

Chapter DOC 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.

Note: Chapter HSS 303 was renumbered chapter DOC 303 and revised under s. 13.93 (2m) (b) 1., 2., 4. to 7., Stats., Register, April, 1990, No. 412.

Note: Sections DOC 303.01 to 303.74, 303.78 and 303.82 to 303.87 as they existed on December 31, 2000 were repealed and new sections DOC 303.01 to 303.74, 303.78 and 303.82 to 303.87 were created, Register, December, 2000, No. 540, effective January 1, 2001.

Subchapter I — General Provisions

DOC 303.01 Applicability and purposes. (1) Pursuant to authority vested in the department of corrections by s. 227.11 (2), Stats., the department adopts this chapter which applies to the department of corrections and to all inmates in its legal custody pursuant to a judgment of conviction or court order regardless of the inmate's physical custody. The department may discipline inmates in its legal custody. This subsection does not preclude another jurisdiction that has physical custody of the inmate from enforcing its rules related to inmate behavior. The department may not discipline an inmate for an incident for which the inmate was disciplined in another jurisdiction. This section implements ss. 302.04, 302.07, 302.08 and 302.11 (2), Stats. The rules governing inmate conduct under this chapter describe the

conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) "Discipline" includes the sanctions described in s. DOC 303.68.

(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.
- (g) Deterrence of misbehavior.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.02 Definitions. In this chapter:

(1) "Adjustment committee" means adjustment committee or hearing officer.

(2) "Administrator" means an administrator of a division of the department of corrections, or designee.

(3) "Authorized" means any of the following:

- (a) According to departmental rules.
- (b) According to policies and procedures.
- (c) According to the direction of a staff member.
- (d) According to established institution custom.
- (e) With permission from the appropriate staff member.

(4) "Bodily injury" means injury or physical pain, illness or any impairment of physical condition.

(5) "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.

(6) "Communicate" means any of the following:

- (a) To express verbally.
- (b) To express in writing.
- (c) To express by means of a gesture or other action.

(7) "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 department presumes that the following persons are 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.
- (c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(8) "Department" means the department of corrections.

(9) "Division" means the division of adult institutions, department of corrections.

(10) "Harass" means to annoy or irritate persistently.

(11) "Inmate gang" means a group of inmates which is not sanctioned by the warden under s. DOC 309.22.

Note: There is no s. DOC 309.22.

(12) "Institution" means a correctional institution, correctional facility, or center or a prison defined under intensive sanctions in ch. DOC 333 or a facility that the department contracts with for services to inmates.

(13) "Intimate parts" means breast, penis, buttocks, scrotum, or vaginal area or any other parts of the body that may result in sexual arousal or gratification for either party.

(14) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions. Tobacco is not included.

(15) "Negotiable instrument" is a writing, signed by the maker or drawer, which contains a promise to pay which is payable on demand or at a specified time, and which is payable to the order of the bearer.

(16) "Possession" means on one's person, in one's quarters, in one's locker or under one's physical control. The department considers possession an activity under s. DOC 303.20 (3).

(17) "Public" means outside of the inmate complaint review system.

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

(19) "Sexual contact" means any of the following:

(a) Kissing except for that allowed under policy and procedures of an institution.

(b) Handholding except for that allowed under policy and procedures of an institution.

(c) Touching by the intimate parts of one person to any part of another person whether clothed or unclothed.

(d) Any touching by any part of one person or with any object or device of the intimate parts of another person or any other parts of the body that may result in sexual arousal or gratification for either party except as provided for in s. DOC 309.11 (2).

(20) "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.

(21) "Staff" means any state employee, an employee of a contract facility, an independent contractor, or a volunteer of the department or institution.

(22) "TLU" means temporary lock up which is a nonpunitive segregated status allowing an inmate to be removed from the general population pending further administrative action.

(23) "Warden" means the warden at an institution, or the warden's designee.

(24) "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.
- (b) Because the actor purported to be acting under legal authority.
- (c) Because the victim did not understand the nature of the thing to which the victim consented.

(25) "Working days" means all days except Saturdays, Sundays, and state legal holidays.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.03 Lesser included offenses. (1) If one offense is a lesser included offense of another, then if the reporting staff member charges an inmate with the greater offense, the staff member has charged the inmate with the lesser included offense.

(2) The adjustment committee may find an inmate guilty of a lesser included offense of the offense charged, even if the reporting staff member did not expressly charge the inmate with the lesser included offense.

(3) The adjustment committee may not find an inmate guilty of 2 offenses or punish the inmate for 2 offenses based on a single incident if one offense is a lesser included offense of the other.

(4) The adjustment committee may not find an offense a lesser included offense of another unless it is so listed in the following table:

Table DOC 303.03

Greater Offense	Lesser Included Offense
303.07 Aiding and abetting	303.06 Attempt 303.05 Conspiracy
303.12 Battery	303.17 Fighting 303.28 Disruptive conduct
303.13 Sexual assault—intercourse	303.14 Sexual assault—contact 303.15 Sexual conduct
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303.17 Fighting	303.28 Disruptive conduct
303.18 Inciting a riot	303.19 Participating in a riot 303.20 Group resistance and petitions 303.28 Disruptive conduct
303.19 Participating in a riot	303.20 Group resistance and petitions 303.28 Disruptive conduct
303.22 Escape	303.51 Leaving assigned area
303.34 Theft	303.40 Unauthorized transfer of property 303.47 Possession of contraband—miscellaneous
303.37 Arson	303.38 Causing an explosion or fire 303.39 Creating a hazard 303.47 Possession of contraband—miscellaneous
303.38 Causing an explosion or fire	303.39 Creating a hazard
303.42 Possession of money	303.47 Possession of contraband—miscellaneous
303.43 Possession of intoxicants	303.40 Unauthorized transfer of property 303.47 Possession of contraband—miscellaneous
303.44 Possession of drug paraphernalia	303.47 Possession of contraband—miscellaneous
303.45 Possession, manufacture, and alteration of weapons	303.47 Possession of contraband— miscellaneous
303.57 Misuse of prescription medicine	303.40 Unauthorized transfer of property
Any substantive offense	303.05 Conspiracy 303.06 Attempt 303.07 Aiding and abetting

(5) After each note to a substantive offense under this chapter, all offenses which are lesser included offenses of the offense are listed, except that aiding and abetting, attempt, and conspiracy are not listed. They are always lesser included offenses of the completed offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.05 Conspiracy. (1) If 2 or more inmates or others plan or agree to do acts which are prohibited under this chapter, all inmates may be guilty of an offense.

(2) An inmates who plans or agrees with individuals to do acts which are forbidden under this chapter is guilty of an offense.

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

(4) The number used for conspiracies in recordkeeping and conduct reports shall be the offense's number plus the suffix C.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.06 Attempt. (1) An inmate is guilty of attempt to violate a rule if either of the following are true:

(a) The inmate planned to do something which would have been a rule violation if actually committed.

(b) The inmate did acts which showed a plan to violate the rule when the acts occurred.

(2) The number used for attempts in recordkeeping and conduct reports shall be the offense's number plus the suffix A.

Note: Battery is DOC 303.12. Attempted battery is DOC 303.12-A.

(3) The penalty for an attempt may be the same as for the completed offense. See Table DOC 303.84.

(4) Staff may charge an inmate with both a substantive offense and attempt to commit that offense, based on the same incident, but may find an inmate guilty of only one.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.07 Aiding and abetting. (1) An inmate who does any of the following is guilty of aiding and abetting a rule violation:

(a) Tells or hires another to commit a rule violation.

(b) Assists another in planning or preparing for a rule violation.

(c) Assists another during commission of an offense, whether or not the assistance was planned in advance.

(d) Assists another to prevent discovery of a violation or the identity of the person who committed it.

(2) The institution shall use the offense's number plus the suffix B for aiding and abetting in record keeping and conduct reports.

Note: Battery is DOC 303.12. Aiding and abetting a battery is DOC 303.12-B.

(3) The reporting staff member may charge an inmate with both a substantive offense and aiding and abetting that offense, based on the same incident, but the adjustment committee may find the inmate guilty of only one offense.

(4) The reporting staff member may charge and the adjustment committee may find an inmate guilty of aiding and abetting even if no one is charged or found guilty of committing the offense. The principal should, if possible, be identified when the inmate is charged.

(5) The adjustment committee may impose the same penalty for aiding and abetting as for the substantive offense. See Table DOC 303.84.

