

Note: HSS 309.38 HSS 309.38 regulates personal hygiene. Good hygiene is important not only for the individual, but also for the whole inmate population and staff. The danger of the spread of disease in a correctional institution must be minimized by healthy living conditions.

Subsection (2) states minimum bathing standards. Several institutions can provide more showers and do so.

Grooming regulations are controversial. Subsection (3) establishes a flexible code for grooming which attempts to provide for the variety of tastes that exist, the need for hygiene, and the need to be able to identify inmates whose appearance may change dramatically over the course of several weeks. ABA, standard 6.7.

Note: HSS 309.39. The population of correctional institutions is largely beyond the control of the department and its division of corrections. Commission of crimes, court disposition of criminal cases, and discretionary parole decisions are the major factors determining correctional institution populations.

Wisconsin currently (early 1982) has more inmates than its institutions were designed to accommodate. This will likely continue for some time. An unfortunate situation, it must be confronted as humanely and imaginatively as possible. This section is meant to alleviate some of the tensions resulting from overcrowding.

The division of corrections wants to remain within the design level for occupancy of living quarters. Subsection (3) implements this goal by requiring single occupancy of single cells or rooms unless emergency conditions exist. Emergency conditions are defined under sub. (1).

Subsection (2) requires a declaration of housing emergency by the secretary following notification by the administrator that population in any institution exceeds the limits established by the legislature. Population reports will be monitored weekly to determine whether emergency conditions exist. Conversely, when the reports indicate that populations at all five institutions have fallen below the established limits, the secretary will be notified and the emergency will be cancelled.

Ideally, maximum security institutions house one inmate to each cell with no dormitories or double-up. In other institutions, group living occurs only in quarters designed for it. When an emergency is declared under sub. (1), the institution may resort to dormitories and doubling-up in rooms not designed for such use.

It is difficult to decide which inmates to place in dormitories or to double-up. Subsection (4) contains guidelines for making this decision. Inmates who volunteer should be chosen if otherwise appropriate.

Subsection (4)(e) requires humane conditions for inmates who are assigned to multiple occupancy. For example, additional time out of cell could relieve some discomfort or tension that may occur when 2 or more people share a small living space. The largest and best equipped cells are usually better places to house inmates who are double-celled. Where feasible, additional equipment such as chairs, lamps, and tables should be added. It is easier for an inmate to endure double-celling if the inmate has a program or job assignment and is occupied during the day.

This section is in substantial conformity with ACA, standard 4142, which considers one person to each cell "important" but not "essential." It also conforms to ABA, standard 6.12; *Corrections*, standard 2.5; *Bell v. Wolfish*, 99 S. Ct. 1861 (1979); *Burks v. Teasdale*, 603 F.2d 59 (8th Cir. 1979); *Rhodes v. Chapman*, No. 80-332 (U.S. June 15, 1981).

Note: HSS 309.40. The division must ensure that adequate and appropriate clothing is provided to inmates. Inmates must maintain it and keep it clean and neat. The sizes of institutions and living units, the amount of storage space, the type of programs available, laundry resources, and differing security requirements dictate that each institution have its own policies relating to personal clothing. In camps, where inmates often have contact with the community, it is desirable to permit the wearing of personal clothing.

Note: HSS 309.45. The objectives of HSS 309.45-309.52 are to meet the security needs of the institution, encourage responsible money management on the part of the inmate, preserve money for the inmate's use upon release, and to enable the inmate to make purchases while in the institution. These broad objectives may sometimes seem inconsistent. Management of funds in a way that meets all the objectives is difficult. If there is a conflict, the requirement in HSS 309.48 (6) that reasons be given for decisions is important.

The differences among inmate needs and obligations explain why the objectives are broad. Family needs and, therefore, the demand on an inmate's funds vary from person to person. For example, one inmate may have a spouse with no income and several children. They may be receiving aid for dependent children. Another inmate may be single, have no family obliga-

tions, and receive money from home. The management of funds in these two cases must be in accordance with the needs of the family and the inmate.

The objectives set forth in this section are factors to consider in weighing the different demands on and amount of inmate funds. The objectives for management of these funds are not listed in priority order, and one should not be given undue emphasis over the other. Rather, they should all be considered in light of the specific circumstances surrounding each inmate's financial position.

Note: HSS 309.46. This section implements s. 46.07(1), Stats., relating to the deposit of money. There is no statutory authority to regulate all money that an inmate controls. For example, a savings account in existence before incarceration is not within the scope of HSS 309.45-309.52.

