to an assignment in the community. "Programs" refers to the activities a resident may participate in if a particular classification is held.

The rules relating to the use of restraining devices reflect an intention to be flexible, while insuring that adequate security is maintained. Without such flexibility, programs would be affected unnecessarily. For example, at a medium security institution there are driver education classes. These classes are adequately supervised by correctional staff at all times, including while the class is off grounds. It would be impossible to have such a class if restraining devices were required while the residents were off grounds.

Likewise, residents in maximum security institutions sometimes attend church and other activities off grounds. It is more conducive to positive participation in such activities to provide adequate supervision by correctional staff, rather than by the use of restraining devices.

HSS 302.12 (2) specifies that a resident may not be kept at a custody level lower than the one to which he or she is assigned. In some instances, residents reside at more secure institutions than their custody rating permits to take advantage of particular programs or because of a shortage of space at less secure institutions. This is permitted by HSS 302.12.

Note: HSS 302.13. HSS 302.13 identifies the security ratings for each correctional institution. Residents may be assigned to a correctional institution only if they have the rating marked by an "X" required for the particular institution. They may be held in the custody classification they possess, or a higher one, but may not be in a lower one.

For example, no residents holding maximum security ratings may reside at the Wisconsin Correctional Institution at Fox Lake. Residents with medium, medium-outside or minimum ratings may reside there. A resident with a medium security rating who resides at Fox Lake must be kept in custody consistent with that rating and may not be accorded freedom of a person with a reduced security rating. Thus, the person could not be assigned to the camp system.

Residents in community services institutions like Shalom House in Green Bay remain assigned to an institution under the direction of the bureau of institutions. This rule does not affect that practice.

Note: HSS 302.14. HSS 302.14 states the only criteria permitted in the assignment of security classifications. While there is ample commentary about the desirability and the process for classification, little has been written about the substantive criteria that should be used. *Sirico, Prisoner Classification And Administrative Decision Making,* 1972 Texas L. Rev. 1229. Experience in Wisconsin teaches that the criteria stated in Rule 302.14 are the only helpful ones. See *ACA Accreditation Standards* 4377. While they are for the most part self-explanatory, some elaboration on them is desirable.

HSS 302.14 (1) makes the nature of the offense relevant and identifies factors relevant to seriousness. These factors are not inclusive and others may be relevant and should be considered in individual cases. It should also be noted that the absence of the factors is relevant. So, for example, if an offense posed no physical danger to another or if the offender did something to avoid or diminish the physical danger to another, this should be considered.

Subsection (2) makes the offender's criminal record relevant. The issue of what specifically may be considered as the offender's record is addressed in another section of these rules.

The length of sentence is of importance in assigning a security classification, as is the amount of time already served for the offense. These criteria are in subs. (3) and (10). A resident who is close to release, either because he has served closed to the expiration of sentence or because of the duration of sentence, may be less of an escape risk or may not need as close supervision as an offender with a substantial period of confinement ahead of him or her.

On the other hand, the fact that an individual is serving a long sentence does not necessarily mean that the person must remain in a maximum security institution. Experience teaches, for example, that some people with life sentences can appropriately reside in less than maximum security institutions. When this is consistent with security and program assignment, length of sentence should not bar assignment to such an institution and transfer among such institutions.

The motivation for the crime and the resident's attitude are also relevant. If the resident's motivation was anger and he or she continues to be angry and shows no remorse, that person may require closer supervision than a person motivated by acute economic need who is sorry for having committed the offense. Subsections (4) and (5) permit these factors to be taken into account.

Subsection (6) explicitly recognizes that physical assaults occur in correctional institutions and that this is relevant to classification. Sometimes, vulnerability may dictate close supervision for the resident's protection. In other cases, minimum supervision will be necessary, because the resident is not exposed to assaultive residents in such a setting.

Subsection (7) takes into account the fact that prior conduct is sometimes an indicator of future conduct. While this is not always so, a resident's prior record, particularly with respect to escape, is properly considered.

Subsection (8) recognizes that the period of time in a particular security setting and institution is relevant to security classification.

It may be necessary, in some cases, to observe people in a maximum security setting before lowering their rating, although other factors suggest immediate lowering of rating is possible. This might be true in a situation in which there is difficulty in deciding the appropriate classification and a short trial period with the resident is desirable.

On the other hand, if a resident has demonstrated over a long period of time that he or she has no difficulty in a particular setting, it may be desirable to decrease the level of supervision or transfer the person to a different institution. This enables the resident to accept more responsibility and to avoid the unncessary boredom that may accompany confinement in the same place for a long period of time.

