APPENDIX

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

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

Others required to go through A&E are people whose parole, mandatory release, or probation was revoked.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

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

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

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

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

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

If the A&E process is centralized in the Wisconsin system, it is likely that specialized staff will conduct A&E for all residents. No effort is made to identify the particular tests to be administered, since it is thought that this is best left to correctional staff and because resources are not available to permit uniform testing at all institutions. This rule and other rules in this chapter substantially fulfill the requirement of *ACA Accreditation Standards* 4356.

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

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

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

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

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

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

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

The American Correctional Association has indicated:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: DOC 302.07. DOC 302.07 is written to insure that handicapped residents receive adequate orientation in the correctional system. Rather than attempt to identify all the possible handicaps people in the correctional system may have, the requirement is stated in a broad fashion to insure that all needs are met. For example, the needs of the developmentally disabled may be different from the needs of the blind. The rule requires that orientation be individualized in accordance with these different disabilities.

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

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

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

Appendix

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: **DOC 302.14.** DOC 302.14 lists criteria that may be considered in the assignment of a security classification. While the criteria are for the most part self-explanatory, some elaboration on them is desirable.

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

Subsection (2) makes the offender's criminal record relevant.

The length of sentence is of importance in assigning a security classification, as is the amount of time already served for the offense. These criteria are in subs. (3) and (10). An inmate who is close to release, either because he or she has served close to the expiration of sentence or because of the duration of sentence, may be less of an escape risk or may not need as close supervision as an offender with a substantial period of confinement ahead of him or her. Because of the special escape risk inmates serving life sentences pose, DOC 302.145 establishes additional criteria for the security classification of lifers.

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

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

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

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

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

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

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

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

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

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

Subsection (14) states that detainers are relevant to the security classification decision but that detainers must be evaluated with respect to the potential penalties an inmate would face upon disposition of whatever underlies the detainer. This is in conformity with *Reddin v. Israel*, 445 F. Supp. 1215 (E.D. Wis. 1978).

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

Understandably, inmates are frustrated by this. When the time and place of release are uncertain inmates often lack incentive to constructively involve themselves in programs that will help them upon release. The uncertainty may also have adverse psychological consequences for the inmate.

Rarely is anyone, including the authority who filed the detainer, certain about the disposition of whatever underlies the warrant. Indeed, detainers are sometimes filed for non-criminal matters like non-support and, in criminal matters, without serious or informed consideration of whether the matter will be pursued when the inmate is available. Whether the authority which filed the detainer eventually takes custody of the inmate may depend upon the sentence being served, a fact the authority has no information about. For discussions of the effects of detainers, see Dickey and Remington, Legal Assistance for Institutionalized Persons—An Overlooked Need, 1976 So. Ill. L.R. 175, 184; D. Wexler, The Law of Detainers (U.S. Department of Justice Monograph, 1973); L. Abramson, Criminal Detainers (Ballinger Publishing Co. 1979).

Subsection (14) requires several things before a detainer can be considered in classification. It has several purposes: (1) to permit the corrections staff to consider the alleged facts underlying the detainer; (2) to permit the inmate to know what those alleged facts are; (3) to permit the inmate to make known additional or contradictory facts; (4) to ensure that the importance attached to the detainer is made clear to the inmate. This last point may enable a inmate, through the social worker or directly, to raise with the authority which placed the detainer the desirability of maintaining it, in the light of its effect.

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

Subsection (15) recognizes that the risk that an inmate presents to public safety and to the security and management of a correctional institution as measured by the department of corrections' risk rating system is relevant to the security classification decision. The measurement of risk is based on documented behavior that illustrates a level of assaultiveness or aggressiveness. The risk rating system is a tool that aids correctional staff in interpreting and weighing the other individual factors in this section. The intent of the risk rating system is to promote consistent, objective and effective classification decisions and limit bias and subjective interpretation of the classification factors as much as possible. The system, however, permits correctional staff to exercise professional judgment in making the final security classification determination.

