

## Chapter DOC 373

### YOUTH CONDUCT IN TYPE 1 SECURED CORRECTIONAL FACILITIES

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**Note:** Chapter HSS 333 as it existed on June 30, 2000 was repealed and a new Chapter DOC 373 was created, Register, June, 2000, No. 534, effective July 1, 2000.

#### Subchapter I — General Provisions

**DOC 373.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 227.11 (2), 301.025 and 938.48 (16), Stats., and section 9126 (23) (e) of 1995 Act 27 to provide for rules governing the conduct of youth in type 1 secured correctional facilities operated by the department, and for the discipline of youth who violate those conduct rules. In this chapter, the department seeks to achieve all of the following:

(1) To provide for the degree of confinement and programming for each youth required for the protection of the public, staff and youth.

(2) To operate orderly institutions.

(3) To deter each youth from committing further delinquent acts.

(4) To provide a uniform disciplinary process for all institutions which enhances the constructive, individualized programming for youth by doing all of the following:

(a) Giving each youth prior notice of all conduct rules that apply to the youth.

(b) Describing all conduct rules in clear, unambiguous language.

(c) Describing all forms of discipline allowable for violations of the conduct rules.

(d) Structuring the exercise of discretion by staff in responding to youth misconduct while retaining flexibility in decision-making and preserving fairness.

(e) Ensuring that each youth is in the appropriate setting necessary to achieve the objectives of ch. 938, Stats., and that discipline which imposes significant restriction on a youth's liberty be imposed only by staff designated by the superintendent to ensure fair, appropriate and consistent decision-making.

(f) Provide for routine review of the restrictions placed on a youth to assure that the restrictions are appropriately based on the seriousness of violations by the youth; the youth's subsequent behavior; and the risk posed by the youth to self, others or institution security.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.02 Applicability.** This chapter applies to the department and all youth who are under its supervision in a type 1 secured correctional facility consistent with the requirements of law.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.03 Definitions.** In this chapter:

(1) "Administrator" means the administrator of the division or that person's designee.

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

- (a) Permitted under department rules.
- (b) Permitted under posted policies and procedures.
- (c) Permitted by staff.

(3) "Close confinement" means restriction of a youth to the youth's assigned room with a minimum of one hour out-of-room time per day.

(4) "Conduct report" means a written report prepared by staff which describes facts relating to an alleged violation of a conduct rule by a youth.

(5) "Consent" means words or overt actions by a competent person indicating a freely given agreement.

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

- (a) Any item which subch. VI prohibits a youth from possessing.
- (b) Any item which is not state property and is on the institution grounds, but not in the possession of any person or in an approved location.
- (c) Stolen property.
- (d) Any item that is not on a youth's property list and is required to be.
- (e) Any item of a type that is not allowed according to posted policies and procedures.
- (f) Allowable items in excess of the quantity allowed according to posted policies and procedures.
- (g) Items in the possession of a youth that do not belong to the youth, except for state property issued to the youth for personal use.
- (h) Anything used as evidence in a disciplinary hearing that is deemed to be contraband by the hearing officer.

(7) "Day" means a calendar day.

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

(9) "Disturbance" means a serious disruption to institution order or security by 2 or more youth.

(10) "Division" means the department's division of juvenile corrections.

(11) "Harass" means to annoy or irritate repeatedly.

(12) "Hearing officer" means a staff member designated by the superintendent to conduct disciplinary hearings and perform other functions under this chapter.

(13) "Institution" means a type 1 secured correctional facility operated by the department.

(14) "Intentionally" means that a youth had a purpose to carry out an act or cause the result specified, or believed that the act, if successful, would cause the result specified.

(15) "Intimate part" means anus, groin, penis, testicles, buttocks, pubic or vaginal area or breast.

(16) "Knowingly" means only that it is reasonable to conclude that a youth believes that a specified fact exists.

(17) "Major conduct rule violation" means a violation of conduct rules for which a major penalty may be imposed.

(18) "Major penalty" means a disposition under s. DOC 373.80 (3).

(19) "Mechanical restraint" means a commercially manufactured device approved by the department and applied to a youth's wrist, arm, legs or torso to restrain or impede free movement.

(20) "Minor conduct rule violation" means any violation of a conduct rule which is not a major conduct rule violation and for which a minor penalty may be imposed.

(21) "Minor penalty" means a disposition under s. DOC 373.68.

(22) "Modified confinement" means restriction of a youth to the youth's assigned room with a minimum of 4 hours of out-of-room time per day.

(23) "Negligently" means that a youth did an act or failed to do an act and thereby failed to exercise that degree of care appropriate for the circumstances.

(24) "Recklessly" means that a youth did an act or failed to do an act and thereby created an unreasonable risk that another might be injured. The act or failure to act shall demonstrate both a conscious disregard for the safety of another and a willingness to take known chances of perpetrating an injury.

(25) "Staff" means a state employee of the institution where a youth is housed.

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

(27) "Supervisor" means staff designated by the superintendent to perform supervisory functions under this chapter.

(28) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19), Stats.

(29) "Youth" means a person or persons supervised by the department in an institution consistent with the requirements of law and regardless of age.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.04 Responsibilities of youth.** Youth placed under department supervision have the opportunity to learn and to demonstrate constructive values and behaviors. By conducting themselves according to the rules and policies of the institution, youth will not only avoid the consequences of misconduct as outlined in this chapter, but will also earn a progressively greater degree of independence during the time of institutional placement. Youth shall do all of the following:

(1) Allow others to have privacy.

(2) Respect the property of others.

(3) Refrain from physically or verbally abusing, exploiting or otherwise harming other youth, staff, or any other person.

(4) Accept adult guidance, support and supervision.

(5) Know the rules of the institution and ask questions of staff if unsure of the meaning of a rule.

(6) Be supportive of efforts by other youth to involve themselves in individual programs and assist others in their efforts to obey institution rules.

(7) Respect the race, gender, age, handicaps, religious background and culture of other persons.

(8) Participate in major decision-making affecting the youth's life.

(9) Carry out the youth's part of the individual case plan.

(10) Use the complaint procedures to address problems that cannot be handled on an informal basis.

(11) Maintain good personal hygiene and strive to maintain good health.

(12) Participate in an active, positive manner in the assigned program.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.05 Conduct rules.** Conduct rules define prohibited youth conduct and are described under ss. DOC 373.14 to 373.65. The conduct rules apply to each youth at all times while assigned to the supervision of an institution, regardless of where the violation was committed or attempted.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.06 Conduct rule violations. (1)** A youth may not violate conduct rules.

(2) Violations of the conduct rules shall be resolved in accordance with this chapter.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.07 Attempted violation of conduct rules.**

(1) A youth is guilty of an attempt to violate a conduct rule if all of the following are true:

(a) The youth intended to do something that would have been a conduct rule violation.

