and 4th paragraphs); and to create HSS 309.05(5), relating to inspection of mail to and from inmates of adult correctional institutions.

Analysis Prepared by the Department of Health and Social Services

Currently s. HSS 309.05(3) does not permit staff of adult correctional institutions to inspect or read correspondence between inmates and specified government officials and agencies, including the courts. There is a need to inspect mail from these parties because, without realizing it, officials and agencies sometimes include unauthorized items in the correspondence which pose a threat to the security of the institution and the safety of inmates and staff. In addition, someone else may have obtained an envelope having the return address of one of those parties for the purpose of sending contraband to inmates.

Mail from courts often include heavy, sharp metal binders used to fasten documents. A recent search of inmate quarters in the segregation unit at Waupun Correctional Institution produced a metal binder which had been fashioned into a 5-6" knife with a taped handle. A weapon like this threatens the safety of inmates and staff and may represent a danger to the public at large if the inmate uses the weapon to escape.

Certain government agencies such as the Veteran's Administration and the Internal Revenue Service send checks directly to inmates rather than to the inmate's account. Inmates are not allowed to have checks because they may lead to undesirable activities such as theft, gambling, forced "borrowing" and the selling of favors including sexual favors. Other agencies sometimes send identification cards and arrest records of other inmates or family members to inmates which may be used to commit fraud and blackmail. These activities threaten the safety, security and order of correctional institutions. Stationery from government agencies and officials may be obtained by unauthorized persons who may send contraband into a correctional institution.

This rule change allows mail received by an inmate from certain listed government officials and agencies and, by an inmate in segregation, from a court to be opened for inspection in the presence of the inmate, but not read. The mail is in the inmate's physical possession as institution staff inspect the mail for contraband. The inspection of mail without the contents being read does not unduly impede an inmate's access to government officials and agencies, but allows the Department to prevent the entry to a correctional institution of unauthorized items which may threaten the health and safety of inmates and staff.

The Department's authority to repeal, renumber and recreate these rules is found in ss. 46.03(1) and (6)(b) and 227.11(2)(a), Stats. The rules interpret ss. 46.03(1) and (6)(b), 53.07 and 53.08, Stats.

SECTION 1. HSS 309.05(3), (4) and Note (3rd and 4th paragraphs) are repealed and recreated to read:

HSS 309.05(3) Correspondence sent by an inmate to the corrections complaint examiner may not be opened for inspection or read by institution staff. Correspondence received by an inmate in connection with a complaint filed by the inmate with the inmate complaint review system under ch. HSS 310, from the secretary of the department, the administrator of the division, the corrections complaint examiner or the superintendent of any state correctional institution, may not be opened for inspection or read by institution staff. Correspondence received by an inmate from any of these parties in connection with the inmates-complaint review system shall be readily identifiable as from the inmate complaint review system.

(4) Correspondence sent by an inmate to any of the parties listed below may not be opened for inspection or read by institution staff. Correspondence received by an inmate from any of these parties may be opened by institution staff in the presence of the inmate. Institution staff may direct the inmate to remove the contents of the envelope, shake out the envelope and show the contents, page by page, to staff so that staff can inspect the contents to determine whether it contains contraband. Institution staff may not read correspondence received by an inmate from any of these parties except that if the correspondence contains an arrest record or any document of identification, staff may read the document but only to the extent necessary to determine who is the subject of the document. If correspondence contains contraband or if the inmate refuses to show the contents of the envelope to institution staff, institution staff may confiscate the correspondence. Confiscated correspondence

shall be processed in accordance with sub.(6)(e)(intro.) and 1, (f) and (g).

This subsection applies to the following parties:

(a) An attorney, if the correspondence is readily identifiable as being from an attorney;

(b) The governor of Wisconsin;

(c) Members of the Wisconsin legislature;

(d) Members of the United States congress;

(e) The secretary of the department, except for correspondence in connection with the inmate complaint review system;

(f) The administrator of the division, except for correspondence in connection with the inmate complaint review system;

(g) A bureau director of the division;

(h) The administrator of the department's division of care and treatment facilities;

(i) The director of the department's bureau of correctional health services;

(j) The superintendent of any state correctional institution, except for correspondence in connection with the inmate complaint review system;

(k) The parole board;

(l) The attorney general of Wisconsin or an assistant attorney general;

(m) Any sheriff's office or police department; or

(n) An agency of the federal government.

