

Chapter HSS 309

RESOURCES FOR INMATES

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Note: Several sections in chapter HSS 309 have explanatory notes. This information can be found in the appendix after the last section.

HSS 309.01 Applicability. This chapter applies to the department of health and social services, to its division of corrections, and to all adult inmates in the legal custody of the department. It is promulgated pursuant to authority conferred by ss. 46.03 (1) and (6) and 227.014(2), Stats., and interprets ss. 46.064, 46.065, 46.07, 53.07, 53.08, 53.12, 56.01, and 56.065, Stats.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.02 Definitions. As used in this chapter:

(1) "Adjustment committee" means the adjustment committee authorized under the departmental disciplinary rules to impose disciplinary measures for inmate misconduct.

(2) "Close family member" under ss. HSS 309.45 - 309.52 means the inmate's natural, adoptive, step, and foster parents; spouse, children, grandparents, grandchildren, or siblings. A parent surrogate is within

the definition of parent if investigation substantiates that a claimed surrogate did in fact act as a parent to the inmate, although the parent surrogate was not an adoptive, foster, or stepparent.

(3) "Department" means the department of health and social services.

(4) "Director of the bureau of adult institutions" or "bureau director" means the director of a bureau of the division of corrections, or designee.

(5) "Division" means the department of health and social services, division of corrections.

(6) "Clinical services unit supervisor" means the clinical services unit supervisor at an institution, or designee.

(7) "General account" means an account established to receive an inmate's pay, pensions, disability payments, or gifts from family; and from which disbursements may be made while an inmate is in the legal custody of the department.

(8) "Institution business manager" means the person designated to receive and disburse money and property at each institution or that person's designee.

(9) "Photograph" means an image on film, video tape, or electronic transmission.

(9m) "Release account" means an account established for an inmate in which a percentage of the inmate's income is deposited, in accordance with s. HSS 309.466 so that the inmate has sufficient funds when released from the institution to purchase release clothing, out-of-state transportation, and other items and services needed on release.

(10) "Representatives of the news media" means any person 18 years old or older who is a member of the press, including broadcast or journalism, who visits an institution for the purpose of investigation and reporting.

(11) "Security director" means the security director at an institution, or designee.

(12) "Segregated account" means an account established for the receipt and disbursement of funds received by inmates for participation in a work or study release program under ch. HSS 324 and certain institution educational programs. Such funds include, but are not limited to, social security, veterans administration, and railroad retirement funds.

(13) "Superintendent" means the superintendent at an institution, or designee.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; emerg. cr. (9m), eff. 5-15-86; cr. (9m), Register, September, 1986, No. 369, eff. 10-1-86.

HSS 309.03 News media access to inmates. (1) Representatives of the news media shall be permitted to visit correctional institutions. Visits and interviews by media representatives with correctional staff and inmates can foster the public's understanding of the qualities, problems, and needs of inmates and institutions. Such understanding helps to develop community acceptance and support of correctional objectives, including the objective of successful reintegration of offenders into the community.

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(2) News media representatives shall be permitted to interview individual inmates, unless:

(a) The superintendent believes that an interview will:

1. Jeopardize the safety or order of the institution; or

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2. Be detrimental to the welfare of the inmate;

(b) The clinical services unit supervisor believes that the inmate is mentally ill;

(c) The inmate is confined in segregation. The director of the bureau of institutions may approve in writing an interview of an inmate confined in segregation in extraordinary circumstances; or

(d) The inmate refuses to be interviewed. A superintendent may require the refusal to be in writing.

(3) Representatives of the news media who visit correctional institutions are subject to the same rules as other visitors. They will not be counted against any limits as to the number of visitors permitted, unless they are on an inmate's visiting list.

(4) With the written permission of the inmate, news media representatives may photograph the inmate. The permission shall include the date of the photo and the use to be made of it.

(5) All visits and interviews conducted pursuant to this section shall be subject to regulation by the superintendent as to time, location, length, and equipment used. Such regulation is not to discourage visits and interviews.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.05 Inmate mail (1) The division of corrections encourages communication between inmates and their families, friends, government officials, courts, and other people concerned with the welfare of inmates. Such communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate inmates and thus contributes to high morale and to the security of inmates and staff.

(2) (a) Incoming mail addressed to inmates may be opened, examined, censored, and delivered under this section only if the inmate consents in writing to receive mail through institution mail services.

(b) If an inmate does not consent under par. (a), the institution shall return incoming mail addressed to the inmate to the post office unopened marked, "refused."

(c) An inmate shall be permitted to correspond with anyone, including inmates in other institutions. There shall be no limit on the length or number of letters received or sent by any inmate.

(3) There shall be no inspection or reading of correspondence between inmates and:

- (a) The governor of Wisconsin;
- (b) Members of the Wisconsin legislature;
- (c) Members of the United States congress;
- (d) The secretary, department of health and social services;
- (e) The administrator, division of corrections;
- (f) The bureau directors of the division of corrections;
- (g) The corrections complaint examiner;

- (h) The attorney general or assistant attorney general of Wisconsin;
- (i) The clerk or judge of any state or federal court;
- (j) The superintendent of any state correctional institution;
- (k) Any sheriff's or police department;
- (l) Administrative agencies of the federal government; or
- (m) The parole board.

(4) Correspondence between attorneys and inmates may be opened for inspection, but not read, in the presence of the inmate. Such mail should be readily identifiable as from or to attorneys.

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

(a) Incoming and outgoing mail may be opened and inspected for contraband. It shall not be delivered if it contains contraband.

(b) Incoming and outgoing mail may be read only if the security director has reasonable grounds to believe that mail should not be delivered pursuant to par. (c) of this section or if the correspondence is between inmates. If the correspondence is between inmates and concerns joint legal matters, it shall not be read and shall be submitted for transmittal without delay.

(c) Incoming and outgoing mail shall not be delivered if it:

1. Threatens criminal activity or physical harm to any person;
2. Threatens blackmail or extortion;
3. Concerns sending contraband in or out of an institution;
4. Concerns plans to escape;
5. Concerns activity that, if completed, would violate the laws of Wisconsin or the United States or the administrative rules of the division of corrections;
6. Is in code;
7. Solicits gifts from a person other than a family member or a person on the visiting list;
8. Is obscene. Material is obscene if the average person, applying state contemporary community standards, would find that the work, taken as a whole:
 - a. Appeals to the prurient interest;
 - b. Depicts or describes, in a patently offensive way, acts involving necrophilia, masochism, sadism, bestiality, or an unnatural preoccupation with excrement; and
 - c. Lacks serious literary, artistic, political, or scientific value;
9. Contains information that, if communicated, would create a clear danger of physical or mental harm to any person.

(d) A record of any mail that is read shall be kept by the security director. It shall include the name of the sender and receiver, the date, the reason for reading it, and the name of the reader. Inmate questions regarding mail inspection shall be addressed to the security director.

(e) A record of any mail that is not delivered shall be kept by the security director. It shall include the name of the sender and intended receiver, the date, and the reason for not delivering it.

1. If it is incoming mail, the letter and a written notice stating why the letter was not delivered shall be sent to the sender, unless the sender was an inmate. The inmate to whom the letter was sent shall be given a written notice that the letter was not delivered and the identity of the sender.

2. If the letter is outgoing mail or if it is incoming and the sender is an inmate, the sender and the person to whom the letter was sent shall receive a notice stating why the letter was not delivered and the identity of the sender and intended receiver. The letter shall be kept by correctional staff.

(f) The security director's decision to refuse to deliver a letter may be appealed to the superintendent, who shall decide the appeal in accordance with these sections.

(g) A record of cash, checks, money orders, and any negotiable instruments shall be made. It shall include the name of the sender and receiver, the amount, and date.

(h) If the inspection or reading of mail reveals an attempt to send contraband in or out of an institution or to secure delivery of mail that may not be delivered pursuant to sub. (5) (c) of this section, the security director may order that mail to or from the inmate or sender shall be opened and read for a reasonable period of time.

(6) Parcels, packages, and any other incoming or outgoing items other than correspondence that are mailed or delivered to an inmate may be opened for inspection for contraband. If, upon opening, the contents are found to be damaged, the inmate should be notified.

(7) Contraband found through inspections conducted pursuant to this section shall be disposed of in accordance with the departmental rules.

(8) For violations of administrative rules or policies and procedures made by institutions relating to mail, mail privileges may be suspended by the security director or adjustment committee.

(9) If an inmate is alleged to have violated these rules or institution policies and procedures relating to mail, a conduct report shall be written and disposed of in accordance with the rules providing for disciplinary procedures for major offenses. For such violation, the penalty may include suspension of mail privileges with a specific person for a specific period, subject to the following:

(a) A suspension of 6 months or less may be imposed by the adjustment committee and appealed to the superintendent; and

(b) A suspension of more than 6 months may be appealed to the superintendent and thereafter the administrator and the secretary.

(10) If a member of the public is alleged to have violated these sections or institution policies and procedures relating to mail, the security director shall investigate and decide if such a violation occurred. If such a violation occurred, the security director may suspend mail privileges with a specific person for a specific period. Suspension of mail privileges may be appealed in accordance with sub. (9).

(11) If mail is opened or read inadvertently, the inmate shall be so notified.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.06 Publications. (1) The division shall encourage and facilitate inmate reading of publications, including books, magazines, newspapers, and pamphlets. Reading generally fosters correctional objectives by educating inmates and by keeping them informed of events and issues in the community.

(2) HSS 309.05 applies to publications. In addition, the receipt of publications by inmates is subject to the following restrictions:

(a) Publications must be received directly from the publisher or other recognized commercial sources in their packages;

(b) Inmates shall not receive publications that:

1. Teach or advocate violence and present a clear and present danger to institutional security and order;

2. Teach or advocate behavior that violates the law of the state or the United States or the rules of the division of corrections;

3. Teach or describe the manufacture or use of weapons, explosives, drugs, or intoxicating substances;

4. Are obscene as defined in HSS 309.05 (5) (c) 8; or

5. Teach or describe the manufacture or use of devices that create a substantial danger of physical harm to others;

(c) A publication shall not be prohibited on the basis of its appeal to a particular ethnic, racial, or religious audience or because of the political beliefs expressed therein.

(3) If a publication is not delivered pursuant to sub. (2), the inmate shall be notified of the name and address of the sender, the date, and the reason for nondelivery. The sender shall be similarly notified, and the publication shall be returned to the sender. The inmate may appeal the decision to the superintendent, who shall decide it within 10 days.

