

Chapter DOC 303

APPENDIX

Note: DOC 303.01. These rules apply to all inmates in the legal custody of the department regardless of whether the inmate is housed in a prison, jail, half-way house, or any other facility. It is the Department's policy and practice not to impose discipline on an inmate if the inmate has been subjected to a formal due process procedure in another jurisdiction for the same actions. See DOC 303.08 and 303.63. Differences among institutions make some differences in specific policies and procedures relating to conduct necessary. Delegating authority to permit these differences, limited though they are, is provided for under this chapter. Chapter DOC 303 sets forth the procedure for inmate discipline. It structures the exercise of discretion at various decision making stages in the disciplinary process, including the decision to issue a conduct report, the decision to classify an alleged violation as major or minor, and sentencing. Codifying the rules of discipline in a clear, specific way serves important objectives by itself. Thus, having specific, written rules which deal with prison discipline has the advantages of stating clearly what conduct is prohibited, of eliminating unnecessary discretion, increasing equality of treatment, increasing fairness, and raising the probability that inmates will follow the rules. In addition, there are advantages to the formal rulemaking process: (1) Rules are made by top officers and administrators in consultation with line staff and others, rather than ad hoc by correctional officers. Thus, greater experience can be brought to bear on the decision-making. This is superior to following unquestioned tradition. (2) The rulemaking process results in public input. The "sunshine" effect results in the elimination of abuses and can also provide new perspectives on more subtle questions. Also, corrections officers are public servants and rulemaking, by exposing their decision-making process to the public, is more democratic than a system of following unwritten or at least unpublished traditional policies.

Note: DOC 303.03. The concept of a lesser included offense is derived from the theory of the same name in the criminal law. In these rules, it serves 2 distinct functions. First, it serves to put the inmate on notice that, while charged in writing with one offense, is also charged and may be convicted of *either* the offense charged or a lesser included offense.

The second function is to insure that an inmate is not *punished* twice for a single act which satisfies the elements of more than one offense, where conviction for more than one offense is unfair.

If an inmate is charged with a lesser included offense and the committee considers the case, the inmate cannot be later charged with the greater offense. Similarly, if an inmate is

charged and found guilty of a higher offense, he or she cannot later be charged with a lesser included offense.

If an act violates more than one section, the offense which best describes the conduct should be charged. This would not prevent separate convictions for a series of related but distinct acts.

Note: DOC 303.05. A purpose of conspiracy statutes in general and of this section is to enable law enforcement and correctional officers to prevent *group* criminal or prohibited activities at an earlier stage than the stage of attempt. Group activities against the rules pose a greater risk than similar individual activities, and this justifies intervention at an earlier stage and punishment for acts which, if done by an individual, would not be against the rules.

The reason that conspiracy has been made a lesser included offense is the similarity between conspiracy and attempt. Both kinds of offenses provide a sanction against activity which is preparatory to an actual offense. If the offense is completed, however, conspiracy should be included in the other offense just as attempt is.

This section has some overlap with DOC 303.20, Group resistance. However, an inmate need not personally break any substantive rule to be guilty of conspiracy; if a group of inmates agree to participate and then one inmate starts to put the plan into effect, *all* are guilty of conspiracy. On the other hand, no plan or agreement need be shown to prove a violation of DOC 303.20. DOC 303.20 is intended to deal with nonviolent group activity of a public, disruptive type, such as group refusal to work, while DOC 303.21 is aimed at secret plans for violations of all types.

Conspiracy is a lesser included offense of the planned offense and also of DOC 303.07, Aiding and abetting.

Note: DOC 303.06. Under sub. (3), the maximum penalty for an attempt may be the same as for a completed offense. This is based on the belief that an event over which the actor had no control should not reduce liability so greatly, and on the knowledge that the perpetrator of an attempt is just as dangerous and just as much in need of a deterrent (punishment) as the perpetrator of a completed offense. Of course, the circumstances of an attempt may lead to mitigation in punishment.

Note: DOC 303.07. Sub. (3) states a principle which is followed in modern criminal law. In Wisconsin a person cannot be found guilty of aiding and abetting *and* the offense itself based on the same incident. In factually ambiguous situations, however, sub. (3) leaves open the option of

charging a person with both and letting the hearing officer or adjustment committee decide which is most appropriate.

Sub. (5) provides that the maximum sentence for aiding and abetting is the same as that provided for the offense itself in DOC 303.84. Obviously, however, in many cases the aider or abettor will not be as culpable as the actual perpetrator of the offense. In such cases, the committee or hearing officer should use its discretion to select an appropriate lower sentence.

Note: DOC 303.08. It is necessary to permit institutions to discipline inmates for violations of specific policies and procedures of the institution. For example, violation of work place policies or procedures regarding recreation may result in a penalty. Likewise, housing units may have policies and procedures necessary for the maintenance of order. These policies will vary from institution to institution and place to place within institutions.

Note: DOC 303.09. This section requires that the rules and notes pertaining to inmate discipline be published.

Due process and fundamental fairness require that inmates be given notice of the rules they are expected to follow. Major changes which require written notice to inmates include, an additional offense, a change in process or any change affecting MR date. In addition, awareness and understanding of the rules and of the sanctions for breaking them should increase compliance with them. Authorities on correctional standards agree that disciplinary rules should be made available to inmates in the form of a rulebook. See the note to DOC 303.01.

Note: DOC 303.10. In a prison it is necessary to regulate very carefully the property which may be kept by the inmates. See "Contraband offenses," DOC 303.42-303.48. This section provides the authority to deal with contraband in situations where no one is charged with an offense, as well as when someone is charged and found guilty.