(6) The adjustment committee need not base the penalty given to an inmate who aids and abets in any way on the penalty, if any, given to the inmate who actually committed the offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.08 Institutional policies and procedures. (1) As provided under this chapter, institutions may make specific policies and procedures and provide that if inmates violate them, they may be disciplined.

(2) Each institution shall maintain at least one official method and location for notifying inmates about notices of general applicability.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.09 Manual of disciplinary rules. (1) The department shall print all of the sections under this chapter, along with their notes, in pamphlet or other available form, and distribute it to inmates when they enter the prison system.

(2) Each institution shall make copies of this pamphlet and any published changes available to every inmate.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.10 Seizure and disposition of contraband. (1) DEFINITION. "Contraband" means any of the following:

(a) Any item which inmates may not possess under this chapter or is not authorized by the institution.

(b) Any item which is not state property and is on the institution grounds but not in the possession of any person.

(c) Any allowable item which comes into an inmate's possession through unauthorized channels or which is not on the inmate's property list and is required to be.

(d) Stolen property.

(e) Property that is damaged or altered.

(f) Anything used as evidence for a disciplinary hearing deemed contraband by the adjustment committee or hearing officer.

(2) SEIZURE. Any staff member who believes that an item is contraband may seize the item. The institution shall return property which is not contraband to the owner or dispose of the property in accordance with division Internal Management Procedures.

(3) DISPOSITION. The hearing officer, adjustment committee, or security director shall dispose of items in accordance with institution policies and procedures. If the inmate files a grievance regarding the seizure or disposition of the property, the institution shall retain property until the warden makes a final decision on the grievance.

(4) INMATE REPORTING. Inmates shall immediately report to staff any property item that becomes damaged.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.11 Temporary lockup: use. (1) A security supervisor, security director, or warden may place an inmate in temporary lockup or TLU.

(2) If the security supervisor places an inmate in temporary lockup, the security director shall review this action within 2 working days. Before this review and the review provided for in sub. (3), the institution shall provide the inmate with the reason for confinement in TLU and with an opportunity to respond, either orally or in writing. If upon review, the security director determines that TLU is not appropriate, the institution shall release the inmate from TLU immediately.

(3) The institution shall not allow any inmate to remain in TLU more than 21 days, except that the warden may extend this period for up to 21 additional days. The administrator may extend an inmate's time in TLU for a second time. The security director shall review the status of each inmate in TLU every 7 days to determine whether TLU continues to be appropriate.

(4) The institution may place an inmate in TLU and keep the inmate there if the decision-maker believes that one or more of the following is present:

(a) If the inmate remains in the general population, the inmate may impede a pending investigation or disciplinary action.

(b) If the inmate remains in the general population, it may be disruptive to the operation of the institution.

(c) If the inmate remains in the general population, it may create a danger to the physical safety of the inmate or another.

(d) If the inmate remains in the general population, it may create a danger that the inmate will try to escape from the institution.

(5) Institution staff shall document the reasons for TLU placement and shall notify the inmate of the reasons.

(6) The institution shall continue to compensate an inmate who had been earning institution compensation at the rate earned in the inmate's previous status, except that the institution shall compensate an inmate employed by prison industries in accordance with s. DOC 313.11. If 1983 Wis. Act 528 does not apply to the inmate, the inmate shall continue to earn extra good time credit. If the reporting staff member charges an inmate in a private sector/prison industry enhancement certification program with one or more offenses under this chapter, and the adjustment committee finds the inmate not guilty of all charges, the institution in which the inmate is confined shall pay the inmate at the prison's maximum pay rate for all hours absent from work due to the disciplinary process including temporary lock-up time. If the adjustment committee finds the inmate in a private sector/prison industry enhancement certification program guilty, the department shall not pay the inmate any pay for hours absent due to the disciplinary process.

(7) TLU time shall not be considered time served for disciplinary penalty purposes.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter II — Offenses Against Bodily Security

DOC 303.12 Battery. (1) Any inmate who causes bodily injury or harm to another is guilty of an offense.

(2) Any inmate who spits or throws or uses body fluids or waste or any substance on another is guilty of an offense.

(3) Any inmate who causes the death of another is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.13 Sexual assault—intercourse. Any inmate who has sexual intercourse, as defined in s. DOC 303.02 (21), with another person without that person's consent is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.14 Sexual assault—contact. Any inmate who has sexual contact, as defined in s. DOC 303.02 (20), with another person without that person's consent is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

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

(a) Has sexual intercourse, as defined in s. DOC 303.02 (21), with another person.

(b) Has sexual contact, as defined in s. DOC 303.02 (20), with another person.

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

(d) Exposes the inmate's own intimate parts to another person for the purpose of sexual arousal or gratification.

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

(f) Clutches, fondles, or touches the inmate's own intimate parts, whether clothed or unclothed, while observable by others.

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

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

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

(1) Communicates to another a plan to physically harm, harass or intimidate that person or another.

(2) Communicates a plan to cause damage to or loss of that person's or another person's property.

(3) Communicates a plan to make an accusation he or she knows is false.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.17 Fighting. Any inmate who 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.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter III — Offenses Against Institutional Security

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

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.19 Participating in a riot. Any inmate who participates in a riot, as defined under s. DOC 303.18, or who remains in a group where some members of the group are participating in a riot, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.20 Group resistance and petitions. (1) Any inmate who participates in any group activity which is not approved under s. DOC 309.365 or is contrary to provisions of this chapter is guilty of an offense.

(2) Any inmate who 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 warden under s. DOC 309.365 or legitimate activities required to submit a request under s. DOC 309.365 (3) or (4).

(d) Group petitions to government bodies, legislators, courts or newspapers.

(3) Any inmate who participates in any activity with an inmate gang, as defined in s. DOC 303.02 (11), or possesses any gang literature, creed, symbols or symbolisms is guilty of an offense. An inmate's possession of gang literature, creed symbols or symbolism is an act which shows that the inmate violates the rule. Institution staff may determine on a case by case basis what constitutes an unsanctioned group activity.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01; corrections in (1) and (2) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543.

DOC 303.21 Cruelty to animals. Any inmate who causes bodily injury to an animal or the unauthorized death of an animal is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.22 Escape. (1) An inmate who does or attempts to do any of the following without permission is guilty of an offense:

(a) Leaves an institution.

(b) Leaves the custody of a staff member while outside of the institution.

(c) Does not follow the inmate's assigned schedule.

(d) Leaves the authorized area to which the inmate is assigned.

(2) Any inmate who makes or possesses any materials for use in escape is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.23 Disguising identity. Any inmate who conceals or disguises the inmate's usual appearance to interfere with or prevent identification is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter IV — Offenses Against Order

DOC 303.24 Disobeying orders. (1) Any inmate who disobeys a verbal or written directive or order from any staff member, directed to the inmate or to a group of which the inmate is or was a member is guilty of an offense.

(2) An inmate is guilty of an offense if the inmate commits an act which violates an order, whether the inmate knew or should have known that the order existed.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.25 Disrespect. Any inmate who shows disrespect to any person is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes, but is not limited to, derogatory or profane writing, remarks or gestures, name-calling, yelling, and other acts made outside the formal complaint process which are expressions of disrespect for authority.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.26 Soliciting staff. An inmate who does any of the following is guilty of an offense:

(1) Offers or gives anything to a staff member or acquaintance or family of a staff member. This subsection does not apply to anything authorized by these rules or institution policy and procedure.

(2) Requests or accepts anything from a staff member or acquaintance or family of a staff member. This subsection does not apply to anything authorized by these rules or institution policy and procedure.

(3) Buys anything from, or sells anything to, a staff member or acquaintance or family of a staff member. This subsection does not apply to items for sale in accordance with institutional procedures.

(4) Requests a staff member or acquaintance or family of a staff member to purchase anything for the inmate. The warden may allow this by special authorization.

(5) Requests another person to give anything to a staff member, or agrees with another person to give anything to a staff member or acquaintance or family of a staff member.

(6) Conveys affection to, or about staff verbally or in writing whether personally written or commercially written or by drawings; or asks for addresses, phone numbers, favors or requests special attention of a staff member or acquaintance or family of a staff member.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.27 Lying. Any inmate who makes a false written or oral statement which may affect the integrity, safety or security of the institution is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.271 Lying about staff. Any inmate who makes a false written or oral statement about a staff member which may affect the integrity, safety or security of the institution or staff, and makes that false statement outside the complaint review system is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.28 Disruptive conduct. Any inmate who engages in, causes or provokes disruptive conduct is guilty of an

offense. "Disruptive conduct" includes physically resisting a staff member, or overt behavior which is loud, offensive or vulgar.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.30 Unauthorized forms of communication. Any inmate who communicates with another person by a method not authorized by the institution is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.31 False names and titles. Any inmate who uses any of the following is guilty of an offense:

(1) A title for the inmate other than Mr., Ms., Miss, or Mrs., as appropriate.