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

Subsection (3) reflects a change in the policy of the department of corrections. Heretofore, residents, including women, could not participate in programs or A&E at men's institutions. Nor did men participate in programs at institutions other than the one's at which they reside. This is now permitted, if the residents are otherwise qualified for the program and have the security classification that permits daily commuting to other institutions. Such progamming

is not likely to be extensive, given the cost involved. The rule does reflect the effort to make more programs available to residents, particularly women. Given the possible costs created by such changes, implementation of the principle is likely to be incremented.

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

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

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

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

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

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

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

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

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

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

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

These elements are:

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

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

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

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

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

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

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

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

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

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

Note: DOC 302.18. DOC 302.18 provides for the review of the program assignment and security classification of each resident. This includes residents in the general population, as well as those in any administrative or segregated confinement. Such review must occur within 6 months of the last review. Continued monitoring of these decisions is an essential feature of correctional treatment. Six months is typical limit for such review. *American Bar Association,* supra, Standard 3.5 (6).

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

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

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

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

Note: DOC 302.19. DOC 302.19 provides a procedure for review and change of an inmate's security classification, institutional placement or program assignment. Except for inmates serving a life sentence, the department's classification chief has final decisionmaking authority for all security classification changes and transfers. The PRC has this authority for pro-

gram assignments. Inmates may appeal the PRC's decision as to program assignment to the institution superintendent.

Typically, the classification chief's decision is made on the recommendation of the PRC. If a recommendation for transfer or change of security classification is not unanimous, all recommendations are considered.

If there is not unanimity as to the change in security classification, transfer or approval for work or study release, the A&E director and the superintendent or designee have the authority to make a recommendation as to the security classification and placement in an institution. If they cannot agree, the issue goes to the classification chief without a formal recommendation but with comments. If there is a tie vote as to program assignment, the superintendent or designee has the authority to make that decision.

The same principles discussed in the note to DOC 302.16 dictate the criteria for program review. There is no need to repeat them here. A staff member must interview the inmate and make a recommendation. This is desirable to ensure continued review of the inmate's status.

The inmate has the option to appear before the PRC unless the inmate refuses or is disruptive. In the center system, the distance of the inmate from the PRC may require that the personal appearance be before a single member of the committee. This should occur as infrequently as possible.

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

With roughly 6,500 inmates in the Wisconsin correctional system, review of each inmate every 6 months means that there are thirteen thousand reviews each year, exclusive of reviews due to changed circumstances. This large volume of work means that responsibility must be delegated at each institution. Yet uniformity is also desirable. For these reasons, decisionmaking is structured to include staff at the institutional level while leaving final authority with the division of adult institutions' classification chief or, in the case of a lifer's minimum security classification, the administrator of the division of adult institutions.

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

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

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

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

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

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

Subsections (6) and (7) provide for emergency transfers. If a resident's physical or mental health requires transfer or if there is a major security problem, it is necessary to have the authority for emergency transfers. A review of the resident's program assignment and security classification is required within 7 days of such a transfer. A "security emergency" is defined in s.DOC 306.23 (1).

Note: DOC 302.21. 1983 Wisconsin Act 528 applies only to inmates who were sentenced for crimes committed on or after June 1, 1984. Inmates who committed crimes before June 1, 1984, have 60 days from the time they are received at a prison to petition the department to have 1983 Wisconsin Act 528 apply to them. Since the act affects computation of a resident's mandatory release date, this rule differentiates, where appropriate, between those residents who are covered by the act and those who are not.

DOC 302.21 (1) requires the computation of 3 critical dates in an inmate's life and notice to the inmate of them. They are the parole eligibility date, the projected mandatory release date and the projected discharge date. The latter 2 are "projected" because they may be altered.

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

An inmate not covered by 1983 Wisconsin Act 528 whose discretionary parole or mandatory release parole has been revoked must await a determination as to how much good time is forfeited before the dates can be set. An inmate covered by 1983 Wisconsin Act 528 whose discretionary parole or mandatory release parole has been revoked must await a determination of how much of the remainder of his or her sentence must be served. An inmate whose probation was revoked but whose sentence was withheld must await sentencing before the dates are determined. After sentencing, they are informed of the dates.