In some cases, the medical needs of a resident greatly affect his or her security rating. For example, some institutions are not staffed to administer particular medication. It is necessary to keep an individual requiring such medication where it can be properly administered. This is provided for in Subsection (9).

Subsection (11) makes community reaction a relevant criteria for security classification. While this criterion is not often used, it is true that community reaction to particular offenders sometimes must be considered. For example, if there is hostility to an offender in a particular place such that adjustment to a nearby institution would be made difficult, it may not be desirable to place the individual in that institution. This adds unnecessarily to the pressures on the resident.

Subsection (12) makes the resident's conduct in the institution relevant. A resident who is aggressive or who is in constant disciplinary trouble may thereby require close supervision. On the other hand, some residents have difficulty in maximum security institutions where the environment is quite structured, but have few problems in minimum security institutions. This subsection permits these facts to be taken into account.

Subsection (13) makes past program performance relevant. Past performance is usually an indicator of the future. The correctional system is committed to helping people improve. It is important to recognize that people can change for the better.

Subsection (14) states that detainers are relevant to the security classification decision. However, the rule states that detainers by themselves shall not prevent a resident from receiving any particular security classification. This is in conformity with *Reddin V. Israel,* 445 F. Supp. 1215 (1978) (E.D. Wis. filed Sep. 21, 1978).

Detainers are particularly troublesome to residents and to correctional officials because they make correctional planning difficult. It is not generally understood that detainers frustrate residents as well as correctional authorities. Detainers make program and parole planning difficult because of the uncertainty they create. Correctional authorities are reluctant to use scarce resources in planning for a person's future, if the planning may go for naught because a detaining authority takes custody upon parole release.

Understandably, residents are frustrated by this. It does not encourage them to constructively involve themselves in programs that will help them upon release, if the time and place of release is so uncertain. The uncertainty may also have adverse psychological consequences for the resident.

Rarely is anyone, including the authority who filed the detainer, certain about the disposition of whatever underlies the warrant. Indeed, detainers are sometimes filed for non-criminal matters like non-support and, in criminal matters, without serious or informed consideration of whether the matter will be pursued when the resident is available. Whether the authority which filed the detainer eventually takes custody of the resident may depend upon the sentence being served, a fact the authority has no information about. For discussions of the effects of detainers, see *Dickey and Remington, Legal Assistance for Institutionalized Persons—An Overlooked Need,* 1976 So. Ill. L.R. 175, 184; *D. Wexler, The Law of Detainers* (U.S. Department of Justice Monograph, 1973); *L. Abramson, Criminal Detainers* (forthcoming publication by West Publishing Co.).

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Subsection (14) requires several things before a detainer can be considered in classification. It has several purposes: (1) to permit the corrections staff to consider the alleged facts underlying the detainer; (2) to permit the resident to know what those alleged facts are; (3) to permit the resident to make known additional or contradictory facts; (4) to inform the authority which filed the detainer as to the resident's offense and sentence and any other relevant information so that a more informed decision as to whether to maintain the detainer can be made; (5) to insure that the importance attached to the detainer is made clear. This last point may enable a resident, through the social worker or directly, to raise with the authority which placed the detainer the desirability of maintaining it, in the light of its effect.

While dealing with detainers effectively may require legal assistance, it is important for the division to inform the detaining authority of the continuing effect of detainers. For this reason, the resident's social worker should be kept informed about the detainer and is required to communicate with the detaining authority about the detainer. HSS 302.14 (14) (c) and (d). This may encourage the exchange of information that will enhance the correctional process.

Note: HSS 302.15. HSS 302.15 states the general rule for eligibility for program assignments. Residents are afforded the opportunity to participate in programs by this rule. The work and study release progam is an example of a program which has special eligibility requirements, which are set out in a separate section.

Subsection (3) reflects a change in the policy of the division of corrections. Heretofore, residents, including women, could not participate in programs or A & E at men's institutions. Nor did men participate in programs at institutions other than the one's at which they reside. This is now permitted, if the residents are otherwise qualified for the program and have the security classification that permits daily commuting to other institutitions. Such progamming is not likely to be extensive, given the cost involved. The rule does reflect the effort to make more programs available to residents, particularly women. Given the possible costs created by such changes, implementation of the principle is likely to be incremented.

This rule does not permit co-educational institutions for residential purposes.

