

Clearinghouse Rule 24-040

WISCONSIN DEPARTMENT OF CORRECTIONS PROPOSED RULE MAKING ORDER

INTRODUCTORY CLAUSE

The statement of scope for this rule was approved by the Governor on December 10, 2021, published as Scope Statement No. SS 115-21 in Register No. 792A3 on December 20, 2021, and approved by Secretary Kevin Carr on January 10, 2022.

The Wisconsin Department of Corrections proposes an order **to repeal** DOC 373.03(1), (3), (4), (13), (17), (18), (19), (20), (21), and (22), 373.11(1), (2), (3), (4), (5) and (6), 373.13, 373.52, 373.57, 373.62, 373.63, 373.67(4), 373.68(3)(b), (10)(a)1., and (10)(d), 373.69, 373.70, 373.71, 373.72, 373.73, 373.74, 373.75, 373.76, 373.77, 373.78, 373.80, 373.81(3)(d) and (5) and 373.82, **to renumber and amend** DOC 373.11(7) and (8), **to amend** DOC 373.01(1), (2), and (4)(intro.), (e) and (f), 373.03(25), (26), and (29), 373.04(intro.), (5), (6), 373.05, Subchapter III(title), 373.22(1), 373.24(1), 373.26(1) and (3), 373.27(2), 373.33, 373.38, 373.45(1)(b), 373.46(2), 373.47(1) and (3), 373.49(2) and (4), 373.58(1) and (2), 373.59(1) and (2), 373.60, 373.65, 373.66(1), 373.67(1), 373.68(1), (4), (10)(intro.), and (10)(c), 373.79(1) and (3), 373.81(1) and (4) and 373.83(1), **to repeal and recreate** DOC 373.03(6), (9) and (10), 373.29, 373.32, 373.34, 373.35 and 373.66(2) **and to create** DOC 373.03(10m), (24m) and (27m), 373.205, 373.24(3), 373.505 and 373.68(14).

RULE SUMMARY

1. Statutes interpreted:

ss. 301.02, 301.025, 301.03, 301.032 and 938.48(16), Stats.

2. Statutory authority to promulgate the rule: Section 227.11 (2) (a) – (e): Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

Section 301.02: The department shall maintain and govern the state correctional institutions.

Section 301.025: The division of juvenile corrections shall exercise the powers and perform the duties of the department that relate to juvenile correctional services and institutions, juvenile offender review, community supervision under s. 938.533, and the serious juvenile offender program under s. 938.538.

Section 301.03(2): Supervise the custody and discipline of all prisoners and maintenance of state correctional institutions and the prison industries under s. 303.01.

Section 938.48(16): (a) Based on research into effective correctional programs and practices, establish standards for services for juveniles under the supervision of the department under s. 938.183, 938.34 or 938.345. (b) Promulgate rules governing services and programming for juveniles in a secured residential care center for center and youth....

3. Explanation of agency authority: The department has responsibilities imposed by statute to establish and enforce standards for services for youth under the supervision of the department. Additionally, the department has responsibilities imposed by statute 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.

4. Related statute or rule: Wisconsin Statute Chapter 938 and Wisconsin Administrative Code Chapter 301.

5. Plain language analysis: This rulemaking order updated DOC 373 to reflect changes in the operations and practices of the department as they affect youth conduct in Type 1 secured correctional facilities. This rulemaking order also updates the language in DOC 373 to reflect current best practices for managing youth behavior and system upgrades. In addition, the rulemaking order updates DOC 373 to adhere to the court order issued in *J.J. et al vs. Litscher et al.*

The rulemaking order updates the definitions of contraband, disturbance, facility, mechanical restraint and staff to align with the definitions in CR 24-003. The rulemaking order repeals the definitions of close confinement, conduct report, major conduct rule violation, major penalty, minor conduct rule violation, minor penalty and modified confinement and creates definitions for group disturbance, security threat group and treatment-based response.