For inmates who committed crimes before November 3, 1983, and who therefore are not covered by 1983 Wisconsin Act 64, parole eligibility, except for crimes with a mandatory eligibility date, is one-half the minimum sentence. The minimum sentence is one year for felonies. Sections 57.11 and 973.01, Stats. (1981-82); *Edelman v. State*, 62 Wis. 2d 613, 215 N.W.2d 386 (1973). For inmates who committed crimes on or after November 3, 1983, and who therefore are covered by 1983 Wisconsin Act 64, parole eligibility is 25% of the sentence imposed for the offense or 6 months, whichever is greater. Parole eligibility should not be equated with a grant of parole. Eligibility simply means the person may be considered for parole. It does not mean the person will be granted parole, necessarily. For all inmates there is a requirement that an inmate serve 60 days in a state institution before obtaining eligibility.

For example, an inmate not covered by 1983 Wisconsin Act 64 with a 5-year sentence for burglary is eligible for parole after 6 months. An inmate covered by the act with the same sentence is eligible for parole after 1 year and 3 months. An inmate who receives 2 consecutive 5 year sentences imposed at the same time is eligible for parole after serving one year if not covered by 1983 Wisconsin Act 64, and after 2 years 6 months if covered by the act. The inmate begins satisfying parole eligibility requirements on the second sentence upon satisfying eligibility requirements on the first. DOC 302.21 (2) (a).

For inmates not covered by 1983 Wisconsin Act 528 the projected mandatory release date is reached by crediting the resident with statutory good time in the amount of one month for the first year, 2 for the second and so on to a maximum of 6 months for the sixth year and every year thereafter; and by crediting extra good time at the rate of one day for every 6 of satisfactory work or study. An inmate receives statutory good time but not extra good time for county jail time. The inmate does not receive extra good time for the period by which his or her sentence is reduced by statutory good time. See ss. 53.11 and 53.12 (1981-82), Stats., and *State ex. rel. Hauser v. Carballo*, 82 Wis. 2d 51, 261 N.W.2d 133 (1978).

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

A few examples help explain this process for inmates not covered by 1983 Wis. Act 528.

An inmate with a single 5-year sentence which had a beginning date of 5-16-74 has a projected discharge date of 5-16-79. Such a person may earn one year, three months of statutory good time pursuant to s. 53.11, Stats., and 6 months, 13 days of extra good time pursuant to s. 53.12, Stats., in which case the inmate's projected mandatory release date would be 8-3-77.

If the same inmate had 2 concurrent 5-year sentences imposed on the same date, the projected discharge date would be the same as in the example above. DOC 302.21 (3) (c) 1.

If an inmate received 2 terms of 5 years to be served consecutively for a total sentence of 10 years, and one sentence was imposed on 5-16-74 and the other on 6-16-74, but both crimes were committed before 5-16-74, the projected maximum discharge date would be 5-16-84. The inmate could earn 3 years, 9 months of statutory good time and 10 months, 22 days of extra good time. The projected mandatory release date would be 9-24-79. DOC 302.21 (3) (a) 3.

If an inmate with a single 5-year sentence imposed on 5-16-74 received a second 5-year concurrent sentence imposed 3 months later on 8-16-74, the inmate's new projected maximum discharge date would be 8-16-79. The inmate's new projected mandatory release date would be 11-3-77. DOC 302.21 (3) (c) 2.

An inmate with a single 5-year term imposed on 5-16-74 who received a second 5-year term, imposed on 8-16-74, to be served consecutively, for a crime committed while the resident was serving the first sentence, would have a new projected maximum discharge date of 5-16-84. The new projected mandatory release date would be 10-20-80. DOC 302.21 (3) (a) 4. It should be noted that the inmate can receive only one month of statutory good time on the second sentence during its first year, 2 during its second year on so on. Section 53.11, Stats. (1981-82); *State ex. rel. Gergenfurtner v. Burke*, 7 Wis. 2d 668, 97 N.W.2d 517 (1959). *State ex. rel. Stenson v. Schmidt*, 22 Wis. 2d 314, 125 N.W.2d 634 (1964).

For those inmates covered by 1983 Wis. Act 528, the maximum discharge date is reached by taking the beginning date of the sentence, adjusting it for county jail time and projecting the maximum period imposed by the court. The projected mandatory release date is established at two-thirds of the court-imposed sentence. Inmates do not earn statutory or extra good time. However, the mandatory release date may be extended for infractions of the department's rules.