Note: DOC 303.11. The main purpose of the section authorizing temporary lockup is to allow temporary detention of an inmate until it is possible to complete an investigation, cool down a volatile situation or hold a disciplinary hearing. The effort is to avoid punitive segregation without a prior hearing, while assuring that inmates can be separated from the general population when there is good reason to do so. The policy is to keep an inmate in TLU only as long as necessary and then either to release the inmate or put the inmate in segregation based on a disciplinary hearing which conforms to the provisions of this chapter. The frequent reviews by high-ranking administrators and the 21-day limit, both provided by sub. (3), are designed to implement this policy, as well as to give the inmate an opportunity to be heard on the issue of whether TLU is appropriate.

Placement in TLU does not affect MR.

The policy is to use TLU only for an appropriate reason. Where TLU is no longer appropriate, it should be discontinued. There are situations, however, when its use for periods up to 21 days, or an additional period of time, is justified. This period may be extended. It is anticipated that such extensions will be relatively rare.

Sub. (4) identifies the situations in which TLU may be appropriate.

It must be emphasized that there are dangers in correctional institutions that may not exist outside them. For example, an inmate who encourages others to defy authority may create an immediate and real danger. If TLU cannot be relied on to isolate such an individual, it is likely that measures have to be taken against the group, though the group is not culpable.

Likewise, an inmate who is intimidating a witness should be restricted, rather than the victim of the intimidation. This may be the only choice available to correctional officers. Sub. (4) (a). Also, an inmate's presence in the general population may greatly inhibit an investigation because the inmate may destroy evidence not yet discovered by authorities. Temporary isolation until the evidence is found is required. Sub. (4) (a).

During evening recreation, the staff is small, yet large numbers of inmates may be outside their cells. Unless the authority exists to temporarily isolate one who is trying to create a disturbance, it will be necessary to cut short recreation for everyone to prevent trouble. This seems unfair, yet would result if an inmate who was encouraging defiance were not isolated in such a situation. Sub. (4) (b).

Some inmates need to be temporarily isolated for their own protection. For example, an inmate may be endangered by virtue of having cooperated in an investigation. The threat may be such that the only effective way to protect him or her is through TLU. Sub. (4) (c).

Sometimes TLU is necessary to prevent escape. For example, an inmate in a camp who has committed an infraction that is ultimately going to affect an expected parole may panic and try to escape. Sub. (4) (d).

Note: DOC 303.12. This section and DOC 303.17, Fighting, have considerable overlap. An inmate should not be found guilty of violating both sections based on a single incident. If it is possible to determine the aggressor in a fight, this section rather than DOC 303.17 should be used.

Lesser-included offenses: DOC 303.17, Fighting and DOC 303.28 Disruptive Conduct.

Note: DOC 303.13. Most of the various situations covered by s. 940.225, Stats., such as intercourse with a child, are not relevant to the prison situation. Therefore, the only distinction in these sections is between non-consensual intercourse and all other types of non-consensual sexual contact. Intercourse is considered to be the more serious offense.

Lesser included offenses: DOC 303.14, Sexual assault-contact; DOC 303.15, Sexual conduct.

Note: DOC 303.14. Examples of violations of this section are kissing or handholding, grabbing or touching another person's breast, buttocks or genitals (even through clothing), rubbing one's genitals against another person (even through clothing). If the other person consents to the contact, this section is not violated, but *both* persons have violated DOC 303.15, Sexual conduct.

Violation of this section is less serious than violation of DOC 303.13, and this section is a lesser included offense of that one. See DOC 303.03 on lesser included offenses. However, where an inmate has violated this section in an attempt to rape the other person, a charge of attempted sexual assault-intercourse would be appropriate. See ch. DOC 309 for permissible displays of affection during visits.

Lesser included offense: DOC 303.15, Sexual conduct.

Note: DOC 303.15. It is not always possible to prove lack of consent to sexual activity in situations where it is likely that one inmate is taking advantage of another. Thus, prohibiting consensual sexual contact helps to prevent sexual assault. This section also forbids consensual sex between married people. See chapter DOC 309 for permissible displays of affection during visits.

Note: DOC 303.16. As with all of the offenses against persons, the purpose of this section is the protection of the safety and security of inmates, staff and the public.

DOC 303.28, Disruptive conduct and DOC 303.25, Disrespect, are related offenses.

Note: DOC 303.18. In order that the record of an inmate more accurately reflects the seriousness of his or her acts, there are three distinct offenses. DOC 303.18 is the most serious and should be used against "ringleaders" of a serious disturbance which involves violence. DOC 303.20 is designed for a non-violent disturbance—for example, a sit-down strike.

Lesser included offenses: DOC 303.19, Participating in a riot; DOC 303.20, Group resistance and petitions; DOC 303.28, Disruptive conduct.

Note: DOC 303.19. See the note to DOC 303.18.

Lesser included offenses: DOC 303.20, Group resistance and petitions; DOC 303.28, Disruptive conduct.

Note: DOC 303.20. DOC 303.20 (1) differs from conspiracy (DOC 303.05) in that under this section each individual must actually disobey a rule or participate in unauthorized group activity, while under DOC 303.05 an inmate may be punished for merely planning an offense. Also, under DOC 303.05 a plan or agreement is required, while under sub. (1) spontaneous group action can be punished. Finally, punishment under this section can be added to punishment for the particular rule violated, while punishment for conspiracy cannot, because conspiracy is a lesser included offense of the planned offense.

The inmate complaint review system in sub. (2) is the appropriate method for bringing group complaints. To permit such complaints or statements outside the system could seriously disrupt a prison. Experience has proven that it is important that there be as few opportunities as possible for coercion of one inmate by another. Unrestricted rights to petition in groups generate intimidation and coercion as inmates try to force others to join them. The authorized methods are thought to protect inmates' rights to petition and to express their views.

The complaint system provides a structured way to investigate and respond to complaints. It requires, for example, time limits for responses, to insure that the complaints are addressed. It requires that complaints be signed. Without this, adequate investigation is usually impossible.

Reliance on the complaint system seems to restrict first amendment rights only as is necessary to permit the maintenance of order in institutions.