(4) Correctional institutions are encouraged to subscribe to publications and circulate them to inmates. Each institution shall establish policies and procedures for making such publications available to inmates.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.10 Visitation. The division of corrections shall encourage and accommodate the visitation of inmates by family members, friends, and others who provide support to inmates. The successful adjustment of an inmate to a correctional institution and the ultimate successful reintegration of an inmate into the community depend upon the maintenance.

nance of family and community ties. Personal contact through visits greatly assists in the maintenance of these ties. Visitation also enhances the exchange of ideas and information between inmates and the public, and many important values are thereby served.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.11 Conduct during visits. (1) Visitors are required to obey the administrative rules and institution policies and procedures regarding visitation. Visitors and inmates shall avoid loud talking and boisterous behavior. Parents are responsible for supervising their children.

(2) Inmates and their visitors are permitted to embrace and kiss at the beginning and end of each visit. Inmates may hold their children. Inmates should otherwise conduct themselves in a discreet manner.

(3) Inmates and visitors may not pass or exchange items during a visit unless authorized to do so.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.12 Visiting list. (1) Each inmate shall have an approved visitors' list.

(2) (a) Except as otherwise provided under this section, only visitors known to the inmate and on the inmate's approved list shall be permitted to visit the inmate. Each inmate shall be permitted 12 adult visitors on the visiting list, regardless of relationship.

(b) Children of the inmate and approved visitors who have not attained their 18th birthday may visit and shall not be counted against the 12 visitors permitted.

(c) Spouses of immediate family members, as defined in sub. (10), who are on the visiting list shall be listed on the visiting list but shall not be counted against the 12 visitors permitted.

(d) With the approval of the superintendent or designee, an inmate may have more than 12 visitors on the visiting list if all such visitors are immediate family members as defined in sub. (10).

(3) An inmate's approved visiting list shall show the name and address of all visitors, relationship, date of birth, the date the person was approved for visiting, and any denial of visitation privileges.

(4) Except as provided under sub. (8), a person may be approved for visiting according to the following requirements:

(a) The inmate shall submit a written request on the appropriate form asking that a person be added to the visiting list.

(b) The appropriate form shall then be sent to the prospective visitor for completion and returned to the institution.

(c) Upon return of the form under par. (b), it will be evaluated by the designated staff member. A field investigation may be requested if further information is necessary.

(d) Minors shall be required to have written approval of their parent or guardian to visit.

(e) In determining whether a person should be approved for visiting, a proposed visitor may be disapproved only if one or more of the following criteria exist:

1. The requesting inmate has provided falsified, incorrect, or incomplete information under par. (a).

2. The proposed visitor has provided falsified, incorrect, or incomplete information on the form under par. (b) or the questionnaire is not returned in 30 days.

3. There is no signed and dated approval of parent or guardian for a proposed visitor under 18 years of age.

4. There are reasonable grounds to believe the visitor has attempted to bring contraband into any correctional institution, including the county jail.

5. The inmate has already reached the limit of 12 visitors permitted under sub. (2).

6. There are reasonable grounds to believe the visitor's presence may pose a direct threat to the safety and security of inmates and staff.

7. The inmate's reintegration into the community would be hindered because of prior criminal involvement with the proposed visitor or because of the proposed visitor's poor adjustment or reputation in the community. This rule is not intended to interfere with inmates' and visitors' pursuit of joint legal interests. Sources specifying prior criminal involvement or poor adjustment and reputation should be listed.

8. A proposed visitor may be disapproved if he or she is a mandatory release and discretionary parolee, probationer, or ex-offender who has not been released or under supervision for at least 6 months before approval unless the proposed visitor is an immediate family member as defined under sub. (10). In all cases, support for approval should come from the supervising agent or agencies involved.

(5) Visiting privileges shall not be denied because of the visitor's marital status. Approved visitors of either sex shall be permitted to visit inmates whether the married visitor's spouse accompanies the visitor or has approved of the visit.

(6) No changes shall be made in an inmate's visiting list for a minimum of 6 months from the date of approval.

(7) Visitors who have not attained their 18th birthday shall be accompanied by an adult who is on the approved list, unless the visitor is the spouse of the inmate.

(8) If a potential visitor is disapproved for visiting, the inmate and the visitor shall be informed of the reasons for the disapproval in writing. The proposed visitor can object to this decision by appealing to the superintendent. A record of the disapproval shall be kept. An inmate may appeal a disapproval through the inmate complaint review system.

(9) Immediate family members as defined under sub. 10 shall be routinely approved for visiting if requested by the inmate to be added to the visiting list of 12 visitors.

(10) Immediate family members are the inmate's natural, adoptive, or stepparents, children, grandchildren, siblings, grandparents, spouse, foster parents, and the spouses of each.

(11) The superintendent may permit occasional visits by family members not on the visiting list who live a great distance from the institution so that frequent visiting is impossible. The superintendent may require notification in advance of such a visit.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.13 Regulation of visits for inmates in the general population. (1) Each institution shall set forth in writing and make available to inmates and visitors policies and procedures providing for:

- (a) The time for visits;
- (b) Weekday, weekend, and night visits;
- (c) The duration of visits;
- (d) The number of visits;
- (e) The number of visitors permitted each visit;
- (f) Immediate termination of a visit for a violation of these rules;
- (g) Items that may be brought into the institution during a visit; and
- (h) The place of visits.

(2) These policies and procedures shall be approved by the director of the bureau of adult institutions.

(3) Each institution shall permit visits on weekends or some weekday nights, or both.

(4) Each institution shall permit visits on weekdays if consistent with scheduled activities and available resources.

(5) Each institution shall permit each inmate in the general population the opportunity to be visited at least 9 hours per week in visits of such duration as the institution specifies pursuant to sub. (1).

(6) Institutions shall require visitors to provide identification before permitting the visit.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.14 Special visits. (1) Public officials and members of private and public organizations who provide services to inmates may visit institutions with the approval of the superintendent. Arrangements for all such visits shall be made in advance with the superintendent to minimize interference with normal operations and activities. Such visits may be limited in duration and restricted to certain areas of the institution by the superintendent for security reasons. A person who has not attained his or her 18th birthday may not participate in any group visit except with the approval of the superintendent.

(2) Attorneys and clergy shall be permitted to visit their clients to give professional services during institution business hours on weekdays. An attorney's aide and law students shall be permitted the same visitation privileges only if an attorney has informed the institution in

writing that the aide and law students will visit. Attorneys' aides, law students, and clergy must give advance notice of their visit, when feasible. Visiting attorneys, their aides, and clergy shall not count against the allowable number of visitors or hours of visits of the inmate. In emergencies, attorney and clergy visits may be permitted outside business hours with the superintendent's approval.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.15 Interinstitution visits of family members. (1) Except in the camp system and metro centers, visits between spouses and between parents and their children who are inmates of different adult state correctional institutions shall be permitted, subject to the following limitations:

(a) At the time of the visit, each inmate shall be in the general population and not subject to any disciplinary restriction.

(b) A visit each quarter of a year shall be permitted between married inmates, but such visit must be conducted in an institution of the same or greater security as the inmate with the highest security classification.

(c) One visit per calendar year shall be permitted between parents and children provided that such a visit is conducted in an institution of the same or greater security as the inmate with the highest security classification.

(d) Visits must be approved by staff members in each institution. The criteria for approval are the same as for other visitors, as set forth under s. HSS 309.13.

(2) In the camp system and metro centers, visits between spouses and between parents and their children who are inmates of different adult state correctional institutions are permitted, consistent with available resources. In scheduling such visits, priority should be given to inmates serving long sentences.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.16 Visits to inmates in segregation. (1) Inmates in segregation shall be permitted visits in accordance with this section. Institutions may increase visiting time for inmates in segregation, but shall provide an opportunity for not less than the following:

9. Wisconsin Legal Directory, (Legal Directors Publishing Company, Inc., 700 Campbell Centre, Box 64805, Dallas, TX 05206); and

10. Wisconsin Jury Instructions - Criminal.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; am. (2), Register, January, 1987, No. 373, eff. 2-1-87.

HSS 309.28 Access to legal assistance. (1) The division of corrections shall make reasonable efforts to ensure that adequate legal services are available to indigent inmates. These legal services need not be provided directly by the division, but may be provided by outside agencies. The legal services by these agencies may include services provided by lawyers, law students and aides supervised by lawyers, and paraprofessionals.

(2) The legal services available pursuant to sub. (1) should include services on the full range of legal concerns an inmate may have.

(3) The lawyer-client privilege applies between lawyers and inmates. The privilege also applies to aides and law students to the same extent it would apply to them in their work with non-inmates, under the rules regulating student practice promulgated by the Wisconsin supreme court.

(4) Before a paraprofessional, a law student, or aide may be admitted to an institution, written authorization from the attorney is required.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.29 Inmate legal services to inmates. (1) Inmates may provide legal services to other inmates.

(2) Institutions may regulate the time and place for the provision of legal services by inmates to other inmates.

(3) Compensation of any kind for the provision of legal services by one inmate to another is forbidden. Such service shall be permitted only if the provider does so voluntarily.

(4) The division is not responsible for legal materials not provided by the division that are given to other inmates.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.35 Personal property. (1) Inmates are permitted to have personal property in their possession in an institution in accordance with this section and policies made by the institution pursuant to this section.

(2) Each institution shall keep a written list of the personal property items permitted at that institution. This list shall be reviewed and, if appropriate, revised every 6 months. The list and any changes in it must be approved by the director of the bureau of adult institutions.

(3) The following are permissible methods by which personal property may be obtained by an inmate, subject to institution approval:

- (a) Purchase from canteen;
- (b) Purchase from approved retail outlets;
- (c) Gifts from friends and relatives brought in on visits;

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(d) Other methods approved by the institution.

(4) Each institution shall make written policies approved by the director of the bureau of adult institutions that:

(a) Provide the approved methods for inmates to obtain personal property at the institutions;

(b) Provide for records of inmate personal property;

(c) Provide for the storage of personal property; and

(d) Specify limitations as to the specifications and number of particular items, such as television sets, rings, radios, and phonographs.

(5) Items not permitted at an institution or permitted but not on the inmate's property list are contraband. They may be seized in accordance with these rules. An inmate may be subject to discipline for possessing contraband.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.36 Leisure time activities. (1) The division shall provide as much leisure time activity as possible for inmates, consistent with available resources and scheduled programs and work. Leisure time activity is free time outside the cell or room during which the inmate may be involved in activities such as recreational reading, sports, film and television viewing, and handicrafts.

