

Chapter HSS 303

DISCIPLINE

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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. 277.014 (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.

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;

- (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) "Harass" means to annoy or irritate persistently.
- (10) "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.
- (11) "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.
- (12) "Overt behavior" means behavior which is open and observable.
- (13) "Possession" means on one's person, in one's quarters, in one's locker or under one's immediate physical control.
- (14) "Sexual contact" means:
- (a) Kissing;

Emerg. renum. (9) to (12) to be
100 to (10), cr. (9) eff. 10-5-86

(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.

(15) "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.

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

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

(18) "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.

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(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.

HSS 303.14 Sexual assault—contact. Any inmate who intentionally has sexual contact, as defined in s. HSS 303.02(14), 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.

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(15), with another person;
- (b) Has sexual contact, as defined in s. HSS 303.02(14), 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; renun. (intro.) to (5) to be (1) and am., cr. (2), Register, April, 1985, No. 352, eff. 5-1-85.

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, April, 1985, No. 352

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 action which is contrary to the provisions under 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; or
- (c) Authorized group activity by authorized groups, such as the lifers group and rap committees.

(3) Subsection (2) only applies to petitions made within an institution. It does not apply to petitions made to people outside an institution, for example, to legislators or newspapers.

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

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.

(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;

Register, April, 1985, No. 352

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