The following examples explain the process for inmates covered by 1983 Wis. Act 528:

An inmate with a single 5-year sentence which had a beginning date of 5-16-83 has a projected maximum discharge date of 5-16-88. The court-imposed sentence is reduced by 1/3 or 1 year and 8 months, so that the mandatory release date is established at 9-16-86;

If the same inmate had 2 concurrent 5-year sentences imposed on the same date, the projected mandatory release and projected maximum discharge dates would be the same as in the example above. DOC 302.21 (3) (c) 1;

If an inmate received 2 terms of 5 years to be served consecutively for a total sentence of 10 years, and the first sentence was imposed on 5-16-83, the projected maximum discharge date would be 5-16-93. The projected mandatory release date would be 1-16-90, no matter when the second sentence was imposed. DOC 302.21 (3) (b) 3; and

If an inmate with a single 5-year sentence imposed on 5-16-83 received a second 5-year concurrent sentence imposed 3 months later on 8-16-83, the inmates's new projected maximum discharge date would be 8-16-88. The inmate's new projected mandatory release date would be 12-16-86. DOC 302.21 (3) (c) 2.

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

Note: DOC 302.23. DOC 302.23 deals with credit toward satisfaction of sentence for parolees whose discretionary parole is revoked. This section applies only to inmates not subject to 1983 Wisconsin Act 528. For inmates who committed crimes on or after June 1, 1984, or other inmates who chose to have 1983 Wisconsin Act 528 apply to them, sentence credit as described in s. DOC 302.25 is treated the same for mandatory release and discretionary parolees.

Discretionary parole violators receive credit for the whole period under supervision. Subsection (4) requires that credit be given for periods in Wisconsin custody after violation, either pursuant to a "hold" or in connection with the course of conduct that leads to violation. See s. 973.155 (1), Stats. Statutory and extra good time may be subject to forfeiture, but only so much as has been earned to the date of violation. Sections 53.11, 53.12, 57.07 (2) (1978), Stats. *State ex. rel., Hauser v. Carballo*, 82 Wis. 2d 51, 261 N.W.2d 133 (1978). A discretionary parole violator must serve his or her sentence to the mandatory release date plus tolled time. Tolled time is the period of time not in custody pursuant to s. 973.155 (1), Stats., between the date of a parolee's violation and the date the parolee is revoked.

Note: DOC 302.24. DOC 302.24 deals with credit toward satisfaction of sentence for parolees whose mandatory release parole is revoked. This section applies only to inmates not subject to 1983 Wisconsin Act 528. For inmates who committed crimes on or after June 1, 1984, or other inmates who chose to have 1983 Wisconsin Act 528 apply to them, sentence credit as

described in s. DOC 302.25 is treated the same for mandatory release and discretionary parolees. This section puts into rule form the requirements of *State ex. rel. Hauser v. Carballo*, 82 Wis. 2d 41, 261 N.W.2d 133 (1978) and ss. 973.155, 302.11 (7) and 304.072, Stats.

Note: DOC 302.25. DOC 302.25 deals with credit toward satisfaction of sentence for parolees subject to 1983 Wisconsin Act 528, who are persons who committed crimes on or after June 1, 1984, or other persons who chose to have the act apply to them. The act makes no distinction between mandatory release and discretionary parolees for purposes of receiving credit. This section puts into rule form the requirements of ss. 973.155 and 302.11 (7) (a), (1989) Stats. The inmate receives credit only for those periods served in custody prior to parole and time served in custody after release if the custody was in connection with the course of conduct that led to violation. The hearing examiner may order the inmate to serve the entire sentence, less time served in custody.

Note: DOC 302.27. This section deals with credit provisions for people whose probation is revoked. People who have been sentenced prior to revocation are treated slightly differently from those whose sentencing is deferred until after revocation. Subsection (1) provides that if the probationer has been sentenced, the term begins when the probationer enters prison. If sentencing was deferred, the term of the sentence begins on the date it is imposed unless it is ordered consective. This difference has limited practical effect. The provisions of s. 973.155, Stats., give both categories of people identical credit. Therefore the difference does not enlarge the total period of confinement. Subjection (3) states the requirements of s. 973.155, Stats. in rule form.