(2) Each institution shall permit inmates to participate in leisure time activities for at least 4 hours per week. Institutions with the facilities to permit more leisure time activity should do so.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.37 Food. (1) The division shall provide nutritious and high quality food for all inmates. Meals shall satisfy the standards of nutrition of the division of health. The sanitation requirements set by the department shall also be satisfied.

(2) Each institution shall make written policies regulating eating outside the dining hall. Institutions may forbid taking certain foods into the living quarters and out of the dining room.

(3) The menu for each institution shall be posted one week in advance of the meal.

(4) Consistent with available resources, inmates who require a special diet for medical or religious reasons shall be provided with such a diet.

(5) An inmate may abstain from any foods that violate his or her religion. Consistent with available resources, such an inmate may substitute from other available foods. The substitution shall be consistent with sub. (1).

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.38 Personal hygiene. (1) Each institution shall enforce the maintenance of good personal hygiene standards for its inmates. Per-

sonal cleanliness shall be the responsibility of each inmate. Adequate facilities shall be provided for this purpose.

(2) Institutions shall provide a minimum of 2 bathing periods per week for each inmate. Clean undergarments, shirts, and stockings shall be allowed for or provided at least twice each week. Inmates whose work or other activity makes it desirable shall be allowed more frequent bathing and changes of clothing.

(3) Grooming shall be regulated as follows:

(a) Specific policies and procedures for hairdressing, use of cosmetics, and personal hygiene shall be made by the bureau of adult institutions.

(b) There shall be no limit on the growth of mustaches or beards or the length of the hair provided the style of wear does not cover the eyes.

(c) Inmates assigned to food preparation and serving areas shall be required to wear hairnets or other suitable hair covering.

(d) Inmates performing work assignments that may reasonably be considered to be hazardous should be required to maintain suitably cropped hair or wear protective appliances or headgear for safety purposes.

(e) Use of hair pins, barrettes, or curlers are permitted under such policies and procedures established by the superintendents.

(f) New identification photographs may be required of any inmate whose appearance changes or is altered significantly during confinement as a result of change in hair style, hair length, or facial hair growth or removal.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.39 Living quarters. (1) HOUSING EMERGENCY. (a) "Institutional housing emergency" means:

1. The number of inmates exceeds the bed capacity of any institution specified in s. 46.054 (1), Stats.; or,

2. A portion of any institution's bed capacity becomes unavailable for use as living quarters because of fire, storm or other damage, health-threatening contamination, or a disturbance, with the result that the number of inmates at any institution exceeds the bed capacity specified in s. 46.054 (1), Stats., less the beds that have become unavailable.

(b) Even if a housing emergency has been declared, security determinations and transfer decisions shall be consistent with s. HSS 302.20, Wis. Adm. Code.

(2) NUMBER OF INMATES AT AN INSTITUTION. Except where an institutional housing emergency as defined in sub. (1) has been declared by the secretary on recommendation of the administrator, the number of inmates at an institution who are not assigned to medical service beds or segregation beds shall be no more than the number of beds specified in s. 46.054 (1), Stats.

(3) NUMBER OF INMATES TO A ROOM. Except where an institutional housing emergency as defined in sub. (1) has been declared by the secre-

tary on recommendation of the administrator, the number of inmates who live in a cell or other room shall be no more than the number for which the room was designed. One inmate shall be assigned to live in a room designed for single occupancy, and not more than 2 inmates may be assigned to live in a room designed for double occupancy. The superintendent of each institution shall designate on the basis of design capacity the occupancy of each room used for inmate residence.

(4) **ASSIGNMENTS TO DOUBLE AND MULTIPLE OCCUPANCY DURING A HOUSING EMERGENCY.** (a) During an emergency, 2 inmates may be assigned to live in a room designed for single occupancy, 3 inmates may be assigned to live in a room designed for double occupancy, and 4 or more inmates may be assigned to a larger room or dormitory.

(b) There shall be no discrimination on the basis of race or religion in the selection of inmates who are to be assigned to rooms in excess of designated occupancy.

(c) Inmates shall be given the opportunity to volunteer for double or multiple occupancy and those who volunteer shall be selected if otherwise appropriate under par. (d).

(d) The following additional factors may be considered by the institution superintendent and staff before they assign an inmate to a room in excess of the designated occupancy of the room:

1. The inmate's medical, psychological, and psychiatric condition;
2. The inmate's record of assault or extreme aggressive behavior;
3. The inmate's overall institutional adjustment;
4. The inmate's history of homosexual behavior;
5. The inmate's length of sentence; and
6. The inmate's program assignment.

(e) Conditions for inmates assigned to occupancy of a room in excess of the occupancy for which the room was designed shall be as humane as possible consistent with available resources.

(5) **MAINTAINING ORDERLY AND CLEAN LIVING QUARTERS.** (a) Inmates shall keep assigned quarters neat and clean. Institution staff shall make necessary cleaning materials available to inmates for this purpose.

(b) Bed sheets, pillow cases, and towels shall be changed at least once a week. Each inmate shall be provided with a standard issue of blankets and similar items necessary for physical comfort. Inmates shall take proper care of these items.

(c) The superintendent may establish other appropriate specific policies and procedures to ensure the maintenance of clean quarters.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; emerg. r. and recr., eff. 1-1-82; r. and recr., Register, April, 1982, No. 316, eff. 5-1-82.

HSS 309.40 Clothing. (1) Each inmate shall be provided with adequate clothing. Inmates are required to maintain this clothing in good condition. Worn clothing shall be exchanged.

(2) Each institution shall make policies relating to wearing personal clothing. These policies must be approved by the director of the bureau of adult institutions.

(3) Inmates shall dress in a clean, neat, and appropriate manner.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.45 Inmate funds and canteen - purpose. The division shall manage inmate funds and permit and forbid spending to achieve the following objectives:

(1) To promote the eventual successful reintegration of inmates into society through a policy designed to ensure that an inmate will have funds available upon release and can manage them responsibly;

(2) To prevent the exchange of contraband and victimization within institutions by prohibiting inmates from carrying money and by requiring all inmate funds to be deposited in accounts for the inmate;

(3) To develop a sense of responsibility on the part of inmates for payment of family financial obligations and debts;

(4) To permit inmates to obtain personal property in accordance with s. HSS 309.35; and

(5) To give inmates the opportunity to manage their funds in a manner consistent with ss. HSS 309.45-309.52.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; emerg. am. (1), eff. 5-15-86; am. Register, September, 1986, No. 369, eff. 10-1-86.

HSS 309.46 Deposit of money. All money in any form delivered to any institution for the benefit of an inmate shall be delivered to the institution business manager. The institution business manager shall credit the appropriate account in the name of the inmate in accordance with these sections and ch. HSS 324.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.465 Crime victim and witness assistance surcharge. For an inmate who committed a crime on or after October 1, 1983, and who has not paid the crime victim and witness assistance surcharge required under s. 973.045, Stats., upon transfer to the first permanent placement and in all subsequent placements in correctional institutions, the institution business office shall deduct 25% of all income earned by or received for the benefit of the inmate until the surcharge is paid in full. The business office shall forward the funds to the state treasurer to satisfy the surcharge in accordance with s. 973.045, Stats.

History: Emerg. cr. eff. 5-15-86; cr. Register, September, 1986, No. 369, eff. 10-1-86.

HSS 309.466 Release account funds. (1) After the crime victim and witness assistance surcharge has been paid in full, as provided for in s. HSS 309.465, and upon transfer of the inmate to the first permanent placement and in all subsequent placements, the institution business office shall deduct 15% of all income earned by or received for the benefit of the inmate, except from work release and study release funds under ch. HSS 324, until \$500 is accumulated, and shall deposit the funds in a release account in the inmate's name.

(2) Release account funds may not be disbursed for any reason until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation. Following the inmate's release, these funds shall be disbursed in accordance with s. HSS 309.49 (5).

(3) An inmate may request that release account funds be deposited in an interest-bearing account established at a bank designated by the division. Deposits shall be made in accordance with division procedures. All interest earned by these funds shall accrue to the inmate and shall be exempt from release account deductions under sub. (1).

(4) An inmate may request that general account funds be transferred to his or her release account up to the release account limit established by the division under sub. (1).

History: Emerg. cr. eff. 5-15-86; cr. Register, September, 1986, No. 369, eff. 10-1-86.

HSS 309.47 Receipts. Inmates shall be provided with a receipt or monthly statement of transactions involving personal funds and shall receive a periodic statement from an institution savings account containing the inmate's funds.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.48 Procedure for inmate requests for disbursements of general account funds. Each institution shall set forth in writing a procedure whereby inmates may request the disbursement of funds. This procedure shall be consistent with ss. HSS 309.45-309.52 and shall include the following information:

- (1) How and to whom requests must be made;
- (2) What information requests shall include;
- (3) Who investigates request;
- (4) Who approves or disapproves requests;
- (5) Notice that the inmate may appeal to the superintendent any decision not made by the superintendent;
- (6) Notice that all decisions shall be in writing, shall state the underlying facts and shall be based on reasons consistent with s. HSS 309.45;
- (7) Time limits for decisions; and
- (8) Notice to the inmate that, if the recipient of funds is receiving government aid, the recipient may have a duty to report receipt of the inmate's funds.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.49 Disbursement of general account funds. (1) General account funds, in excess of the amount specified for canteen, under s. HSS 309.52(1)(b), shall be disbursed by the institution business manager under sub. (3). All disbursements shall be consistent with the purposes under s. HSS 309.45.

(2) Inmates may request to have general account funds disbursed for any reason. The procedure for processing inmate requests is required to be written under s. HSS 309.48.

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(3) Requests for disbursement in excess of \$25 to more than one close family member and to other persons under sub. (4)(a) may be made only with written permission of the superintendent or designee. All other disbursements are approved or disapproved by the person designated by the institution under s. HSS 309.48(4).

(4) The objectives of s. HSS 309.45 may be fulfilled by disbursements of general account funds in excess of the canteen limit including, but not limited to, the following:

(a) To any source not including sources under par. (b), (c), (d), or (f) only with written permission from the superintendent under sub. (3).

(b) Twenty-five dollars or less to the inmate's one close family member once every 30 days. Such disbursements do not require approval by the superintendent.

(c) To deposit in an interest bearing account established in the inmate's name at a bank designated by the division. All interest shall accrue to the inmate. Such disbursements do not require approval by the superintendent.