(b) The youth committed an act that demonstrated intent to violate a conduct rule.

(2) The penalty for an attempt to violate a conduct rule is the same as the penalty for violating that conduct rule.

(3) A youth may be charged with both a substantive conduct rule violation and with an attempt to commit that conduct rule violation, based on the same incident, but may be found guilty of only one.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.08 Aiding, abetting or knowing of conduct rule violations. (1)** A youth is guilty of aiding and abetting a conduct rule violation if the youth intentionally does any of the following:

(a) Encourages, directs, commands, hires, coerces, requests or signals another youth to commit a conduct rule violation.

(b) Assists another person, prior to a conduct rule violation, in planning or preparing for committing a conduct rule violation, with intent that the conduct rule violation be committed.

(c) Assists another person during commission of a conduct rule violation, whether or not this assistance was planned in advance.

(d) Destroys evidence of a conduct rule violation committed by another person or otherwise helps to prevent discovery of a conduct rule violation or of the person who committed the violation.

(2) If a youth knows of a plan to commit a conduct rule violation or knows of the commission of a conduct rule violation, failure of the youth to report the plan or commission is a conduct rule violation.

(3) A youth may be charged with both a substantive conduct rule violation and aiding and abetting or knowing of that conduct rule violation, based on the same incident, but may be found guilty of only one.

(4) A youth may be charged and found guilty of aiding and abetting or knowing of a conduct rule violation even if no one is charged or found guilty of committing the conduct rule violation.

(5) The penalty for aiding and abetting or knowing of a conduct rule violation shall normally be the same as for the substantive conduct rule violation.

(6) The penalty for a youth who aids and abets or knows of a conduct rule violation need not be based in any way on the penalty, if any, for the youth who actually committed the conduct rule violation.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.09 Defenses.** The following, if established by a youth by a preponderance of the evidence are complete defenses to alleged violations of the conduct rules under this chapter:

(1) **MENTAL INCAPACITY.** At the time of the conduct, the youth, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform to the conduct rules.

(2) **INVOLUNTARY INTOXICATION.** At the time of the conduct, the youth, as a result of involuntary intoxication, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform to the conduct rules. This subsection does not afford a defense if the intoxicant was taken voluntarily, unless the intoxicant was taken consistent with a proper prescription.

(3) **MISTAKE.** The youth honestly erred and the error negates the existence of a state of mind essential to the conduct rule violation.

(4) **SELF-DEFENSE.** A youth may use the minimum amount of force necessary to prevent death or bodily injury to self or in defending a third person. A youth may not continue to exercise self-defense after an order by staff to stop. In determining whether the minimum force was used in exercising self-defense, staff shall consider:

(a) Whether the aggressor used a weapon.

(b) The size of the youth invoking a self-defense claim in relation to the size of the aggressor.

(c) The opportunity of the youth who claims self-defense to flee or to obtain assistance from staff.

(d) Whether staff were nearby.

(5) **ORDERS.** A youth may disobey a conduct rule when expressly authorized to disobey it by staff.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.10 Youth access to conduct rules. (1)** The superintendent shall provide youth with an orientation to department conduct rules as part of the assessment and evaluation of youth under s. DOC 371.05 (1) (d).

(2) The superintendent shall provide a youth with a written copy of the conduct rules.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2000, No. 534.

**DOC 373.11 Major and minor penalties and conduct rule violations. (1)** Any minor penalty may be imposed for a conduct rule violation for which a major penalty may be imposed.

(2) Restitution may be imposed in addition to or in lieu of any major penalty.

(3) Except for a conduct rule violation listed under sub. (4) or covered by sub. (6), a conduct rule violation is neither a major nor a minor conduct rule violation until a supervisor classifies it as major or minor using the criteria under sub. (5).

(4) All of the following are classified as major conduct rule violations:

(a) Section DOC 373.14 Causing the death of another

(b) Section DOC 373.15 Sexual intercourse

(c) Section DOC 373.16 Sexual contact

(d) Section DOC 373.17 Restraint of another

(e) Section DOC 373.18 Fighting

(f) Section DOC 373.19 Battery

(g) Section DOC 373.21 Inciting a disturbance

(h) Section DOC 373.22 Participating in a disturbance

(i) Section DOC 373.26 Escape

(j) Section DOC 373.28 Obstruction

(k) Section DOC 373.41 Arson

(L) Section DOC 373.42 Causing an explosion

(m) Section DOC 373.46 Intoxicants and paraphernalia

(n) Section DOC 373.47 Weapons

- (o) Section DOC 373.56 Misuse of medication
- (p) Section DOC 373.57 Self-harm and disfigurement
- (q) Section DOC 373.62 Violation of conditions of leave
- (r) An attempted violation of a conduct rule listed in this subsection

(5) An alleged violation of any section of this chapter other than those listed in sub. (4) or covered by sub. (6) may be treated as a major conduct rule violation. If the conduct rule violation has not been disposed of summarily in accordance with s. DOC 373.68, a supervisor shall decide whether the alleged violation shall be treated as a major conduct rule violation. In deciding whether an alleged violation should be treated as a major conduct rule violation, the supervisor shall consider all of the following criteria and shall indicate in the record of disciplinary action the reason for the decision based on these criteria:

- (a) Whether the youth has previously been found guilty of the same or a similar conduct rule violation, how often a finding of guilt has been established, and how recently.
- (b) Whether the youth 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 inju-

ry 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.

(6) Any conduct report containing at least one charge of a major conduct rule violation shall be processed as a major conduct rule violation, which may result in a major penalty, even if the conduct report also includes minor conduct rule violations.

(7) If a youth commits a conduct rule violation during the course of a visit, the hearing officer may suspend visiting privileges as a disposition, under s. DOC 379.07 (9) (b).

(8) If a conduct rule violation occurred as a result of misuse of the mail, the hearing officer may suspend mail privileges as a disposition, under s. DOC 379.04 (6).

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.12 Lesser-included conduct rule violations.** Certain prohibited acts have lesser-included acts associated with them. A youth alleged to have violated a conduct rule is also considered to have allegedly violated a lesser-included conduct rule. No youth may be found to have committed both an act and its lesser-included act based upon the same incident. Table 373-A lists the lesser-included conduct rule violations of each conduct rule violation.