(2) A name other than the name by which the inmate was committed to the department unless the name was legally changed.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.32 Enterprises and fraud. (1) Any inmate who engages in a business or enterprise, whether or not for profit, or who sells anything except as specifically allowed under other sections is guilty of an offense, except for the following situation:

(a) An inmate who was owner or part owner of any business or enterprise prior to sentencing may communicate with the inmate's manager or partner concerning the management of the enterprise or business.

(b) An inmate may write and seek publication of works in accordance with these rules and institutional policies and procedures.

(2) Any inmate who offers to buy or orders any item with the intention of not paying for it or buys it on credit is guilty of an offense.

(3) Any inmate who misrepresents facts to another to obtain items of value is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter V — Offenses Against Property

DOC 303.34 Theft. Any inmate who steals the property of another person or of the state is guilty of an offense. "Steals" means obtains or retains possession of or title to the property of another, without consent of the owner.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.35 Damage or alteration of property. (1) Any inmate who damages, destroys or alters any property of the state or of another person without authorization is guilty of an offense.

(2) Any inmate who damages, destroys, alters, or disposes of the inmate's own property without the permission of the staff of the inmate's own living unit is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.36 Misuse of state or federal property. Any inmate who uses any government property in any way that is not authorized is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.37 Arson. Any inmate who ignites a fire and thereby creates a risk to people or property, or both, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.38 Causing an explosion or fire. Any inmate who causes an explosion or starts a fire is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.39 Creating a hazard. Any inmate who creates a hazard by fire, explosion or other means, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.40 Unauthorized transfer of property. Any inmate who gives, receives, sells, buys, exchanges, barter, lends,

borrows or takes any property from another inmate without authorization is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.41 Counterfeiting and forgery. Any inmate who makes, uses, possesses, or alters any document so it appears that the document was made or signed by a different person; or that the document was signed at a different time or with different provisions is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter VI — Contraband Offenses

DOC 303.42 Possession of money. Except as specifically authorized, any inmate who has in the inmate's possession any of the following is guilty of an offense:

- (1) Coins or paper money.
- (2) A check.
- (3) A money order.
- (4) A savings bond.
- (5) Any other negotiable instrument.
- (6) A credit card.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.43 Possession of intoxicants. Except as specifically authorized, any inmate who has in the inmate's possession any intoxicating substance is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.44 Possession of drug paraphernalia. Any inmate who possesses any device used in the manufacture of an intoxicating substance or any device used to take an intoxicating substance into the body, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.45 Possession, manufacture and alteration of weapons. (1) Any inmate who possesses any item to be used as a weapon, is guilty of an offense.

(2) Any inmate who makes or alters any item making it suitable for use as a weapon is guilty of an offense.

(3) Any inmate who possesses an item which is designed to be used as a weapon is guilty of an offense.

(4) Any inmate who possesses an item which could be used in the manufacture of a weapon is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.47 Possession of contraband—miscellaneous. (1) Each institution shall maintain and make available to inmates a list of all types of property which inmates are allowed to possess in accordance with department policies and procedures relating to personal property.

(2) Any inmate who possess any of the following is guilty of an offense:

- (a) Items of a type which are not allowed.
- (b) Allowable items in excess of the quantity allowed.
- (c) Allowable items which are required to be listed but are not listed on the inmate's property list.
- (d) Items which do not belong to the inmate, except state property issued to the inmate for the inmate's use, such as sheets and uniforms.

(e) Personal written information relating to any staff of the department, including a staff's or staff's immediate family home address or telephone number.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.48 Unauthorized use of the mail. (1) Any inmate who uses a postal service to communicate with a person who has been declared a prohibited correspondent of that inmate in accordance with ch. DOC 309 is guilty of an offense.

(2) Any inmate who sends through the mail anything which, according to this chapter, the inmate may not have in the inmate's possession, is guilty of an offense.

(3) Any inmate who does any of the following is guilty of an offense:

(a) Makes or alters any postage stamp or alters or erases a postal cancellation mark or possesses any postage stamp that has been altered.

(b) Mails or attempts to mail any letter or parcel on which is affixed a canceled postage stamp.

(c) Uses a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.

(4) Any inmate who attempts to circumvent the rules under s. DOC 309.04 related to mail by sending a second envelope or letter within an envelope addressed to a destination other than the address on the outside envelope, is guilty of an offense.

(5) Any inmate who sends food samples through the mail is guilty of an offense.

(6) Any inmate who sends body fluids or body wastes, including pubic hair, through the mail is guilty of an offense.

(7) Any inmate who sends correspondence which harms, harasses or intimidates any person is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter VII — Movement Offenses

DOC 303.49 Punctuality and attendance. Inmates shall attend and be on time for all activities for which they are scheduled. Any inmate who violates this section is guilty of an offense, unless one of the following exist:

(1) The inmate is sick and reports this fact as required by institution policies and procedures.

(2) The inmate has a valid pass to be in some other location.

(3) The inmate is authorized to skip the event.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.50 Loitering. Inmates shall walk at a normal pace, following a normal route, and without delay when going to and from all activities and their quarters. Any inmate who violates this section is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.51 Leaving assigned area. Any inmate who leaves a room or area where the inmate is required to be is guilty of an offense, unless one of the following exists:

(1) The inmate gets permission to leave from a staff member supervising the activity.

(2) The inmate has a valid pass to go somewhere else at that time.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.511 Being in an unassigned area. Any inmate who, without a staff member's permission, enters or remains in a room or area other than the one to which the inmate is assigned is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.52 Entry of another inmate's quarters. Any inmate who enters the quarters of any other inmate or permits another to enter their own quarters, is guilty of an offense, unless such entry is the result of one of the following:

(1) (a) Part of a work assignment and under the supervision of a staff member.

(b) Allowed according to institution policies and procedures.

(2) Reaching, leaning, or putting any object or part of the body into another inmate's quarters is included in "entering."

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter VIII — Offenses Against Safety And Health

DOC 303.54 Improper storage. The inmate shall keep toiletries, hobby materials, medications, cleaning supplies and certain other items in the original containers, unless otherwise specified, and in the authorized place. Any inmate who stores any of these items in a different container or in an unauthorized place is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.55 Dirty quarters. Any inmate who does not comply with institution procedures for orderly and clean quarters is guilty of an offense, provided the inmate had knowledge of the condition of his or her quarters and had the opportunity to clean or rearrange it.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.56 Poor grooming. (1) Any inmate whose personal cleanliness or grooming is a health hazard to the inmate or others or is offensive to others, and who has knowledge of this condition and the opportunity to correct it, but does not, is guilty of an offense.

(2) Any inmate who fails to shower at least once a week, unless the inmate has a medical excuse, is guilty of an offense.

(3) The institution may require inmates performing work assignments which may be hazardous to maintain suitably cut hair, or to wear protective equipment. Any inmate who fails to wear such required equipment or who fails to maintain suitably cut hair is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.57 Misuse of prescription medication. Any inmate who does any of the following is guilty of an offense:

(1) Takes more of a prescription medication than was prescribed.

(2) Takes a prescription medication more often than was prescribed.

(3) Takes a prescription medication which was not prescribed for the inmate.

(4) Possesses or takes any prescription medication except at the time and place where the inmate is supposed to take it.

(5) Improperly disposes of any prescription medication. The inmate shall return unused medication to staff.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.58 Disfigurement. Any inmate who disfigures, cuts, pierces, removes, mutilates, discolors or tattoos any part of the inmate's body or the body of another, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter IX — Miscellaneous Offenses

DOC 303.59 Use of intoxicants. (1) Any inmate who takes into the inmate's body any intoxicating substance, except prescription medication in accordance with the prescription, is guilty of an offense.

(2) (a) When a test on an inmate's body specimen or a physical examination of an inmate indicates use of an intoxicating substance, the inmate is guilty of an offense.

(b) The institution shall confirm results of a test conducted under par. (a) by a second test if the inmate requests a confirmatory test immediately after the institution informs the inmate of a positive test result.

(c) Any confirmatory test shall be conducted in accordance with department procedures.

