

Chapter HSS 303

DISCIPLINE

- General provisions**
- HSS 303.01 Applicability and purposes (p. 32)
- HSS 303.02 Definitions (p. 32)
- HSS 303.03 Lesser included offense (p. 32-2)
- HSS 303.04 Definitions relating to state of mind (p. 33)
- HSS 303.05 Defenses (p. 34)
- HSS 303.06 Attempt (p. 34)
- HSS 303.07 Aiding and abetting (p. 35)
- HSS 303.08 Institutional policies and procedures (p. 35)
- HSS 303.09 Manual of disciplinary rules (p. 36)
- HSS 303.10 Seizure and disposition of contraband (p. 36)
- HSS 303.11 Temporary lockup; use (p. 37)
- Offenses against bodily security**
- HSS 303.12 Battery (p. 39)
- HSS 303.13 Sexual assault—intercourse (p. 39)
- HSS 303.14 Sexual assault—contact (p. 39)
- HSS 303.15 Sexual conduct (p. 39)
- HSS 303.16 Threats (p. 39)
- HSS 303.17 Fighting (p. 40)
- Offenses against institutional security**
- HSS 303.18 Inciting a riot (p. 40)
- HSS 303.19 Participating in a riot (p. 40)
- HSS 303.20 Group resistance and petitions (p. 40)
- HSS 303.21 Conspiracy (p. 40)
- HSS 303.22 Escape (p. 40-1)
- HSS 303.23 Disguising identity (p. 41)
- Offenses against order**
- HSS 303.24 Disobeying orders (p. 41)
- HSS 303.25 Disrespect (p. 41)
- HSS 303.26 Soliciting staff (p. 41)
- HSS 303.27 Lying (p. 42)
- HSS 303.271 Lying about staff (p. 42)
- HSS 303.28 Disruptive conduct (p. 42)
- HSS 303.29 Talking (p. 42)
- HSS 303.30 Unauthorized forms of communication (p. 43)
- HSS 303.31 False names and titles (p. 43)
- HSS 303.32 Enterprises and fraud (p. 43)
- HSS 303.33 Attire (p. 43)
- Offenses against property**
- HSS 303.34 Theft (p. 43)
- HSS 303.35 Damage or alteration of property (p. 43)
- HSS 303.36 Misuse of state or federal property (p. 44)
- HSS 303.37 Arson (p. 44)
- HSS 303.38 Causing an explosion or fire (p. 44)
- HSS 303.39 Creating a hazard (p. 44)
- HSS 303.40 Unauthorized transfer of property (p. 44)
- HSS 303.41 Counterfeiting and forgery (p. 44)
- Contraband offenses**
- HSS 303.42 Possession of money (p. 44)
- HSS 303.43 Possession of intoxicants (p. 45)
- HSS 303.44 Possession of drug paraphernalia (p. 45)
- HSS 303.45 Possession, manufacture and alteration of weapons (p. 45)
- HSS 303.46 Possession of excess smoking materials (p. 45)
- HSS 303.47 Possession of contraband—miscellaneous (p. 46)
- HSS 303.48 Unauthorized use of the mail (p. 46)
- Movement offenses**
- HSS 303.49 Punctuality and attendance (p. 46)
- HSS 303.50 Loitering (p. 46)
- HSS 303.51 Leaving assigned area (p. 47)
- HSS 303.511 Being in an unassigned area (p. 47)
- HSS 303.52 Entry of another inmate's quarters (p. 47)
- Offenses against safety and health**
- HSS 303.54 Improper storage (p. 47)
- HSS 303.55 Dirty quarters (p. 47)
- HSS 303.56 Poor grooming (p. 48)
- HSS 303.57 Misuse of prescription medication (p. 48)
- HSS 303.58 Disfigurement (p. 48)
- Miscellaneous offenses**
- HSS 303.59 Use of intoxicants (p. 48)
- HSS 303.60 Gambling (p. 48)
- HSS 303.61 Refusal to work or attend school (p. 48)
- HSS 303.62 Inadequate work or study performance (p. 49)
- HSS 303.63 Violations of institution policies and procedures (p. 49)
- HSS 303.631 Violating conditions of leave (p. 49)
- Disciplinary procedure and penalties**
- HSS 303.64 Disciplinary violations—possible dispositions (p. 49)
- HSS 303.65 Offenses that do not require a conduct report (p. 50)
- HSS 303.66 Conduct report (p. 50)
- HSS 303.67 Review by security office (p. 51)
- HSS 303.68 Major and minor penalties and offenses (p. 51)
- HSS 303.69 Major penalties: adjustment segregation (p. 53)
- HSS 303.70 Major penalties: program segregation (p. 54)
- HSS 303.71 Controlled segregation (p. 56)
- HSS 303.72 Minor penalties (p. 56)