**Table 373-A**

**LESSER-INCLUDED CONDUCT RULE VIOLATIONS**

<b>Conduct Rule Violation</b>		<b>Lesser-Included Conduct Rule Violation</b>	
DOC 373.14	Causing the Death of Another	DOC 373.19	Battery
DOC 373.15	Sexual Intercourse	DOC 373.16	Sexual Contact
DOC 373.16	Sexual Contact	DOC 373.27	Inappropriate Sexual Conduct
DOC 373.18	Fighting	DOC 373.28	Obstruction
		DOC 373.33	Disruptive Conduct
DOC 373.19	Battery	DOC 373.18	Fighting
		DOC 373.28	Obstruction
		DOC 373.33	Disruptive Conduct
DOC 373.21	Inciting a Disturbance	DOC 373.23	Unauthorized Group Activity
DOC 373.22	Participating in a Disturbance	DOC 373.24	Group Resistance
		DOC 373.33	Disruptive Conduct
DOC 373.23	Unauthorized Group Activity	DOC 373.24	Group Resistance
		DOC 373.33	Disruptive Conduct
DOC 373.24	Group Resistance	DOC 373.33	Disruptive Conduct
DOC 373.26	Escape	DOC 373.51	Leaving An Assigned Area
		DOC 373.62	Violations of Conditions of Leave
DOC 373.28	Obstruction	DOC 373.29	Disobeying Orders
		DOC 373.33	Disruptive Conduct
DOC 373.33	Disruptive Conduct	DOC 373.30	Disrespect
DOC 373.39	Theft	DOC 373.44	Transfer of Property or Services
DOC 373.41	Arson	DOC 373.42	Causing an Explosion
		DOC 373.43	Creating a Safety Hazard
DOC 373.42	Causing an Explosion	DOC 373.43	Creating a Safety Hazard

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.13 Prehearing security. (1)** A youth may be placed in prehearing security if a supervisor has a reasonable belief that one or more of the following is true:

- (a) If the youth remains in the general population, there will be a significant physical or psychological danger to the youth or another person.
- (b) If the youth remains in the general population, the youth will seek to intimidate a witness in any pending investigation.
- (c) If the youth remains in the general population, the youth will encourage other youths by example, expressly, or by the

youth's presence, to defy staff authority and thereby erode staff's ability to control a particular situation.

(d) If the youth remains in the general population, the youth will create a significant danger to property.

(e) If the youth remains in the general population there is a significant risk of escape.

(f) If the youth remains in the general population, an investigation will thereby be inhibited.

(g) If the youth remains in the general population, a significant risk to institution security will be created.

(2) When a youth is placed in prehearing security under sub. (1), a supervisor shall inform the youth in writing within 48 hours of the placement of the reason for the placement and the person who has authorized the placement.

(3) The superintendent shall review the placement decision under sub. (1) within 48 hours of the placement, excluding week-ends and legal holidays, to determine whether a youth still needs to be in prehearing security consistent with this section.

(4) No youth may remain in prehearing security pending investigation longer than 7 days without being served an approved conduct report and without receiving the notice in s. DOC 373.71.

(5) No youth may remain in prehearing security pending a hearing longer than 21 days. The superintendent shall review the status of each youth in prehearing security at least every 7 days to determine whether confinement continues to be appropriate. If upon review it is determined that confinement is not appropriate, the youth shall be released from prehearing security immediately.

(6) A youth shall be placed in an appropriate setting to achieve the objectives of this section. A youth's own room may be used for prehearing security.

(7) A youth may be required to wear mechanical restraints while outside of the living quarters if the superintendent determines that the use of mechanical restraints is necessary to protect staff, other youth or other persons, or to maintain the security of the institution.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

### Subchapter II — Conduct Rules Relating to Bodily Security

**DOC 373.14 Causing the death of another.** A youth may not intentionally, negligently or recklessly cause the death of another person.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.15 Sexual intercourse.** (1) In this section, "sexual intercourse" means any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration, however slight, by any part of the body or an object into the anus or vagina of another person.

(2) A youth may not engage in sexual intercourse.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.16 Sexual contact.** A youth may not intentionally touch with a body part or an object any intimate part of another person, either directly or through clothing, or cause it to be touched by another with or without the consent of that person.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.17 Restraint of another.** Unless authorized, a youth may not seize, restrain or confine another person.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.18 Fighting.** (1) In this section, "fight" means any situation where 2 or more persons are trying to injure each other by any physical means including, but not limited to, hitting, biting, kicking, scratching, throwing or swinging objects or using weapons.

(2) A youth may not participate in a fight.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.19 Battery.** A youth may not intentionally cause injury, physical pain, illness or any impairment of physical condition to another person.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.20 Threats.** A youth may not communicate to another person verbally, in writing or by gesture, symbol or action to do any of the following:

(1) Harm or harass that person or someone else.

(2) Cause damage to or loss of that person's or another person's property.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

### Subchapter III — Conduct Rules Relating to Institutional Security

**DOC 373.21 Inciting a disturbance.** A youth may not encourage, direct, command, hire, coerce, request or signal one or more persons to participate in a disturbance.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.22 Participating in a disturbance.** A youth may not do any of the following:

(1) Intentionally or recklessly participate in a disturbance.

(2) Remain in a group that has been ordered to disperse if some members of the group are participating in a disturbance.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.23 Unauthorized group activity.** (1) In this section, "group" means a gang, cult or faction or other formal or informal association of youth.

(2) A youth may not do any of the following:

(a) Encourage, direct, command, hire, coerce, recruit or signal another person to participate in a group not authorized by the superintendent.

(b) Communicate verbally, in writing or by gesture, symbol or action about an unauthorized group matter or to demonstrate affiliation with an unauthorized group.

(c) Wear, display or have in the youth's possession the clothing, jewelry, colors or other symbols of an unauthorized group to demonstrate affiliation with the group. This includes the cutting, styling or wearing of the youth's hair or the wearing of clothes in a manner which demonstrates affiliation with an unauthorized group, or the depiction of the symbols of the group affiliation on a person's body or on things including arts and crafts projects.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.24 Group resistance.** A youth may not do any of the following:

(1) Participate in any group action with other youth, contrary to this chapter, institution policies and procedures or a verbal directive from staff, whether or not the group action creates a serious danger of harm to persons or property.

(2) Join in or solicit another to join in any group petition, gathering, or statement, except that the following actions are not prohibited:

(a) Group complaints authorized by s. DOC 380.04 (5).

(b) Group petitions to courts.

(c) Authorized actions by authorized groups.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.25 Disguising identity.** A youth may not do any of the following:

(1) Conceal, alter or disguise personal appearance in an attempt to prevent identification.

(2) Use any items or materials to make a representation of himself or herself without authorization of staff.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.26 Escape.** Unless authorized, a youth may not do any of the following:

(1) Leave the institution.

(2) Violate the directives of staff as to where the youth may be and for what time period the youth may be at the designated place.

(3) Fail to return to the institution or other designated facility from any approved leave.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

## Subchapter IV — Conduct Rules Relating to Order

**DOC 373.27 Inappropriate sexual conduct.** (1) A youth may not engage in any of the following inappropriate sexual conduct:

(a) Requesting, soliciting, hiring or communicating with another person in any manner, including orally or in writing, to have sexual intercourse, as defined in s. DOC 373.15 or sexual contact, as described in s. DOC 373.16.