Sub. (2) prohibits petitions only within an institution. There is no intention to limit petitions addressed to those outside an institution. Typically, this activity is a letter signed by more than one inmate to a newspaper or public official.

Sub. (3) makes it an offense to identify with a gang by some overt act such as signing. Gangs pose a serious threat to institutions. Like many prison rules, this one is aimed at conduct which taken alone might not seem serious to people without experience in corrections. In Wisconsin, the experience has been that permitting such activity creates significant problems and can contribute to the erosion of authority which leads to serious prison disturbances. States that have permitted such activity have uniformly had major problems in their institutions.

See the notes to DOC 303.18 and 303.05.

Note: DOC 303.21. Cruelty to animals can evoke strong emotional and physical reactions by inmates who either commit or witness the act. Not only is this behavior unac-

ceptable, but it can also lead to physically violent retaliation among inmates which compromises the security and safety of both inmates and staff. The purpose of this section is to prevent incidents of animal cruelty and retaliatory action while ensuring a greater level of security in the institution.

Note: DOC 303.22. Since escape is an extremely serious offense (it is one of the few disciplinary offenses which is frequently prosecuted), it is important to define it carefully.

If an inmate is off grounds on work or study release or on furlough, physical deviation from his or her assigned location is enough to prove escape. Of course, an inmate who deviated from a prescribed route or left an area would probably be guilty of violating DOC 303.24, Disobeying orders.

An inmate may be prosecuted in criminal court and also for a rule violation for the same incident.

Lesser included offense: DOC 303.51, Leaving assigned area.

Note: DOC 303.23. The purpose of this section is to help prevent more serious offenses, such as escape, and to promote identification of the offender in other cases.

Note: DOC 303.24. Because of the close proximity of large numbers of people in a prison, prompt obedience to orders is necessary for orderly operation. Obedience is also an important aspect of learning self-discipline.

Under this section, the staff member giving the order need not say, "I am giving a direct order," although this is frequently a desirable practice.

Note: DOC 303.25. Disrespectful behavior of the type prohibited by this section can lead to a breakdown of authority or a serious disturbance. This section is directed at conduct within the institution which is potentially disruptive or which erodes authority, not at activity outside the institution.

Note: DOC 303.26. This section forbids all types of contacts between inmates and staff which could lead to favoritism or bribery. Just as theft would be very difficult to control in a prison without a rule prohibiting *all* transfer of property (See DOC 303.40), so bribery and favoritism would be difficult to control in the absence of a rule prohibiting all exchanges between staff and inmates. Also, the appearance of impropriety may be as destructive to inmate or staff morale as would actual impropriety. The existence of unwritten exceptions tends to undermine respect for the rule as a whole because it may appear to the inmates to represent either half-hearted or arbitrary enforcement.

Note: DOC 303.27. Purposes of this section are to help maintain orderly and efficient operation of the institution and to encourage people to tell the truth. On the outside,

lying is only punished as a criminal offense if the lie was made under oath. However, in prison the contacts between inmates and state authorities are much more pervasive and a false statement, even one not made under oath, can have serious consequences.

Note: DOC 303.271. Lying about staff can hurt the staff member and affect staff morale generally. There have been several instances in which inmates deliberately made false allegations concerning corruption and sexual misconduct by staff. The nature of the allegations and the fact that, upon investigation, it became evident the inmate was trying to injure the staff member, led to the conclusion that this behavior should subject inmates to punishment. The inmate complaint review system will not insulate inmates from all liability. However, if the inmate does not reveal the false statement to persons outside the complaint system, and actual harm to the staff member is minimized. Since the implicated staff member can write the conduct report, the likelihood of retaliation against inmates for legitimate use of the complaint system is reduced.

Note: DOC 303.28. This section is intended to help preserve a reasonably quiet and orderly environment for the benefit of all inmates and staff. Its counterpart offense outside the institution setting is "disturbing the peace."

Note: DOC 303.30. This is another example of a rule which prohibits action which in itself is not harmful; however, the rule is necessary as an aid in controlling more dangerous behavior. In this case, controlling secret means of communication helps prevent conspiracies and escapes. If at any time a deaf or mute person is an inmate at an institution, this section should not be applied to use of sign language by or to that person.

Note: DOC 303.31. This section is intended to protect members of the public from being misled by an inmate concerning his or her identity or status, and to avoid confusion of staff members concerning the identity of inmates. This section should not be interpreted to forbid use of common and recognizable nicknames, initials, or a shortened form of the first or last name.

Note: DOC 303.32. The purposes of this section are to prevent inmates who set up businesses from taking advantage of any member of the public; to prevent any state liability upon contracts entered into by inmates; and to prevent fraud on the public by inmates who order items and do not pay. If inmates were allowed to conduct businesses by mail from inside an institution, this would greatly increase the amount of mail and supervision required. Furthermore, it is possible an unsuspecting outsider would pay for something the inmate could not supply, leading to the unsatisfactory alternatives of a victim who has lost money, or state liability. Inmates have opportunities to work in institutional jobs and on work release, and to sell hobby items through official channels. These opportunities plus the exception provide

sufficient ways for inmates to work, make money, and learn skills.

Note: DOC 303.34. Most cases of theft in prison are minor and criminal sanctions are not an effective means of deterring theft. In fact, this section alone is not considered enough to control theft without the addition of other sections such as DOC 303.40, Unauthorized transfer of property; DOC 303.50, Loitering; and DOC 303.52, Entry of another inmate's quarters.

Lesser included offense: DOC 303.40, Unauthorized transfer of property.

Note: DOC 303.35. A purpose of this section is to protect the property of inmates, staff, and the state. There is a parallel criminal statute, s. 943.01, Stats., but except in extreme cases, violations of this section will probably be handled through the disciplinary process rather than by prosecution.

Inmates may only destroy their own property with specific authorization. "Authorization" is defined under DOC 303.02. Inmates may not authorize damage or alteration of property. This is because it is important to monitor such destruction. Without current property lists, it is impossible to keep track of property in institutions.