(d) To purchase United States savings bonds. Bonds purchased for others are subject to the limitations under par. (b). Bonds purchased shall be retained by the institution business manager until redeemed or until the inmate's release. Any redemption money shall be returned to the general account. Such disbursements do not require approval by the superintendent.

(e) To pay creditors' claims acknowledged in writing by the inmate and claims reduced to judgment. Such disbursements require approval by the superintendent. If necessary, the claims may be verified.

(f) To pay costs of temporary release under ch. HSS 325 and leave for qualified inmates under ch. HSS 326. Such disbursements do not require approval by the superintendent.

(5) Before releasing an inmate to field supervision, the releasing institution shall inform the parole agent of the balances in the inmate's general account, release account under s. HSS 309.466 and segregated account, if any, under s. HSS 309.50. The agent shall instruct the institution business manager as to where these balances shall be transferred. Following release, the former inmate may use funds formerly held in his or her institution accounts only with the approval of the agent. When the client is discharged from field supervision, any remaining funds from these accounts shall be paid to the client.

(6) Inmates may not open charge accounts or possess charge cards.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; emerg. r. (5), eff. 5-15-86; r. and recr. (5), September, 1986, No. 369, eff. 10-1-86.

HSS 309.495 Transportation for inmates upon release. The division shall arrange for the transportation of an inmate released from an institution to the inmate's release placement location in the state, or shall give the inmate the means to procure transportation to that location.

History: Emerg. cr. eff. 5-15-86; cr. Register, September, 1986, No. 369, eff. 10-1-86.

HSS 309.50 Segregated account funds. (1) Funds received for inmates on work or study release shall be credited to a segregated account.

(2) Collection and disbursement of funds received under sub. (1) shall be governed under ch. HSS 324.

(3) Funds received by inmates for enrollment in programs within the institution and funded by the institution shall be placed in a segregated account. Inmates shall be required to pay the costs of tuition and books from these funds. If an inmate refuses to do so, it may be grounds for removal from a program.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.51 Funds for legal correspondence and copying. (1) Legal correspondence may not be denied due to lack of funds, except as limited in sub. (2). Inmates without sufficient funds in their general account to pay for paper, photocopy work, or postage may receive a loan. Any amount advanced shall be charged to the inmate's general account for future repayment.

(2) If the superintendent determines that charges for legal correspondence substantially exceed the inmate's ability to pay, the superintendent may grant a subsidy from institution funds to the inmate. No subsidy may exceed \$25.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.52 Canteen. (1) (a) Each institution shall maintain a canteen accessible directly or indirectly to inmates to facilitate purchase of property approved under s. HSS 309.35. Institution staff may consult with the inmate population in selecting canteen stock.

(b) The bureau of adult institutions shall establish, in writing, a maximum allowable amount of money that may be spent during a specified period of time. The bureau should adjust this amount periodically to reflect the impact of inflation on purchasing power.

(c) A current list of approved and available merchandise, giving the price of each item, shall be conspicuously posted at each canteen. Copies shall be made available to inmates who do not have direct access to the canteen.

(d) Institutions shall permit inmates to purchase approved personal property not carried in the canteen. The procedures to be followed shall be written and available to inmates. The procedures shall permit purchases from a sufficient number of enterprises to ensure a reasonable selection and a competitive price.

(2) Each institution canteen shall maintain an identification and book-keeping system for withdrawal of funds from the inmate's general account for purchases made through the canteen. No canteen shall use money as a means of exchange.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.55 Compensation. (1) An inmate shall be compensated for his or her involvement only in approved institution work and study programs while confined in a correctional institution.

(2) The purposes of this section are:

(a) To provide uniform and fair compensation standards as an incentive to inmates to develop and reinforce positive behavior;

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(b) To compensate inmates with wages so that they may make purchases from the canteen and accumulate funds to assist them upon their release;

(c) To encourage inmates to complete their programs successfully;

(d) To promote institutional order by providing an incentive for good behavior; and

(e) To encourage appropriate behavior and the development of skills useful to enable successful reintegration into the community upon release.

(3) All inmates shall receive compensation in accordance with sub. (1) with the exception of those inmates:

(a) Out of the institution for a court appearance;

(b) Participating in a work release program approved under ch. HSS 324;

(c) Placed in the following segregated statuses:

Nonpunitive:

1. Voluntary confinement - unless the inmate requested placement in this status upon the recommendation of, or with approval by, the security director for the purpose of ensuring the inmate's personal safety and the inmate was in a pay status prior to such placement;

2. Administrative confinement under ch. HSS 308 - if the inmate was in a nonpay status prior to such placement, or the inmate is not participating in an approved institution work or study program while in this status;

3. Observation under ch. HSS 311 - if the inmate was in a nonpay status prior to such placement, or the inmate is not participating in an approved institution work or study program while in this status;

Punitive:

4. Adjustment segregation under ch. HSS 303;

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5. Program segregation under ch. HSS 303;
6. Control segregation under ch. HSS 303;
- (d) Refusing any work or study assignment; or
- (e) Voluntarily unassigned.

(4) An inmate in temporary lockup shall receive the regular incentive daily rate earned in his or her previous status. An inmate in administrative confinement or observation status and eligible for compensation under this section shall receive the regular incentive daily rate earned in his or her previous status.

(5) Each institution shall evaluate its work and study programs both inside and outside the institution on the basis of the skill and responsibility necessitated by each and rank them on a range of 1 to 5. Range 5 shall include those programs requiring the most skills and responsibility and range 1 shall include those programs requiring the least. This ranking shall be consistent throughout the division.

The maximum number of positions an institution may have at each level shall be determined as follows based on the total institution population:

<i>Program status</i>	<i>Positions</i>
Range 5	5%
Range 4	20%
Range 3	20%
Range 2	30%
Range 1	20%
Involuntarily unassigned	No maximum set

(6) All compensation shall be computed on an hourly basis. Those inmates with programs requiring more refined skills and increased responsibility shall receive greater compensation than those with programs requiring less skill and responsibility.

(a) Certain inmates shall be compensated at a uniform rate less than that computed for range 1 positions, unless otherwise provided for under this section. These are inmates who are:

1. Involuntarily unassigned;
 2. In sick cell status;
 3. In hospital placement;
 4. In the old men's gang (not otherwise assigned under this section);
- or
5. In the "special" voluntary confinement status under sub. (3) (c) 1.

(b) The hourly rates shall be increased for weekend and legal holiday work. Inmates in sick cell status or hospital placement with injuries sustained in job-related accidents shall be compensated at the daily incentive rate earned in their previous status. Hospital placement status shall include those inmates transferred to mental health or medical facilities.

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(7) Inmates in comparable work or study programs shall be compensated equally, regardless of their institution placement.

(8) An inmate shall be compensated for the period of any lockdown required for search of an institution pursuant to ch. HSS 306, unless the lockdown is precipitated by inmate misconduct.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.56 Inmate telephone calls. (1) The division of corrections shall encourage communication between inmates and their families, friends, government officials, courts, and people concerned with the welfare of inmates. Communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate inmates and thus contributes to morale and to the security of inmates and staff.

(2) Inmates may be permitted to phone individuals on the approved visiting list as provided under s. HSS 309.12 and others as provided in this chapter.

(3) Each inmate shall be permitted to make a minimum of one telephone call per month. Where resources permit, more than one telephone call may be allowed and is encouraged.

(a) Telephone calls not made during the month may not be banked for use at a later date.

(b) The inmate may be prohibited from calling if in segregated status, but may be permitted to make calls under s. HSS 309.57 or 309.58 (2).

(4) Long distance calls shall be made collect unless payment from the inmate's general account is approved.

(5) Calls shall not exceed 6 minutes in duration, without permission.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

HSS 309.57 Telephone calls to attorneys. (1) Inmates may call attorneys regarding legal matters with the permission of the appropriate staff member. Such calls may be made regardless of the inmate's security status.

(2) An inmate's telephone calls to an attorney are not subject to the maximum limit in number, and an attorney's name need not be on the inmate's approved visiting list.

(3) An inmate's telephone calls to an attorney shall be made collect unless payments from the inmate's general account is approved.

(4) Staff shall give permission for calls to attorneys for the following reasons:

(a) To allow an inmate to return a call from an attorney;

(b) When there is a statutory time limit that would be missed and the inmate needs to convey information to the attorney;

(c) When it appears to staff that a call to an attorney is in the best interest of the inmate;

(d) When an inmate is unable to write; or

(e) When an emergency exists.

History: Cr. Register, October, 1981. No. 310, eff. 11-1-81.

HSS 309.58 Incoming and emergency calls. (1) Because of the difficulty of reaching inmates for incoming calls, a person calling an inmate should be asked to leave a message. The message shall be delivered to the inmate as soon as possible.

(2) In the case of emergencies, including but not limited to critical illness or death of a close family member of an inmate, a special telephone call may be permitted regardless of the security status of the inmate or the number of calls already made during that month.

History: Cr. Register, October, 1981. No. 310, eff. 11-1-81.

HSS 309.59 Calls between inmates. (1) An inmate shall be permitted to make telephone calls to his or her spouse, parent, or child committed to another Wisconsin correctional or mental health institution. Such calls shall be permitted only after prior arrangements through appropriate staff have been made. Calls under this section shall be paid for from the account of the inmate originally requesting the call.

(2) Calls under this section are subject to the limits under s. HSS 309.56 (3).

History: Cr. Register, October, 1981. No. 310, eff. 11-1-81.

HSS 309.60 Procedure for approval. (1) Each institution shall make a written policy available to inmates that contains a specific procedure for requesting telephone calls and that sets time limits for the calls. The procedure shall be consistent with this chapter.

(2) The superintendent may make exceptions to any limits on inmate calls consistent with the policy of this chapter.

History: Cr. Register, October, 1981. No. 310, eff. 11-1-81.

HSS 309.61 Religious beliefs and practice. (1) **GENERAL PRINCIPLES.** (a) The division may not discriminate against an inmate or an inmate group on the basis of the inmate's or group's religious beliefs. The division recognizes that religious beliefs can provide support to inmates which may aid in their adjustment to institutional life and can lead to development of community ties which may aid in the inmates' successful reintegration into the community upon release.

(b) Inmates may pursue lawful religious practices required or encouraged by their respective religions which are consistent with their orderly confinement, the security of the institution and fiscal limitations.

(c) The division may not require inmates to participate in religious activities and may not maintain information concerning an inmate's religious activities other than records required for administrative purposes.