Additionally, this rulemaking order removes the provisions relating to major and minor penalties and conduct rule violations and prehearing security. The rulemaking order also removes the conduct rule relating to order for talking when prohibited, the conduct rules relating to movement for loitering and the conduct rule relating to safety and health for self-harm and disfigurement. Other conduct rules for violating conditions of leave and failing to perform assignments are repealed in this rulemaking order. This rulemaking order creates another

conduct rule relating to bodily security for bullying, creates a conduct rule relating to order for violating boundaries and creates a conduct rule relating to contraband for misuse of state or federal property.

Lastly, this rulemaking order updates the conduct rules relating to facility security for participating in a disturbance and for group resistance, updates the conduct rules relating to order from disobeying orders to refusal to comply and updates the conduct rule relating to order for lying and unauthorized forms of communication. This rulemaking order also updates several provisions relating to the disposition of conduct rule violations by removing major conduct rule violations and dispositions for major conduct rule violations, conduct reports and disciplinary hearings.

6. Summary of, and comparison with, existing or proposed federal regulations that are intended to address the activities to be regulated by the proposed rule: There are no existing or proposed federal regulations that address the activities to be regulated by the proposed rules. However, federal standards set by the Juvenile Justice and Delinquency Prevention Act (JJDP A) includes the following provisions which may affect best practices for managing youth behavior in a secured correction facility:

34 U.S.C. § 11133(a)(7)(B)(ii)

(B) contain—(ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

34 U.S.C. § 11133(a)(9)(D)

(D) programs that provide treatment to juvenile offenders who are the victims of child abuse or neglect, and to their families, in order to reduce the likelihood that such juvenile offenders will commit subsequent violations of law:

34 U.S.C. § 11133(a)(9)(L)

(L) programs for positive youth development that assist delinquent and other at-risk youth in obtaining-

- (i) a sense of safety and structure;
- (ii) a sense of belonging and membership;
- (iii) a sense of self-worth and social contribution;
- (iv) a sense of independence and control over one's life; and
- (v) a sense of closeness in interpersonal relationships;

Prison Rape Elimination Act (PREA)

28 C.F.R § 115.315 Limits to cross-gender viewing and searches

28 C.F.R. § 115.341 Obtaining information from resident

28 C.F.R § 115.342 Placement of residents in housing, bed program, education, and work assignments

7. Comparison with similar rules in adjacent states:

The adjacent states have similar rules to the proposed Wisconsin rule. All adjacent states have requirements that juvenile correctional facilities must have written policies regarding unacceptable youth behavior and the potential consequences if a youth violates the rules of conduct. Additionally, most adjacent states have rules that provide for or require review of any alleged misconduct and allow for youth to appeal any allegations of misconduct.

a. **Illinois:** The Illinois Department of Juvenile Justice was created to provide treatment and services through a comprehensive continuum of individualized educational, vocational, social, emotional, and basic life skills to enable youth to avoid delinquent futures and become productive, fulfilled citizens. 730

ILCS 5/3-2.5-5. Illinois Administrative Code specifies the conduct rules for youth expounds on these responsibilities and specifies the disciplinary procedures for youth in the Department's care. Conduct rules specify a number of offenses and the maximum penalty for each offense. The conduct rules specify a variety of offenses including possessing contraband, sexual misconduct, assault, damage or misuse of property, dangerous communications and failure to report for a work, educational, or program assignment or for transport. Ill. Admin. Code tit. § 2504.20.

Illinois Administrative Code also codifies the administration of discipline for the Department of Juvenile Justice. Employees have the duty to observe the conduct of youth and must complete a disciplinary report if they observe a youth committing an offense, discovers evidence of its commission, or receives information from a reliable witness of such conduct. Ill. Admin. Code tit. § 2504.30. Disciplinary reports shall be reviewed by a reviewing officer to determine if the reported facts justify a disciplinary hearing, if the offense was minor or major in nature, or if the report shall be expunged from the youth's record. Ill. Admin. Code § 2504.50(d). No youth shall be found guilty of any violation of these rules without a hearing before the Adjustment Committee or Program Unit. Ill. Admin. Code tit. § 2504.20(a).

b. **Iowa:** Iowa administrative code specifies the standards and requirements for juvenile detention facilities. Per Iowa administrative code, a facility shall provide to the child written policies specifying inappropriate behaviors, reasonable consequences for misconduct, and due process procedures available to the child. 441 IAC 105.16(6). Upon request, the above information shall be provided to the child's parent or guardian and referring worker. 441 IAC 105.16(6).