Note: DOC 303.36. See the notes to DOC 303.35 and 303.37.

Note: DOC 303.37. The purpose of this section is to protect the property and safety of inmates and staff and the property of the state. Because of the dangerous potential of fires, arson is punishable even if no damage to property occurs (see DOC 303.35). If damage does occur, an inmate could be punished for violating both this section and DOC 303.35. In addition, starting a fire or creating a fire hazard is punishable even where not done intentionally (see DOC 303.39). Violation of this section is more serious than violation of DOC 303.39.

Lesser included offenses: DOC 303.38, Causing an explosion or fire; DOC 303.39, Creating a hazard; DOC 303.47, Possession of contraband—miscellaneous.

Note: DOC 303.38. The purpose of this section is to protect the property and safety of inmates and staff and the property of the state. Because of the dangerous potential of explosions; intentionally causing an explosion is punishable even if no damage occurs, and if damage does occur an inmate could be punished for violating both this section and DOC 303.35. Also, negligently causing an explosion is punishable under DOC 303.39, if a hazard is thereby created.

Note: DOC 303.39. The purpose of this section is to protect the property and personal safety of inmates and staff, and to protect state property. Because of the high density living situation in a prison, carelessness can endanger large numbers

of people and create a very serious risk. Therefore, the standard of care of reasonable people must be enforceable through the disciplinary process.

Note: DOC 303.40. This section is designed to aid in the prevention of a variety of other offenses or undesirable activities: theft (or forced "borrowing," or unfair "sales"); gambling; selling of favors by inmates with access to supplies, equipment, information, etc.; and the selling of sexual favors.

Most property items of significant value are easily recognizable (inmates are not allowed to keep money in their possession), so if an item belonging to one inmate is found in the possession of another, a violation of this section is easy to prove even though it may be impossible to prove that theft, gambling or some other offense took place.

The sections on contraband (DOC 303.42–303.47) cover unauthorized acceptance of gifts from outsiders. Unauthorized transfers involving staff members are covered by DOC 303.26, Soliciting staff. DOC 303.36 covers unauthorized use of state property, Misuse of state property. Therefore, this section only covers transfers between inmates. Misuse of state or federal property is a lesser included offense of DOC 303.34, Theft, DOC 303.43, Possession of Intoxicants, and of DOC 303.57, Misuse of Prescription Medicine.

Note: DOC 303.41. In the prison setting almost any writing is of potential legal significance, since letters are sometimes monitored, many memos are put into inmates' files, and notes might be used as evidence in disciplinary proceedings. Also, the smooth and fair operation of the prison depends on the reliability of records such as canteen books, passes, orders, prescriptions and files.

This section is not a lesser included offense of theft; if a forged document is successfully used to obtain someone else's property, the inmate has violated both DOC 303.34, Theft, and this section.

Note: DOC 303.42. Circulation of money is not permitted within the institutions for the same reasons that transfer of property is not allowed. See the note to DOC 303.40. Since unlike other types of personal property, money is not readily identifiable, it would be impossible to prevent transfer of money if inmates were allowed to keep it in the institution. Accounts have been set up for all inmates in which they can deposit their money and from which they can send money to friends, relatives or persons selling goods. See departmental rules relating to inmate accounts.

Lesser included offense: DOC 303.47, Possession of contraband—miscellaneous.

Note: DOC 303.43. The purposes of this section are to prevent intoxicating substances from being brought into insti-

tutions, to protect inmates and staff from intoxicated persons and to prevent escape. People under the influence of intoxicants often act abnormally and may injure themselves or others. In a prison, intoxicants are particularly troublesome because acting without inhibition can be dangerous to others. Many inmates who try to escape and who attack staff and other inmates are under the influence. It is important to control such conduct by controlling the substances which create the risks.

See DOC 303.02 regarding the definitions of "authorization" and "intoxicating substance."

Lesser included offenses: DOC 303.40, Unauthorized transfer of property and DOC 303.47, Possession of contraband-miscellaneous.

Note: DOC 303.44. This section is designed to help carry out the same purposes described in the note to DOC 303.43 as the purposes for a rule against possession of intoxicating substances. It is easier to control the use of the forbidden substances if the means for making or using the substances are unavailable.

Lesser included offense: DOC 303.47, Possession of contraband-miscellaneous.

Note: DOC 303.45. The purpose of this section is to protect the safety of inmates and staff by taking dangerous items away from inmates whenever it appears that an inmate is planning to use an item as a weapon, and by making possession of weapons a punishable offense.

Many items which an inmate may legitimately possess could also be used as weapons. For example, possession of a razor blade which is located in a razor or in a box of blades and with other toiletry items would not, in itself, be an offense. But carrying around a single razor blade, especially outside the cell, would probably be an offense.

Sub. (1) deals with items which are still in their original form and which have both a legitimate use and use as a weapon. Examples are knives, kitchen utensils, matches, cigarettes, tools and heavy objects. On the other hand, sub. (2) deals with items which have been altered from their original form. Examples include a spoon or table knife which has been sharpened and a razor blade which has been taped or fitted to a handle. If an inmate makes or alters such an item, there is no need to show that he or she intended to use it as a weapon.

Finally, sub. (3) deals with items which have no other purpose than to be used as weapons. Examples include guns, explosives, switchblade knives and many of the homemade items which are also covered by sub. (2). Inmates are not allowed to have such items under any circumstances and they will be confiscated.

Lesser included offense: DOC 303.47, Possession of contraband-miscellaneous.

Note: DOC 303.47. The purposes of controlling the types and quantities of property which inmates may have with them are: (1) to prevent trading, and more serious offenses associated with it, among inmates (see DOC 303.40 and note); (2) to simplify storage; (3) to keep out items which are likely to be misused; and (4) to keep out extremely valuable items which may create jealousy among inmates. Items in sub. (2) (b)-(d) are included in order to help prevent trading and theft.