(d) To the extent feasible, institutions shall make facilities and other resources available to inmates for religious practices permitted under sub. (2).

(2) **INMATE PARTICIPATION IN RELIGIOUS PRACTICES.** (a) An inmate who wants to participate in religious practices that involve others or that affect the inmate's appearance or institution routines shall submit a written request to the superintendent for permission to participate in specific

religious practices. The request shall include a statement that the inmate professes, or adheres to, a particular religion and shall specify the practices of the religion in which the inmate requests permission to participate.

(b) Upon receipt of the request, the superintendent, with the assistance of the chaplain or designated staff person with appropriate religious training, shall determine if the request is motivated by religious beliefs.

(c) In determining whether the request is motivated by religious beliefs, the superintendent may consider:

1. Whether there is literature stating religious principles that support the beliefs; and

2. Whether the beliefs are recognized by a group of persons who share common ethical, moral or intellectual views.

(d) In determining whether the request is motivated by religious beliefs, the superintendent may not consider:

1. The number of persons who participate in the practice;

2. The newness of the beliefs or practices;

3. The absence from the beliefs of a concept of a supreme being; or

4. The fact that the beliefs are unpopular.

(e) If the superintendent determines that the request is not motivated by religious beliefs, he or she shall deny the request.

(f) If the superintendent determines that the request is motivated by religious beliefs, he or she shall grant permission to participate in practices that are consistent with orderly confinement, the security of the institution and fiscal limitations.

(g) The superintendent shall establish guidelines consistent with this section to govern inmate participation in religious practices and the guidelines shall be posted in a conspicuous place or distributed to all inmates.

(3) **RELIGIOUS SERVICES AND PRAYERS.** To the extent feasible, each superintendent, upon the recommendation of the chaplain or designated staff person with appropriate religious training, shall arrange the institution's schedule so that inmates may attend religious services, pray or meditate at the times prescribed or encouraged by their religion.

(4) **CHAPLAINS.** (a) The superintendent may employ one or more chaplains to coordinate and supervise the institution's religious programs.

(b) The chaplain shall hold services, provide counseling and provide other pastoral services or shall arrange for other qualified persons to provide these pastoral services.

(c) The chaplain or designated staff person with appropriate religious training shall develop and maintain close relationships with religious resources from outside the institution and shall encourage religious groups from outside the institution to take part in institution religious activities.

(d) The superintendent, upon the recommendation of the chaplain or designated staff person with appropriate religious training, may permit representatives of religious groups from outside the institution to visit inmates, hold services, provide counseling, perform marriages and provide other services commonly provided by chaplains. The superintendent may compensate these representatives.

(5) RELIGIOUS LITERATURE. Religious literature transmitted through the U.S. mail or otherwise distributed shall be delivered to inmates unless the security director has reasonable grounds to believe that the literature will jeopardize the safety of the institution or that the literature promotes illegal activity.

(6) SYMBOLS. Inmates may wear garments, religious medals and other symbols required by their religion, unless this interferes with the identification of inmates or the security of the institution.

(7) DIETARY LAWS. (a) Upon request of an inmate, the superintendent shall provide the inmate with a list of the contents of each meal in advance of the meal.

(b) To the extent feasible, institutions shall plan meals so that an inmate may maintain a nutritious diet while complying with dietary restrictions prescribed by the inmate's religion.

(c) An institution may accommodate inmate requests for special foods for religious observances.

History: Emerg. cr. eff. 6-16-86; cr. Register, January, 1987, No. 373, eff. 2-1-87.

APPENDIX

Note: HSS 309.03. Access to correctional institutions, staff, and inmates by the news media furthers several important public policy objectives. These objectives include the free exchange of information and ideas about correctional policy; the provision of information about correctional policy to the public; the development of public support for appropriate correctional objectives, including reintegration of offenders into the community; and the important values which inevitably flow from openness in public institutions and from the exercise of freedom of expression. See T. Emerson, *Toward A General Theory of the First Amendment* (1963); T. Emerson, *The System of Freedom of Expression* (1970).

It is through the exchange of information and ideas that an understanding by the public of the difficult correctional issues comes. Such understanding furthers the correctional process.

For these reasons and because of the fundamental nature of freedom of expression, HSS 309.03 permits media access to correctional institutions, inmates, and staff is permitted. This access is not unlimited, however. Sub. (2) identifies the circumstances in which this access is restricted. In weighing the necessity for such limitations, due consideration was given to other forms of access of inmates to the media. See HSS 309.05. It should be apparent that the limitations in sub. (2) are not substantial in the light of other means of access. *Houchins v. KQED*, 438 U.S. 1 (1978); *Pell v. Procunier*, 417 U.S. 817 (1974); *Saxbe v. Washington Post Co.*, 417 U.S. 843 (1974); *Procunier v. Martinez*, 416 U.S. 396 (1974).

The limitation of sub. (2) (a) 1 is to preserve order in the institution. There may be situations in which media access must be restricted because of an existing security problem that prevents safe access or because access may exacerbate or create such a problem. That such a limitation is proper is acknowledged in the *Pell* case, which also discusses the problems created by excessive media attention to inmates who become public figures and severe disciplinary problems. *Pell* at 831-32.

Subsection (2) (a) 2 permits the superintendent to limit access for the benefit of a particular inmate. An example of a situation in which such a limit may be appropriate is when an inmate has recently arrived at an institution and requires time to adjust, free of media attention about the crime for which he or she was convicted. If the inmate's trial received a great deal of attention, continued media interviews can create a strain on the inmate. The institution has an obligation to assist inmates under such pressure.

Subsection (2) (b) permits the clinical services unit supervisor to restrict interviews of the mentally ill. This is for the protection of the inmate and to enable treatment to proceed.

For 3 reasons, sub. (2) (c) limits interviews of those in segregation. First, a purpose of segregation is to permit the inmate to reflect on his or her problems without interruption. This is not furthered by media access. Second, it is a burden on limited resources to permit such interviews because of the security actions that must be undertaken when an inmate leaves the segregation area or when an outsider enters it. Finally, there is a danger that if an inmate who has disciplinary problems becomes notorious, others will follow his or her example. The way is left open however to such visits in extraordinary situations, for example, the furtherance of an investigation of charges of mishandling of persons in segregated status or some situation not arising from the action which resulted in segregation and which cannot await the person's return to general population status.

In promulgating these restrictions, the division of corrections is mindful of the fact that access to confined persons by the public should never be eliminated. Other rules, particularly those relating to visitation, mail, and access to legal services, do permit access of the public to all inmates.

Subsection (4) regulates the taking of photographs. It is intended to protect the privacy rights of inmates.

Visits and interviews are regulated as to duration, time, location, and equipment by sub. (5). *Pell*, 417 U.S. at 826.

This section is substantially consistent with existing policy and is substantially in accord with the National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (1973) (hereinafter "*National Advisory Commission*"), standard 2.17, and complies with American Correctional Association's *Manual of Standards for Adult Correctional Institutions* (1977) (hereinafter "*ACA*"), standard 4024.

Note: HSS 309.05. HSS 309.05 regulates mail to and from inmates of correctional institutions. Subsection (1) identifies many of the values to the inmate, correspondents, and the public of the free exchange of information and ideas. Contact with family and others in the community is crucial to successful reintegration. Mail is one method of communication that can develop and strengthen family and community ties. Contact with those outside the institution helps motivate inmates and contributes to morale. This enhances inmates' involvement in correctional programs and the security of inmates and staff.

Of course, broader values are served by free expression. It contributes to individual self-fulfillment; it is a means of attaining the truth; it is a method of securing participation by members of society in social decision making; and it is a means of maintaining the necessary balance between stability and change in society. T. Emerson, *Toward a General Theory of The First Amendment* (1963).

Subsection (2) requires each inmate to consent in writing to receive mail through the institution mail service. Without this consent, the institution shall return mail unopened to the sender, as required in the U.S. Postal Service Domestic Mail Manual, ch. 115.97. Subsection (3) reflects the view that no proper correctional value is served by inspecting or reading mail between inmates and those identified there. Access to government officials, including the courts, should not be impeded by restrictions on correspondence. This is in accord with the *National Advisory Commission*, standard 2.17; American Bar Association's *Tentative Draft of Standards Relating to the Legal Status of Prisoners* (1977) (hereinafter "*ABA*"), standard 6.1; Kratz et al., *Model Rules and Regulations on Prisoner's Rights and Responsibilities* (1973) (hereinafter "*Model Rules*"), rules IC-1 and IC-2.

Attorney mail may be inspected, but not read, in the presence of the inmate. There is a need to inspect, chiefly because attorneys, by the nature of their work, sometimes send items such as checks directly to their clients. Attorneys are often not aware that such items should be sent to the inmate's account. This regulation is to ensure that such unknowing acts do not introduce unauthorized items into institutions. The rule also notes the importance of adequate identification of attorney mail.

Subsection (5) identifies restrictions that are placed on correspondence. These restrictions are made because they are thought to further a substantial correctional interest. The effort is to draw them in a way that is not unnecessarily broad. Of course, the U. S. Supreme Court has indicated that correctional agencies have some latitude in making such restrictions and need not show with certainty that adverse consequences will flow from the failure to restrict. *Procunier*, 416 U.S. at 414-15. However, experience in corrections in Wisconsin teaches that the restrictions in sub. (5) are important. Some commentators urge that restrictions be specifically drawn. That is what is attempted here. See ABA, standard 6.1. Others urge that there be no restrictions. *National Advisory Commission*, standard 2.17.

Subsection (5) (a) permits inspection for contraband. The dangers created by contraband are great, and every reasonable effort must be made to control it. See the discussion of dangers in the note to HSS 303.48. Mail containing contraband is not delivered, and notification is provided for in (5). *Model Rules*, rules ID-1, IC-2.

Subsection (5) (c) states the other substantive criteria for restricting mail. While there may be overlap among categories, this is tolerable in the interest of clarity. Important correctional objectives are furthered by preventing inmate involvement in crime, whether as victims or as perpetrators. Among the objectives are maintaining a secure, crime-free environment which protects inmates and staff and permits programs to flourish and the development of attitudes that assist in reintegration. And, of course, the protection of the public is furthered by preventing inmates from committing crimes in which members of the public are involved. Preventing harassment of the public is another important objective. These are the objectives of the restrictions specified in sub. (4) (c) 1-5 and 9.