In an institutional setting it is desirable to have all money kept in an account for the benefit of the inmate, rather than to allow inmates to carry money. This eliminates problems with exchange of contraband and victimization that could result if the inmates carried money. While these problems may be present without money, this section prevents use of money as a means of illegal exchange.

Note: HSS 309.465. HSS 309.465 implements the crime victim and witness assistance surcharge established by s. 973.045, Stats. The statute requires that if an inmate in a state prison has not paid the surcharge, the department is required to assess and collect the amount owed from the inmate's wages or other moneys and transmit the amount collected to the state treasurer.

Note: HSS 309.466. HSS 309.466 requires the division to establish a release account for each inmate. It recognizes that a release account will promote inmate savings and ensure that inmates have funds available upon release to help with their transition back into society pursuant to HSS 309.45 (1). The deduction will come out of all inmate funds coming into the institution or earned by the inmate at the institution, including hobby income and inmate wages, except income from work release and funds received for study release, but will not start until the crime victim and witness surcharge is paid in full. The specific percentage of the deduction and the total amount that may be deducted will be determined by internal management procedures of the division. The release fund is untouchable for any purpose until release from prison except that when a release date is established an inmate may ask that funds be disbursed to pay for release clothing and arrange for out-of-state transportation. Following release, disbursements are monitored by the inmate's parole agent. Funds will be needed upon release to pay for housing, security deposits, food and transportation until employment is found, especially since allowances for gate money and release clothing are eliminated effective July 1, 1986.

Note: HSS 309.47. This section requires the division to give the inmate a receipt of all transactions in his or her account. This is good accounting practice. It is in accord with ACA, standard 4368.

The requirement that the inmate receive a periodic statement from a savings account serves 2 important objectives: (1) provides notification to the inmate of the current state of the account and (2) provides an accounting check on possible mistakes. For example, if a sum were wrongly credited, it may be noticed by the inmate who could notify the institution business manager to correct the error.

Note: HSS 309.48. HSS 309.48 requires each institution to write its procedure pertaining to inmate requests for disbursement of funds. The written procedure must contain all the information under sub. (1)-(8) and be otherwise consistent with HSS 309.45-309.52. The procedure for submitting requests and approval is not necessarily the same for all institutions. This section outlines common information each institutional procedure must contain.

Note: HSS 309.49. HSS 309.49 governs the use of general account funds. Subsection (1) acknowledges the institution business manager's discretion to allow or forbid spending of inmate funds for any reason that is consistent with meeting the objectives of HSS 309.45.

Subsection (2) recognizes that an inmate can request to have funds spent for any reason. Obviously the request should be for something consistent with the purpose of HSS 309.45 or the appropriate authority will not approve the expenditure. For example, if an inmate has less than \$500 in an institution controlled account, that inmate will have less latitude to spend freely unless some other purpose under HSS 309.45 is considered to be overriding in the discretion of the superintendent.

Subsection (4) specifies some uses of funds, in excess of the canteen limit, that may be consistent with HSS 309.45. This is intended as a guideline. Again, as discussed in the note to HSS 309.45, whether an expenditure is consistent with the objectives of that section depends upon the financial situation of the individual inmate making the request.

Disbursements in excess of \$25 to one close family member or to persons other than close family members require written permission of the superintendent. This subsection was adopted to eliminate illegal activities. It should not be used as a bar to disbursements in excess of \$25 to one close family member, for example, if it can be established that the money is to be used for a lawful purpose. Subsection (4)(b) recognizes that disbursement of \$25 or less to a close family member of the inmate once every 30 days may be desirable. This kind of disbursement relates to the objective in HSS 309.45(3) concerning the development of a sense of responsibility on the part of inmates for payment of family obligations. The definition of close family member is contained in HSS 309.02(2).

Sub. (4)(c) and (d) specify that the inmate may deposit money in an interest bearing account or purchase U.S. savings bonds. This is desirable as a means of meeting the objectives of HSS 309.45(1) and (4). *ACA*, standard 4370 considers the provision for accrual of interest to the inmate to be an essential element of any written policy on inmate funds.

Subsection (4)(e) relates to the objective of HSS 309.45(3) regarding the payment of an inmate's debts.

Note: HSS 309.50. The segregated account is used primarily for administration of the funds handled by the work and study release programs. The handling of these funds is governed under ch. HSS 324.

Subsection (3) requires funds received by inmates from outside sources due to enrollment in institution programs and funded by institution funds to be deposited in a segregated account. These funds are to be used for tuition and books. Although these programs are made available to all inmates, regardless of ability to pay, inmates who receive funds should be required to use the money to help pay for the costs of education. Past division policy was to prohibit using these funds for tuition and books. Examples of the sources of such funds are veterans administration, social security, and railroad retirement funds.