Items which are covered by this section and are not covered by any of the more specific sections are items which are not, in themselves, dangerous. Therefore, even when an inmate is guilty because he or she failed to register an item, had a prohibited item or had too many of one kind of item, the inmate's property is not confiscated. Property is disposed of or returned in accordance with DOC 303.10.

The types of items allowable vary from institution to institution, so no actual listing is given here. Rather, a listing of all allowable property should be posted at each institution in accordance with department policies relating to personal property. This section gives notice that the posted lists exist and that violation of them is a disciplinary offense. Possession of Contraband-Miscellaneous is a lesser included offense of DOC 303.37, Arson, DOC 303.42, Possession of Money, DOC 303.43, Possession of Intoxicants, DOC 303.44, Possession of Drug Paraphernalia, DOC 303.45, Possession, Manufacture, and Alteration of Weapons, and of DOC 303.46, Possession of Excess Smoking Materials.

Note: DOC 303.48. Use of the mails is an important right of prisoners which is protected by the first amendment to the U.S. Constitution and may not be abridged except under the following circumstances:

First, the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression. Second, the limitation of First Amendment freedoms must be no greater than necessary or essential to the protection of the particular governmental interest involved.

Chapter DOC 309 governs the use of the mail by inmates. Basically, inmates may correspond with anyone unless the inmate or the correspondent abuses the privilege. Then, the right to correspond with a particular person may be terminated pursuant to ch. DOC 309 or as part of a disciplinary hearing. Sub. (1) only comes into play if the right to correspond with a particular person has already been terminated. If the inmate nonetheless corresponds with that person, for example by enclosing a message inside a letter or package to someone else, the inmate has violated this section.

The purposes of sub. (2) are the same as the purposes of DOC 303.42 and 303.46. See the notes to those sections. Inmates should not be allowed to send away, for safekeeping, items which were improperly acquired, such as money, drugs, weapons or the property of others. This section is only intended to apply to situations where the inmate personally puts items into an envelope or package. For example, if money from the inmate's account is sent out to pay for a purchase, there is no violation.

A person should not be charged with a violation of DOC 303.30 and this section for the same act.

Note: DOC 303.49 to DOC 303.52. In general, all of the sections concerning movement have the following purposes: (1) to prevent escape by monitoring inmates' movements; (2) to prevent fights, assaults and disturbances by preventing gathering of groups except in closely supervised situations; and (3) to permit the effective monitoring of inmate activity both in the institution and while the inmate is on work or study release. In addition, DOC 303.49, Punctuality and attendance, is intended to promote the smooth running of all programs of work, study and recreation, and to promote development of punctual habits by inmates. DOC 303.52 has the additional purposes of preventing theft and other illicit activity. DOC 303.50 is not intended to prohibit normal conversation between inmates who are walking.

Note: DOC 303.54. The purposes of this section are to aid in the enforcement of the contraband rules and to prevent possible poisoning or misuse of items due to improper labeling. The exact list of items which are covered by this section will be posted at each institution; this section only names the types of items which are likely to be covered.

Note: DOC 303.55. In the close living conditions of a prison, a messy or dirty room could become a breeding ground for bacteria or a haven for pests such as insects or mice, and thus threaten the health and safety of the inmate of that room and of others. Where two or more inmates share quarters, differences in habits of neatness could lead to arguments or to an unpleasant environment for one person. Finally, development of the habit of neatness is part of rehabilitation. For all of these reasons, neatness and cleanliness of rooms is regulated. However, since the layout of rooms, the laundry arrangements and the content of rooms varies greatly among institutions, the particular requirements are not contained in this section but instead will be posted at each residence hall or institution. See DOC 303.08, Institutional policies and procedures.

The organization of living quarters is also important because it is essential for staff to be able to observe quarters and because rooms can be arranged in a way that creates a fire hazard. Thus, the organization of rooms is also subject to institution policies.

Violation of DOC 303.24, Disobeying orders, should not be charged when an inmate violates this section, unless the inmate has been warned and still refuses to clean up.

Note: DOC 303.56. The purpose of this section is to protect the health and safety of all inmates and staff.

Note: DOC 303.57. Use of prescription medications must be carefully monitored because many of the medications have mind-altering qualities and could be abused just as controlled substances such as heroin, cocaine, marijuana, or alcohol can be abused. See note DOC 303.43, Possession of intoxicants, for the reasons behind the policy of not allowing inmates to use any mind-altering drugs.

Because the very same policy explains DOC 303.43 and 303.59, and this section, inmates should not be found guilty of violating both this section and one of the others on a single occasion unless more than one type of drug was involved. Rather, the reporting officer, or the hearing officer or adjustment committee, should decide which of the sections is most appropriate.

Lesser included offense: DOC 303.40, Unauthorized Transfer of Property.

Note: DOC 303.58. The purpose of this section is to protect the safety and health of the inmates. Tattooing, ear piercing and other forms of self-mutilation can lead to serious infections. In addition, some forms of disfigurement could lead to identification problems.

This section is only intended to cover injury to oneself or to another person with that person's consent. Injury to another person without DOC 303.12, Battery, covers his or her consent.

Note: DOC 303.59. The reasons for the policy of not allowing inmates to use any kind of intoxicating drugs, including alcohol, are given in the note to DOC 303.43.

This section does not cover misuse of prescription medications because it is already an offense covered by DOC 303.57. For the purpose of deciding which of the 2 sections applies, "prescription medication" means only drugs obtained properly or improperly, directly or indirectly, from pharmacy supplies at the institution. The fact that some doctor sometimes prescribes a particular drug somewhere does not make it a "prescription medication" for purposes of this section.