Note: DOC 302.29. DOC 302.29 deals with credit provisions for escapes. It states that the person resumes receiving credit for the sentence from which he or she escapes when the person is taken into custody. Because a resident often has no control over when he or she is returned to a Wisconsin correctional institution, it is thought that fairness requires credit for all time in custody, unless the custody is pursuant to a sentence in a jurisdiction outside Wisconsin. Custody is thus defined differently than in DOC 302.23. This is based on s. 973.15 (7) (1989), Stats. cf. s. 304.072 (2) (1989), Stats. Therefore, while an escapee awaits extradition or return to the institution, credit is to be given.

Note: DOC 302.30. Inmates and persons on mandatory release parole may on occasion wish to waive good time or entitlement to mandatory release. Because a waiver has serious implications for parties other than the person requesting the waiver, it must be subject to approval of the department.

The overall goal in the decision to permit the waiver of good time or of entitlement to mandatory release is to promote the individual's reintegration into society. Superficial compliance with any of the criteria is not sufficient. The institution staff and the division administrator must exercise their judgment to decide if the waiver will help the inmate or mandatory release parolee cope with the outside world. This decision should take into account the views of the inmate's social worker at the institution or the parolee's parole agent. The department's bureau of correctional health services should be consulted if the reason for the request is to complete medical treatment. Examples of inappropriate considerations which do not promote reintegration into society are avoidance of parole supervision, avoidance of detainers, and desire to serve lengthy periods of another jurisdiction's sentence in Wisconsin. A waiver may be allowed if an inmate has minimal time remaining on his or her sentence from another jurisdiction, since transferring the inmate for such a short time could disrupt release planning and cause administrative difficulties.

The requirements of DOC 302.26 (3) (a) are to enable the registrar to do the necessary administrative work for a waiver. The rule forbidding the waiver of more than 6 months of good time at once is to ensure that the inmate does not waive too much good time at once, because once waived the time may not be reinstated, except for good cause. Good cause would be shown if the circumstances which caused the waiver changed. DOC 302.26 (3) (c). Circumstances might change and make a wholesale waiver of good time undesirable. For example, a sick inmate might recover more rapidly than anticipated. The requirement that at least 15 days be waived at once is to avoid undue administrative burden. The requirement of a written waiver is to ensure that proper records are kept. The requirement of consultation with a social worker or agent is to ensure that the inmate or mandatory release parolee understands the consequences of a waiver.

Note: DOC 302.31. DOC 302.31 deals with the award of extra good time credit to inmates not covered by 1983 Wisconsin Act 528. That act eliminates extra good time for those inmates who committed crimes on or after June 1, 1984, and to others who chose to have the act apply to them. Extra good time credit is available to inmates not under the act who are assigned to approved vocational, job, school, or program assignments. An inmate shall earn extra good time credit only if he or she meets certain conditions and criteria. Extra good time credit is granted to provide incentives to inmates in work and study programs to develop and reinforce positive behavior. See American Correctional Association's *Manual of Standards for Adult Correctional Institutions* (1977), standard 4391.

Sub. (1) (a) puts into rule form the requirements of s. 53.12 (1), Stats. (1981-82). Assignment to a vocational, job, school, or program in accordance with ch. DOC 302 is a prerequisite for earning extra good time credit. In addition, an inmate must surpass "the general average" (s. 53.12 (1), Stats.) (1981-82) for that assignment as determined by his or her supervisor in accordance with the criteria established for such an evaluation of that particular assignment. It is anticipated that most inmates will perform at this average level. The term "average" does not mean that half of the inmates in a particular assignment should lose extra good time credit each month. If that was the intent underlying the provision, the word "mean" would have been used instead of "average."

Subsection (1) (b) provides for extra good time credit to certain inmates who are involuntarily unassigned. Subsection (2) (b) denies credit to others involuntarily unassigned. Legal support for these provisions is found in an attorney general's opinion, 37 *Op. Atty. Gen.* 452 (1948). The opinion dealt with awarding good time to a county jail prisoner sentenced under the Huber Law, but for whom the sheriff is unable to secure employment. The opinion says such a prisoner is entitled to good time under such conditions.