HSS 303

HSS 303.73	Referral for prosecution (p. 57)	HSS 303.82	Adjustment committee (p. 63)
HSS 303.74	Summary disposition procedure (p. 58)	HSS 303.83	Sentencing considerations (p. 64)
HSS 303.75	Hearing procedure for minor violations (p. 58)	HSS 303.84	Sentencing procedure and schedule of penalties (p. 65)
HSS 303.76	Hearing procedure for major offenses—notice (p. 59)	HSS 303.85	Recordkeeping (p. 68)
HSS 303.78	Due process hearing: advocates (p. 61)	HSS 303.86	Evidence (p. 68)
HSS 303.81	Due process hearing: witnesses (p. 62)	HSS 303.87	Harmless error (p. 69)

Note: Several sections in this chapter have explanatory material which can be found in the appendix following the last section in this chapter.

GENERAL PROVISIONS

HSS 303.01 Applicability and purposes. (1) Pursuant to authority vested in the department of health and social services by s. 227.11 (2), Stats., the department adopts this chapter which applies to the department, division of corrections and to all adult inmates in its legal custody. It implements ss. 53.07, 53.08, 53.11 (2) and 53.04, Stats. The rules governing inmate conduct under this chapter describe all the conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) "Discipline" includes only the sanctions described in HSS 303.08. It does not include reclassification, change of program assignment, loss or modification of a MAP contract, change of housing assignment, or transfer to another institution.

(3) The objectives of the disciplinary rules under this chapter are the following:

- (a) The maintenance of order in correctional institutions;
- (b) The maintenance of a safe setting in which inmates can participate in constructive programs;
- (c) The rehabilitation of inmates through the development of their ability to live with others, within rules;
- (d) Fairness in the treatment of inmates;
- (e) The development and maintenance of respect for the correctional system and for our system of government through fair treatment of inmates;
- (f) Punishment of inmates for misbehavior; and
- (g) Deterrence of misbehavior.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1987, No. 378.

HSS 303.02 Definitions. In this chapter:

- (1) "Authorized" means:
 - (a) According to departmental rules;
 - (b) According to posted policies and procedures;
 - (c) According to the latest order of a staff member;

Register, June, 1987, No. 378

- (d) According to established institution custom; or
 - (e) With permission from the appropriate staff member.
- (2) "Bodily injury" means injury or physical pain, illness or any impairment of physical condition.
- (3) "Bureau director" means director of the bureau of institutions, division of corrections, department of health and social services, or designee.
- (4) "Case record" means any file folder or other method of storing information which is accessible by the use of an individual inmate's name or other identifying symbol.
- (5) "Communicate" means:
- (a) To express verbally;
 - (b) To express in writing; or
 - (c) To express by means of gesture(s) or other action(s).
- (6) "Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. A person under 15 years of age is incapable of consent as a matter of law. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence;
- (a) A person who is 15 to 17 years of age;
 - (b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct; or
 - (c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (7) "Department" means the department of health and social services.
- (8) "Division" means the department of health and social services, division of corrections.
- (9) "Inmate gang" means a group of inmates which threatens, intimidates, coerces or harasses other inmates or engages in activities which intentionally violate or encourage the intentional violation of statutes, administrative rules or institutional policies and procedures.
- (10) "Harass" means to annoy or irritate persistently.
- (11) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions, to include: LSD, heroin, cocaine, marijuana, alcoholic drinks, paint thinner or glue. Tobacco is not included.
- (12) "Negotiable instrument" is a writing, signed by the maker or drawer, which contains an unconditional promise to pay which is payable on demand or at a specified time, and which is payable to the order of the bearer.
- (13) "Overt behavior" means behavior which is open and observable.