(d) An inmate who requests a confirmatory test shall pay for the cost of the test. If the inmate does not have sufficient funds to pay for the cost of the test, the institution in which the inmate is

confined shall loan the inmate the necessary funds. If the confirmatory test does not validate the results of the first test, the institution shall refund any money the inmate contributed to the cost of the confirmatory test.

(3) An inmate who refuses to provide a body specimen, submit to a physical examination, or a breathalyzer test, is guilty of the offense of use of intoxicants.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.60 Gambling. Any inmate who is involved in gambling, gambles or possesses any gambling material is guilty of an offense. "Gambles" includes betting money or anything of value on the outcome of all or any part of any game of skill or chance or an athletic contest or on the outcome of any event, or participation in any lottery or sweepstakes.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.61 Refusal to work or attend school. Any inmate who refuses to perform a work assignment or attend school, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.62 Inadequate work or study performance. Any inmate whose work fails to meet the standards set for performance on a job or school program and who has the ability to meet those standards, is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.63 Violations of institution policies and procedures. Each institution may make specific substantive disciplinary policies and procedures. Any inmate who violates any of these specific disciplinary policies and procedures is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.631 Violating conditions of leave. Any inmate who violates conditions of leave imposed under s. DOC 326.10 is guilty of an offense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

Subchapter X — Disciplinary Procedure And Penalties

DOC 303.64 Disciplinary violations—possible dispositions. The institution may deal with a violation of ss. DOC 303.12 to 303.63 in the following ways:

(1) If a staff member determines that a conduct report is not required, the staff member may counsel and warn the inmate under s. DOC 303.65.

(2) The staff member may dispose of a minor violation summarily under s. DOC 303.74.

(3) Staff may refer any violation to the security director in writing by a conduct report as provided under s. DOC 303.66. The security director may deal with these violations as follows:

(a) The security director may dismiss, alter or correct the report as provided under s. DOC 303.67.

(b) If the violation is a minor one, the security director shall refer the matter to a hearing officer to be disposed of in accordance with s. DOC 303.75.

(c) If the violation is a major one, the security director shall refer the matter to a hearing officer to be disposed of in accordance with ss. DOC 303.76 to 303.84.

(4) The security director may refer violations of the criminal law to law enforcement authorities for further investigation and prosecution. Whether or not prosecution is started, the institution may handle the incident as a disciplinary offense.

(5) If the adjustment committee finds an inmate guilty, the adjustment committee may refer the inmate to program review to review the inmate's program assignment and custody level.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.65 Offenses that do not require a conduct report. (1) The department does not require staff members to make official conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, staff may merely inform the inmate that the inmate's behavior is against the rules and discuss the inmate's behavior and give a warning if:

- (a) The inmate is unfamiliar with the rule.
- (b) The inmate has not violated the same or a closely related rule within the previous year (whether or not a conduct report was made).
- (c) The inmate is unlikely to repeat the offense if warned and counseled.
- (d) Although the inmate's acts were a technical violation of a rule, the purposes of this chapter would not be served by writing a conduct report in the particular situation.

(2) The staff member shall write a conduct report if an inmate commits a major offense.

(3) The department does not require staff to make official reports of dispositions made in accordance with sub. (1).

(4) The security director may strike a charge if the security director believes the charge is inappropriate, in accordance with s. DOC 303.67. The hearing officer, adjustment committee or warden may not review the security director's decision to strike a charge.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.66 Conduct report. (1) Except under the conditions described in s. DOC 303.65, any staff member who observes or finds out about a rule violation shall do any investigation necessary to assure that a violation occurred, and if the staff member believes a violation has occurred, shall write a conduct report. If more than one staff member knows of the same incident, only one of them shall write a conduct report.

(2) In the conduct report, the staff member shall describe the facts in detail and what other staff members reported, and list the sections of ch. DOC 303 which were allegedly violated, even if they overlap.

(3) The institution shall issue only one conduct report for each act or transaction that is alleged to violate these sections. If one act or transaction is a violation of more than one section, the institution shall only issue one conduct report.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.67 Review by security office. (1) Within 2 working days of the date of issuance, the security director shall review all conduct reports.

(2) The security director shall review and approve conduct reports which resulted in summary disposition prior to entry in any of the inmate's records.

(3) The security director shall review conduct reports for the appropriateness of the charge.

(a) The security director may dismiss a conduct report.

(b) The security director shall strike any section number if the statement of facts could not support a finding of guilty of violating that section.

(c) The security director may add any section number if the statement of facts could support a finding of guilty of violating that section and the addition is appropriate.

(d) The security director may refer a conduct report for further investigation.

(4) The security director shall divide all remaining conduct reports into major offenses, which include those with both major and minor offenses, in accordance with ss. DOC 303.76 to 303.84, and shall dispose of minor offenses in accordance with s. DOC 303.75.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.68 Major and minor penalties and offenses.

(1) (a) A "major penalty" is adjustment segregation as defined in ss. DOC 303.69 and 303.84, program segregation as defined in ss. DOC 303.70 and 303.84, loss of earned good time or extension of mandatory release date under s. DOC 303.84, disciplinary separation under s. 303.70, room confinement of 16 to 30 days, loss of recreation privileges for over 60 days for inmates in the general population, loss of recreation privileges for over 8 days for inmates in segregation, building confinement for over 30 days, and loss of specific privileges for over 60 days. The adjustment committee may impose a minor penalty for a violation where a major penalty could be imposed. The adjustment committee may impose restitution in addition to or in lieu of any major penalty and may impose any combination of penalties.

(b) A "minor penalty" is a reprimand, loss of recreation privileges for 1 to 60 days for an inmate in general population, loss of recreation privileges for 1 to 8 days for inmates in segregation, building confinement for 1 to 30 days, room confinement for 1 to 15 days, loss of a specific privilege for 1 to 60 days, extra duty for up to 80 hours, assignments to secure work crews under ch. 304, and restitution in accordance with ss. DOC 303.72 and 303.84. The adjustment committee may impose restitution in addition to or in lieu of any other minor penalty and may impose any combination of penalties.

(c) A "major offense" is a violation of a disciplinary rule for which a major penalty may be imposed if the accused inmate is found guilty.

(d) A "minor offense" is any violation of a disciplinary rule which is not a major offense under sub. (3) or (5) or which the security director has not classified as a major offense.

(2) Except for an offense listed under sub. (3) or covered by sub. (5), an offense is neither a major nor a minor offense until the security director classifies it as major or minor.

(3) Any violation of the following sections is a major offense:

Section	Title
DOC 303.12	Battery
DOC 303.13	Sexual assault—intercourse
DOC 303.14	Sexual assault—contact
DOC 303.18	Inciting a riot
DOC 303.19	Participating in a riot
DOC 303.21	Cruelty to animals
DOC 303.22	Escape
DOC 303.23	Disguising identity
DOC 303.37	Arson
DOC 303.41	Counterfeiting and forgery
DOC 303.43	Possession of Intoxicant
DOC 303.44	Possession of Drug Paraphernalia
DOC 303.45	Possession, manufacture and alteration of weapons
DOC 303.57	Misuse of prescription medication
DOC 303.59	Use of intoxicants

(4) The institution may handle an alleged violation of any section other than ones listed in sub. (3) as either a major or minor offense. The security director shall decide whether it shall be treated as a major or minor offense, if the offense has not been disposed of summarily in accordance with s. DOC 303.76. In deciding whether an alleged violation should be treated as a major or minor offense, the security director shall consider the following

criteria and shall indicate in the record of disciplinary action the reason for the decision based on these criteria:

(a) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently.

(b) Whether the inmate has recently been warned about the same or similar conduct.

(c) Whether the alleged violation created a risk of serious disruption at the institution or in the community.

(d) Whether the alleged violation created a risk of serious injury to another person.

(e) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft.

(5) The adjustment committee shall handle any conduct report containing at least one charge of a major offense as a major offense, even if it also includes minor offenses. Any such conduct report may result in major penalties.

(6) The institution shall handle any alleged violation of a rule which may result in a suspension of visiting or correspondence privileges, work or study release, or leave.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.69 Major penalties: adjustment segregation. (1) **CONDITIONS.** Adjustment segregation may not exceed the time period specified in s. DOC 303.84. The institution shall provide inmates in adjustment segregation the following:

(a) Clean mattress.

(b) Sufficient light to read by at least 12 hours per day.

(c) Sanitary toilet and sink.

(d) Adequate ventilation and heating.