Subsection (1) (b) 1 provides that an inmate who is involuntarily unassigned and whose last assignment was terminated because of medical or psychological problems resulting from, or aggravated by, the assignment may be entitled to extra good time credit if the appropriate staff member was notified of the inmate's willingness to accept another assignment within the specified period of time. Examples of what this provision is meant to include are situations when an inmate develops a serious physical reaction (e.g., hives or rash) from chemicals he or she must use in the course of the assignment; when an inmate develops or aggravates a hay fever condition while working on a camp farm; when an inmate has an emotional disturbance that results in placement in observation; and upon release the clinical psychologist, psychiatric social worker, or physician decides that it is in the inmate's best interests not to return to the previous assignment because of fear of a possible recurrence of the emotional turmoil. In such cases, the inmate shall receive extra good time credit if the other provision of the subsection is met. Subsection (1) (b) 2 is meant to deal with those situations in which an inmate has not received an assignment from the PRC.

Subsection (1) (c)-(e) recognizes that administrative confinement, observation, and TLU are nonpunitive statuses and the inmate may earn extra good time if he or she was earning extra good time credit in his or her status immediately prior to this placement. If the inmate is participating in an approved institution work or study program while in this status and satisfies the criteria under sub. (1) (a), credit shall also be granted. Additionally, an inmate placed in TLU from administrative confinement, program, or control segregation may earn extra good time credit if he or she was earning credit in the nonsegregation status prior to placement in segregation. However, if an inmate remains in TLU after the disposition of a disciplinary charge as guilty, he or she shall not be eligible to earn extra good time credit from the date of the disposition through placement into segregation, if any is imposed.

Subsection (1) (f) recognizes that an inmate may want to receive extra good time credit for participating in a correspondence course program. Extra good time credit shall be granted for such study involvement if the PRC approves of such study in accordance with ch. DOC 302, and credit shall be granted for the inmate's involvement only subsequent to the PRC decision.

Similarly, sub. (1) (h) and (i) provide that an inmate shall earn extra good time credit while in sick cell status or hospital placement under the stated conditions. Credit shall be awarded for nonassignment as well as assignment-related medical conditions.

Subsection (2) states specific conditions under which an inmate may not earn extra good time credit. This provision is meant to complement sub. (1) in denoting an inmate's eligibility for credit. Problems in determining an inmate's eligibility for credit under these sections are to be referred to the superintendent for resolution.

Subsection (3) requires that all assignments with similar skills and responsibilities in all of the correctional facilities have reasonably uniform criteria. This requirement ensures that each inmate in the system is evaluated uniformly on the basis of reasonable criteria consistent with the skills and responsibilities of the assignment independent of institution placement. It also necessitates interinstitution communication among supervisors who, with their experience, can provide for development of the most sound criteria for evaluation.

Subsection (3) (c) is a refinement of sub. (3) (b). In most cases, a supervisor may properly assume that each assigned inmate is capable of earning extra good time credit in that assignment. However, at times an inmate may be incapable of performing in the assignment at a level that would entitle him or her to credit, because of poor dexterity skills or mental, physical, or medical disabilities that have been confirmed through clinical testing. In these special cases, the supervisor should consult with the inmate and appropriate staff and develop new criteria consistent with the inmate's special disabilities as well as the skills and responsibilities of that assignment. Of course, the inmate may be placed in another assignment more tailored

to his or her abilities but, if this is undesirable or impossible, every effort should be made to accommodate the inmate.

An example might be helpful here. Suppose that an inmate with a physical disability is assigned to the yard maintenance crew at the Kettle Moraine Correctional Institution. An inmate not so disabled might be required under the criteria developed pursuant to sub. (5) to perform a given amount of work of a certain quality in set amount of time to earn extra good time credit. However, a disabled inmate may not be able to perform at this level despite diligence. In this case, new criteria should be established to take this inmate's disability into account in the decision to award extra good time credit. It would seem reasonable to reduce the amount of required work and its quality in a given amount of time. By reducing the quality and quantity of work for a disabled person we are simply recognizing that the person with equal or greater diligence than a nondisabled person may nonetheless produce less. This inability to produce an equal amount of work should not deny credit to the inmate. To the contrary, diligence should earn credit.