Communication in code, by its nature, can create a danger. Its restriction was specifically approved by the United States Supreme Court. Restrictions imposed in sub. (4) (c) 1-5 and 9 have been approved, though, in more general language. *Procurier*, 416 U.S. at 412-13. The specific limits that are permissible is rarely addressed by commentators. Typically, the limits are phrased generally in terms of "security." See, e.g., *ABA*, standard 6.1. The effort in this section is to be more specific.

Restrictions on solicitation of gifts are necessary, primarily because such solicitation is often linked to a threat to another inmate who is related to or a friend of the person being solicited. General solicitation is undesirable because it impedes the development of independence and the willingness and ability to sustain oneself.

Subsection (5) (c) 8 restricts obscene communication. The development of appropriate attitudes towards oneself and others is an important correctional objective. To permit inmates to mail obscene letters to others is not only a violation of the law but also a possible source of harassment of others. To receive such correspondence does not develop feelings of self-respect and also involves illegal use of the mails. The *Miller* test is relied on to define obscenity. *Miller v. California*, 413 U.S. 15 (1972).

Subsection (5) (b) states the standard by which mail may be opened and read. Random opening and reading are not permissible. Reasonable grounds to believe that the substantive criteria are satisfied must exist before mail is open and read. Because of the possible danger of escape created by mail among inmates, it may systematically be opened and read. Some commentators urge that search warrants be obtained before inspection is permitted. *Model Rules*, rule IC-2; *ABA*, standard 6.1 (a). Such a requirement would unnecessarily use scarce resources which can be used in better ways.

Subsection (5) (d) provides for keeping of records of mail opened and read. This permits review of the practice should questions arise about it.

Subsection (5) (e) provides for a record of mail not delivered either because it contains contraband or because it violates sub. (5) (c). It also provides for notification of the people affected. Subsection (5) (f) permits appeal to the superintendent of the decision not to deliver. Subsection (5) (g) is to ensure that money that arrives by mail is handled properly.

Subsection (5) (h) permits monitoring of mail for a reasonable period if these rules are violated. This is to prevent further violations. Serious violation may lead to suspension of specific correspondence privileges.

Subsection (6) permits the inspection of incoming and outgoing parcels and packages. This is necessary to control contraband. Subsection (6) provides for the disposal of the contraband.

Subsections (8) - (10) provide for suspension of mail privileges. Because of the significance of mail, such a decision must be preceded by a full due process hearing if an inmate is alleged to have violated the rules or institution policies and procedures.

Such a hearing is not possible if a member of the public is alleged to have violated. Then, a through investigation must precede suspension. Appeals are also provided.

Note: HSS 309.06. HSS 309.06 regulates inmate access to publications. Such access furthers the same goals identified in the note to HSS 309.05. They need not be repeated here. Subsection (4) provides for institution subscriptions to facilitate access by inmates unable to buy their own.

Subsection (2) states the limits on inmate access to publications. Publications are mail and therefore the mail rules apply. *Gaugh v. Schmidt*, 498 F. 2d 10 (7th Cir. 1974). The attempt, as with mail, is to be specific and to limit access only in furtherance of important correctional objectives. *Procurier v. Martinez*, 416 U.S. 396 (1974); see the note to HSS 309.05.

HSS 309

The requirement that publications be received directly from the publisher or other commercial sources is to control contraband. To inspect every publication, which would be necessary if this limit did not exist, would be very costly. This restriction is not aimed at the substance of publications. *Bell v. Wolfish*, 441 U.S. 520 (1979). To mitigate the effect of this rule, institutions are encouraged to make publications available to inmates. Inmates may lend publications to others and receive books from libraries outside the institutions.

Subsection (3) is designed to inform the sender and inmate if a publication is not delivered and the reasons for it.

Subsection (2) (b) is to limit access to publications that create specific security risks. Advocating or teaching violence, criminal behavior, and the manufacture or use of things that are not permitted in an institution directly threaten inmates and staff. See the note to HSS 309.05 and the authorities cited therein for further reference.

Subsection (2) (c) is intended to comply with the requirements of *Cook v. Carballo*, No. 76-C825 (E.D. Wis. 1979).

Note: HSS 309.10. Visitation of inmates serves several important correctional objectives. Among these are the maintenance of family and community ties. Visits help the morale and motivation of inmates, which are important factors in successful correctional programs and institution security. There is evidence that the maintenance of family ties directly increases the chances for successful reintegration into the community. See Holt and Miller, *Explorations in Inmate-Family Relationships* (1972) 42-3. Finally, visitation increases the opportunities for the exchange of ideas and information. See the notes to HSS 309.03 and 309.05.

Note: HSS 309.11. HSS 309.11 requires visitors as well as inmates to obey visiting rules. If they fail to do so, visiting privileges may be suspended pursuant to HSS 309.17.

Subsection (2) regulates conduct during visits. Visitors and inmates often wish to display affection. This, of course, is appropriate. Excessive physical contact is not appropriate in a place for visiting. Visits are conducted in public, and proper conduct is essential to ensure that all people involved in visits enjoy themselves. Most people consider extended and continuing public displays of affection inappropriate, and discretion should be exercised to avoid embarrassment to others. In most cases, staff members should counsel inmates about misbehavior before considering disciplinary action.

Subsection (3) forbids items to be passed without authorization. Procedures are established at each institution to permit exchanges in an authorized manner.

Note: HSS 309.12. HSS 309.12 regulates visitation and the criteria for approval to visit. Each inmate is to have an approved visiting list. It may have only 12 people on it because institutions cannot accommodate unlimited numbers of visitors. The need for some limits has been acknowledged. *Model Rules*, rules IC-6 (1); *ABA*, standard 6.2, Commentary, p. 501. People who have not attained their 18th birthday who are the children of visitors or the inmate do not count against the 12. This is to enlarge the number of visitors and for the convenience of visitors.

Subsection (2) (c) permits spouses of immediate family to visit and not be counted against the limit of 12.

Subsection (2) (d) is to prevent hardship to inmates with large families. This exception to the limit of 12 requires that only family members be on the visiting list.

There is going to be objection to any method of limiting visitors. No system can satisfy everyone. A variety of methods for limiting the numbers of visitors was considered. One proposal was to limit visitors according to their relationship to the inmate. Under this proposal, there would be unlimited visiting for immediate family members and strict limits on non-family members. Such a system has the virtue of contributing to the preservation of family ties. On the other hand, inmates without large families object because their visitors are curtailed. There is also great difficulty in defining who is a family member. This creates administrative problems. Furthermore, it limits the choice of inmates as to who may visit.

Setting a limit by number has the virtue of permitting a substantial number of family visitors for those who desire them and of permitting people without a family to include a substantial number of friends. It is an easier system to administer and, on the whole, seems more fair. It leaves to the inmate the choice of who may visit.

Subsection (4) states the procedure for being added to the approved list and the criteria for approval. A written request and the completion of a questionnaire are required. The questionnaire is to elicit the information necessary to evaluate the application. Subsection (4) (e) states the criteria for approval. Because of the importance of maintaining family ties, immediate family are routinely approved.

Applicants may be disapproved only for the reasons stated under sub. (4) (e). Past attempts to bring contraband into the institution or a county jail may result in disapproval. That this is proper has been acknowledged by commentators, *Model Rules*, rule IC-6 (d). When the limit of visitors has been reached, future applicants will routinely be disapproved until there is an opening on the list.

Subsection (4) (e) 6. permits the exclusion of visitors if there are reasonable grounds to believe they pose a direct threat to the institution, inmates, and staff. Subsection (4) (e) 7. permits the disapproval of people who have influenced the inmate to commit crime. Sometimes such visitors must be forbidden from visiting to assist in the ultimate successful reintegration of the inmate.

Subsections (4) (e) 8. and (5) address specific issues that have arisen in the past. No useful purpose seems to be served by exclusion of the persons identified. See *Model Rules*, rule IC-6 (d).

Subsection (6) is to limit the administrative burden that results from frequent changes of visitors on the list.

Subsection (7) is for the protection of young men and women and because security problems are created when young people visit correctional institutions if they are not accompanied by an adult.

The purpose of sub. (8) is to make known to nonapproved visitors and inmates the reasons for disapproval and to permit review of the decision.

Subsection (9) provides for routine approval of immediate family for visiting. This means that upon verification of the relationship, visiting should be approved unless for some extraordinary reason an inquiry should be made regarding a restriction in visiting.

An example is the best way to illustrate what is contemplated under sub. (11). An inmate may have a relative in California who visits Wisconsin once a year. Such a person may be allowed to visit the inmate without being added to the inmate's visiting list.

Note: HSS 309.13. HSS 309.13 regulates some aspects of visiting by requiring institutions to make policies and procedures. Flexibility is needed in the rules relating to visitation because of the great differences among institutions. For example, at maximum security institutions with large populations, visitation can be during daytime, nighttime, and weekends, to accommodate the large numbers of visitors, the difficulty some visitors have getting to institutions except at night and on weekends, and the need to avoid unnecessary disruption of correctional programs.

On the other hand, some camps are in remote areas of the state. The majority of inmates are working in the community during the day, and the camps are not heavily staffed. Therefore, visitation is feasible only on weekends and by special arrangement.

For the above reasons, the rules simply direct each institution to make policies and procedures and set some minimal requirements. In some cases, no change in present policy is necessary.

Subsection (2) requires institutions to permit visits on weekends or nights or both, because some visitors are unable to visit at other times.

Subsection (4) requires the opportunity for a minimum of nine hours of visitation per week per inmate of reasonable duration. This ensures adequate visitation. If an inmate has a visit of less than its allowable duration because of either a specific institution policy or procedure or the option of the visitor or inmate, nine hours of visiting may be precluded in that particular week since the inmate has a maximum number of weekly visits of a maximum duration each.

Subsection (5) requires visitors to provide identification. This identification must be adequate to verify that the visitors are who they claim to be.

Note: HSS 309.14. HSS 309.14 regulates visits by state officials, groups, attorneys, and clergy.

It is important that state officials and the public have access to correctional institutions. Such access develops an understanding of the correctional process, dispels misconceptions, and encourages the exchange of ideas and information among leaders and members of the public, inmates, and correctional staff. Such visits are not subject to the restrictions under HSS 309.13, but advance notice is necessary to accommodate groups. Such visitors should have virtually unlimited access to institutions, unless a security problem dictates that the visit be limited. Staff and visitors should also be sensitive to the inmates' desire for privacy and try to be as unobtrusive as possible.