In sub. (2) use of intoxicating substances is proven by a positive test result performed on body contents specimens or breath or through physical examinations. The department uses reliable tests accepted by the scientific community and follows the standards suggested by the test authors or manufacturers. With respect to urinalysis, an inmate is considered to have refused to submit to a body fluids search if

he or she does not provide a urine specimen within a reasonable time after the request.

Note: DOC 303.60. Gambling is forbidden for the following reasons: (1) it can result in some players being cheated or taken advantage of; (2) it can lead to serious debts which in turn lead to violence, intimidation and other problems; (3) even without cheating or large debts, it can create strong emotions leading to violence or other discipline problems; (4) some inmates have a psychological dependence on gambling (similar to alcoholism) which has been associated with criminal behavior in the past. Removing the opportunity for gambling could help such inmates to overcome this problem.

Thus, for example, betting a pack of cigarettes on the outcome of a TV football game is an offense. It would also violate DOC 303.40, Unauthorized transfer of property, if the bet was paid. The experience of staff is that even this type of betting can lead to serious problems for the reasons listed earlier.

Note: DOC 303.61. See the note to DOC 303.62.

Note: DOC 303.62. Performance of work assignments is vital to the operation of each institution. Laundry, food preparation, cleaning, and maintenance are among the tasks performed by inmates. Enforcement, through the disciplinary process, of the duty to work is necessary to the smooth running of the institution.

Even where an inmate is not assigned work which is vital to the institution's operation, the inmate must work or study if assigned to do so. These sections are designed to instill habits of dependability and responsibility which are important in getting and keeping jobs on the outside.

Note: DOC 303.63. Each institution, due chiefly to its unique physical facilities, security requirements and programs, must have the authority to regulate matters more specifically and frequently than is possible through the rule-making process. This section provides the authority to do so. Violations of policies and procedures authorized under this section may be treated as violations permitting punishment. Such policies and procedures must be related to the objectives under DOC 303.01.

Note: DOC 303.64. This section gives an overview of the different ways a rule violation can be handled. In general, less serious offenses are handled by informal means, such as counseling, warning or summary punishment with consent of the inmate. More serious offenses are handled by more formal means, including a hearing by an impartial officer or committee at least 2 working days after notice is given, an opportunity to respond to the charges and an opportunity for appeal. In addition, in the most serious or "major" cases the accused may have the opportunity to call witnesses and

present evidence, the opportunity to confront and cross-examine adverse witnesses and the assistance of a staff member in preparing for the hearing.

The goal of fairness is advanced by the procedural rules in several ways: (1) the hearing officer or adjustment committee is impartial; (2) the officer's or committee's decision must be based on all relevant information, and on a decision that it is more likely than not that the incident occurred; (3) various safeguards assure that the inmate's side of the story is fully presented. In some cases, any or all of the following are allowed: a staff member's help in preparing for the hearing, an opportunity to present evidence and witnesses, and an opportunity to confront and cross-examine adverse witnesses. In all cases, the inmate can make a statement on his or her own behalf; (4) the officer or committee is required to make a written report of the decision and reasons for it. This allows review of the decision; (5) there are guidelines set out to help the staff member make certain decisions, such as the decision whether to write a conduct report and the decision of what punishment to impose.

Note: DOC 303.65. This section recognizes that it is not desirable or necessary to handle all observed rule violations through the formal disciplinary process, and it provides guidelines for the exercise of discretion by staff members. This helps to increase uniformity and to increase understanding of the disciplinary rules and the enforcement policy among both inmates and staff.

Although this section limits the staff member's discretion (for example, a staff member may not handle a major offense, such as fighting, informally), there is still considerable scope for the staff member's judgment, for example, in deciding whether the inmate is likely to commit the offense again. The staff member's experience can guide him or her in making this judgment better than a detailed rule could. Also, even if the staff member may handle a rule violation informally, this section does not require the staff member to do so when in his or her judgment discipline is needed.

Sub. (1) (d) refers to the purposes of the individual sections and the rules generally in DOC 303.01. A statement of the purpose of each disciplinary rule in this chapter can be found in the note to that section. These notes in some cases give examples of situations where the rule should normally not be enforced.

Note: DOC 303.66. If a staff member has decided, using the guidelines in DOC 303.65, that counseling or warning an inmate is not the best response to a particular infraction, the next step is to write a conduct report. The contents of the conduct report are described in sub. (2). A conduct report is the first step for all 3 types of formal disciplinary procedures: summary punishment, minor offense hearing and major offense hearing.

If the staff member did not personally observe the infraction, sub. (1) requires that he or she investigate any allegation to be sure it is believable before writing a conduct report. An informal investigation by the reporting staff member can save the time of the adjustment committee by weeding out unsupported complaints, and can also provide additional evidence to the adjustment committee if any is found.

Sub. (3) provides that there should be a conduct report for each action which is alleged to violate the sections. If one action violates 3 sections only one report is required. Presumably, the report would list the sections violated and state the relevant facts. This is an effort to avoid unnecessary use of forms.

There is no "statute of limitations" for writing the report. Rather, the guiding factor, when there is time between the alleged offense and the conduct report, should be whether the inmate can defend himself or herself and not be unfairly precluded from doing so due to the passage of time.

Note: DOC 303.67. A conduct report is the initial step in the formal disciplinary process. Any staff member may write it. Unless the accused inmate admits the charges and submits to summary punishment (see DOC 303.74), the next step is review by the security office.

If summary disposition of the case has already occurred, the security office also reviews the conduct report. The same type of review for the appropriateness of charges should be made, as well as a review of the appropriateness of writing a conduct report (see DOC 303.65) and of the appropriateness of the sentence imposed. The security director may reduce the punishment or charges, if a violation has been treated summarily. The security director may not add to them, since summary punishment is based on consent of the inmate and the inmate has only admitted the charges which were originally written on the conduct report. Only if the conduct report and the punishment are approved may a record of the violation be included in the inmate's files.

