

Chapter HSS 135

DEAD HUMAN BODIES

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HSS 135.01 Purpose and authority. This chapter and ch. HSS 136 regulate the preparation, transportation and disposition of dead human bodies for purposes of protecting the health of the public and properly registering deaths. The chapter is promulgated under the authority of ss. 69.03, 140.05 (3), and 155.01 (1), Stats., to interpret and contribute to the implementation of ss. 69.34 to 69.48 and 140.05 (1), Stats., and ch. 155, Stats. Nothing in this chapter shall prevent a member of the immediate family from preparing the dead body of a family member for burial, except as provided in s. HSS 135.04 (1) (b), or from conducting the funeral of a deceased family member.

History: Cr. Register, March, 1984, No. 339, eff. 4-1-84.

HSS 135.02 Definitions. As used in this chapter:

(1) "Burial permit" or "burial-transit permit" or "permit for disposition of dead human body" means the form prescribed and supplied by the department to authorize the burial or other final disposition of a dead human body.

(2) "Common carrier" has the meaning prescribed for "common motor carrier" in s. 194.01 (5), Stats., and in addition includes a vehicle using rails, air or water to transport persons or property.

(3) "Death certificate" means the form prescribed and supplied by the department which contains such items of information as the department judges necessary to identify the deceased and to certify the cause or causes of death, and is presented by the funeral director or member of the immediate family of the deceased to the county registrar of deeds, city health officer, or clerk of an incorporated village, as appropriate, for filing and as the condition for issuance of a burial permit.

(4) "Department" means the Wisconsin department of health and social services.

(5) "Disinterment permit" means the form prescribed and supplied by the department to authorize removal of a dead human body from a grave or tomb.

Note: A section of the burial permit form is used as a disinterment permit.

(6) "Disposition" means, in reference to a dead human body, burial, entombment in a mausoleum or separate vault, temporary storage, cremation or donation for scientific research or teaching use.

(7) "Embalmer" means a person who is licensed under s. 445.05, Stats., to do embalming.

(8) "Embalming" has the meaning designated in s. HSS 136.02 (1).

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(9) "Final disposition" means, in reference to a dead human body, burial, entombment in a mausoleum or separate vault, or cremation.

(10) "Funeral director" means a person who is licensed under s. 445.04, Stats., to prepare, other than by embalming, dead human bodies for burial or other disposition, or to direct and supervise the burial or other disposition of dead human bodies.

(11) "Immediate family" means, in order of decisionmaking priority, spouse, adult children, parents, adult brothers and sisters, grandparents, and adult grandchildren of the deceased person.

(12) "Interment" means, in reference to a dead human body, burial or entombment in a mausoleum or separate vault.

(13) "Local health officer" has the meaning prescribed in s. 143.01 (1), Stats.

(14) "Relative" means an adult who is spouse, parent, step-parent, child, step-child, brother, sister, grandchild, grandparent, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the deceased person.

(15) "Removal notice" means the form prescribed and supplied by the department to be notice and record of the removal of a dead human body from a hospital or nursing home by a funeral director or other authorized person.

Note: Inquiries concerning burial permit, death certificate and removal notice forms should be sent to Vital Statistics Section, Division of Health, P.O. Box 309, Madison, Wisconsin 53701.

History: Cr. Register, March, 1984, No. 339, eff. 4-1-84.

HSS 135.03 Removal from a hospital or nursing home. (1) HOLDING, PENDING DECISION OF RELATIVE, FRIEND OR PUBLIC AUTHORITIES. Hospital or nursing home authorities shall make provision for holding a body until a relative, friend or the public authorities determine what disposition shall be made of the remains. The hospital or nursing home may cause a body to be removed that is unclaimed after 12 hours from the time of death and following due notice to the local health officer.

Note: See s. 165.02, Stats., for disposition of the bodies of persons who have died at state, county or municipal institutions.

(2) **DELAY FOR AUTOPSY.** Except for cases which involve a coroner or medical examiner because a death has occurred under circumstances specified in s. 979.20, Stats., whenever the immediate family has requested or approved an autopsy, the funeral director or member of the immediate family or other person authorized to remove the body from the hospital shall delay making the removal for up to 10 hours after death, or for a longer period of time if the pathologist and funeral director mutually agree on a longer period of time, to permit completion of the autopsy.

(3) **PRESENTATION OF REMOVAL NOTICE.** The hospital or nursing home may not release a body to a funeral director, member of the immediate family or other person authorized to remove the body until the funeral director or other person making the removal presents a notice of removal, in duplicate, to the administrator of the hospital or nursing home or to his or her representative. One copy of the removal notice shall be

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retained on file by the hospital or nursing home and the other shall be forwarded immediately by the hospital or nursing home to the city health officer or, if there is not city health officer, to the register of deeds of the county.