(14) "Possession" means on one's person, in one's quarters, in one's locker or under one's immediate physical control.

(15) "Sexual contact" means:

(a) Kissing;

(b) Handholding;

(c) Touching by the intimate parts of one person to any part of another person. In this subsection, "intimate part" means breast, penis, buttocks, scrotum, or vaginal area, whether clothed or unclothed; or

(d) Any touching by any part of one person or with any object or device of the intimate parts of another person.

(16) "Sexual intercourse" means any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration by any part of the body or an object into the anus or vagina of another person.

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

(18) "Superintendent" means the superintendent of an institution, or designee.

(19) "Without consent" means no consent in fact or that consent is given for any of the following reasons:

(a) Because the actor put the victim in fear by the use or threat of imminent use of physical violence on him or her, or on a person in his or her presence, or on a member of his or her immediate family; or

(b) Because the actor purported to be acting under legal authority; or

(c) Because the victim did not understand the nature of the thing to which he or she consented, either by reason of ignorance, or mistake of fact or of law other than criminal law, or by reason of youth, or by reason of defective mental condition—whether permanent or temporary.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; renum. (14) to (16) to be (16) to (18), cr. (14) and (15), Register, April, 1985, No. 352, eff. 5-1-85; emerg. renum. (9) to (18) to be (10) to (19), cr. (9) eff. 12-5-86; renum. (9) to (18) to be (10) to (19), cr. (9), Register, June, 1987, No. 378, eff. 7-1-87.

HSS 303.03 Lesser included offenses. (1) If one offense is a lesser included offense of another, then if an inmate is charged with the greater offense, the inmate is deemed to be charged with the lesser included offense as well.

(2) An inmate may be found guilty of a lesser included offense of the offense charged, even if he or she was not expressly charged with the lesser included offense.

(3) An inmate may not be found guilty of 2 offenses or punished for 2 offenses based on a single incident if one offense is a lesser included offense of the other.

(4) No offense may be considered a lesser included offense of another unless it is so listed in the following table:

have been. This is especially important at parole hearings and program review committee meetings.

OFFENSES AGAINST BODILY SECURITY

HSS 303.12 Battery. Any inmate who intentionally causes bodily injury to another is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 303.13 Sexual assault—intercourse. Any inmate who has sexual intercourse, as defined in s. HSS 303.02(16), with another person without that person's consent and knowing that it is without that person's consent is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, April, 1985, No. 352, eff. 5-1-85; correction made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1987, No. 378.

HSS 303.14 Sexual assault—contact. Any inmate who intentionally has sexual contact, as defined in s. HSS 303.02(15), with another person without that person's consent and knowing that it is without that person's consent is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, April, 1985, No. 352, eff. 5-1-85; correction made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1987, No. 378.

HSS 303.15 Sexual conduct. (1) Any inmate who intentionally does any of the following is guilty of an offense:

(a) Has sexual intercourse, as defined in s. HSS 303.02(16), with another person;

(b) Has sexual contact, as defined in s. HSS 303.02(15), with another person;

(c) Requests, hires or tells another person to have sexual intercourse or sexual contact;

(d) Exposes his or her intimate parts to another person for the purpose of sexual arousal or gratification, or for exhibitionistic purposes; or

(e) Has contact with or performs acts with an animal that would be sexual intercourse or sexual contact if with another person.

(2) Lack of consent is not an element of the offense of sexual conduct.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; renum. (intro.) to (5) to be (1) and am., cr. (2), Register, April, 1985, No. 352, eff. 5-1-85; correction in (1) (a) and (b) made under s. 13.93 (2m) (b) 7, Stats., Register, June, 1987, No. 378.