Subsection (4) states that additional reasonable criteria used to evaluate an inmate's performance in an assignment must be established if a job has unique requirements. This requirement ensures that all inmates are treated fairly and that each inmate knows the level of performance required. The evaluation of performance must be based on diligence and effort in an assignment and not on the quantity or quality of work product.

Subsection (4) (d) authorizes the superintendent to resolve any questions regarding an inmate's eligibility under subs. (1) and (2). This is necessary because subs. (1) and (2) may not categorize the full range of inmate statuses, and questions may arise regarding time spent in certain statuses in relation to credit earned. It is anticipated that a question will be resolved within 30 days after the date of referral to the superintendent.

Section 53.12 (1), Stats. (1981-82), provides for "a diminution of time at a rate of one day for each 6 days during which he shows diligence." As stated earlier, it is anticipated that most inmates will perform adequately in their assignments and will earn credit each month. Since projected credit is granted upon entry, this would require no monthly administrative computations. Monthly recomputation would be required, however, for those who fail to perform adequately or who spend time in any status noted under sub. (2). In these cases, the table under sub. (5) should be used in computing earned credit for a particular month. This provides for fairness to inmates and reduces unnecessary paperwork.

Subsection (5) (a) also provides that an inmate who is entitled to extra good time for a fraction of a day is credited with the whole day. Thus, an inmate who works part of a day in a shop which is closed for part of the day due to an equipment failure receives credit for the full day.

DOC 302.27. DOC 302.27 deals with the award of extra good time credit to inmates who are assigned to approved vocational, job, school, or program assignments. An inmate shall earn eatra good time credit only if he or she meets certain conditions and criteria. Extra good time credit is granted to provide incentives to inmates in work and study programs to develop and reinforce positive behavior. See American Correctional Association's *Manual of Standards for Adult Correctional Institutions* (1977), standard 4391.

Sub. (1) (a) puts into rule form the requirements of s. 53.12 (1), Stats, (1981-82). Assignment to a vocational, job, school, or program in accordance with ch. DOC 302 is a prerequisite for earning extra good time credit. In addition, an inmate must surpass "the general average" (s. 53.12 (1), Stats. (1981-82)) for that assignment as determined by his or her supervisor in accordance with the criteria established for such an evaluation of that particular assignment. It is anticipated that most inmates will perform at this average level. The term "average" does not mean that half of the inmates in a particular assignment should lose extra good time credit each month. If that was the intent underlying the provision, the work "mean" would have been used instead of "average."

Subsection (1) (b) provides for extra good time credit to certain inmates who are involuntarily unassigned. Subsection (2) (b) denies credit to others involuntarily unassigned. Legal support for these provisions is found in an attorney general's opinion, 37 *Op. Atty. Gen.* 452 (1948). The opinion dealt with awarding good time to a county jail prisoner sentenced under the Huber Law, but for whom the sheriff is unable to secure employment. The opinion says such a prisoner is entitled to good time under such conditions.

Subsection (1) (b) 1 provides that an inmate who is involuntarily unassigned and whose last assignment was terminated because of medical or psychological problems resulting from, or aggravated by, the assignment may be entitled to extra good time credit if the appropriate staff member was notified of the inmate's willingness to accept another assignment within the specified period of time. Examples of what this provision is meant to include are situations when an inmate develops a serious physical reaction (e.g., hives or rash) from chemicals he or she must use in the course of the assignment; when an inmate develops or aggravates a hay

fever condition while working on a camp farm; when an inmate has an emotional disturbance that results in placement in observation; and upon release the clinical psychologist, psychiatric social worker, or physician decides that it is in the inmate's best interests not to return to the previous assignment because of fear of a possible recurrence of the emotional turmoil. In such cases, the inmate shall receive extra good time credit if the other provision of the subsection is met. Subsection (1) (b) 2 is meant to deal with those situations in which an inmate has not received an assignment from the PRC.