Implicit in subsection (2) is the goal of having sufficient resources so that every resident can have the opportunity for a job or program. The rule recognizes, however, that population pressures and particular security needs may occasionally make this impossible.

Note: HSS 302.16. HSS 302.16 identifies the only criteria which may be used to assign residents to job, school, vocational or other programs. There is little written about the specific criteria appropriate for program assignment. Most commentators simply suggest that some criteria are appropriate. *See, e.g., ACA Accreditation Standard* 4377.

The medical needs of the resident may preclude particular assignments. For example, a resident with particular physical disabilities may thereby be precluded from a job requiring heavy physical labor. This is reflected in subsection (1).

Subsection (2) reflects staff experience that a resident's needs, aptitude, motivation and interests are important in classification. Indeed, they are among the most important factors in program assignment. It is desirable that residents be involved in programs for which they have an interest and aptitude. This raises performance and confidence. The subsection also recognizes that people continue to develop and that future interests and human potential ought also be considered. Subsection (2) also makes past performance and general institutional adjustment relevant. Experience teaches that these are important in evaluating a resident's potential for programs, though they are by no means conclusive.

Subsection (3) recognizes that particular programs may be better suited for the physically vulnerable than others. See the note to HSS 302.04.

Subsection (4) recognizes that the number of residents who might appropriately be placed in particular programs may exceed the resources. In the note to HSS 302.02, the importance of diagnosing a resident's needs was pointed out. Such diagnosis is meaningful only if the resources are available to meet needs. See, *Krantz, et. al., Model Rules and Regulations On Prisoners' Rights and Responsibilities* at 83.

Subsection (5) states that institution needs may be considered in program assignments. Correctional institutions are small communities with a significant degree of interdependennce. This sometimes requires that residents be placed in jobs for the good of the community. This should only be done if the job is not detrimental to the individual. For example, an institution may need a cook. To avoid transferring a person from a job that suits his or her needs, it is usually desirable to place a person without a job or in an inappropriate job or awaiting assignment in the cook position.

An effort should be made to avoid placing a resident in a program that is inconsistent with his or her needs. So, for example, it would be inappropriate to transfer a person with an appropriate program assignment in an institution near his or her home to an institution that is far away simply because of that institution's needs. Rather, institution needs should be a secondary factor in program assignment and should be applied only when also consistent with the resident's needs.

Subsection (6) states that a resident's security classification is relevant to program assignment. This means only that a resident may not be assigned to a program in an institution unless the resident has the requisite security classification for the institution.

Note: HSS 302.17. HSS 302.17 states the procedure and decision making authority for assignment to a job, vocational, educational or other program at the conclusion of the A&E process. The authority of staff to classify and transfer residents is broad. *Meachum V. Fano,* 427 U.S. 215 (1976); *Montayne V. Haymes,* 427 U.S. 236 (1976). Commentators agree that this process should have several essential elements to insure that the decisions are made in a fair, informed way. *American Correctional Association; Manual of Correctional Standards* (1966); *National Advisory Commission On Criminal Justice Standards and Goals, Corrections* (1973); *Krantz, et. al., Model Rules And Regulations On Prisoners Rights And Responsibilities* (1973); *American Bar Association; Tentative Draft of Standards Relating To The Legal Status of Prisoners* (1977).

These elements are:

(1) A decision making process that involves staff who are most informed about the resident. In Wisconsin, this includes the A&E committee and director, as provided in HSS 302.17 (1).

(2) Centralized decision making for the whole correctional system. HSS 302.17 (1).

(3) Notice of the criteria and facts relied on. This is provided by HSS 302.05 to 302.07, 302.12, and 302.14.

(4) An opportunity for the resident to be heard on the issues being addressed. HSS 302.17 (5).

(5) An explanation of the decision to the resident. This is provided orally at the staffing and in writing in the A&E packet. HSS 302.17 (5) and (6).

(6) Timely monitoring of the decision. HSS 302.17 (2).

There is one additional requirement of the rule, that the A&E committee be made up of permanent, designated members, subs (3) and (4). It is desirable to require that there be continuity in the decision making process and that all staff be experienced in the process. This helps to avoid arbitrariness and insures uniformity in decision making. Centralizing final decision making authority in the classification chief is also helpful in these respects.

Some commentators urge that the classification process should be an adversary one, with a right of the inmate to call witnesses, call and cross-examine adverse witnesses and legal assistance. *American Bar Association, supra,* Standard 3.5 (9). It is certainly desirable that the resident be involved in the classification process, for he or she may have essential information and such involvement develops amenability to correctional treatment. It is also important that the decisions be based on accurate facts.