HSS 303.16 Threats. Any inmate who intentionally does any of the following is guilty of an offense:

(1) Communicates to another his or her intent to physically harm or harass that person or another;

(2) Communicates his or her intent to cause damage to or loss of that person's or another person's property; or

(3) Communicates his or her intent to make an accusation he or she knows is false.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

Register, June, 1987, No. 378

HSS 303.17 Fighting. Any inmate who intentionally participates in a fight is guilty of an offense. "Fight" means any situation where 2 or more people are trying to injure each other by any physical means, to include hitting, biting, kicking, scratching, throwing or swinging objects, or using weapons.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

OFFENSES AGAINST INSTITUTIONAL SECURITY

HSS 303.18 Inciting a riot. Any inmate who intentionally encourages, directs, commands, coerces or signals one or more other persons to participate in a riot is guilty of an offense. "Riot" means serious disturbance to institutional order caused by a group of 2 or more inmates which creates a serious risk of injury to persons or property.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 303.19 Participating in a riot. Any inmate who intentionally or recklessly participates in a riot, as defined under HSS 303.18, or who intentionally or recklessly remains in a group which has been ordered to disperse if some members of the group are participating in a riot, is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 303.20 Group resistance and petitions. (1) Any inmate who intentionally participates in any group activity which is not approved under s. HSS 309.365 or is contrary to provisions of this chapter, to institution policies and procedures or to a direct verbal order from a staff member, but which does not create a serious risk of injury to persons or property, is guilty of an offense.

(2) Any inmate who intentionally joins in or solicits another to join in any group petition or statement is guilty of an offense, except that the following activities are not prohibited:

(a) Group complaints in the inmate complaint review system;

(b) Group petitions to courts;

(c) Authorized activity by groups approved by the superintendent under s. HSS 309.365 or legitimate activities required to submit a request under s. HSS 309.365 (3) or (4); or

(d) Group petitions to people outside an institution, for example, to legislators or newspapers.

(3) Any inmate who intentionally participates in any activity with the purpose of identifying himself or herself with an inmate gang, as defined in s. HSS 303.02 (9), is guilty of an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. am. eff. 12-5-86; am. Register, June, 1987, No. 378, eff. 7-1-87.

HSS 303.21 Conspiracy. (1) If 2 or more inmates plan or agree to do acts which are forbidden under this chapter, all of them are guilty of an offense.