History: Cr. Register, March, 1984, No. 339, eff. 4-1-84.

HSS 135.04 Preparation and funeral. (1) PREPARATION FOR BURIAL OR FOR ENTOMBMENT. (a) In removing bodies and preparing them for burial or entombment or for transportation, the funeral director, embalmer and registered apprentice funeral director and registered apprentice embalmer shall take all reasonable precautions to minimize the risk of transmitting any communicable disease from the dead human body.

Note: Diseases that are communicable are those listed in ch. HSS 145. They include tuberculosis and sexually transmitted disease (venereal disease).

(b) Any member of the immediate family of a deceased person may prepare the body for burial or other final disposition, except that no person may embalm a dead human body unless licensed pursuant to ch. 445, Stats., and no member of the immediate family may prepare a body for burial or other final disposition if there is risk of transmitting any communicable disease from the dead body, either because a communicable disease was the cause of death or the individual had a communicable disease at the time of death, unless the local health officer determines that the risks of transmitting the disease from the dead body are minimal.

(c) A dead human body need not be embalmed when prepared for burial or entombment except if the body is to be shipped by common carrier as provided under par. (d).

(d) Every body to be shipped by common carrier shall be embalmed except a body that it is not possible to embalm, a body donated to a school for research and training purposes under s. HSS 135.05 (2), or when the immediate family of the deceased objects to embalming on religious grounds. Whenever a body to be shipped by common carrier is not embalmed or is in a state of decomposition, the body may be shipped only after being enclosed in a strong, tightly sealed outer case.

(e) Embalming standards shall be as specified in ch. HSS 136.

(f) No one other than the licensed embalmer, licensed funeral director, registered apprentice embalmer and registered apprentice funeral director shall be allowed in the embalming room during the embalming except at the request of or with the permission of the immediate family of the deceased. Apart from these exceptions, the preparation of dead human bodies for interment shall be entirely private.

(g) A large-type copy of par. (f) shall be permanently fastened to the door of the preparation or embalming room in all funeral establishments.

(h) A licensed embalmer may embalm and otherwise prepare for burial or entombment a dead human body in the home of a deceased person or in the home of a relative of the deceased person.

Note: When a death has occurred under any of the circumstances listed in s. 979.20 (1), Stats., embalming must be delayed until authorized by the coroner or medical examiner of the county in which the injury or other cause of death occurred, pursuant to s. 979.20 (4), Stats.

(2) FUNERALS. (a) A funeral may be conducted from the home of the deceased person or from the home of a relative of the deceased person.

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(b) During an epidemic, when the disease is one that is both communicable and malignant, or when deaths are occurring from unusual forms of virulent and apparently communicable disease, the local public health officer may, with the consent of the department, prohibit public funerals for persons who have died from the disease.

History: Cr. Register, March, 1984, No. 339, eff. 4-1-84.

HSS 135.05 Transportation and burial or other disposition. (1) BURIAL PERMIT. (a) 1. A burial-transit permit issued by a county register of deeds, city health officer or clerk of an incorporated village, as appropriate, is required for each dead body shipped by common carrier.

2. The burial-transit permit shall be attached in a strong envelope to the shipping case when a body is to be transported by common carrier.

(b) No body may be buried or otherwise finally disposed of unless accompanied by an official burial permit which shall serve as authorization for burial or other disposition.

Note: As provided in s. 69.47, Stats., a copy of the death certificate can serve as the burial permit when burial or other disposition of the body is to take place outside of the registration district in which the death occurred.

(c) No dead body shipped or transported into Wisconsin from another state or territory may be buried or otherwise finally disposed of in Wisconsin unless accompanied by an official burial document from the state where the death occurred. "Official burial document" means a burial permit or equivalent official document provided for in the laws of the state of origin, which identifies the body, indicates the date and place of death, and provides medical certification of the cause of death.

(d) Any document furnished by an agency of the federal government in connection with shipment into Wisconsin of the body of a person who died in a foreign country, which identifies the body, indicates the date and place of death, and provides medical certification of the cause of death, shall be deemed a burial permit and sufficient authority for burial or other disposition in Wisconsin under s. 69.48, Stats.

(2) DONATION OF BODIES FOR RESEARCH AND TEACHING. (a) A dead human body may be donated to a medical or dental school anatomy department under s. 155.06, Stats., or to a medical school or school of mortuary science under s. 155.02 (3), Stats.