Subsection (1) (c) - (e) recognizes that administrative confinement, observation, and TLU are nonpunitive statuses and the inmate may earn extra good time if he or she was earning extra good time credit in his or her status immediately prior to this placement. If the inmate is participating in an approved institution work or study program while in this status and satisfied the criteria under sub. (1) (a), credit shall also be granted. Additionally, an inmate placed in TLU from administrative confinement, program, or control segregation may earn extra good time credit if he or she was earning credit in the nonsegregation status prior to placement in segregation. However, if an inmate remains in TLU after the disposition of a disciplinary charge as guilty, he or she shall not be eligible to earn extra good time credit from the date of the disposition through placement into segregation, if any is imposed.

Subsection (1) (f) recognizes that an inmate may want to receive extra good time credit for participating in a correspondence course program. Extra good time credit shall be granted for such study involvement if the PRC approves of such study in accordance with ch. DOC 302, and credit shall be granted for the inmate's involvement only subsequent to the PRC decision.

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Subsection (2) states specific conditions under which an inmate may not earn extra good time credit. This provision is meant to complement sub. (1) in denoting an inmate's eligibility for credit. Problems in determining an inmate's eligibility for credit under these sections are to be referred to the superintendent for resolution.

Subsection (3) requires that all assignments with similar skills and responsibilities in all of the correctional facilities have reasonably uniform criteria. This requirement ensures that each inmate in the system is evaluated uniformly on the basis of reasonable criteria consistent with the skills and responsibilities of the assignment independent of institution placement. It also necessitates interinstitution communication among supervisors who, with their experience, can provide for development of the most sound criteria for evaluation.

Subsection (3) (c) is a refinement of sub. (3) (b). In most cases a supervisor may properly assume that each assigned inmate is capable of earning extra good time credit in that assignment. However, at times an inmate may be incapable of performing in the assignment at a level that would entitle him or her to credit, because of poor dexterity skills or mental, physical, or medical disabilities that have been confirmed through clinical testing. In these special cases, the supervisor should consult with the inmate and appropriate staff and develop new criteria consistent with the inmate's special disabilities as well as the skills and responsibilities of that assignment. Of course, the inmate may be placed in another assignment more tailored to his or her abilities but, if this is undesirable or impossible, every effort should be made to accommodate the inmate.

For example, suppose that an inmate with a physical disability is assigned to the yard maintenance crew at the Kettle Moraine Correctional Institution. An inmate not so disabled might be required under the criteria developed pursuant to sub. (5) to perform a given amount of work of a certain quality in set amount of time to earn extra good time credit. However, a disabled inmate may not be able to perform at this level despite diligence. In this case, new criteria should be established to take this inmate's disability into account in the decision to award extra good time credit. It would seem reasonable to reduce the amount of required work and it quality in a given amount of time. By reducing the quality and quantity of work for a disabled person we are simply recognizing that the person with equal or greater diligence than a nondisabled person may nonetheless produce less. This inability to produce an equal amount of work should not deny credit to the inmate. To the contrary, diligence should earn credit.

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Subsection (4) (d) authorizes the superintendent to resolve any questions regarding an inmate's eligibility under subs. (1) and (2). This is necessary because subs. (1) and (2) may

not categorize the full range of inmate statuses, and questions may arise regarding time spent in certain statuses in relation to credit earned. It is anticipated that a question will be resolved within 30 days after the date of referral to the superintendent.

Section 53.12 (1), Stats. (1981-82), provides for "a diminution of time at a rate of one day for each 6 days during which he shows diligence." As stated earlier, it is anticipated that most inmates will perform adequately in their assignments and will earn credit each month. Since projected credit is granted upon entry, this would require no monthly administrative computations. Monthly recomputation would be required, however, for those who fail to perform adequately or who spend time in any status noted under sub. (2). In these cases, the table under sub. (5) should be used in computing earned credit for a prticular month. This provides for fairness to inmates and reduces unnecessary paperwork.

Subsection (5) (a) also provides that an inmate who is entitled to extra good time for a fraction of a day is credited with the whole day. Thus an inmate who works part of a day in a shop which is closed for part of the day due to an equipment failure receives credit for the full day.