c. **Michigan:** Per Michigan administrative code, a juvenile court operated facility shall have and follow written discipline policy and procedures that specify acts which are prohibited within the facility and penalties that may be imposed for minor misbehavior and major violations and a copy shall be given and explained to each resident and staff members. R. 400.10169(2).

d. **Minnesota:** Minnesota administrative rule codifies facility operational service policies and practices for programs from children. Each facility must communicate verbally and in writing to a resident who is capable of understanding the facility's rules and the details of the due process system used in the facility. Minn. R. 2960.0080(4). The rules must address which behaviors are considered acceptable and unacceptable and the reasons why, the consequences that will be applied in recognizing and rewarding acceptable behavior and modifying unacceptable behavior, the due process system that governs the facility's use of disciplinary consequences and the relationship of the resident's individualized education program discipline recommendations, if any, to the facility's discipline plan. Minn. R. 2960.0080(4).

Additionally, a facility must have a resident discipline plan that explains the consequences or administrative sanctions for specific behaviors or omissions, the administrative process for handling major and minor violations, the right of notice of major charges made against the resident, the right to internal review and the appeal process. Minn. R. 2960.0270(6)(a). These rules of conduct must be posted and explained to a resident in a way and in a language that the resident will understand. Minn. R. 2960.0270(6)(c).

8. Summary of the factual data and analytical methodologies: The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis: Not applicable.

10. Effect on small businesses: Not applicable.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs. Not applicable.

12. Agency contact person: Caitlin Washburn, Administrative Rules Coordinator, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI, 53707-7925; by phone: (608) 240-5020; or by email: DOCAdministrativeRulesCommittee@wisconsin.gov.

13. Place where comments are to be submitted and deadline for submission: Written comments on the proposed rule will be accepted and receive consideration if they are received by June 4th, 2024. Written comments should be addressed to: Administrative Rules Committee, c/o Caitlin Washburn, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email: DOCAdministrativeRulesCommittee@wisconsin.gov.

TEXT OF RULE

SECTION 1. DOC 373.01 (1), (2), (4)(intro.), (e) and (f) are amended to read:

DOC 373.01 (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~~ facilities.

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

(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~~ facility security.

SECTION 2. DOC 373.03 (1), (3) and (4) are repealed.

SECTION 3. DOC 373.03 (6), (9) and (10) are repealed and recreated to read:

DOC 373.03 (6) "Contraband" means any item or items introduced or found in the facility whether illegal or legal that are expressly prohibited by the department or facility policy.

(9) "Disturbance" means any of the following has occurred:

- (a) A group disturbance.
- (b) An incident.
- (c) A youth has taken a hostage.

(10) "Facility" means a type 1 juvenile correctional facility, as defined in s. 938.02 (19), Stats.

SECTION 4. DOC 373.03 (10m) is created to read:

DOC 373.03 (10m) "Group disturbance" means the disruption or interference of normal facility operations resulting from 3 or more youth participating in actions, threats, demands, or suggestions to advocate disruption or disturbance almost akin to a riot.

SECTION 5. DOC 373.03 (13), (17), (18), (19), (20), (21) and (22) are repealed.

SECTION 6. DOC 373.03 (24m) is created to read:

DOC 373.03 (24m) “Security threat group” means a group of individuals who threaten, intimidate, coerce, or harass others or who engage in any activity that violates or encourages the violation of statutes, administrative rules, or department policy.

SECTION 7. DOC 373.03 (25) and (26) are amended to read:

DOC 373.03 (25) “Staff” means a state employee ~~of~~ or a person under contract with the department or the institution facility where a youth is housed.

(26) “Superintendent” means the superintendent of ~~an institution~~ a facility or designee.

SECTION 8. DOC 373.03 (27m) is created to read:

DOC 373.03 (27m) “Treatment-based response” means a nonpunitive intervention to provide youth with activities or opportunities to improve social, emotional, or behavioral skill development.

SECTION 9. DOC 373.03 (29) is amended to read:

DOC 373.03 (29) “Youth” means a person or persons supervised by the department in ~~an institution~~ a facility consistent with the requirements of law and regardless of age.