In order to preserve the option of using a major punishment, the security office will designate a conduct report as containing a "major offense" whenever it seems possible that segregation, extension of the mandatory release date or loss of good time will be imposed by the adjustment committee. Some offenses are always major offenses; these are listed in sub. (3). The security director shall consider violations of other sections individually and determine whether to treat an offense as major or minor. However, guidelines for the exercise of this discretion are given in sub. (4).

When a security director treats an offense as a major offense, as allowed by sub. (4), the security director should indicate in the record of the disciplinary action some reason

for that decision based on the criteria enumerated under sub. (4).

Note: DOC 303.69. The purpose of this section is to promote uniformity among all the institutions in applying adjustment segregation, to make sure standards are met and to inform inmates what to expect.

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

Note: DOC 303.70. The purposes of this section are to promote uniformity among all the institutions of program segregation and disciplinary separation, to make sure standards are met and to inform inmates what to expect.

Sub. (3) clarifies what personal property inmates in program segregation and disciplinary separation may keep in their cells. Each institution may have a policy designed to motivate inmates to improve their behavior in segregated statuses so that they will be permitted to move into the general population of the institution.

Since program segregation and disciplinary separation may last for almost one year (or longer if a new offense is committed), the conditions are not as spartan as in adjustment segregation. In particular, there is an opportunity to take advantage of programs. Sub. (7). An inmate's stay in program segregation and disciplinary separation may not be extended and the inmate may be released at anytime through the procedure established under this section.

DOC 303.70 provides for a new penalty—disciplinary separation. Disciplinary separation is being added to the major penalty selection as an alternative to program segregation. The difference is it is less punitive for the first time offender or the offender who normally follows the rules. There is not an automatic extension of mandatory release date with disciplinary separation. Program segregation requires an extension of one day for every 2 days served.

Note: DOC 303.71. Controlled segregation is not intended as punishment but, as its name implies, it is to be used where it has been impossible to control a person in segregation. The purpose of the section is to promote uniformity in the use of controlled segregation and make sure standards are met. In particular, incoming and outgoing mail is still allowed as if the inmate were not in segregation.

Note: DOC 303.72. This section describes other major and minor penalties which may be imposed. The purpose of this section is to standardize the punishments used so that an inmate's disciplinary record is easier to understand, and to inform inmates of what to expect.

Note: DOC 303.74. The availability of summary disposition avoids the necessity of a disciplinary hearing when the

inmate agrees to summary disposition. Summary disposition is only allowed in relatively minor cases, those where the punishment is limited to the punishments listed in sub. (5). To further limit the possibility of abuse, the supervisor must approve any summarily-imposed punishment. Sub. (4). Also, summary punishments must be reviewed and approved by the security office before being entered in the inmate's disciplinary record or other files. See DOC 303.67.

Note: DOC 303.75. The hearing procedure for minor violations, often called an "informal hearing," has several safeguards to protect the inmate from an erroneous or arbitrary decision. It is used in the following situations: (1) When the inmate did not agree to summary disposition, because he or she contested the facts or for some other reason; and (2) When the inmate waives a due process hearing.

The protections present in the minor hearing procedure are: subsection (1)—notice of charges; subsection (2)—specific time limits for the evidence; subsection (6)—the right to appeal; and except as provided in DOC 303.85 (2), no records are kept in any offender-based file if the inmate is found not guilty.

The 21-day time limit is not intended to be jurisdictional in nature. This provision specifically overrules *State ex rel Jones v. Franklin*, 151 Wis. 2d 419, 444 N.W. 2d 738 (Ct. App. 1989).

Note: DOC 303.76. Subsection (2) concerns waiver. When an inmate waives a hearing for a major due process violation, he or she waives all rights associated with that type of hearing and has only the rights associated with hearings for minor violations. Waiver includes waiving the right to question or confront witnesses. In that case, a hearing of the type used for minor offenses is held. The inmate still has an opportunity to make a statement, there is an impartial hearing officer, a decision is based on the relevant information, and an entry in the records is made only if the inmate is found guilty. Failure to hold the hearing within the 21-day time limit is not intended to deprive the adjustment committee of competency to proceed with the hearing. This provision specifically overrules *State ex rel Jones v. Franklin*, 151 Wis. 2d 419, 444 N.W. 2d 738 (Ct. App. 1989).

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

A waiver is not an admission of guilt.

Subsection (3) concerns time limits, which are the same as those under s. DOC 303.75.

Subsection (4) allows the hearing to be held at one of a number of places.

Generally, it is desirable to provide hearings where the violation occurred. Sometimes, this is impossible. When it is impossible, fairness requires that the inmate have the same protections where the hearing is held as he or she would have at the institution where the violation is alleged to have occurred.

Subsection (5) does not greatly limit the adjustment committee's discretion to prohibit cross-examination and confrontation, as it appears to do, because of the fact that the witness need not be called at all. The committee may rely on hearsay testimony if there is no reason to believe it is unreliable. See DOC 303.86, Evidence.

Subsection (6) requires that the committee give the inmate and his or her advocate a written copy of the decision.

Subsection (7) gives the inmate the right to appeal an adverse decision. Appeal increases uniformity in decision-making, may eliminate or reduce abuses of discretion, and provides an opportunity for the warden to review the work of his or her subordinates in handling disciplinary cases.

Note: DOC 303.78. allows the institution to assign advocates and to regulate their caseloads. The choice of an advocate, however, is not the inmate's constitutional right. If an inmate objects to the assignment of a particular advocate because that advocate has a known and demonstrable conflict of interest in the case, the institution should assign a different advocate to the inmate. An inmate has no due process or other right to know the procedure by which a particular advocate is selected in a particular case.