(2) **NECESSITIES.** The institution shall provide the following for each inmate in adjustment segregation but the items need not be kept in the cell, as determined by the warden based on safety and security concerns:

(a) Adequate clothing and bedding.

(b) Toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use personal hygiene supplies.

(c) Writing materials and stamps.

(d) Holy books.

(e) Meals, which shall be nutritionally adequate.

(3) **OTHER PROPERTY.** The institution may allow inmates in adjustment segregation access to material pertaining to legal proceedings and law books or other property provided by the institution.

(4) **VISITS AND TELEPHONE CALLS.** The institution shall permit inmates in adjustment segregation visitation and telephone calls in accordance with ch. DOC 309.

(5) **CORRESPONDENCE.** Inmates in adjustment segregation may receive and send first class mail in accordance with the departmental rules relating to inmate mail.

(6) **SHOWERS.** The institution shall permit inmates in adjustment segregation to shower at least once every 4 days.

(7) **SPECIAL PROCEDURES.** The institution shall not allow any property in the cell except that described in subs. (1), (2) and (3), and letters received while in adjustment segregation. Institutions may establish policies and procedures for the orderly operation of facilities used for segregated inmates.

(8) **LEAVING CELL.** Inmates in adjustment segregation may not leave their cells except as needed for urgent medical or psychological attention, showers, visits, exercise and emergencies endangering their safety in the cell or other reasons as authorized by the warden. The warden may require inmates to wear mechanical

restraints, as defined in s. DOC 306.09 (1), while the inmates are outside their cells.

(9) **EXERCISE.** The institution shall give an inmate in adjustment segregation an opportunity to exercise outside the inmate's cell at least once every eight days.

(10) **GOOD TIME.** An inmate shall not earn extra good time while in adjustment segregation. The institution shall not pay wages to inmates in adjustment segregation.

(11) **OBSERVATION.** The institution shall give a person placed in observation while in adjustment segregation credit toward the penalty being served.

(12) **TIME SERVED.** Adjustment segregation starts the day of the disposition. If the inmate is already in adjustment status, adjustment segregation is then consecutive to the current adjustment segregation being served and is concurrent to any other segregation or separation status being served.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.70 Major penalties: program segregation and disciplinary separation. (1) **CONDITIONS.** Program segregation and disciplinary separation may not exceed the period specified in s. DOC 303.84. The adjustment committee or the hearing officer may impose program segregation or disciplinary separation for a major offense. The institution shall provide inmates in program segregation and disciplinary separation the following:

(a) Clean mattress.

(b) Sufficient light to read by at least 12 hours per day.

(c) Sanitary toilet and sink.

(d) Adequate ventilation and heating.

(2) **NECESSITIES.** The institution shall provide the following for each inmate in program segregation or disciplinary separation, but the items need not be kept in the cell, as determined by the warden based on safety and security concerns:

(a) Adequate clothing and bedding.

(b) A toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use personal hygiene supplies.

(c) Writing materials and stamps.

(d) Holy books.

(e) Meals, which shall be nutritionally adequate.

(3) **OTHER PROPERTY.** The institution may allow inmates in program segregation and disciplinary separation access to material pertaining to legal proceedings and law books or other property provided by the institution.

(4) **VISITS AND TELEPHONE CALLS.** The institution shall permit inmates in program segregation and disciplinary separation visitation and telephone calls in accordance with ch. DOC 309.

(5) **CORRESPONDENCE.** Inmates in program segregation and disciplinary separation may receive and send first class mail in accordance with departmental rules relating to mail.

(6) **SHOWERS.** The institution shall allow inmates in program segregation and disciplinary separation to shower at least once every 4 days.

(7) **SERVICES AND PROGRAMS.** The institution shall provide social services, clinical services, program opportunities and an opportunity to exercise for inmates in program segregation and disciplinary separation, but the institution shall provide these services at the individual's cell, unless otherwise authorized by the warden.

(8) **LEAVING CELL.** Inmates in program segregation and disciplinary separation may not leave their cells except as needed for urgent medical or psychological attention, showers, visits, exercise and emergencies endangering their safety in the cell or other reasons as authorized by the warden. The warden may require inmates in program segregation or disciplinary separation to wear

mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells.

(9) GOOD TIME, PAY AND TIME SERVED. (a) Inmates in program segregation earn neither extra good time nor compensation. Inmates in disciplinary separation continue to earn good time, but may not earn compensation.

(b) Program segregation is concurrent to all segregation or disciplinary separation time. Program segregation starts the day of the disposition. When concurrent to disciplinary separation, the rules for program segregation apply.

(c) Disciplinary separation is concurrent to all segregation statuses. When concurrent to other segregation statuses, the rules of the other statuses govern.

(10) CANTEEN. Inmates in program segregation and disciplinary separation may have approved items brought in from the canteen but may not go to the canteen in person.

(11) SPECIAL RULES. Institutions may establish policies and procedures for the orderly operation of facilities used for inmates in program segregation and disciplinary separation.

(12) REVIEW OF PROGRAM SEGREGATION AND DISCIPLINARY SEPARATION. The warden may review an inmate's status in program segregation and disciplinary separation at any time and may place the inmate in the general population at any time. The warden shall review such status at least every 30 days.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.71 Controlled segregation. **(1) USE.** A security supervisor may order into controlled segregation any inmate in segregated status who exhibits disruptive or destructive behavior. Staff shall not place an inmate in controlled segregation unless a conduct report is written for the conduct giving rise to the use of controlled segregation.

(a) A security supervisor may not order controlled segregation for more than 72 hours for a single inmate, but the security director may extend the placement for uncontrollable behavior.

(b) The security director shall review extensions every 24 hours. When the inmate's behavior is brought under control, the person who authorized the extension shall remove the inmate from controlled segregation.

(2) CONDITIONS. The institution shall provide inmates in controlled segregation the following: clean mattress, sufficient light to read by for at least 12 hours per day, sanitary toilet and sink and adequate ventilation and heating.

(3) NECESSITIES. The institution shall provide the following for each inmate in controlled segregation: adequate clothing, essential hygiene supplies, and nutritionally adequate meals. While an inmate is acting in a disruptive manner, the institution shall maintain close control of all property.

(4) VISITS. Inmates in controlled segregation may not receive visits, including no-contact visits, except from their attorney or with permission from the security director.

(5) CORRESPONDENCE. Inmates in controlled segregation may receive and send first class mail in accordance with departmental rules relating to mail. The institution may provide correspondence materials if they do not pose a threat to anyone.

(6) SPECIAL RULES. (a) The institution shall not allow any property in the cell except that described in subs. (2) and (3), letters received while in controlled segregation and legal materials. Institutions may establish policies and procedures for the orderly operation of the facilities used for inmates in controlled segregation.

(b) Inmates in controlled segregation may not leave their cells except in emergencies endangering the inmate's safety in the cell or with permission from the security director. The warden may require inmates in controlled segregation to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(7) GOOD TIME. An inmate in controlled segregation shall earn compensation if the inmate earned compensation in the previous status. If 1983 Wis. Act 528 does not apply to the inmate, the inmate earns extra good time if the inmate earned extra good time in the previous status.

(8) RECORDS. Staff shall visually check inmates in controlled segregation every half-hour and make a written record or log entry at each such interval noting the condition of the inmate.

(9) CREDIT. The institution shall give an inmate in controlled segregation credit toward a term of program segregation and adjustment segregation during such period of confinement.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.72 Other penalties. Other penalties in accordance with ss. DOC 303.68 and 303.84 shall include any of the following:

(1) REPRIMAND. The adjustment committee or hearing officer may impose a reprimand as a minor penalty. A reprimand is any oral statement by the committee or hearing officer to an inmate when the inmate is found guilty of a disciplinary offense. The committee or hearing officer shall only record the reprimand if no other penalty is given.

(2) LOSS OF RECREATION PRIVILEGES. (a) The adjustment committee or hearing officer may impose loss of recreation privileges for 1 to 60 days as a minor penalty and for over 60 days as a major penalty for inmates in the general population. Recreation privileges include sports and leisure activities outside the cell, either on grounds or off grounds.

(b) The adjustment committee or hearing officer may impose loss of recreation privileges for 1 to 8 days as a minor penalty and for 9 to 60 days as a major penalty for inmates in segregation.