SECTION 10. 373.04 (intro.), (5) and (6) are amended to read:

DOC 373.04 Responsibilities of youth. (intro.) 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~~ facility, 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~~ facility placement. Youth shall do all of the following:

(5) Know the rules of the ~~institution~~ facility 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~~ facility rules.

SECTION 11. DOC 373.05 is amended to read:

DOC 373.05 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~~ a facility, regardless of where the violation was committed or attempted.

SECTION 12. DOC 373.11 (title), (1), (2), (3), (4), (5) and (6) are repealed.

SECTION 13. DOC 373.11 (7) and (8) are renumbered 373.68(12) and (13) and amended to read:

DOC 373.68 (12) If a youth commits a conduct rule violation during the course of a visit, the ~~hearing officer may suspend~~ visiting privileges may be suspended as a disposition, under s. DOC 379.07 (9) (b).

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

SECTION 14. DOC 373.13 is repealed.

SECTION 15. DOC 373.205 is created to read:

DOC 373.205 Bullying. A youth may not participate in unwanted aggressive behavior that involves a real or perceived power imbalance through verbal behavior, physical, or social behavior or both, that intends to cause physical or psychological harm or both.

SECTION 16. DOC 373 Subchapter III (title) is amended to read:

Subchapter III – Conduct Rules Relating to ~~Institutional~~ Facility Security

SECTION 17. DOC 373.22 (1) is amended to read:

DOC 373.22 (1) Intentionally or recklessly participate in a disturbance including, disruptive behavior, throwing items, or language that includes hate or conflict.

SECTION 18. DOC 373.24 (1) is amended to read:

DOC 373.24 (1) Participate in any group action with other youth, contrary to this chapter, ~~institution facility~~ 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.

SECTION 19. DOC 373.24 (3) is created to read:

DOC 373.24 (3) Participate in any activity associated with any security threat group or possess any written materials, symbols, or symbolism related to a security threat group.

SECTION 20. DOC 373.26 (1) and (3) is amended to read:

DOC 373.26 (1) Leave the ~~institution~~ facility.

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

SECTION 21. DOC 373.27 (2) is amended to read:

DOC 373.27 (2) Any contact with another person is prohibited, except when the contact is appropriate and permissible under ~~institution~~ facility policy.

SECTION 22. DOC 373.29 is repealed and recreated to read:

DOC 373.29 Refusal to comply. A youth may not refuse to comply with any verbal or written directive from staff.

SECTION 23. 373.32 is repealed and recreated to read:

DOC 373.32 Lying. A youth may not do any of the following:

- (1) Make an oral or written statement that the youth knows is false or misleading.
- (2) Withhold or misrepresent information.

SECTION 24. DOC 373.33 is amended to read:

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~~ facility, any area within the ~~institution~~ facility or any other area to which the youth is assigned.

SECTION 25. DOC 373.34 and 373.35 are repealed and recreated to read:

DOC 373.34 Violating boundaries. A youth may not do any of the following:

- (1) Intentionally touch with a body part or an object any 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.
- (2) Intentionally make staff feel uncomfortable through verbal or nonverbal communication, including comments of a sexual nature or comments regarding the personal lives of staff.

DOC 373.35 Unauthorized forms of communication. A youth who does any of the following is guilty of unauthorized forms of communication:

- (1) Communicates with another person by a method or with a device not authorized by the department.
- (2) Communicates with persons where a court order exists prohibiting contact.
- (3) Communicates with persons whom the department has prohibited contact.
- (4) Communicates with a victim of a crime for which the youth has been convicted, or a read-in-offense, or victim's family unless approved by the superintendent.
- (5) Communicates in a manner that harms, harasses, or intimidates any person.
- (6) Communicates in a manner that is intended to be in code or in a manner that hinders staff's ability to readily translate, understand or interpret the communication.

SECTION 26. DOC 373.38 is amended to read:

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

SECTION 27. DOC 373.45 (1) (b) is amended to read:

DOC 373.45 (1) (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~~ facility.