The underlying concern under the old policy was that it was unfair to require those inmates who receive money from outside sources to pay for tuition and books when these costs would be paid from institution funds for inmates who received no outside money. The division has the responsibility to provide these kinds of educational programs regardless of ability to pay.

The present policy reflects the view that, when inmates receive outside money by virtue of their enrollment in an institutional educational program, that money should be used to pay for the costs of that program. This policy frees resources to help the division better fulfill its responsibility to provide educational programs.

Note: HSS 309.51. This section authorizes loans and subsidies to inmates for expenses related to legal correspondence. The funds are not intended for actual legal services but for expenses for postage, paper, or photocopying.

This section is necessary so no inmate is denied access to the legal process due to lack of funds. For a discussion of the importance of the legal process to people in correctional institutions, see HSS 309.25 and note.

Note: HSS 309.52. Canteen expenditures are consistent with the purposes of HSS 309.45 since they allow the inmate to manage funds for personal needs. HSS 309.35 governs the approval of personal property. Approved property for personal needs, for example, shaving, dental hygiene, or tobacco, may be purchased by inmates from the canteen up to the canteen limit established by the bureau of institutions. Subsection (1)(b) was written to permit flexibility in setting the maximum limit on property that may be purchased at the canteen. It should be adjusted to reflect current economic conditions.

Subsection (1)(d) requires the institutions to permit the purchase of approved personal property not carried in the canteen. The procedures developed must allow a reasonable selection. Therefore, purchases should not be limited to a small number of businesses. Allowing inmates to choose from a large number of businesses encourages inmates to compare prices, and this is important in developing responsible money management habits.

Subsection (2) is consistent with the objective of HSS 309.45(2) since it prohibits use of money as the means of exchange at the canteen. An identification and bookkeeping procedure to ensure the proper account is charged when a purchase is made reduces the possibility of problems with victimization or exchange of contraband, which are addressed in the note to HSS 309.48.

Note: HSS 309.55. HSS 309.55 requires that each inmate at a correctional institution be compensated for his or her involvement in approved (see chs. HSS 302 and 324) work and study programs. All inmates except those noted under sub. (3) will be compensated.

The purpose of this section is to provide uniform and fair compensation standards as an incentive to inmates in work and study programs to develop and reinforce positive behavior

and to compensate them with sufficient wages so that they can make purchases from the canteen and accumulate funds to assist them upon their release from the institution. See ACA, standards 4390-4391. Compensation also provides an incentive for inmates to complete their programs successfully, promotes institution order, and encourages the development of behavior and skills related to successful reintegration into the community upon release.

Subsection (3)(c)1 provides for compensation for those inmates who were in a pay status and requested placement in voluntary confinement upon the recommendation of, or approval by, the security director for the purpose of ensuring the inmate's safety. Such an inmate shall receive the minimum wage under sub. (6) while in voluntary confinement.

Subsections (3)(c)2 and 3 provide for compensation for those inmates who are in administrative confinement or observation either because they were in a pay status prior to this placement or because they are able to participate in approved work or study programs while under this status. This is appropriate because these are nonpunitive statuses and it is important to encourage such activity when it is consistent with the inmate's status and behavior.

The statuses in sub. (4) are short term, temporary in nature, usually pending further investigation or examination after which the inmate may return to the former program assignment. The inmate should not lose pay during this period.

Subsection (5) requires each institution to rank its work and study programs according to the degree of skill and responsibility demanded by each. This ranking should be uniform throughout the division to ensure systematic and efficient administration and uniform treatment of all inmates (sub. (7)). No maximum has been set for the percentage of positions under sub. (5) for those inmates who are involuntarily unassigned. The number of inmates at an institution varies whereas the number of work and study programs available remains relatively constant; thus any percentage would be impractical for this status. Institutions shall attempt to provide positions for all those inmates willing to study or work, however.

The compensation rates under sub. (6) are consistent with the requirements for wage standards in prison industries under s. 56.01(4), Stats., which states that all inmates shall be paid on the basis of the productivity of the work they perform and may be paid at an hourly rate with a provision for incentive wages. This subsection provides for increased compensation for work or study on weekends or legal holidays. However, no inmate shall be compelled to work on Sunday or a legal holiday, except to perform necessary household work or when necessary to maintain the management or discipline of the institution in accordance with s. 56.22, Stats. This section also complies with the statutory requirement that wages shall not be set at a rate that will cause a deficit in operations.