Register, June, 1987, No. 378

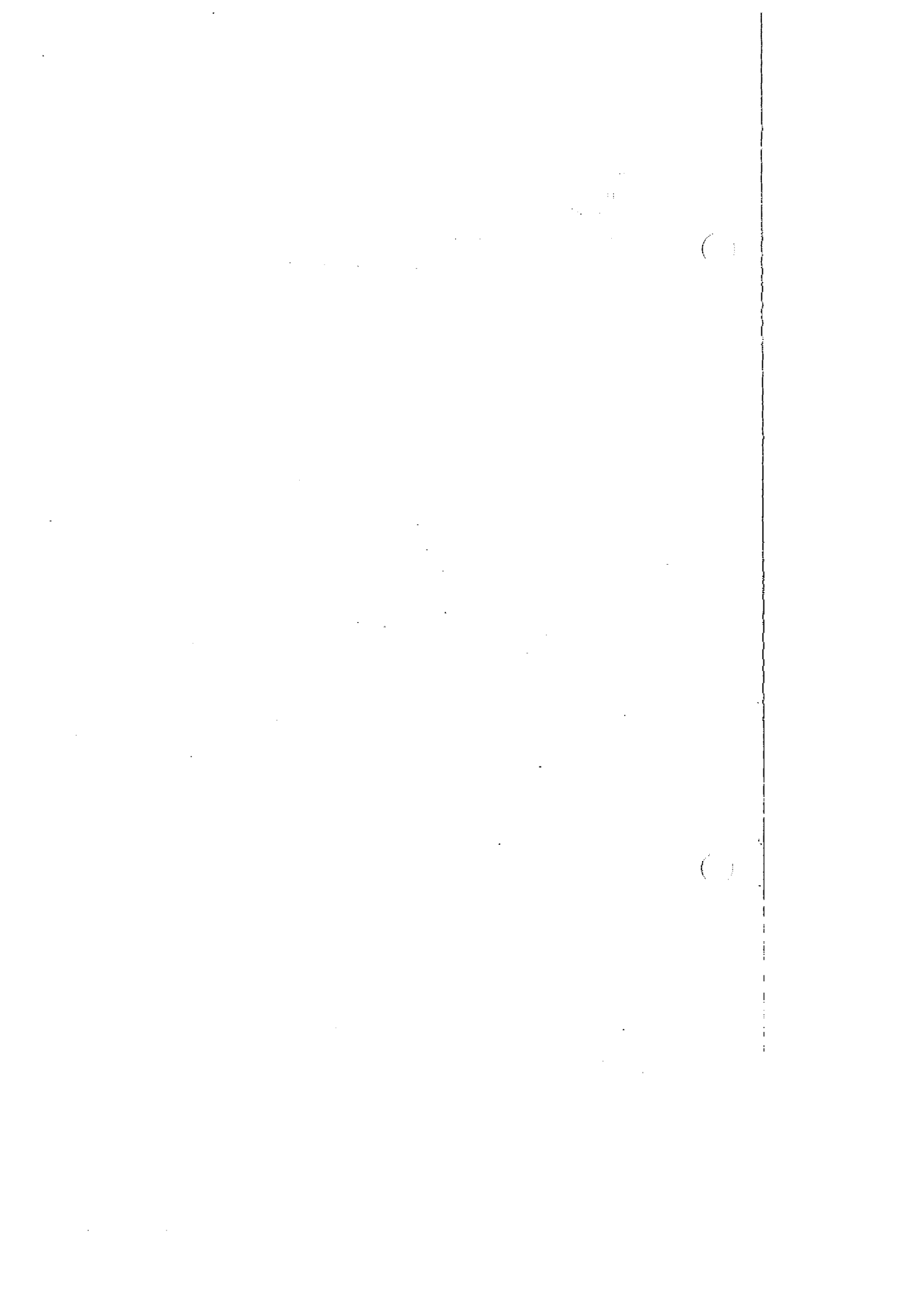
(2) The penalty for conspiracy may be the same as the penalty for the most serious of the planned offenses.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 303.22 Escape. (1) An inmate who does any of the following without permission and with the intent to escape is guilty of an offense:

- (a) Leaves an institution;

Next page is numbered 41



to do—for example, to bring a lawsuit or to write a letter. Such a rule has a chilling effect on the exercise of the protected rights of freedom of expression and access to the courts. Therefore, this section has been narrowed so that only certain types of threats are punishable. A threat to bring a lawsuit is not prohibited in this section. If an otherwise allowable "threat" is communicated in certain ways, however, HSS 303.28, Disruptive conduct or HSS 303.25, Disrespect, might be violated.

Under the Wisconsin criminal code, the following types of threats are punishable: threats to injure or accuse of crime, s. 943.30, Stats., and threats to communicate derogatory information, s. 943.31, Stats. Under either of these statutes, an element of extortion must be present, that is, the threat must be related to a demand for money or property from the victim. Extortion is not a necessary element to find guilt under this section.

Note: HSS 303.17. A principal purpose of this section is to protect the safety and security of inmates and staff. In addition, fights create a serious risk of disruption and must be considered serious offenses for this reason. Although inmates do have a limited privilege of self defense (see HSS 303.05), as a general rule they should learn to use non-violent means of settling disputes and they should depend on correctional officers rather than their own fists to defend them when attacked. Obviously it will often be difficult for correctional officers, the hearing officer or the adjustment committee to determine who started a fight and whether or not the other person exceeded the bounds of self-defense. Therefore, avoiding such situations entirely is the safest course.