(b) A dead body donated to a school identified in par. (a) shall be prepared for transportation by washing with disinfecting fluid and closing all orifices, and shall be transported to arrive at the school within 48 hours after death unless pursuant to s. 155.06 (7) (a), Stats., a funeral service or other last rites are conducted in which case the already embalmed body shall be transported to arrive at the school as soon as possible after the rites have been concluded.

(c) A dead body donated to a school identified in par. (a) shall be transported to the school accompanied by a burial-transit permit, except that if there is not sufficient time for this document to be obtained before the body is sent or brought to the school, the document shall be delivered to the school within 48 hours following the arrival there of the body.

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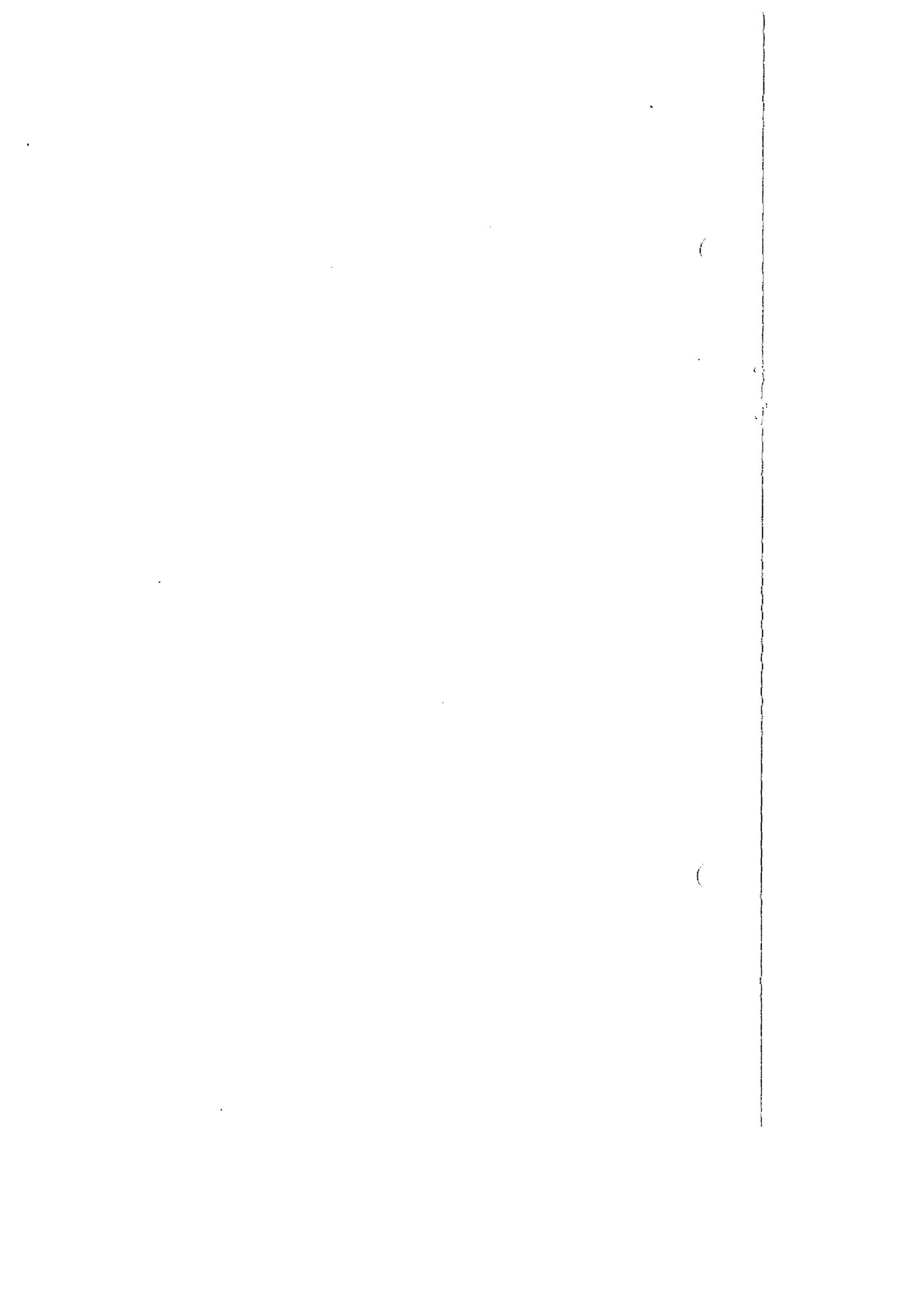
(d) As soon as a donated body is received and accepted at the school identified in par. (a), the body shall be carefully embalmed by injection of a preserving and disinfecting fluid into the blood vessels.

