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 (1) differs from conspiracy (HSS 303.21) in that under this section each individual must actually disobey a rule, 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.

Other problems are also created by unrestricted group petitions. It disrupts orderly movement and security by requiring more freedom of movement than is safe. It is also disruptive of programs and contributes to the formation of gangs, which 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 serious problems and can contribute to the erosion of authority which leads to serious prison disturbances. States that have permitted such activity have uniformly had serious problems in their institutions.

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 reponses, to insure that the complaints are addressed. It requires that complaints be signed. Without this, adequate investigation is usually impossible.

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. (3) makes clear that sub. (2) only applies to petitions 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.

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 activites 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.