It is intended that a person should not be found guilty under both HSS 303.12, Battery, and this section for the same fight. This section should be used for the person who willingly joins a fight when someone attacks him or her.

Lesser included offense: HSS 303.28, Disruptive Conduct.

Note: HSS 303.18. Former division policy and procedure 1.02 (Riots—Rebellion) covered a wide range of activity from very serious to minor. In order that the record of an inmate should more accurately reflect the seriousness of his or her acts, there are now three distinct offenses. HSS 303.18 is the most serious and should be used against "ringleaders" of a serious disturbance which involves violence. Those who actively participate but are not ringleaders should be charged under HSS 303.19. HSS 303.20 is designed for a non-violent disturbance—for example, a sitdown strike. A similar three-way division is used in Krantz, et al., *Model Rules and Regulations* (1973) at 147-149.

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

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

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

Note: HSS 303.20. HSS 303.20 is designed for a non-violent disturbance - for example, a sit-down strike. HSS 303.20 (1) differs from conspiracy (HSS 303.21) in that under this section each individual must actually disobey a rule or participate in unauthorized group activity, while under HSS 303.21 an inmate may be punished for merely planning an offense. Also, under HSS 303.21 a plan or agreement is required, while under sub. (1) spontaneous group action can be punished. Finally, punishment under this section can be added to punishment for the particular rule violated, while punishment for conspiracy cannot, because conspiracy is a lesser included offense of the planned offense.

Sub. (2) substantially follows the old policy and procedure of 14.03. The inmate complaint review system is the appropriate method for bringing group complaints. To permit such complaints or statements outside the system could seriously disrupt a prison. Experience has proven that it is important that there be as few opportunities as possible for coercion of one inmate by another. Unrestricted rights to petition in groups generates intimidation and coercion as inmates try to force others to join them. The authorized methods are thought to protect inmates' rights to petition and to express their views.

Furthermore, complaints outside the complaint system create confusion among staff. There is already provision for the investigation of complaints in the system. Staff (and their union) are frequently reluctant to cooperate in investigations made outside the system. This makes adequate investigation impossible and hurts morale and institutional security. It also makes an adequate response to the complaint impossible.

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

HSS 303

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

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

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

See the notes to HSS 303.18 and 303.21

Note: HSS 303.21. A purpose of conspiracy statutes in general and of this section is to enable law enforcement and correctional officers to prevent *group* criminal or prohibited activities at an earlier stage than the stage of attempt. Group activities against the rules pose a greater risk than similar individual activities, and this justifies intervention at an earlier stage and punishment for acts which, if done by an individual, would not be against the rules.

The content of sub. (1) of this section is similar to s. 939.31, Stats., though it differs in 2 important respects. The 2 elements of conspiracy under the statute are first, an agreement, and second, an overt act in furtherance of the conspiracy by one member of the group. Under this section, overt acts are not required because a prison setting may be so volatile that it is unwise to wait for such acts. As in the statute, the maximum penalty is the same as for the offense itself; an inmate cannot be found guilty of both conspiracy and the planned offense, because under HSS 303.03 conspiracy is a lesser included offense.

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

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

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

Note: HSS 303.22. Since escape is an extremely serious offense (it is one of the few disciplinary offenses which is frequently prosecuted), it is important to define it carefully. The old policy and procedure 4.01 was basically the same as this one; it read:

Residents shall not leave the confines of the institution proper, other designated authorized areas away from the institution to which they are assigned, or the custody and control of a staff member.

The only change is that now, if an inmate is off grounds on work or study release or on furlough, mere physical deviation from his or her assigned location is not enough to prove escape. Intent to escape must also be proved. This modification recognizes that unexpected situations may arise when an inmate is off grounds and unsupervised, and a certain amount of leeway must be available to inmates to deal with such situations. Of course, an inmate who deviated from a prescribed route or left an area would probably be guilty of violating HSS 303.24, Disobeying orders. If no unexpected situation arose, however, then deviation from the schedule would create a strong inference of intent to escape.

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

Lesser included offense: HSS 303.51, Leaving assigned area.

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