(b) Exposing, touching or gesturing to the youth's own intimate parts to attract the attention of another person or using sexually explicit communication.

(c) Touching an animal for the purpose of causing sexual arousal or gratification to the youth or another person.

(2) Any contact with another person is prohibited, except when the contact is appropriate and permissible under institution policy.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.28 Obstruction.** (1) In this subsection, "obstruct or resist" means to try to prevent or impede a change in placement location by passive or aggressive use of one's body or another object. A youth may not physically obstruct or resist staff's attempt to change the physical location of the youth or another youth.

(2) In this subsection, "obstruct or impede" means to try to diminish staff's ability to visually monitor or supervise a youth by use of one's body, another person or an object. A youth may not obstruct or impede staff's ability to visually monitor the youth or another youth.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.29 Disobeying orders.** A youth may not disobey any verbal or written directive to the youth from staff.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2000, No. 534.

**DOC 373.30 Disrespect.** A youth may not show disrespect for another person by behavior directed at that person, whether or not the person is present, which is audible or observable and includes, but is not limited to, derogatory or profane writing, oral remarks, gestures, name-calling or yelling.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.31 Soliciting staff.** Unless authorized, a youth may not do any of the following:

(1) Give or offer to give anything having more than nominal value to staff or family of staff.

(2) Request or accept anything having more than nominal value from staff or family of staff.

(3) Buy, rent, lease or borrow anything from, or sell, rent, lease or lend anything to staff or family of staff.

(4) Request that staff or family of staff buy, rent, lease or borrow anything for the youth.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.32 Lying.** A youth may not make an oral or written statement that the youth knows is false or misleading.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.33 Disruptive conduct.** A youth may not engage in or cause conduct within the sight or hearing of others which is unusually loud, offensive or vulgar, including arguments, yelling, loud noises, horseplay, loud talking and other behavior which may disrupt the normal functioning of the institution, any area within the institution or any other area to which the youth is assigned.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.34 Talking when prohibited.** Each institution shall post specific policies and procedures stating the times and

places talking is forbidden or limited. A youth may not talk during those times, in those places or in a manner contrary to the institution policies and procedures, unless at least one of the following applies:

(1) The youth is replying to a question addressed to the youth by staff.

(2) Talking at that time and place is necessary for the physical health and safety of the youth or another person.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.35 Unauthorized forms of communication.** Unless authorized, a youth may not communicate by passing notes, using sign language, if sign language is not the youth's primary method of communication, using a language other than English, unless a youth's primary language is not English, using signals, or by unauthorized use of a telephone or mail or any other communication device, method or code. Any document or property, that is passed to or made available to another, is considered a means of communication under this section.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.36 Enterprise and fraud.** (1) A youth may not engage in any unauthorized activity involving the exchange of money, property, or service. Any youth who was engaged in any lawful business or enterprise prior to admission shall disengage from the operation of it in a manner determined by the superintendent.

(2) A youth may not offer to buy or order any item intending not to pay for it.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

## Subchapter V — Conduct Rules Relating to Property

**DOC 373.37 Counterfeiting and forgery.** (1) A youth may not make or alter any of the following:

(a) Any document so that it appears to have been made, signed, initialed or stamped either by someone else, or at a different time or with different provisions.

(b) Any postage stamp or postal cancellation mark.

(2) A youth may not knowingly use a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.38 Unauthorized use of or access to records.** Unless authorized, a youth may not read, gather or disclose information in institution records about another youth.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.39 Theft.** In this section, "steal" means obtain or retain the possession of or title to the property of another with intent to deprive the owner of it without the consent of the owner. A youth may not steal the property of another person or the state.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.40 Property damage or alteration.** (1) A youth may not intentionally, negligently or recklessly damage, destroy or alter the property of another person or state property.

(2) Unless authorized, a youth may not damage or destroy his or her personal property.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.41 Arson.** A youth may not start a fire unless authorized by staff.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.42 Causing an explosion.** A youth may not cause an explosion.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.43 Creating a safety hazard.** A youth may not create a safety hazard. This includes, but is not limited to, the misuse of electrical outlets, electrical equipment and machinery

or activities such as tampering with doors or locks or rendering floors slippery with water or another agent.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.44 Transfer of property or services.** Unless authorized, a youth may not do any of the following:

- (1) Give, sell or lend property or services to another person.
- (2) Receive, accept, buy or borrow property or services from another person.
- (3) Barter or exchange property or services with another person.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

### Subchapter VI — Conduct Rules Relating to Contraband

**DOC 373.45 Unauthorized possession of money.** (1) In this section:

(a) “Negotiable instrument” means a check or other written statement, signed by the maker or drawer, which contains an unconditional promise to pay which is payable on demand or at a specified time and which is payable to the order of the bearer.

(b) “Possess” means have on a youth’s person, in the youth’s quarters, in the youth’s locker or otherwise under the youth’s control in the institution.

(2) Unless authorized, a youth may not possess coins or paper money, a check, money order, savings bond or any other negotiable instrument.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.46 Intoxicants and paraphernalia.** (1) In this section, “intoxicating substance” means anything which, if taken into the body, may alter or impair normal mental or physical functions or is represented to do so, including, but not limited to, alcoholic drinks, lysergic acid diethylamide, also known as LSD, heroin, cocaine, marijuana, alcohol, paint thinner and unauthorized glues. Medications taken consistent with a proper prescription in accordance with law are not intoxicating substances.

(2) A youth may not knowingly possess, distribute or use an intoxicating substance, or have knowledge of, but fail to report another person’s possession, distribution or use of an intoxicating substance.

(3) A youth may not knowingly possess any chemical laboratory equipment or homemade device used in the manufacture of an intoxicating substance or any device used to take an intoxicating substance into the body, including, but not limited to, a still, hollow needle, small spoon, roach clip or marijuana or hashish pipe.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.47 Weapons.** (1) A youth may not possess any item that can be used as a weapon with intent to use it as a weapon against another person or to damage property.

(2) A youth may not make or alter any item with intent to make it suitable for use as a weapon.

(3) A youth may not knowingly possess an item that is designed to be used as a weapon or to be used in the manufacture of a weapon.

(4) Any item found which apparently violates this section may be confiscated. If a youth is found not guilty of violating this section and the item is not contraband, the item shall be returned to the youth.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.48 Unauthorized possession or use of tobacco or smoking materials.** A youth may not smoke tobacco or any other substance or possess tobacco or any other smoking materials.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.49 Unauthorized property.** (1) A youth may not possess stolen property or property a youth may not knowingly possess under the laws of Wisconsin, the United States or the rules of the department.

(2) Each institution shall post a list of all types of personal property which youth are allowed to possess in accordance with s. DOC 379.10 (2). All property that is not on the posted list is unauthorized.

(3) All property which is not on a youth’s property inventory, consistent with s. DOC 379.10 (4), is unauthorized.