The rule reflects a conscious effort to design a fair decision making process that provides to the resident notice of what is being considered, an opportunity to be heard on the issue being decided and the decision with reasons for it. This is the essence of "due process." Experience teaches that these are important, but that an unduly adversary process is not in the best interests of either the resident or the correctional system. An unnecessarily adversary process can seriously detract from the correctional process which the resident is just beginning and frustrate appropriate correctional goals, including successful reintergration of the offender into the community.

The rule seeks to achieve these goals without relying on an adversary process that might detract from the overall adjustment of the resident and unnecessarily tax already scarce resources. It should be apparent from the rule that all relevant information is welcome in the decision making process, from whatever source.

Note: HSS 302.18. HSS 302.18 provides for the review of the program assignment and security classification of each resident. This includes residents in the general population, as well as those in any administrative or segregated confinement. Such review must occur within 6 months of the last review. Continued monitoring of these decisions is an essential feature

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of correctional treatment. Six months is typical limit for such review. *American Bar Association*, supra, Standard 3.5 (6).

A review may occur at any time at the designation of the PRC or at the request of the resident. To avoid abuse of the process, there must be a change in relevant circumstances to compel early review at a resident's request. For example, early completion of a program or a modification of sentence would be a relevant change. HSS 302.18 (3). Such requests are typically granted.

The purposes of the review are stated in HSS 302.18 (2) and are self-explanatory. See note to HSS 302.02. Sometimes, effective review may require additional testing. If so, the PRC should refer the resident to an appropriate testing site.

HSS 302.18 (4) and (5) require every institution and camp to have a program review committee. Because it is essential that the review be meaningful and that there be experienced decision makers, it is required that members of the PRC be permanent and hold relatively high rank. The members of the PRC in the camp hold lower rank, only because staff there are limited. Because there is a single social services supervisor for the camp system, that member typically votes by telephone on PRC decisions and recommendations.

To insure permanence, HSS 302.18 (6) limits the use of alternates. Each PRC member may designate only one permanent alternate who should sit only in unusual circumstances. The phrase "consistent with available staff" is used to permit small institutions to vary from the single alternate requirement. This is necessary to avoid having the same staff member sit on the adjustment committee and PRC, when the case was referred to PRC by the adjustment committee. It is also necessary to avoid requiring a resident's social worker from sitting on the PRC at small institutions.

Note: HSS 302.19. HSS 302.19 provides the procedure for the review and change of classification and program assignment. The division's classification chief has final decision making authority for all security classification changes and transfers. HSS 302.19 (4). The PRC has this authority for program assignments. HSS 302.19 (5). Inmates may appeal the PRC's decision as to program assignment to the superintendent. HSS 302.19 (9).

Typically, the classification chief's decision is made on the recommendation of the PRC. If a recommenation for transfer or change of security classification is not unanimous, all recommendations are considered.

If there is not unanimity as to the change in security classification, transfer or approval for work or study release, the A&E director and the superintendent or designee have the authority to make a recommendation as to the security classification and placement in an institution. If they cannot agree, the issue goes to the classification chief without a formal recommendation but with comments. If there is a tie vote as to program assignment, the superintendent or designee has the authority to make that decision.

The same principles discussed in the note to HSS 302.16 dictate the criteria for program review. There is no need to repeat them here. The resident's social worker must inteview the resident and make a recommendation. This is desirable to ensure continued review of the resident's status by the social worker.

The resident has the option to appear before the PRC. In the camp system, the distance of the resident from the PRC may require that the personal appearance be before a single member of the committee. This should occur as infrequently as possible. The resident must appear before a change in security classification or a transfer may be made. HSS 302.19 (1).

The procedure for decision making at the end of the A&E process and periodically thereafter by the progam review committee may seem cumbersome. However, the assignments made at these stages have a substantial impact upon the quality of life of a resident and upon parole release decisions. For example, a person at a minimum security institution is accorded more freedom than a person at a maximum security institution. Successful adjustment at a camp might influence the parole release decision. So correctional authorities and residents have a substantial interest in ensuring that classification decisions are made in a careful way, by experienced people after a thorough development and review of the facts.

With roughly 5000 inmates in the Wisconsin correctional system, review of each inmate every 6 months means that there are ten thousand reviews per year, exclusive of reviews due to changed circumstances. This large volume of work means that responsibility must be delegated at each institution. Yet uniformity is also desirable. For these reasons, decision making is structured to include staff at the institutional level while leaving final authority with the division's classification chief.