Note: HSS 309.05(3rd and 4th paragraphs). Subsection (2) requires each inmate to consent in writing to receive mail through the institution mail service. Without this consent, the institution will return mail unopened to the sender as required by the U.S. Postal Service Domestic Mail Manual, ch. 115.97. Subsections (3), (4) and (5) reflect the view that no proper correctional purpose is served by institution staff reading the mail an inmate receives from any of the listed parties, for access to these government officials and other

parties should not be unduly impeded by restrictions on correspondence. Accordingly, outgoing mail to the parties listed in subs. (3), (4) and (5), and incoming mail in connection with the inmate complaint review system (ICRS) or from a court, if addressed to an inmate in the general population, may not be opened at all by institution staff. Incoming mail from the parties listed in sub. (4) as well as incoming mail from the parties listed in sub.(5) when addressed to an inmate in segregation may be opened in the presence of the inmate. The opened mail will be handed to the inmate who will be directed to remove the contents. The inmate will be directed to shake out the envelope and show the contents of the mail, page by page, to institution staff so that staff can determine whether the mail contains contraband. Institution staff are not permitted to read the mail, except that if the mail contains a rap sheet or similar document or a document of identification such as a social security card or driver's license, staff will be allowed to read the document but only to the extent necessary to determine who is the subject of it.

There is need for inspection of incoming mail under sub.(4) and mail from courts to inmates in segregation under sub.(5) because government officials and attorneys sometimes send checks directly to an inmate rather than to the inmate's account, and stationery from the listed offices and the courts may be obtained by unauthorized persons. Courts often secure documents with large metal fasteners that can be fashioned into weapons by inmates. If correspondence contains contraband that can be removed easily, such as checks or large metal fasteners, the item should be removed and the correspondence returned to the inmate. However, if the correspondence contains such contraband as drugs, the correspondence should be confiscated. Currency and confiscated correspondence should be processed in accordance with sub.(6)(e)1, (f) and (g).

SECTION 2. HSS 309.05(5) to (11) are renumbered HSS 309.05(6) to (12) and HSS 309.05(6)(intro.), as renumbered, is amended to read:

HSS 309.05(6)(intro.) Except as provided in subs.(3), and (4) and (5), the following restrictions apply to all inmate correspondence:

SECTION 3. HSS 309.05(5) is created to read:

HSS 309.05(5) Correspondence sent by an inmate to the clerk or judge of any state court or federal court may not be opened for inspection or read by institution staff. Correspondence received by an inmate from any of these parties may not be opened for inspection or read by institution staff unless the inmate is in segregation. If an inmate is in segregation, correspondence received by an inmate from any of these parties may be opened by institution

staff in the presence of the inmate. Institution staff may direct the inmate to remove the contents from the envelope, shake out the envelope and show the contents, page by page, to staff so that staff can inspect the correspondence to determine whether it contains contraband. Institution staff may not read correspondence received by an inmate from any of these parties except that if the correspondence contains an arrest record or document of identification, staff may read the document but only to the extent necessary to determine who is the subject of the document. If correspondence contains contraband or if the inmate refuses to show the contents of correspondence to staff, the correspondence may be confiscated. Confiscated correspondence shall be processed in accordance with sub.(6)(e)1 and (intro.), (f) and (g).

The repeals and 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. 227.22(2), Stats.

Wisconsin Department of Health
and Social Services

Dated: February 15, 1988

By: 

Timothy F. Cullen, Secretary

Seal:

8-27-7/263



State of Wisconsin

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson
Governor

Timothy F. Cullen
Secretary

February 15, 1988

RECEIVED

FEB 16 1988

Mailing Address:
Post Office Box 7850
Madison, WI 53707

Mr. Orlan Prestegard
Revisor of Statutes
7th Floor - 30 on the Square
Madison, Wisconsin 53702

Revisor of Statutes
Bureau

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 309.05, administrative rules relating to inspection of mail to and from inmates of adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules apply to inmates of adult correctional institutions and to adult correctional institutions. The rules do not affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Timothy F. Cullen
SECRETARY

Enclosure