Note: DOC 303.81. The inmate facing a disciplinary proceeding for a major violation should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not compromise institutional safety or correctional goals. Ordinarily, the right to present evidence is basic to a fair hearing; but the unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution. It may be that an individual threatened with serious sanctions would normally be entitled to present witnesses and relevant documentary evidence; but here we must balance the inmate's interest in avoiding loss of good time against the needs of the prison, and some amount of flexibility and accommodation is required. Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse

The decision of whether to allow a witness to testify has been delegated to the security director. Sub. (2). The time

for making requests is limited under sub. (1), in order to give the security director an opportunity to consider the request prior to time for the hearing, which usually must be held within 21 days. See DOC 303.76 (3).

Sub. (3) lists the factors to be considered in deciding whether to call a requested witness.

Subs. (4), (5) and (6) indicate that signed statements are preferable to other hearsay, but other hearsay may be relied on if necessary.

Sub. (8) forbids interviewing members of the public and requesting their presence at hearings without the hearing officer's permission. Members of the public are not permitted to attend hearings. Such people are usually employees and school officials who are involved in work and study release. There is no authority to compel their involvement in hearings. More importantly, requesting their involvement or permitting adversary interviewing seriously jeopardizes the programs by making the people unwilling to cooperate. It also creates the possibility that there will be harassment of such people. Instead, the work release coordinator should get whatever information these people have and provide it to the committee.

Note: DOC 303.83. This section sets out the considerations which are actually used in deciding, within a range, how severe an inmate's punishment should be. It does not contain any formula for deciding the punishment. The actual sentence should be made higher or lower depending on the factors listed. For instance, if this is the fourth time the inmate has been in a fight in the last year, his or her sentence should be greater than average, unless other factors balance out the factor of the bad record.

Note: DOC 303.84. There are 2 limits on sentences which can be imposed for violation of a disciplinary rule: (1) A major penalty cannot be imposed unless the inmate either had a due process hearing or was given the opportunity for one and waived it; and (2) only certain lesser punishments can be imposed at a summary disposition. Major penalties are program and adjustment segregation, disciplinary separation, room confinement of 16 to 30 days, loss of recreational privileges for over 60 days for inmates in the general population, loss of recreation privileges for over 8 days for inmates in segregation, building confinement for over 30 days, loss of specific privileges for over 60 days, loss of good time for those inmates to whom 1983 Wisconsin Act 528 does not apply, and extension of mandatory release date for those inmates who committed offenses on or after June 1, 1984, and other inmates who chose to have 1983 Wisconsin Act 528 apply to them. See DOC 303.72 and DOC 303.74. This section limits both the types and duration of penalties.

In every case where an inmate is found guilty of violating a disciplinary rule, one of the penalties listed in sub. (1) must be imposed. More than one penalty may be imposed. For example, if adjustment segregation is imposed, program segregation may also be imposed. Loss of good time or extension of mandatory release date, whichever is applicable, may be imposed in conjunction with either or both of these penalties. The inmate will then serve his or her time in each form of segregation and lose good time or have his or her mandatory release date extended. Similarly, more than one minor penalty may be imposed for a single offense. A major and minor penalty may be imposed for a major offense.

Sentences for program segregation and disciplinary separation may only be imposed for specific terms. The possible terms are 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330 and in some cases, 360 days. The specific term represents the longest time the inmate will stay in segregation unless he or she commits another offense. However, release prior to the end of the term is possible. DOC 303.70 provides that a placement in program segregation may be reviewed at any time and must be reviewed at least every 30 days.

The limits on loss of good time or extension of the mandatory release date which are found in sub. (2) (e) are required by s. 53.11 (2), Stats. (1981-82). Prior to the 1983 amendments, this statute limited the number of days of good time which could be lost to 5 for the first offense, 10 for the second, and 20 for each subsequent offense. Those limitations are still applicable to inmates who committed offenses before June 1, 1984, and did not choose to have 1983 Wis. Act 528 apply to them.

1983 Wis. Act 528 amended s. 53.11 (2), Stats. (1981-82) (now s. 302.11 (2), Stats.), in three specific ways. First, it replaced the concept of "good time" with extension of the mandatory release date. Second, it allowed an extension of an inmate's mandatory release date by not more than 10 days for the first offense, 20 for the second, and 40 for each subsequent offense. The adjustment committee must impose this extension of the mandatory release date. The third change the statute made was the mandatory extension of an inmate's mandatory release date by a number of days equal to 50% of the number of days spent in segregation. This number must be calculated when the inmate is released from segregation, since the inmate may not spend the full amount of time in segregation to which he or she was sentenced. 1983 Wisconsin Act 528 applies to inmates who committed offenses on or after June 1, 1984, and other inmates who chose to have the act apply to them.

Sections 53.11, Stats. (1981-2) and 302.11, Stats., follow current practice by limiting loss of good time or extension of the mandatory release date to major offenses.

Note: DOC 303.86. This section makes clear that courtroom rules of evidence are not to be strictly followed in a disciplinary proceeding. Thus, a more flexible approach is used. The main guidelines are that the hearing officer or committee should try to allow only reliable evidence and evidence which is of more than marginal relevance. Hearsay should be carefully scrutinized since it is often unreliable; the statement is taken out of context and the demeanor of the witness cannot be observed. However, there is no need to find a neatly labeled exception; if a particular piece of hearsay seems useful, it can be admitted.

Subs. (3) and (4) address the problem of the unavailable witness. Sub. (3) contemplates that the statement and the identity of the maker will be available to the accused. Sub. (4) permits the identity of the witness to be withheld after a finding by the institution that to reveal it would pose a risk of harm to the witness. This is not often a problem, but it

does arise, particularly in cases of sexual assault. To protect the accused, it is required that there be corroboration; that the statement be under oath; that the content of the statement be revealed, consistent with the safety of the inmate. In addition, the committee or hearing officer may question the people who give the statements.

Note: DOC 303.87. This rule is to make clear that staff errors which do not substantially affect a finding of guilt or the inmate's ability to provide a defense, may be disregarded. For example, if an inmate were not served with an approved conduct report within the time specified, this would be harmless unless it affected the inmate's right to present a defense in a meaningful way. This rule conforms to present practices. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.