Decision making throughout these rules is structured to ensure fairness and thoroughness.

Note: HSS 302.20. Typically, inter-institution transfers will be made routinely as part of the A&E and program review process. This is stated in HSS 302.20 (1). The transfer decision is part of the A&E and PRC process.

While it is true that there is wide discretion vested in correctional authorities to transfer residents, in Wisconsin this may only be done consistent with the overall review of a resident's status. *Meachum V. Fano,* 427 U.S. 215 (1976); *Montayne V. Haymes,* 427 U.S. 236 (1976).

When a resident is alleged to have violated a disciplinary rule and this may require review of his security classification and program assignment, the procedure set forth in HSS 302.20 must be followed. It is designed to insure that there is a factual basis for the transfer and the finding of a disciplinary infraction, to give the resident an adequate opportunity to be heard on the issue of whether an infraction occurred and whether transfer is desirable, and to insure that all facts relevant to program assignment and security classification are considered. Thus, a disciplinary infraction is only one factor to be considered in reviewing these matters. This substantially conforms to the suggestions of the *American Bar Association,* supra and *Krantz, et. al., Model Rules and Regulations On Prisoners' Rights And Responsibilities.*

Several provisions of the rule require comment. Subsection (4) permits segregation of the resident pending review by the PRC. This is apart from any segregation which is imposed for the violation. Three working days is adequate time to provide for a decision as to program and security classification.

Sub. (5) requires the disciplinary hearing to be held within 3 working days of service of the report of the infraction, with the permission of the resident, if he or she is in a county jail. Such confinement is necessary because camps are unable to segregate residents due to a lack of facilities. Rather than require transfer to a more secure institution, it is thought more desirable to permit the resident to reside in a couty jail until the outcome of the disciplinary hearing and program review. This permits the resident to have the hearing and review in a place where he or she can call on witnesses and a staff advocate familiar with the setting in which the infraction is alleged to have occurred, if they are necessary. Less hardship is visited on the resident by having the resident remain close by if a transfer does not ultimately occur.

If 3 working days is insufficient time for the resident to prepare for the hearing, the resident may be transferred to a more secure institution. This is because county jails are usually unwilling to hold residents for more than 3 working days. If a particular jail is willing to hold a person for longer than 3 working days, transfer should be unnecessary.

Subsections (6) and (7) provide for emergency transfers. If a resident's physical or mental health requires transfer or if there is a major security problem, it is necessary to have the authority for emergency transfers. A review of the resident's program assignment and security classification is required within 7 days of such a transfer. A "security emergency" is defined in s.HSS 306.23 (1).

Note: HSS 302.21. 1983 Wisconsin Act 528 applies only to inmates who were sentenced for crimes committed on or after June 1, 1984. Inmates who committed crimes before June 1, 1984, have 60 days from the time they are received at a prison to petition the department to have 1983 Wisconsin Act 528 apply to them. Since the act affects computation of a resident's mandatory release date, this rule differentiates, where appropriate, between those residents who are covered by the act and those who are not.

HSS 302.21 (1) requires the computation of 3 critical dates in an inmate's life and notice to the inmate of them. They are the parole eligibility date, the projected mandatory release date and the projected discharge date. The latter 2 are "projected" because they may be altered.

Newly sentenced offenders are distinguished from others under HSS 302.21 (1). Because registrars have the necessary information to determine the dates for those recently sentenced, they can provide the information within 10 days.

An inmate not covered by 1983 Wisconsin Act 528 whose discretionary parole or mandatory release parole has been revoked must await a determination as to how much good time is forfeited before the dates can be set. An inmate covered by 1983 Wisconsin Act 528 whose discretionary parole or mandatory release parole has been revoked must await a determination of how much of the remainder of his or her sentence must be served. An inmate whose probation was revoked but whose sentence was withheld must await sentencing before the dates are determined. After sentencing, they are informed of the dates.

For inmates who committed crimes before November 3, 1983, and who therefore are not covered by 1983 Wisconsin Act 64, parole eligibility, except for crimes with a mandatory eligibility date, is one-half the minimum sentence. The minimum sentence is one year for felonies. Sections 57.06 and 973.01, Stats.; *Edelman v. State,* 62 Wis. 2d 613, 215 N.W.2d 386 (1973). For inmates who committed crimes on or after November 3, 1983, and who therefore are cov-