(3) ROOM AND CELL CONFINEMENT. The adjustment committee or hearing officer may impose room and cell confinement for 1 to 15 days as a minor penalty and for 16 to 30 days as a major penalty. During the hours of confinement, the inmate may not leave the inmate's quarters without specific permission. The warden may grant permission for attendance at religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement. The warden may remove any or all electronic equipment from an inmate's quarters if room confinement is imposed.

(4) LOSS OF A SPECIFIC PRIVILEGE. The adjustment committee or hearing officer may impose the loss of a specific privilege for a period of 1 to 60 days as a minor penalty and for a period of over 60 days as a major penalty. Specific privileges which the adjustment committee or hearing officer may take away include but are not limited to: use of inmate's own TV, radio or cassette player; phone calls; participation in off grounds activities; having meals in the dining room; and canteen privileges. However, the adjustment committee or hearing officer may suspend mail for periods of time in accordance with s. DOC 309.05.

(5) RESTITUTION. The adjustment committee or hearing officer may impose restitution as a minor penalty. Restitution is payment to the owner for the replacement or repair of stolen, destroyed and damaged property or for medical bills. Restitution may include escape expenses or any other expenses caused by the inmate's actions. The adjustment committee or hearing officer may order an inmate to make full or partial restitution. The institution may withhold money from earnings or take money from an inmate's account to satisfy the requirements to make restitution.

(6) EXTRA DUTY. The adjustment committee or hearing officer may assign an inmate extra work or school duty for a maximum of 80 hours or require an inmate to report as ordered to a school or a work assignment for as long as 80 hours, without pay, as a minor penalty.

(7) BUILDING CONFINEMENT. The adjustment committee or hearing officer may impose building confinement for a period of 1 to 30 days as a minor penalty and for a period of over 30 days

as a major penalty. Building confinement is confinement to the building in which the inmate resides. During the hours of confinement, the inmate may not leave the building without specific permission. The warden may grant permission for attendance at religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement.

(9) SECURE WORK CREWS. The adjustment committee or hearing officer may give uncompensated secure work crew assignments under ch. DOC 304 as a minor disciplinary sanction to inmates.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.73 Referral for prosecution. The warden shall work with the local district attorney and determine when violations that may violate criminal statute shall be referred for prosecution.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.74 Summary disposition procedure. **(1)** The staff member may summarily find an inmate guilty and punish the inmate for minor rule infractions in accordance with this section.

(2) Before an inmate is summarily found guilty and punished, a staff member shall do the following:

(a) Inform the inmate of the nature of the alleged infraction and the contemplated penalty.

(b) Inform the inmate that the incident may be handled summarily or that it may be handled through the formal disciplinary process.

(3) If the inmate agrees to summary disposition, the staff member shall inform the inmate of the punishment. This agreement is not appealable.

(4) Before imposing the punishment, the staff member shall get the oral or written approval of the supervisor. If the supervisor disapproves of the summary disposition, the institution shall handle the alleged infraction through the formal disciplinary process or alter the disposition so that the supervisor approves it.

(5) The staff member shall impose punishments pursuant to s. DOC 303.68 (1) (b).

(6) The reporting staff member shall make a written record of dispositions pursuant to this section on an appropriate form indicating that summary disposition has been made and approved by the supervisor.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.75 Hearing procedure for minor violations. **(1) NOTICE.** When an inmate is alleged to have committed a minor violation and the security director has reviewed the conduct report pursuant to s. DOC 303.67 and staff have not disposed of the conduct report summarily in accordance with s. DOC 303.74, staff shall give a copy of the approved conduct report to the accused inmate.

(2) TIME LIMITS. The institution may not hold the hearing until at least 2 working days after the inmate receives the approved conduct report. The institution may not hold the hearing more than 21 days after the inmate receives the approved conduct report unless otherwise authorized. The security director may authorize a hearing beyond the 21 day time limit, either before or after the 21st day. The 21 day time limit is not jurisdictional. The inmate may request more time to prepare, and the security director may grant this request. An inmate may waive in writing the time limits provided in this section. The institution shall toll time for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(3) HEARING OFFICER. The warden shall appoint one or more staff members to serve as hearing officers. A hearing officer with substantial involvement in the conduct report may not hold a hearing on that conduct report.

(4) HEARING. At the hearing, a hearing officer shall review the conduct report and discuss it with the inmate. The hearing officer shall provide the inmate with an opportunity to respond to the report and make a statement about the alleged violation. The hearing officer may question the inmate. The inmate has no right to a staff advocate, to confront witnesses or to have witnesses testify on the inmate's behalf. If an inmate refuses to attend a hearing, or is disruptive, the hearing officer may conduct the hearing without the inmate being present. The institution may use electronic conferencing for hearings.

(5) DECISION AND DISPOSITION. (a) The hearing officer shall decide the guilt or innocence of the inmate on each charge, and decide the punishment. Staff shall inform the inmate of the decision. The hearing officer may impose penalties for minor violations in accordance with s. DOC 303.72. The adjustment committee may impose penalties for major violations when a due process hearing is waived under s. DOC 303.76 (6) in accordance with ss. DOC 303.83 and 303.84.

(b) The institution shall establish guilt based on a finding that it was more likely than not that the inmate committed the act.

(c) The hearing officer shall state in writing the finding of guilt for each charge, the punishment and the reasons for it.

(6) APPEAL. An inmate may appeal the disposition of a minor hearing within 10 days to the warden.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; r. and recr. Register, April, 1985, No. 352, eff. 5-1-85; r. and recr. Register, July, 2000, No. 535, eff. 8-1-00.

DOC 303.76 Hearing procedure for major violations. **(1) NOTICE.** When an inmate is alleged to have committed a major violation and the security director has reviewed the conduct report pursuant to s. DOC 303.67, staff shall give the inmate a copy of the approved conduct report within 2 working days after its approval. The institution shall inform the inmate of all of the following:

(a) The rules which the inmate is alleged to have violated.

(b) The potential penalties or other potential results that may be imposed, including but not limited to removal from work release.

(c) The right the inmate has to a due process hearing or to waive this right in writing.

(d) If the inmate waives the right to a formal due process hearing, the inmate will be given an informal hearing under s. DOC 303.75.

(e) If a formal due process hearing is chosen, the inmate shall be informed of all of the following:

1. The inmate may present oral, written, documentary and physical evidence, and evidence from witnesses in accordance with this section and s. DOC 303.81.

2. The inmate may have the assistance of a staff advocate in accordance with this section and s. DOC 303.78.

3. The adjustment committee may permit direct questions or require the inmate or the inmate's advocate to submit questions to the adjustment committee to be asked of the witness.

4. The adjustment committee may prohibit repetitive, disrespectful and irrelevant questions.

5. The inmate may appeal the finding and disposition of the adjustment committee in accordance with sub. (7).

6. If the inmate refuses to attend a hearing, or is disruptive, the adjustment committee may conduct the hearing without the inmate being present.

(2) WAIVER. An inmate may waive the right to a due process hearing in writing at any time. If the inmate waives a due process hearing, the institution shall dispose of the conduct report under the hearing procedures for minor violations, s. DOC 303.75. A waiver does not constitute an admission of the alleged violation. A waiver may not be retracted without the security director's approval.

(3) **TIME LIMITS.** The institution may not hold the hearing until at least 2 working days after the inmate receives a copy of the conduct report and hearing rights notice. The institution may not hold the hearing more than 21 days after the inmate receives the approved conduct report and hearing rights notice unless otherwise authorized. The security director may authorize a hearing beyond the 21 day time limit, either before or after the 21st day. The 21 day time limit is not jurisdictional. The inmate may request more time to prepare, and the security director may grant the request. An inmate may waive in writing the time limits provided in this section. The institution shall toll time for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(4) **PLACE.** The due process hearing may take place at the institution where the alleged conduct occurred, at a county jail or at an institution to which an inmate has been transferred.

(5) **HEARING.** The adjustment committee, as defined in s. DOC 303.82, shall conduct the due process hearing. If an inmate refuses to attend the hearing or disrupts the hearing, the adjustment committee may conduct the hearing without the inmate being present. The institution may use electronic conferencing for hearings. At a due process hearing, the adjustment committee:

(a) Shall read the conduct report aloud.

(b) Shall provide all witnesses who are requested and permitted to speak for or against the accused a chance to speak.

(c) May require that physical evidence be offered. May permit direct questions or require the inmate or the inmate's advocate to submit questions to the adjustment committee to be asked of the witness.

(d) May prohibit repetitive, disrespectful or irrelevant questions.

(6) **DECISION.** After the hearing the adjustment committee:

(a) Shall consider all relevant information.