(4) A youth may not knowingly violate this section or institution policies and procedures relating to personal property.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.50 Unauthorized use of the mail.** (1) A youth may not use the U.S. postal service to communicate with a person the youth may not correspond with under s. DOC 379.04.

(2) A youth may not send through the mail any item that the youth is not allowed to possess, except that items in safekeeping and items which have been seized may be sent out through the mail or by other means at the youth’s expense.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

### Subchapter VII — Conduct Rules Relating to Movement

**DOC 373.51 Leaving an assigned area.** A youth may not leave a room or area where the youth is attending any scheduled activity such as, but not limited to, a class, meal, religious service, group meeting or the immediate area of work or school assignment without authorization or a valid pass.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.52 Loitering.** A youth may not fail to move promptly when going to or from any event, work, class, meeting, meal, appointment or the youth’s living quarters.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.53 Entry of an unauthorized room or area.** (1) In this section, “enter” means reach into, lean into or put any object or part of the body into a room or area.

(2) Unless authorized, a youth may not enter another youth’s room or permit another youth to enter the youth’s own room.

(3) Unless authorized, a youth may not enter any area other than an area to which the youth has been assigned.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.54 Tardiness and absence.** Unless authorized, a youth may not be tardy or absent from any event, work, class, meeting, meal, appointment or other program related activity.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

### Subchapter VIII — Conduct Rules Relating to Safety and Health

**DOC 373.55 Creating an unsanitary condition.** (1) In this section, bodily fluids or secretions include saliva, blood, feces, semen, urine and vomit.

(2) A youth may not intentionally throw, expel, or otherwise cause the youth’s own bodily secretions or fluids, or the secretions or fluids of another youth to come into contact with another person.

(3) A youth may not recklessly or negligently dispose of the youth’s own bodily secretions or fluids, or the secretions or fluids of another youth.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.56 Misuse of medication.** (1) A youth may not possess or take medication except as properly prescribed for the youth, and in the amount and manner authorized.

(2) A youth may not distribute any medications, including over-the-counter medications, to another youth.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.57 Self-harm and disfigurement.** (1) A youth may not cause injury, physical pain, illness or any impairment of physical condition to self.

(2) A youth may not cut, pierce, remove, mutilate, discolor or tattoo any part of the youth's own body or the body of another person.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.58 Room disorder.** (1) Each institution or residential area of an institution shall adopt and post specific policies and procedures regulating the organization, neatness and cleanliness of youth living quarters.

(2) A youth may not violate institution policies and procedures regarding organization, neatness and cleanliness of a youth's living quarters.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.59 Poor self-maintenance.** (1) A youth may not fail to follow institution standards or directives regarding personal cleanliness or grooming when the youth has been informed by staff that he or she does not meet the standards or directives.

(2) A youth may not fail to shower at least every 7 days or more frequently if required by the institution.

(3) A youth performing a work assignment may be required to maintain suitably cut hair or to wear protective headgear or a net.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

## Subchapter IX — Miscellaneous Conduct Rules

**DOC 373.60 Violation of clothing policy.** Each institution shall post specific policies and procedures describing the clothing to be issued to youths, how clothing shall be worn, and when it shall be worn. A youth may not violate the institution policies and procedures regarding clothing.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.61 Gambling.** A youth may not wager money, services or anything else of value on the outcome of all or any part of a game of skill or chance, an athletic contest, the outcome of any event, or anything else.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.62 Violation of conditions of leave.** (1) Each institution shall post specific policies and procedures regarding conditions imposed on an authorized leave. Institutions may solicit the views of appropriate community representatives prior to adoption of the specific policies and procedures.

(2) A youth may not violate the institution's policies and procedures relating to authorized leave.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.63 Failure to perform assignments.** A youth may not refuse to perform assignments.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.64 Failure to cooperate with program.** In this section, "fail to cooperate" includes, but is not limited to, failure of a youth to work appropriately toward completion of case plan objectives or program goals or to respond appropriately to any discipline imposed. A youth may not intentionally fail to cooperate with an assigned program.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.65 Institution policies and procedures.** (1) Each institution shall make specific policies and procedures relating to talking, clothing, movement within the institution, con-

ditions of leave from the institution, personal property, personal hygiene and conditions of living quarters. These policies and procedures shall be consistent with the purposes stated in s. 938.01, Stats., and the goals of youth corrections in s. DOC 371.01 (2). No institution policy or procedure may conflict with any provision of this chapter or be stricter than any provision of this chapter.

(2) The institution may solicit the views of youth prior to the adoption of an institution policy or procedure.

(3) Discipline may be imposed for violation of an institution policy or procedure only if at least one of the following apply:

(a) The policy or procedure was posted on an institution bulletin board or in an institution handbook and a youth had actual knowledge of the institution policy or procedure at the time of the violation.

(b) There is a violation of an institution policy or procedure in an institution handbook or other document that was received by a youth, in which case the youth is presumed to have knowledge of the policy or procedure in the absence of a preponderance of evidence to the contrary.

(4) Each institution shall maintain at least one bulletin board for bulletins of general applicability. Bulletin boards shall be located so that every youth has an opportunity to read all bulletins that apply to youth. Bulletins that are no longer in effect shall be removed from the bulletin board.

(5) A handbook of all current policy and procedure bulletins under sub. (1) shall be maintained at the institution and be readily accessible to youth.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

## Subchapter X — Disposition of Conduct Rule Violations

**DOC 373.66 Conduct rule violations: possible dispositions.** The conduct rule violations described in ss. DOC 373.14 to 373.65 may be dealt with by staff only in the following ways:

(1) If a conduct rule violation is a minor conduct rule violation, a conduct report may not be written, but a youth may be counseled and warned, consistent with s. DOC 373.67 or disciplined summarily, consistent with s. DOC 373.68.

(2) A major conduct rule violation shall be referred to the superintendent in writing by a conduct report under s. DOC 373.69. Violations referred to the superintendent may be dealt with as follows:

(a) The superintendent may dismiss, alter or correct the conduct report consistent with s. DOC 373.70.

(b) If the superintendent determines that a violation should be treated as a minor conduct rule violation, the superintendent shall refer the matter to appropriate staff to be disposed of in accordance with s. DOC 373.68.

(c) If the violation is a major conduct rule violation, the superintendent shall refer the matter to a hearing officer to be disposed of in accordance with this subchapter.

(3) Violations of the criminal law may be referred under s. DOC 373.83 to law enforcement authorities for prosecution.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.67 Conditions under which youth who violate conduct rules are not disciplined.** (1) Staff may write conduct reports only for major conduct rule violations under s. DOC 373.11 (4) or violations of conduct rules which they believe are major conduct rule violations under s. DOC 373.11 (5). Under any of the following conditions, staff may inform a youth about conduct that violates a conduct rule, discuss that conduct and give a warning:

(a) The youth is unfamiliar with the conduct rule.