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Attorneys and clergy are permitted access to their clients any time during business hours. No attempt is made to define "clergy." Superintendents are now making the decision as to whom should be admitted based on the activity which ensues, not on the credentials of the leader of the activity. This same access is accorded law students and aides who have written authorization from their referring attorney. *Pell v. Procunier*, 417 U.S. 817 (1974). In emergencies, efforts should be made to allow lawyers and clergy to visit outside of business hours. Advance notice is desirable though not always possible. Of course, visits by attorneys, clergy, law students, and attorneys' aides do not count against allowable visitation hours.

This section is consistent with present policy and in substantial agreement with the *ABA*, standards 6.2 (d) and (f), and substantially satisfies *ACA*, standard 4306.

Note: HSS 309.15. HSS 309.15 provides for and regulates visits of one inmate to another if the inmates are related. Such a policy reflects the view that these visits are good for morale and motivation, help keep families together, and ultimately assist in successful reintegration.

Such visits do put a strain on staff resources. For this reason, the number of visits is limited, inmates must be in the general population to be permitted such visits, and staff approval is required.

Such visits are required to be permitted only at major institutions. Staff are not available at camps and the metro centers to permit interinstitution visits among family members in accordance with the rules.

It may be possible to permit such visits from the camps and metro centers. For example, if a staff member is transporting an inmate from Camp McNaughton to the reformatory, another inmate might go along and visit a relative at the reformatory. This practice is to be encouraged. However, because resources are not available to ensure such visits, this section does not require them.

Note: HSS 309.16. HSS 309.16 permits visits to inmates in segregated status. Institutions differ in their capacity to permit such visits. Inmates in segregation for punishment are not accorded the same visiting privileges as inmates in the general population. Subsection (1) sets the minimum visitation periods. Because inmates are in controlled segregation for a maximum period of 72 hours, are usually acting in a disturbed manner, and are not easily calmed down, visits to such inmates are not permitted.

Subsection (2) limits visitors in some situations to 3 designated people. Large numbers of visits to those in segregation cannot be accommodated. However, since administrative confinement is a nonpunitive measure, inmates there must be allowed full visitation privileges consistent with this status and their behavior. People who have not attained their 18th birthday require the approval of the security director because such visitors are sometimes quite immature and are a greater security risk. Also a visit to a segregation area may affect the young, and this should be considered before permission is sought or granted. See *ABA*, standard 6.2 (b). An exception to this requirement is made for the children of the inmate.

Note: HSS 309.17. HSS 309.17 provides for the suspension and termination of the privilege to have a particular person visit. Such an action may be the result of violation of the administrative rules, federal or state law, or the institution policies and procedures by a visitor or inmate. Commentators agree that this is appropriate. *Model Rules*, rule 1C-6 (d). If an alleged violation was by an inmate, it must be disposed of through the disciplinary process. Such suspension is provided for as a punishment under the departmental disciplinary rules.

If the alleged violation is by the visitor, the security director must investigate to be certain the violation occurred. Either the adjustment committee or the security director decides if suspension or termination of visiting is appropriate. Such findings may be appealed through the normal disciplinary process. The suspension may be appealed further pursuant to (2) (a) and (b).

Note: HSS 309.18. HSS 309.18 permits and regulates a range of public group activities. The capacity of each institution to have such activities varies, so each institution must regulate them as to time, place, size, and manner. This rule does not address inmate activity groups. Subsection (2) identifies the criteria to be used in regulating such activities. Although such activities may be beneficial, they may create security problems and a strain on resources. The benefits have already been discussed. See the notes to HSS 309.03 and 309.05.

Note: HSS 309.25. It is important that the legal process be available to people in correctional institutions. *Bounds v. Smith*, 430 U.S. 817 (1977); *Younger v. Gilmore*, 404 U.S. 15 (1971); *Johnson v. Avery*, 393 U.S. 483 (1969); *Ex parte Hull*, 312 U.S. 546 (1941). Not only is such access guaranteed by the U.S. Constitution, but also it serves important substantive objectives.

Commentators have remarked as follows about the benefits of legal services to correctional inmates, institutions, and the system:

"Inmates and mental patients have great need for the assistance of legally trained persons. The need for legal assistance falls generally into three categories:

1. Legal assistance is needed relating to incarceration or commitment. This includes obvious remedies such as appeal, habeas corpus, and other postconviction review. It also includes less obvious matters such as sentence reduction, credit for time spent in jail awaiting trial or sentencing, and executive clemency.

2. Legal assistance is needed to help the inmates and their families deal with economic problems such as debts and support obligations, tax problems, social security and health benefits, licensing problems, or selective service. The objective of an adequate legal assistance program should be to enable the inmate to return to the community free of unnecessary legal complications that will make it difficult for him to adjust, and he will thus avoid being sent back to the institution. This is particularly true in the case of detainees which, if not resolved, make it impossible to develop a suitable plan for returning the inmate to the community. Assisting an inmate's reassimilation into the community is an important objective, whether one sees the purpose of incarceration as rehabilitation or punishment.

3. Legal assistance is needed relating to conditions of confinement. In some instances an inmate may need assistance in using increasingly common administrative grievance procedures. More often he needs assistance in deciding whether to try to obtain judicial review of conditions of confinement.

The need for legal assistance is great whether that need is viewed from the perspective of the individual inmate or mental patient, from the perspective of the institutional program, or from the perspective of the criminal justice or mental health system generally.

1. Although almost all inmates and mental patients have need for legal assistance, most are incapable of defining what the needs for assistance are. Because of the experiences they have had with lawyers and because of the popular misconception of the role of the lawyer, the average inmate or mental patient thinks of the lawyer's role as confined to assisting a person in court proceedings, such as divorce. He does not perceive of the lawyer as a person able to help with family problems, debts, social security and health benefits, eligibility for various licenses including driver's licenses, selective service, educational benefits, and the like. As a consequence the inmate and the mental patient not only need help in dealing with known legal problems, but, even more importantly, they need assistance in defining problems which they have and in the resolution of which legal assistance can be helpful.

2. The institutional program is helped if inmates have an opportunity to raise issues whether those issues relate to their conviction or commitment, to civil law needs such as family problems or debts, or to conditions of the institution. The institution does not need inmates who should not legally be there or inmates whose institutional programs are thwarted by a detainer from another jurisdiction. No institution benefits by having an inmate worried about whether his family is getting welfare or is being hassled by creditors.

3. The criminal justice and mental health systems also benefit from an adequate institutional legal assistance program. The program can be to the systems what the pathologist is to the hospital. It affords an opportunity to view the program from the perspective of its results and, unlike the pathologist, it does so at a time that allows corrections to be made if the system misfired in the individual case. In this way, deficiencies in the criminal justice and mental health systems become apparent. Inmates and mental patients are typically confused as to what happened and often feel a sense of injustice because no one, including their own lawyers, explained to them what was happening or gave them an opportunity to adequately participate in the decisions that were being made. This is particularly true with respect to some practices such as plea bargaining. Other imperfections in the system become plainly apparent, such as wide disparity in sentences and lawyers' unawareness that involuntary mental health programs are not necessarily "beneficial" to the client who has been counseled into an institutional program that is underfinanced and understaffed."

Dickey and Remington, *Legal Assistance for Institutionalized Persons An Overlooked Need*, 1976 So. Ill. L.J. 175, 176-179.

For other analyses of the legal needs of the confined, see: Brakel, *Legal Problems of People In Mental and Penal Institutions: An Explanatory Study*, 1978 ABF Research Journal 565; Dickey, *The Lawyer and the Quality of Service to the Poor and Disadvantaged: Legal Services to the Institutionalized*, 1978 De Paul L. Rev. 407.

For a helpful discussion of these and other benefits from providing such access, see ABA, standard 2.2, Commentary.

HSS 309

These rules attempt to ensure that inmates have access to the legal system in an effective way. Of course, resources available to the division of corrections are limited. Priorities are constantly set and reevaluated so that the goals of the correctional system can be realized.

Wisconsin has pioneered in providing legal services to correctional inmates. Through a cooperative effort of the University of Wisconsin Law School and the division of corrections, a wide range of legal services are available to inmates and inmates' needs have been identified. This program and its objectives are described in Dickey and Remington, *supra*, and Dickey, *supra*.

The state public defender provides legal services to indigent inmates on postconviction criminal matters as well as in conditions of confinement cases. Corrections legal services is also funded by the division to provide legal services to parolees and probationers and to people in correctional institutions.

This section substantially complies with *ACA* standard, 4280; *Model Rules*, rule VII-16; *ABA*, standard 2.1; *National Advisory Commission*, standard 2.1. See 15 *Cal. Adm. Code* 3160 - 3165.

Note: HSS 309.26. HSS 309.26 regulates access to the judicial process. Subsection (1) reaffirms the policy of effective access. *Bounds v. Smith*, 430 U.S. 817 (1977).

Subsection (2) permits institutions to make policies regarding such access. Such policies might include rules providing for orderly access to legal materials and lawyers. For example, the present practice is to try to have every new inmate see a law student during the first four weeks of confinement. This is a reasonable procedure which relates to the general issue of access to the judicial process. That such policies may be necessary is acknowledged by *ABA*, standard 2.1 (A). The principle that such policies not unduly delay or adversely affect claims and defenses is not in need of further explanation, except to point out that there is delay in every person's access to the courts and, given limited resources, inmates cannot expect instantaneous access to the process.

Institutions also regulate law library hours. These regulations indirectly affect access to courts and are necessary if access is to be provided to all inmates, given the fact that resources are limited.

Subsections (3) and (4) are to ensure that inmates are not adversely affected by their involvement in the judicial process. The system must have integrity. To penalize people for their legal actions is not permissible.

See *ABA*, standard 2.1; *National Advisory Commission*, standard 2.1; *Model Rules*, rules VII-16; 15 *Cal. Adm. Code* 3160.

Note: HSS 309.27. An important element of effective access to the judicial process is access to an adequate law library. HSS 309.27 regulates such access.

Subsection (1) provides that legal materials should be reasonably available to inmates. Access involves more than books. It includes staff time to supervise the library and periods of availability that do not interfere with programs. This can be costly, and the hours the library is open must be left to each institution.

An inmate with a special need may require extraordinary access. By way of illustration, an inmate with a pending hearing in an action to terminate parental rights may have a great need for such access and would be permitted to be in the library as much as is necessary.

Subsection (2) requires each institution to have an adequate law library. What is minimally adequate is defined in sub. (3). This definition adopts *ABA* standard 2.3.