(b) Shall establish guilt based on a finding that it was more likely than not that the inmate committed the act.

(c) May find the inmate guilty or not guilty. A committee of 3 may find the inmate guilty if at least 2 of the 3 members find that it was more likely than not that the inmate committed the act and if 2 agree upon a sentence, may sentence the inmate. A committee of 2 or of one may find the inmate guilty if the committee members unanimously find that it was more likely than not that the inmate committed the act and may sentence the inmate if they are unanimous as to the sentence. The committee may consider any of the inmate's defenses or other mitigating factors.

(d) May refer the matter to the warden for a decision if the adjustment committee members do not agree on a finding of guilt or a sentence.

(e) Shall inform the inmate of the decision or give the inmate a postponed or delayed decision.

(f) Provide the accused inmate and the inmate's advocate, if any, a written copy of the decision with reasons for the decision.

(7) **APPEAL.** (a) Any time within 10 days after either a due process hearing or after the inmate receives a copy of the decision, whichever is later. An inmate who is found guilty may appeal the decision or the sentence, or both, to the warden.

(b) The warden shall review all records and forms pertaining to the appeal and make the decision within 60 days following receipt of the request for appeal.

(c) The warden's decision shall be one of the following:

1. Affirm the adjustment committee's decision and the sentence.

2. Modify all or part of the adjustment committee's decision or sentence.

3. Reverse the adjustment committee's decision, in whole or in part.

4. Return the case to the adjustment committee for further consideration or to complete or correct the record.

(d) The warden's decision is final regarding the sufficiency of the evidence. An inmate may appeal procedural errors as provided under s. DOC 310.08 (3).

(e) The warden may at any time review the conduct report and act on it unilaterally as if there were an appeal.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; r. and recr. Register, April, 1985, No. 352, eff. 5-1-85; r. and recr. Register, July, 2000, No. 535, eff. 8-1-00; correction in (1) (e) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, December, 2000, No. 540.

DOC 303.78 Due process: advocates. (1) (a) At each institution, the warden may designate or hire staff members to serve as advocates for inmates in disciplinary hearings at the institution.

(b) The warden may assign a different staff member to serve as the inmate's advocate if the inmate establishes the assigned advocate has a conflict of interest in the case.

(c) The warden may assign advocates to inmates. If an inmate objects to the assignment of a particular advocate because the advocate has a known and demonstrated conflict of interest in the case, the warden shall assign a different staff member to serve as the inmate's advocate.

(2) When the warden assigns an advocate, the advocate's purpose is to help the accused inmate to understand the charges against the inmate and to help in the preparation and presentation of any defense the inmate has, including gathering evidence and testimony, and preparing the inmate's own statement. The advocate may speak on behalf of the accused inmate at a disciplinary hearing or may help the inmate prepare to speak.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.81 Due process hearing: witnesses.

(1) The accused may directly or through an advocate make a request to the security office for witnesses to appear at the major violation hearing, including requests for the appearance of the staff member who signed the conduct report. Except for good cause, an inmate may present no more than 2 witnesses in addition to the reporting staff member or members. The inmate shall make this request within 2 days of the service of notice when no advocate is assigned and within 2 days of the initial contact by the advocate when an advocate is assigned. The security director may waive the time limits for good cause.

(2) After all witness requests have been received, the security director shall review them to determine whether the witnesses possess relevant information and shall be called.

(3) Witnesses requested by the accused who are staff or inmates shall attend the disciplinary hearing unless one of the following exist:

(a) The risk of harm to the witness if the witness testifies.

(b) The testimony is irrelevant to the question of guilt or innocence.

(c) The testimony is merely cumulative of other evidence and would unduly prolong the hearing.

(4) If a witness is unavailable to testify, the adjustment committee may consider a written statement, a transcript of an oral statement, or a tape-recorded statement. Unavailability means death, transfer, release, hospitalization, or escape in the case of an inmate; death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of a staff member. The adjustment committee may consider a written statement, a transcript of an oral statement, or a tape-recorded statement if it determines that there is cause for the witness not to testify.

(5) If the institution finds that testifying would pose a risk of harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity or a corroborated signed statement from a staff member getting the statement from that witness. The adjust-

ment committee shall reveal the contents of the statement to the accused inmate, though the adjustment committee may edit the statement to avoid revealing the identity of the witness. The committee may question the witnesses, if they are otherwise available. Two anonymous statements by different persons may be used to corroborate each other. A statement can be corroborated in either of the following ways:

(a) By other evidence which substantially corroborates the facts alleged in the statement such as an eyewitness account by a staff member or circumstantial evidence.

(b) By evidence of a very similar violation by the same person.

(6) If it is not possible to get a signed statement in accordance with subs. (4) and (5), the hearing officer may consider other evidence of what the witness would say if present.

(7) After determining which witnesses will be called for the accused inmate, staff shall notify the inmate of the decision in writing.

(8) Witnesses other than inmates or staff may not attend hearings but advocates with the hearing officer's permission may contact them. The adjustment committee may designate a staff member to interview any such witness and report to the committee.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (1) to (4) and (8), Register, April, 1985, No. 352, eff. 5-1-85; r. and recr. Register, July, 2000, No. 535, eff. 8-1-00.

DOC 303.82 Adjustment committee. (1) Due process disciplinary hearings shall be conducted by an adjustment committee of one, 2 or 3 staff members appointed by the warden. At least one member of every adjustment committee shall be a supervisor.

(2) No person who has substantial involvement in an incident, which is the subject of a hearing, may serve on the committee for that hearing. Committee members shall determine the subject matter of the hearing in advance in order to allow replacement of committee members if necessary and thereby avoid the necessity of postponing the hearing.

(3) An adjustment committee may hold a hearing even if the inmate has waived due process.

(4) When a single hearing officer is sitting on the adjustment committee pursuant to sub. (1), or after the waiver of due process, the hearing officer has the same authority as given the adjustment committee under this chapter.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.83 Sentencing considerations. In deciding the sentence for a violation or group of violations, the supervisor making summary disposition or the adjustment committee or hearing officer who is holding the hearing may consider any of the following:

(1) The inmate's overall disciplinary record, especially during the last year.

(2) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently.

(3) Whether the alleged violation created a risk of serious disruption at the institution or in the community.

(4) Whether the alleged violation created a risk of serious injury to another person.

(5) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft.

(6) Whether the inmate was actually aware that the inmate was committing a crime or offense at the time of the offense.

(7) The motivation for the offense.

(8) The inmate's attitude toward the offense and toward the victim, if any.

(9) Mitigating factors, such as coercion, family difficulties which may have created anxiety and any special circumstances.

(10) Whether the offense created a risk to the security of the institution, inmates, staff or the community.

(11) Any other relevant factors.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.84 Sentencing procedure and schedule of penalties. (1) In every case where an inmate is found guilty of one or more violations of the disciplinary rules, one or more of the following penalties shall be imposed, except as provided in sub. (2) and subject to the limitations under ss. DOC 303.68 to 303.72:

(a) Reprimand.

(b) Loss of recreational privilege.

(c) Room confinement.

(d) Building confinement.

(e) Loss of a specific privilege.

(f) Mail as provided in the departmental rules relating to mail.

(g) Adjustment segregation.

(h) Extra duty without pay.

(i) Program segregation or disciplinary separation.

(j) Loss of good time for an inmate whose crime was committed before June 1, 1984, and who did not choose to have 1983 Wis. Act 528 apply to the inmate, or extension of the mandatory release date for an inmate whose crime was committed on or after June 1, 1984, and for other inmates who chose to have 1983 Wis. Act 528 apply to them.

(k) Restitution.

(2) Punishment imposed pursuant to sub. (1) is subject to the following:

(a) Adjustment segregation, program segregation or disciplinary separation, 16 to 30 days in room confinement, and loss of good time or extension of the mandatory release date, whichever is applicable, may be imposed for a single major offense. At one hearing, the maximum penalty is the most severe penalty the inmate could receive for any single offense of which the inmate is found guilty. The duration of a penalty may not exceed the duration shown in Table 303.84.