SECTION 28. DOC 373.46 (2) is amended to read:

DOC 373.46 (2) A youth may not knowingly possess, transfer, manufacture, distribute or use an intoxicating substance, or have knowledge of, but fail to report another person's possession, transfer, manufacture, distribution or use of an intoxicating substance.

SECTION 29. DOC 373.47 (1) and (3) are amended to read:

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

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

SECTION 30. DOC 373.49 (2) and (4) are amended to read:

DOC 373.49 (2) Each ~~institution~~ facility 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.

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

SECTION 31. DOC 373.505 is created to read:

DOC 373.505 Misuse of state or federal property. Any youth who uses government property in an unauthorized manner is guilty of misuse of state or federal property.

SECTION 32. DOC 373.52 is repealed.

SECTION 33. DOC 373.57 is repealed.

SECTION 34. DOC 373.58, 373.59(1) and (2) and 373.60 are amended to read:

DOC 373.58 (1) Each ~~institution~~ facility or residential area of ~~an institution~~ a facility 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~~ facility policies and procedures regarding organization, neatness and cleanliness of a youth's living quarters.

DOC 373.59 (1) A youth may not fail to follow ~~institution~~ facility 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~~ facility.

DOC 373.60 Violation of clothing policy. Each ~~institution~~ facility 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~~ facility policies and procedures regarding clothing.

SECTION 35. DOC 373.62 and 373.63 are repealed.

SECTION 36. DOC 373.65 is amended to read:

DOC 373.65 Institution Facility policies and procedures. (1) Each ~~institution~~ facility shall make specific policies and procedures relating to talking, clothing, movement within the ~~institution~~ facility, conditions of leave from the ~~institution~~ facility, 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~~ facility policy or procedure may conflict with any provision of this chapter or be stricter than any provision of this

chapter.

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

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

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

(b) There is a violation of an ~~institution~~ a facility policy or procedure in an ~~institution~~ a facility 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~~ facility 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~~ facility and be readily accessible to youth.

SECTION 37. DOC 373.66 (1) is amended to read:

DOC 373.66 (1) ~~If a conduct rule violation is a minor conduct rule violation, a conduct report may not be written, but a~~ A youth may be counseled and warned, consistent with s. DOC 373.67 or disciplined summarily, consistent with s. DOC 373.68.

SECTION 38. DOC 373.66 (2) is repealed and recreated to read:

DOC 373.66 (2) In lieu of or in addition to a warning or summary disposition, facility staff may issue a treatment-based response to address any conduct rule violation.

SECTION 39. DOC 373.67 (1) is amended to read:

DOC 373.67 (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:

SECTION 40. DOC 373.67 (4) is repealed.

SECTION 41. DOC 373.68 (1) is amended to read:

DOC 373.68 (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.

SECTION 42. DOC 373.68 (3) (b) is repealed.

SECTION 43. DOC 373.68 (4) and 10(intro.) are amended to read:

DOC 373.68 (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; or 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.

(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:

SECTION 44. DOC 373.68 (10)(a) 1. is repealed.

SECTION 45. DOC 373.68 (10) (c) is amended to read:

DOC 373.68 (10) (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.~~

SECTION 46. DOC 373.68 (10) (d) is repealed.

SECTION 47. DOC 373.68 (14) is created to read:

DOC 373.68 (14) If a conduct rule violation occurred as a result of misuse of federal or state property, the federal or state property privileges may be suspended as a disposition under s. DOC 379.

SECTION 48. DOC 373.69, 373.70, 373.71, 373.72, 373.73, 373.74, 373.75, 373.76, 373.77 and 373.78 are repealed.

SECTION 49. DOC 373.79 (1) and (3) are amended to read:

DOC 373.79 (1) A report 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.~~

(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.

SECTION 50. DOC 373.80 is repealed.

SECTION 51. DOC 373.81 (1) is amended to read:

DOC 373.81 (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.

SECTION 52. DOC 373.81 (3) (d) is repealed.

SECTION 53. DOC 373.81 (4) is amended to read:

DOC 373.81 (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.~~

SECTION 54. DOC 373.81 (5) is repealed.

SECTION 55. DOC 373.82 is repealed.

SECTION 56. DOC 373.83 (1) is amended to read:

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

SECTION 57. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.