(b) The youth has not violated the same or a closely related rule recently, whether or not discipline was imposed.

(c) The youth is unlikely to repeat the conduct rule violation if warned and counseled.

(d) Although the youth technically violated a conduct rule, the purpose of this chapter would not be served by disciplining a youth in the particular situation.

(2) No record or official report of a disposition under sub. (1) is required.

(3) The superintendent may overrule a determination that a violation has occurred. The decision by the superintendent to overrule or not overrule is not reviewable by a hearing officer.

(4) A major conduct rule violation listed under s. DOC 373.11 (4) may not be disposed of in accordance with this section. Staff shall write a conduct report when a major conduct rule violation under s. DOC 373.11 (4) occurs.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

#### **DOC 373.68 Summary disciplinary dispositions.**

(1) A youth may be disciplined summarily for a minor conduct rule violation in accordance with this chapter. When a youth is disciplined summarily under this section, staff shall make an appropriate record.

(2) When staff who have the responsibility for supervising a youth believe that a penalty listed in sub. (3) is appropriate, staff shall do all of the following:

(a) Inform the youth of the nature of the alleged infraction and the potential disposition.

(b) Obtain the youth's version of the underlying facts.

(c) Make a finding as to whether the youth violated a conduct rule, communicate this finding to the youth and impose discipline consisting of one or more of the disciplinary actions under sub. (3).

(3) Discipline imposed by staff under this section shall be limited to one or more of the following disciplinary actions:

(a) An oral or written reprimand.

(b) Room confinement for a maximum of 5 hours. Room confinement may not be served during mandatory program periods.

(c) Exclusion from the youth's room for a maximum of 5 hours.

(d) Loss of a specific privilege for up to one week or loss of participation in a special event.

(e) A disposition, which may include:

1. Counseling and a warning.
2. Extra duty related to the misconduct.
3. Apology for the misconduct.
4. Monetary restitution.
5. A period of positive behavior.

(4) A supervisor shall review the findings of fact and discipline within one day, excluding weekends and holidays, of imposition of the discipline. The supervisor may affirm, modify or reverse the findings of staff, reduce the discipline or write a conduct report if it is determined that the violation was a major conduct rule violation. The supervisor may make any adjustment, consistent with this chapter, in the discipline imposed or in the imposition of future consequences, but may not increase the level of discipline imposed by staff unless the requirements of sub. (10) are met.

(5) A youth has no right to be present at the supervisor's review.

(6) Imposition of discipline is not suspended while the matter is under review. A youth shall be credited for any confinement served during the review.

(7) A youth may appeal the decision of the supervisor to the superintendent consistent with s. DOC 373.81.

(8) The record of a conduct rule violation which is dealt with by a summary disposition shall be approved by the supervisor before being entered in a youth's official records.

(9) Within a reasonable time following disposition, staff shall counsel the youth about the incident that occurred.

(10) More restrictive forms of discipline than those authorized in sub. (3), for a conduct rule violation not designated as a major conduct rule violation under this chapter, may be imposed by a supervisor under this subsection as follows:

(a) Discipline imposed under this subsection is limited to the discipline authorized in sub. (3), modified as follows:

1. Room confinement for not more than 10 hours.

2. Loss of a specific privilege for not more than 2 weeks or the loss of 2 occurrences of a special event.

3. Loss of an off grounds activity for no longer than 30 days.

(b) Before a youth is disciplined under this subsection, the supervisor shall do all of the following:

1. Obtain a statement of facts with a recommendation from staff.

2. Inform the youth of the nature of the alleged infraction and the range of discipline.

3. Request that the youth relate the facts concerning the matter at issue.

(c) A disposition under this section shall be imposed consecutive to other dispositions under this section and may be imposed consecutive to a disposition under s. DOC 373.80.

(d) The supervisor may impose discipline under this subsection, may dismiss the charge, or may write a conduct report if the conduct rule violation is a major conduct rule violation.

(e) Within a reasonable time following a disposition under this subsection, staff shall talk to the youth and offer counseling about the incident that occurred.

(f) A youth may appeal the supervisor's decision under this section consistent with s. DOC 373.81.

(11) Any contraband related to the incident shall be disposed of in accordance with s. DOC 376.17.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.69 Conduct reports.** (1) Staff who observe or discover a conduct rule violation shall investigate the matter to determine if a conduct rule violation occurred. If staff conclude that a major conduct rule violation has occurred, a conduct report shall be written. If more than one staff knows of the same violation, the superintendent shall designate the staff who shall write the conduct report.

(2) A conduct report may only be written for a major conduct rule violation.

(3) The conduct report shall describe the facts in detail, including information obtained from other staff. The report shall list all conduct rules that were allegedly violated, even if they overlap. All physical evidence and witnesses shall be mentioned in the report.

(4) There shall be at least one conduct report or record for each act that is alleged to be a major conduct rule violation under this chapter.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.70 Review of conduct reports by the superintendent.** (1) The superintendent shall promptly review all conduct reports for technical adequacy and the appropriateness of the charges.

(2) The superintendent:

(a) Shall dismiss a conduct report if the superintendent believes that it should not have been written.

(b) Shall eliminate any conduct rule violation cited in the conduct report if the statement of facts does not establish that a violation was committed.

(c) May add any conduct rule violation to the conduct report if the statement of facts establishes that a violation was committed.

(d) Shall destroy the conduct report if no conduct rule violation was committed.

(e) May refer a conduct report for further investigation.

(3) Following a review, the superintendent shall determine whether a conduct report shall be approved.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.71 Notice of alleged major conduct rule violation.** When a youth is alleged to have committed a major conduct rule violation and the superintendent has reviewed and approved the conduct report pursuant to s. DOC 373.70, the following procedure shall be followed:

(1) The superintendent shall give a copy of the approved conduct report to the youth within 7 days of placement in prehearing security.

(2) The superintendent shall inform the youth orally and in writing of the conduct rule which the youth is alleged to have violated.

(3) The superintendent shall inform the youth orally and in writing of the potential penalties which may be imposed.

(4) The superintendent shall also inform the youth orally and in writing of all of the following:

(a) That the youth has a right to a disciplinary hearing at which the youth may present oral, written, documentary and physical evidence, and evidence from voluntary eye witnesses.

(b) That the youth has a right to the assistance of a staff advocate, the right to ask questions of the witnesses, that repetitive, disrespectful and irrelevant questions may be forbidden and that the youth may appeal the finding and disposition of the hearing officer to the superintendent.

(c) That the youth may waive the right to a disciplinary hearing and to the other rights specified in this subsection and that a waiver is not an admission of guilt.