TABLE DOC 303.84
SCHEDULE OF PENALTIES
(Maximum in days)

	Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983 Wisconsin Act 528*	Disciplinary Separation	
Offenses against bodily security						
303.12	Battery	8	360	20	40	360
303.13	Sexual assault—intercourse	8	360	20	40	360
303.14	Sexual assault—contact	8	360	20	40	360
303.15	Sexual conduct	8	180	10	20	180
303.16	Threats	5	180	10	20	180
303.17	Fighting	8	360	20	40	360
Offenses against institutional security						
303.18	Inciting a riot	8	360	20	40	360
303.19	Participating in a riot	6	360	10	20	360
303.20	Group resistance and petitions	4	360	10	20	360
303.21	Cruelty to animals	8	360	20	40	360
303.22	Escape	8	360	20	40	360
303.23	Disguising identity	8	180	20	40	180
Offenses against order						
303.24	Disobeying orders	6	180	10	20	180
303.25	Disrespect	8	180	10	20	180
303.26	Soliciting staff	8	360	20	40	360
303.27	Lying	5	180	10	20	180
303.271	Lying about staff	8	360	20	40	360
303.28	Disruptive conduct	5	360	10	20	360
303.30	Unauthorized forms of communication	5	60	10	20	60
303.31	False names and titles	4	180	0	0	180
303.32	Enterprises and fraud	6	120	5	10	120
Offenses against property						
303.34	Theft	8	360	20	40	360
303.35	Damage or alteration of property	8	180	15	30	180
303.36	Misuse of state property	4	60	0	0	60
303.37	Arson	8	360	20	40	360
303.38	Causing an explosion or fire	6	180	15	30	180
303.39	Creating a hazard	6	120	10	20	120
303.40	Unauthorized transfer of property	5	120	0	0	120
303.41	Counterfeiting and forgery	8	360	20	40	360
Contraband offenses						
303.42	Possession of money	8	360	20	40	360
303.43	Possession of intoxicants	8	360	20	40	360
303.44	Possession of drug paraphernalia	8	360	20	40	360
303.45	Possession, manufacture & alteration of weapons	8	360	20	40	360
303.47	Possession of contraband—miscellaneous	6	120	10	20	120
303.48	Unauthorized use of the mail	8	360	20	40	360
Movement offenses						
303.49	Punctuality and attendance	5	120	5	10	120
303.50	Loitering	4	120	5	10	120
303.51	Leaving assigned area	6	180	10	20	180
303.511	Being in unassigned area	6	180	10	20	180
303.52	Entry of another inmate's quarters	8	360	20	40	360

TABLE DOC 303.84 (Continued)
SCHEDULE OF PENALTIES
 (Maximum in days)

	Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983 Wisconsin Act 528*	Disciplinary Separation	
Offenses against safety and health						
303.54	Improper storage	4	60	5	10	60
303.55	Dirty quarters	4	60	0	0	60
303.56	Poor grooming	4	60	0	0	60
303.57	Misuse of prescription medication	8	360	20	40	360
303.58	Disfigurement	5	120	10	20	120
Miscellaneous						
303.59	Use of intoxicants	8	360	20	40	360
303.60	Gambling	4	180	5	10	180
303.61	Refusal to work or attend school	4	60	5	10	60
303.62	Inadequate work or study performance	4	60	5	10	60
303.63	Violation of institutional policies and procedures	6	180	10	20	180
303.631	Violating conditions of leave	8	360	20	40	360
303.05	Conspiracy		Maximum for completed offense			
303.06	Attempt		Maximum for completed offense			
303.07	Aiding and abetting		Maximum for completed offense			

* Does not include the mandatory extension of 50% of the number of days spent in segregation status required under par. (e).

(b) Program segregation and disciplinary separation shall be given for a specific term of 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330 or 360 days.

(c) More than one minor or major penalty may be imposed for a single offense and both a major and minor penalty may be imposed for a major offense.

(d) Loss of accumulated good time or extension of the mandatory release date may be imposed as a penalty only where the violation is listed as a major offense under s. DOC 303.68 (3) or is designated as a major offense by the security director because of its nature or the inmate's prior record.

(e) 1. For those inmates to whom 1983 Wis. Act 528 does not apply, the number of days of good time lost on one occasion may be based on the number of prior occasions on which the inmate lost good time but shall not exceed the following:

Number of prior occasions good time lost	Maximum number of days good time lost
None	5
One	10
2 or more	20

2. For those inmates to whom 1983 Wis. Act 528 applies, the number of days the mandatory release date is extended on one occasion may be based on the number of prior occasions on which the inmate lost good time or had his or her mandatory release date extended but shall not exceed the following:

Number of prior occasions good time lost or mandatory Release date extended	Maximum number of days mandatory release date extended
None	10
One	20
2 or more	40

(f) Restitution may be imposed in addition to any other penalty.

(g) For those inmates to whom 1983 Wis. Act 528 applies, in addition to other penalties imposed in accordance with this sub-

section, the inmate's mandatory release date shall be extended by the number of days equal to 50% of the number of days spent in adjustment, program or controlled segregation status.

(h) TLU time may not be considered as time served for disciplinary penalty purposes.

(i) A guilty finding on any conduct report designated major for any reason in this chapter may result in one or more major penalties.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.85 Recordkeeping. (1) The Department may keep records of disciplinary infractions in an inmate's case record only in the following situations:

(a) If the inmate was found guilty by summary disposition procedure.

Note: See s. DOC 303.74.

(b) If the inmate was found guilty by a hearing officer or an adjustment committee. The institution shall remove records if an appeal is successful except a conduct report entry may remain on a warning card as it still constitutes a warning.

Note: See s. DOC 303.82.

(2) The department may keep conduct reports which have been dismissed or in which the inmate was found not guilty for statistical purposes, and security reasons, but the department may not consider them in making program assignment, transfer, or parole release decisions, nor may the department include them in any inmate's case record except that a conduct report may remain on a warning card as it constitutes a warning that the conduct specified in the conduct report is a violation.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.86 Evidence. (1) (a) "Evidence" is any statement or object which could be presented at a disciplinary hearing or in a court of law, whether or not it is admissible.

(b) Evidence is relevant if that evidence makes it appear more likely or less likely that the inmate committed the offense of which the inmate is accused.

Note: For example: an inmate is accused of threatening another inmate. Testimony that the accused inmate and the other inmate had a loud argument the day before is relevant. It indicates a possible motive for a threat and makes it appear more likely

that a threat occurred. An officer testifies that the accused inmate has lied to the officer on previous occasions. This is relevant if the testimony of the accused inmate varies from the conduct report.

(2) (a) An adjustment committee or a hearing officer may consider any relevant evidence, whether or not it would be admissible in a court of law and whether or not any violation of any state law or any DOC administrative code provision occurred in the process of gathering the evidence.

(b) An adjustment committee or a hearing officer may refuse to hear or admit relevant evidence for any of the following reasons:

1. The evidence is not reliable.

Note: For example: opinions which are not supported by factual observation; hearsay or statements made outside of the hearing; reputation of the witness.

2. The evidence, even if true, would be of marginal relevance.

Note: For example: evidence of prior acts by the accused inmate or a witness, to show that the inmate is repeating a pattern.

3. The evidence is merely cumulative of evidence already received at the hearing and is no more reliable than the already admitted evidence, for example: testimony of other inmates corroborating the accused's story, when corroboration has already occurred.

(3) If a witness is unavailable to testify, the adjustment committee may consider a written statement, a transcript of an oral statement, or a tape-recorded statement. Unavailability means death, transfer, release, hospitalization, or escape in the case of an inmate; death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of a staff member. The adjustment committee may consider a written statement, a transcript of an oral statement, or a tape-recorded statement if it determines that there is cause for the witness not to testify.

(4) If the institution finds that testifying would pose a risk of harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity or a signed statement from a staff member getting the statement from that witness. The adjustment committee shall reveal the statement to the accused inmate, though the adjustment committee may edit the statement to avoid revealing the identity of the witness. The committee may question the witnesses, if they are otherwise available. Two anonymous statements by different persons may be used to corroborate each other. A statement can be corroborated in either of the following ways:

(a) By other evidence which substantially corroborates the facts alleged in the statement such as, eyewitness account by a staff member or circumstantial evidence.

(b) By evidence of a very similar violation by the same person.

(5) After disposition has been reached by the adjustment committee, and if a finding of guilt results, the adjustment committee shall then forward restricted informant material to the security office for retention in the restricted security department file.

(6) The institution shall place the original conduct report and all due process documents in the inmate's case record. However, the institution shall place restricted informant reports only in the security department restricted file.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.

DOC 303.87 Harmless error. If staff does not adhere to a procedural requirement under this chapter, the error is harmless if it does not substantially affect a finding of guilt or the inmate's ability to provide a defense.

History: Cr. Register, December, 2000, No. 540, eff. 1-1-01.