Subsection (2) also exempts each camp and the Wisconsin resource center from the requirements for an adequate library. The camp system and the Wisconsin resource center, however, must attempt to borrow materials requested by inmates from the Criminal Justice Reference and Information Center (CJRIC) at the University of Wisconsin Law School or from correctional institution law libraries. If materials are not available from the CJRIC, inmates may request copies of materials from correctional institution law libraries. While transfer may occasionally be necessary to provide adequate access at the inmate's request, it is unlikely that it will be frequent.

This section is in accord with *ABA* standard 2.3; *Model Rules*, rule VII-16; *National Advisory Commission* standard 2.1; and *ACA* standard 4283. See 15 *Cal. Adm. Code* 3161.

Note: HSS 309.28. HSS 309.28 regulates legal services to inmates. The note to HSS 309.25 explains the importance of legal services to inmates. Wisconsin is fortunate to have a State Public Defender System, the Legal Assistance to Institutionalized Persons Program of the University of Wisconsin Law School, and Corrections Legal Services. These groups provide Register, January, 1987, No. 373

legal services on the full range of concerns an inmate may have and satisfy the requirements of these rules. Despite these services, inmate needs for legal help are not always fully met.

No effort is made to define what efforts the division of corrections must make nor to elaborate on what is adequate. Such matters are not susceptible to easy definition, nor are numbers and ratios necessarily helpful in evaluating the quality of services provided. Furthermore, the division is somewhat dependent upon the ability and willingness of other agencies to provide services. The financial resources and the services are presently available to satisfy many, but by no means all, legal needs. It is not expected that the resources to satisfy all needs will be available in the immediate future.

Subsection (2) provides that legal services on the full range of legal concerns should be available. Roughly, these fall into three categories.

- (1) Matters relating to the fact or duration of confinement;
- (2) Matters relating to civil matters, including economic and family problems;
- (3) Matters relating to the conditions of confinement.

Subsection (3) provides that the lawyer-client privilege applies to the service provider-inmate relationship. If legal services are to keep their integrity, the relationship between the providers and inmates must be treated in the manner in a prison as any lawyer-client relationship would be in the private sector. To do less would confuse the clients and inhibit assistance to them by legally trained people.

Subsection (4) requires written authorization for nonlawyers before they are admitted to institutions.

This section is in substantial accord with *ACA*, standard 4283; *ABA*, standard 2.2; *Model Rules*, rule VII-16; *National Advisory Commission*, standard 2.1.

Note: HSS 309.29. HSS 309.29 permits inmates to assist other inmates by providing legal services. So-called "jailhouse lawyers" have been approved by the United States Supreme Court. *Johnson v. Avery*, 393 U.S. 483 (1969). This is a common practice in many states, though not nearly so prevalent in Wisconsin. An inmate may be more comfortable with and trust another inmate more than a lawyer who is viewed as an outsider. And a "jailhouse lawyer" may sometimes be the only source of legal services available.

Institutions must regulate jailhouse lawyering, and sub. (2) provides the authority for this. Policies will vary from institution to institution.

Subsection (3) forbids compensation for legal services by one inmate to another. This is consistent with the disciplinary rule forbidding enterprises by inmates. Permitting compensation can create security problems, in that it may permit one inmate to take advantage of another. Making the provision of services voluntary is an attempt to avoid such a problem. This section is similar in principle to 15 *Cal. Adm. Code* 3163 and is consistent with *ABA*, standard 2.2 (d).

Note: HSS 309.35. HSS 309.35 provides authority for inmates to have personal property in correctional institutions.

Personal property can give inmates a sense of their own individuality and self-esteem. All people enjoy having personal property, and in correctional institutions it can be a welcome link to one's family, friends, and community.

Personal property, however, creates three major problems. First, administratively, it may be difficult to clean and keep track of such property. Second, such property can create security problems. These problems may be direct, e.g., the item may be fashioned into a weapon, or indirect, e.g., the item may be bartered, sold, or stolen. Third, each institution has a different capacity to store and keep records of property, as well as distinct security and program requirements. For example, personal clothing is easier to keep track of in a camp with a population of thirty than in a maximum security institution with a population of one thousand. Furthermore, an inmate in a camp who goes into the community daily on study release cannot appropriately do so in khakis issued by the institution. This would create unnecessary problems in school.

For these and other reasons, each institution is required to make policies regarding personal property. This permits the desired flexibility; however the list of permitted property and other regulations must be approved by the director of the bureau of adult institutions. This centralization of authority is to avoid unnecessary differences among the policies.

Subsection (3) identifies some of the methods by which property may come into the institution. Institutions are free to use other methods. Subsection (4) (a) permits institutions to choose methods appropriate for that institution.

Subsection (4) (b) is to ensure that property is not lost or exchanged. Subsection (4) (c) acknowledges that institutions have varying capacities to store property. Some property may have to be sent to an inmate's home upon transfer to an institution with limited storage capacity.

Subsection (4) (d) gives institutions authority to regulate the specifications and number of items. Such policies, e.g., as to size of television, are already in effect and will be continued.

Subsection (5) restates the disciplinary rule regarding contraband.

This section substantially satisfies the *ACA*, standard 4365.7. See 15 *Cal Adm. Code* 3190-3192 for similar rules.

Note: HSS 309.36. HSS 309.36 regulates leisure time activities. They are important to all of us and provide a necessary break from daily routine and an opportunity to enrich our lives. In institutions, where there is often a great deal of regimentation, breaks from the routine are especially important. Involvement in such activities serves important correctional objectives, in that it is intellectually enriching, develops self-discipline and a sense of cooperation, contributes to self-development, and is a release for energy and anxiety. Activities also help people avoid the problems that often accompany idleness. Therefore, the division encourages such activities and tries to make available a variety of them to permit individual development and to take into account different interests.

Subsection (2) sets a minimum of 4 hours per week activity outside the cell. This takes into account the variety of institutions and their resources, as well as the possibility to permit more activity in spring, summer, and fall than in winter. Institutions are encouraged to permit more activities, and in fact are now doing so. Of course, this should not interfere with work and other programs.

This substantially satisfies *ACA*, standard 4419. See 15 *Cal. Adm. Code* 3220-3223.

Note: HSS 309.37 HSS 309.37 regulates the diet of inmates. The policy of the division is to provide nutritious and quality food to inmates. It must be noted that this must be done on a limited budget. The preparation of food for large numbers of people always presents problems. And, because tastes vary, there will always be different views of the adequacy of diet. However, food must be nutritious and prepared under sanitary conditions. Sub. (1) requires this.

Subsection (2) requires each institution to regulate eating outside the dining room and permits institutions to forbid eating certain foods in the living quarters. Institutions differ, and size alone sometimes creates sanitation problems.

The purpose of sub. (3) is to give inmates notice of what is to be served so that they may supplement their diet if they so choose.

Subsection (4) provides for a special diet for medical or religious reasons. Providing such a diet requires the cooperation of the division of health. No inmate should be denied a special diet because of security status.

Subsection (5) permits abstention and provides for substitution if available. This is typically done on religious occasions like Ramadan or for medical reason.

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 obligations, 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.

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.

Note: HSS 309.61. HSS 309.61 prohibits discrimination against an inmate based on the inmate's religious beliefs, but regulates an inmate's ability to practice his or her religion. Inmates do not lose their constitutional right under the first amendment to hold whatever religious beliefs they wish or to hold no religious beliefs. See *U.S. v. Reynolds*, 98 U.S. 145 (1878). However, the extent to which an inmate may practice his or her religion may be curtailed in a correctional setting because consideration must be given in these settings to security, order and fiscal limitations. Although the beliefs of each inmate must be respected, it would be impossible to provide a regular service or ritual for every denomination or sect represented in the general population. The limits on religious practice included in the section are consistent with ACA, Standards for Adult Correctional Institutions, standard 2-4468 (2d ed. 1985) (hereinafter ACA) and the Proposed Standards of the American Bar Association's Joint Committee on the Legal Status of Prisoners amended and approved by the American Bar Association's House of Delegates (1981), standard 6.5 (b) (hereinafter ABA).

Subsection (1) (c) establishes that in addition to an inmate's right to hold religious beliefs, an inmate has the right to be free from pressure to participate in religious practices. Records concerning inmate religious preferences may be kept only for administrative purposes such as issuance of passes to participate in religious activities, dietary restrictions or approval of special religious visits. See ABA standard 6.5 (d) and (e).

Subsection (2) describes the procedure for requesting permission to participate in religious practices. The superintendent must make an initial determination that the request is based upon a religious belief and is not a subterfuge for obtaining special privileges. The superintendent should consult with the chaplain or designated staff person with appropriate religious training prior to making his or her determination. A test for what constitutes a religion is diffi-

cult to devise. The listed considerations and prohibited concerns are taken from the National Advisory Commission on Criminal Justice Standards and Goals, Corrections Standard 2.6 (6) (1973) and ACA standard 2-4468. If the superintendent determines the request has a religious basis, he or she must determine whether to allow the practice. Inmates should be granted permission to pursue religious practices which do not threaten security or order and do not unreasonably burden the institution.

Subsection (4) describes the alternatives that institutions may employ to meet the religious needs of inmates. A chaplain or designated staff person with appropriate training should coordinate religious services and community resources. It is the responsibility of the institution's chaplain or designated staff person to identify the religious needs of the institution's inmate population and to recommend to the superintendent the most appropriate means to meet those needs. The chaplain or designated staff person should have a positive regard for the contributions that all religions make to the inmates involved with them. Due to the changing preferences and diversity of religious beliefs in correctional institutions, resources from outside the institution can fulfill a need in the delivery of religious services. The chaplain or designated staff person should attempt to develop volunteer services. However, if necessary to supplement the volunteer services, institutions may pay religious providers from outside the institution. See ACA standards 2-4463 and 2-4471. The chaplain or designated staff person should be responsible for the recruitment, selection, training and supervision of volunteers providing religious services. He or she should make recommendations to the superintendent concerning scheduling of religious activities, allocation of resources and propriety of requested religious activities.

Subsection (5) states the standard by which religious literature may be withheld from inmates. The standard is consistent with ABA standards 6.1 (b) and (c).

Subsection (6) establishes special protections for religious symbols and attire. See ABA standard 6.5 (f).

Subsection (7) allows for the special religious diets required by many religious groups. Within the constraints of budget and security, inmates should be provided with a diet sufficient to sustain them in good health without violating religious dietary laws. See ABA standard 6.5 (c).