(5) The youth may elect to waive the right to a disciplinary hearing at anytime. The waiver shall be in writing and shall be submitted to the superintendent. The superintendent may not accept a written waiver by a youth if the superintendent believes that the youth lacks the mental capacity to waive the disciplinary hearing.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.72 Procedure when the right to a disciplinary hearing is waived.** When a youth is alleged to have committed a major conduct rule violation, the superintendent has reviewed and approved the conduct report under s. DOC 373.70 and the youth has waived the right to a disciplinary hearing under s. DOC 373.71 (5), the following procedure shall be followed:

(1) The youth shall appear before a hearing officer not less than 24 hours nor more than 7 days after the date the approved conduct report is given to the youth.

(a) The youth may request more time for preparation or a waiver of time limits. Unless there are good reasons for not granting more time or a waiver of time limits, a reasonable amount of additional time or a waiver of time limits shall be granted.

(b) Time limits may be exceeded due to the absence or unavailability of the youth.

(2) (a) The hearing officer shall review the conduct report and discuss it with the youth.

(b) The youth shall be provided with an opportunity to respond to the report and present the youth's version of the facts relating to the alleged violation.

(c) The hearing officer may question the youth.

(d) The youth has no right to a staff advocate, to confront witnesses or to have witnesses testify on the youth's behalf. Staff who wrote the conduct report need not be present.

(3) The hearing officer shall decide the guilt or innocence of the youth on each charge, decide the discipline and announce these decisions to the youth. Penalties may be imposed under s. DOC 373.80.

(4) A finding of guilt shall be based on a preponderance of the evidence.

(5) The hearing officer shall document the findings for each charge, the reasons for the findings, the disposition and the reasons for the disposition. The hearing officer shall submit the documentation to the superintendent.

(6) A person directly involved in preparing the conduct report may not conduct a disciplinary hearing on that conduct report.

(7) Any contraband related to the incident shall be disposed of in accordance with s. DOC 376.17.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.73 Procedure for disciplinary hearings.**

(1) The disciplinary hearing for a youth alleged to have committed a major conduct rule violation shall be held in accordance with this chapter.

(a) At the disciplinary hearing, the conduct report shall be read aloud and all witnesses for or against the accused, including the accused and the staff who wrote the conduct report, shall have a chance to speak.

(b) The hearing officer shall permit the youth or the youth's advocate to question each of the witnesses. The hearing officer may permit or require the youth or the youth's advocate to submit questions to the hearing officer to be asked of a witness. The hearing officer may forbid repetitive, disrespectful or irrelevant questions.

(c) The hearing officer may require that physical evidence, if any exists, be offered.

(2) After the disciplinary hearing, the hearing officer shall deliberate, considering only the evidence which was presented. The institution has the burden of establishing guilt by a preponderance of the evidence. The hearing officer shall inform the accused and the youth's advocate, if any, of the decision. The accused shall receive a written copy of the decision, the finding on each charge, the reasons and the disposition.

(3) The disciplinary hearing shall be held no sooner than one day and no later than 14 days after service of an approved conduct report alleging the violation. This period may be enlarged or diminished if the superintendent approves and the youth agrees.

(4) A youth may waive in writing the time limits set by this section.

(5) Any contraband related to the incident shall be disposed of in accordance with s. DOC 376.17.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.74 Disciplinary hearing: advocates.**

(1) A superintendent shall designate staff to serve as advocates for youth at disciplinary hearings. Preference shall be given to staff who volunteer. Staff may be selected by an accused youth, subject to staff's consent and availability. Staff involved in the incident or in writing the report used in the disciplinary hearing process may not act as the youth's advocate.

(2) Before the disciplinary hearing, the advocate shall help the youth understand the charges and help in the preparation and presentation of any defense, including gathering evidence and witness testimony and preparing the youth's own statement. The

advocate may speak on behalf of the youth at the disciplinary hearing or may help the youth state a defense. After the disciplinary hearing, the advocate shall discuss the case with the youth, ensure that the youth understands what happened at the disciplinary hearing and answer any questions.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.75 Disciplinary hearing: location.** The disciplinary hearing shall take place at the institution where the alleged conduct occurred or at the institution to which the youth has been transferred.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.76 Disciplinary hearing: witnesses and notice.** (1) A youth may request that witnesses be called. The youth shall make the request to the youth's advocate who shall deliver it to the hearing officer. Except for good cause, a youth may present no more than 2 witnesses. If a youth has chosen not to have an advocate, the request shall be sent to the superintendent. Except for good cause, a request shall be made within 2 days after the youth is served notice as provided in s. DOC 373.71.

(2) After a request for witnesses has been received, the hearing officer shall review the request and determine witness availability as provided in sub. (3).

(3) A witness requested by the accused shall attend the disciplinary hearing unless one or more of the following apply:

(a) There is a significant risk of bodily or psychological harm to the witness if he or she testifies as determined by the hearing officer.

(b) The witness is a youth who does not want to testify.

(c) The witness is not a youth or staff.

(d) The witness is a youth who is unavailable due to hospitalization, illness, transfer, release or is otherwise unable to attend, or staff who is unavailable due to injury, illness, vacation or because he or she is no longer employed at that location, or is on extended leave.

(e) The testimony is irrelevant to the question of guilt or innocence of the youth or to the disposition.

(f) The testimony merely duplicates other evidence and would unduly prolong the hearing.

(g) The witness is a member of the staff who is on a shift other than the shift on which the hearing is held.

(4) If a witness, approved to testify at the disciplinary hearing, is unavailable to testify for one of the reasons under sub. (3), the hearing officer may accept a signed, written statement, a transcript of a statement, an oral statement by telephone, a tape recorded statement or may require the advocate or other staff person to interview the witness and report the interview in writing.

(5) If the hearing officer determines under sub. (3) (a) that a witness is unavailable and the hearing officer considers a signed, written statement from that witness, the identity of the witness may not be revealed to the accused. The statement shall be disclosed to the accused only if it can be edited so that it will not disclose the identity of the witness.

(6) After determining which witnesses will be called for the accused, the hearing officer shall schedule a time for a hearing when all of the following persons can be present:

(a) The hearing officer.

(b) The youth's advocate, if any.

(c) The witnesses.

(d) The accused.

(7) In the case of youth witnesses and the accused, the hearing officer, when scheduling the disciplinary hearing, shall attempt to avoid conflict with off grounds activities, but these persons may be required to attend the disciplinary hearing even if it conflicts with those activities.

(8) The hearing officer or other designated staff shall notify the accused, the advocate, if any, and all witnesses of the time and location of the disciplinary hearing.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.77 Disciplinary hearing: hearing officers.**

(1) The superintendent shall designate staff to serve as hearing officers who make decisions in disciplinary hearings.

(2) The superintendent may designate 2 or 3 hearing officers to function as a hearing committee assigned to fulfill the role of a single hearing officer in a disciplinary hearing. If a hearing committee is designated to conduct the disciplinary hearing, a decision shall be rendered as follows:

(a) A decision by a committee of 3 requires the concurrence of a majority of members of the committee.