In addition to the compensation provided for under sub. (6) to inmates with injuries sustained in job related accidents, s. 56.21, Stats., provides for further compensation at the time of parole or final discharge to those inmates who have become permanently incapacitated or have materially reduced earning power as a result of the injury, as determined by the department of industry, labor, and human relations.

Subsection (8) is derived from the security rules, ch. HSS 306.

Note: HSS 309.56. Telephone calls are a desirable means for inmates to maintain meaningful contacts with persons outside correctional facilities. Although calls are desirable, the number must be limited due to the lack of resources available. But, subs. (1) and (3) make it clear that allowing more than one call per month is encouraged as sound correctional policy.

Subsections (2) and (3) require the division of corrections to permit at least one telephone call per month to someone on the approved visiting list, close family members, and others. Each institution is encouraged to allow more calls, but it is not required because some institutions do not have resources to accommodate larger numbers of calls. This reasoning also applies to the six-minute time limit under sub. (5).

Subsection (4) requires long distance calls to be collect unless payment from the inmate's account is approved. Allowing the inmate to pay for his or her own calls was left to the discretion of each institution because all institutions do not allow it.

The resource problems associated with telephone calls in a correctional setting are numerous. Inmates must be supervised to some extent by staff while they are making calls and while they are being moved to an area where the calls are made. The large number of inmates in high security institutions requires a substantial commitment just to permit each inmate to make one telephone call each month. Inmates in institutions with lower security may not need close supervision, but these institutions also do not have the same level of staff.

The policy on telephone calls, HSS 309.56 to 309.60, substantially conforms to the American Correctional Association's, *Manual of Standards for Adult Correctional Institutions* (1977) (hereinafter "ACA"), standard 4349.

Register, November, 1986, No. 371

Note: HSS 309.57. A telephone call to an attorney can be necessary if the mail is inadequate and an inmate must contact an attorney with reference to a case. Telephone contact with attorneys furthers access to the judicial process, legal services, and legal materials, and access to the legal process is guaranteed by the U.S. Constitution. HSS 309.25 and the note following that section contain a discussion of the benefits of such a policy. The policy of effective access is articulated in *Bounds v. Smith*, 430 U.S. 817 (1977), and HSS 309.25—309.29.

Several commentators have supported a policy that assists inmates in making confidential contact with attorneys via the telephone. See *ACA*, standard 4282; National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (1973), standard 2.2; *Krantz, et al., Model Rules and Regulations on Prisoners' Rights and Responsibilities* (1973), rule IC-5; and American Bar Association's *Tentative Draft of Standards Relating to the Legal Status of Prisoners* (1977), part VI, standard 6.1(c).

The requirement that calls be made with permission of appropriate staff recognizes that some formal arrangements may be necessary for security or other reasons before an inmate has access to a telephone and it may take time for such arrangements to be made. Unnecessary telephone calls may thus be prevented. Although an inmate may call an attorney only with permission of staff, that permission may not be unreasonably withheld if a need exists under sub. (4).

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

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

Note: HSS 309.58. Subsection (1) requires that staff ask for messages from incoming callers and that the messages be delivered to the inmate. Reaching inmates for each incoming call would be impracticable. The policy under sub. (1) permits staff to plan for inmate telephone calls. This preserves order and fosters more efficient use of staff time.

If an inmate is easily accessible, staff may allow an inmate to answer the call. An inmate might be allowed to take an incoming call in an emergency.

Subsection (2) permits an inmate to make emergency telephone calls regardless of the number of calls the inmate has already made that month or the inmate's institution status. Serious illness or death in the family are recognized as bases for granting leave under ch. HSS 326 and temporary release under ch. HSS 325. However, there may be other reasons for emergency telephone calls so the rule is not limited to those situations.

Note: HSS 309.59. Permitting telephone calls between spouses and parents and children committed to Wisconsin correctional or mental health institutions fosters the correctional goal of maintenance of family ties. However, such calls involve two institutions and, thus may require additional arrangements to ensure security at both institutions. Therefore, a separate rule was adopted specifying that the prior arrangements be made.

Note: HSS 309.60. Subsection (1) requires each institution to establish written procedures for telephone calls. Since each institution has unique physical structure, resources, security concerns, and staffing patterns, separate procedures are needed. In some minimum security institutions, for example, the superintendent may establish a policy which allows more liberal use of the telephone by inmates. In all cases, however, those procedures must incorporate the policy established in this chapter.

Subsection (2) allows the superintendent to grant permission for an inmate to place a telephone call regardless of any other limitation in this chapter. This is consistent with the policy of HSS 309.56(1) because the superintendent may find that communication by a telephone call is necessary and desirable even when other provisions of this chapter would prohibit it.