(b) A decision by a committee of 2 must be unanimous. If a unanimous decision cannot be reached, the matter shall be referred to the superintendent for decision.

(3) No person who was directly involved in an incident which is the subject of a disciplinary hearing may serve as hearing officer or be on the committee for that disciplinary hearing.

(4) The hearing officer or committee shall base its findings, conclusions and decisions on discipline solely on this chapter and the evidence which was presented at the disciplinary hearing.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.78 Disciplinary hearing: evidence.**

(1) During a disciplinary hearing, the hearing officer shall consider any relevant evidence, whether or not it would be admissible in a court of law and whether or not any violation of this chapter occurred in the process of gathering the evidence, unless any of the following applies:

(a) The evidence is not reliable.

(b) The evidence duplicates evidence already received at the disciplinary hearing.

(2) Evidence is relevant if that evidence makes it appear more likely or less likely that the youth committed the violation of which the youth is accused.

(3) A finding of guilt shall be based on a preponderance of the evidence.

(4) After a finding of guilt by the hearing officer, confidential informant material shall be forwarded to the superintendent for retention in restricted security records.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.79 Recordkeeping.** (1) A record of a conduct rule violation may be included in a youth's permanent record only if the youth was found guilty by summary disciplinary procedure, as provided in s. DOC 373.68 or by a hearing officer under this chapter.

(2) Following an appeal in which the finding of guilty is reversed, all records of the conduct rule violation shall be removed from the youth's records.

(3) No record of an alleged violation of the conduct rules which has been dismissed or for which the youth was found not guilty, may be maintained in any official record or considered in making program or release decisions. Information concerning the alleged violation may be retained for statistical or administrative purposes only, but without personal identifiers.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.80 Dispositional alternatives for major conduct rule violations.** (1) If a youth's guilt is not established by a preponderance of the evidence, the hearing officer shall dismiss the case.

(2) If a youth's conduct, as proven, is not sufficient to warrant a major penalty, the hearing officer may order a disposition under s. DOC 373.68.

(3) If the hearing officer finds that a youth committed a major conduct rule violation, the hearing officer shall consider any extenuating or mitigating circumstances in determining the appropriate major penalty disposition, which may include any of the following:

(a) First major conduct rule violation within 60 days: not to exceed close confinement for 3 days and modified confinement for an additional 40 days.

(b) Second major conduct rule violation within 60 days: not to exceed close confinement for 4 days and modified confinement for an additional 50 days.

(c) Third and each subsequent major conduct rule violation within 60 days: not to exceed close confinement for 6 days and modified confinement for an additional 60 days.

(4) A major penalty disposition may only be imposed concurrent with other major dispositions under this section.

(5) The minimum requirement of one-hour out-of-room time per day for close confinement may be suspended for a 24-hour period upon the recommendation of a physician or psychologist. The superintendent shall send a written report of the suspension to the administrator.

(6) If the hearing officer finds that a youth committed a conduct rule violation which resulted in damages or monetary loss, the hearing officer may direct that the youth pay restitution in addition to any disposition imposed under sub. (3).

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

#### **DOC 373.81 Discipline: review by superintendent.**

(1) A youth who has received summary discipline or a major penalty may appeal the decision to the superintendent within 7 days of the day the youth was notified of the decision. A youth who has difficulty preparing a written appeal shall be assisted by staff when requested to do so by the youth.

(2) The superintendent shall issue a final decision on the appeal within 7 days of receipt of the appeal. Failure to issue a final decision upholds the decision to discipline.

(3) The superintendent may do any of the following:

(a) Affirm both the finding of guilt and the discipline imposed.

(b) Affirm the finding of guilt, but reduce the discipline.

(c) Reverse the finding of guilt.

(d) Remand for reconsideration or rehearing, if there was a finding of guilt.

(4) Whether or not there is an appeal, the superintendent shall review all findings of guilt and the discipline imposed within 2 days, excluding weekends and holidays, of the time that the decision is imposed and may review the findings and discipline at any time thereafter. In either case, the superintendent may reverse the finding of guilt or reduce the discipline or remand for reconsideration or rehearing, if there was a finding of guilt.

(5) An institution may not require a youth to serve 90 or more continuous days of confinement without the approval of the administrator.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

#### **DOC 373.82 Basic services and privileges for youth serving a major penalty.**

(1) All of the following are the minimum services and privileges for a youth serving a major penalty, unless suspended under sub. (2), because the youth is out of control:

(a) Underwear, socks, outer clothing or, when warranted, clothing which will assist in the prevention of self-harm.

(b) Appropriate bedding supplies.

(c) Toothbrush, toothpaste and comb or pick.

(d) Washcloth, towel, soap and shower.

(e) Full meals at regularly scheduled times.

(f) Reading and writing materials.

(g) Daily exercise or recreation, to take place outside of room or cell.

(h) Reasonable social worker contact and discussion, if requested by the youth.

(i) Daily counselor contact.

(j) Daily opportunity to clean room or cell.

(k) Crisis intervention worker or other appropriate staff contacts and discussion.

(L) Daily, except Saturday, Sunday and legal holidays, teacher contact. The youth shall be offered at least 3 hours of educational work a day. Youth with exceptional educational needs shall be offered instruction in accordance with law.

(m) Health care.

(n) Pastoral care services, if requested by the youth.

(2) A youth may be placed in control status and one or more of the items of personal property in sub. (1) may be removed temporarily if the youth is any of the following:

(a) Physically out of control and abusing or misusing any item of personal property under sub. (1) in a manner that creates a dangerous situation or serious disruption.

(b) Escalating toward the loss of physical control and, based on the youth's behavior and history, it is reasonably believed that a dangerous situation or serious disruption will occur if the youth is not placed in control status and one or more items of personal property in sub. (1) are not removed temporarily.

(c) In observation status under ch. DOC 375.

(3) The maximum period of time a youth may remain in control status without approval of the superintendent is 72 hours.

(4) When a youth is retained in control status more than 72 hours, a clinical evaluation to consider appropriateness for transfer to a mental health facility shall be conducted as soon as is reasonably possible.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.83 Referral for prosecution.** (1) The superintendent of each institution shall develop, in conjunction with local law enforcement authorities, a policy regarding conduct rule violations to be considered for referral for prosecution.

(2) When a conduct rule violation which is also a crime is alleged, the superintendent shall review the incident in light of the policy to determine if the case should be referred for prosecution and if necessary, shall order an investigation to determine if sufficient evidence exists for referral.

(3) Whether or not the review described in sub. (2) results in prosecution, the incident may be handled as a conduct rule violation.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.

**DOC 373.84 Harmless error.** If a procedural requirement under this chapter is not adhered to by staff, the error may be deemed harmless and disregarded if it does not prejudice a fair proceeding involving a youth.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.