(3) **CREMATION.** Cremation of a dead body shall be considered final disposition of that body. No additional permit covering transportation of the ashes of a cremated body or interment or other disposal of the ashes of a cremated body is required.

History: Cr. Register, March, 1984, No. 339, eff. 4-1-84.

HSS 135.06 Disinterment. No human remains that are buried or resting in a permanent vault may be disinterred, transported and reinterred unless a disinterment permit is first obtained from the local health officer of the place of disinterment. The disinterment permit shall constitute authorization to transport and reinter the disinterred remains. Presentation of a death certificate shall not be a condition for issuance of a disinterment permit.

History: Cr. Register, March, 1984, No. 339, eff. 4-1-84.



Sub. (3) lists the factors to be considered in deciding whether to call a requested witness.

Subs. (4), (5) and (6) indicate that signed statements are preferable to other hearsay, but other hearsay may be relied on if necessary.

Subs. (7) and (9) provide that the same hearing officer who considers the requests for witnesses is also the person to schedule the hearing and notify all participants. There is a time limit on the hearing—it must be 2 to 21 days after notice to the inmate. See HSS 303.78 (3).

Sub. (8) forbids interviewing members of the public and requesting their presence at hearings. Such people are usually employees and school officials who are involved in work and study release. There is no authority to compel their involvement in hearings. More importantly, requesting their involvement or permitting adversary interviewing seriously jeopardizes the programs by making the people unwilling to cooperate. It also creates the possibility that there will be harassment of such people. Instead, the work release coordinator should get whatever information these people have and provide it to the committee.

Note: HSS 303.82. *Wolff v. McDonnell*, 418 U.S. 539 (1974), requires that the adjustment committee members be impartial in the sense that they should not have personally observed or been a part of the incident which is the basis of disciplinary charges. However, the court specifically held that a committee member could be "impartial" even if he or she was a staff member of the institution. Nevertheless, this section provides for some diversity on the panel by the requirement that at least one member be from the treatment, rather than custodial, staff.

The use of one and 2 member committees is new. There are 2 principal reasons for it. The camp system has never held due process hearings because of the fact that the staff is small and it is impossible to involve staff from distant institutions. For example, some camps have as few as 4 staff members. To provide a 3 person committee and an advocate and to prevent the complainant from being one of these people is impossible. Of course, there would be no one to supervise the camp during the hearing, either. The conflict between the desire to have due process hearings at the camps and limited resources is resolved by permitting smaller committees.

The problem of available staff also exists at larger institutions. So many staff can be tied up in the process that other important functions are neglected. It is thought that fairness can be achieved by relying on smaller committees while other correctional objectives are also achieved.

Note: HSS 303.83. This section sets out the considerations which are actually used in deciding, within a range, how severe an inmate's punishment should be. It does not contain any formula for deciding the punishment. The actual sentence should be made higher or lower depending on the factors listed. For instance, if this is the fourth time the inmate has been in a fight in the last year, his or her sentence should be greater than average, unless other factors balance out the factor of the bad record.

The purpose of this section is to focus the committee's or officer's attention on the factors to be considered, and to remind them not to consider other factors such as personal feelings of like or dislike for the inmate involved.

Note: HSS 303.84. There are 2 limits on sentences which can be imposed for violation of a disciplinary rule: (1) A major punishment cannot be imposed unless the inmate either had a due process hearing, or was given the opportunity for one and waived it. Major punishments are program and adjustment segregation and loss of good time; and (2) Only certain lesser punishments can be imposed at a summary disposition. See HSS 303.74. This section limits both the types and durations of punishments.

In every case, where an inmate is found guilty of violating a disciplinary rule, one of the penalties listed in sub. (1) must be imposed. Cumulative penalties may be imposed in accordance with sub. (2). For example, an inmate cannot be punished with both room confinement and adjustment segregation. However, if adjustment segregation is imposed, program segregation or loss of good time, or both may also be imposed. The inmate will then serve his or her time in each form of segregation and lose good time.

Sentences for program segregation may only be imposed in specific terms. The possible terms are 30, 60, 90, 120 and in some cases, 360 days. This is contrary to, for example, adjustment segregation where terms from 1-8 days may be imposed. The specific term represents the longest time the inmate will stay in segregation unless he or she commits another offense. However, release prior to the end of the term is possible. HSS 303.70 provides that a placement in program segregation may be reviewed at any time and must be reviewed at least every 30 days.

Sub. (2) (a) also provides that sentences imposed at one hearing cannot be cumulated to result in a sentence longer than certain maximums. The reasons for this limit are: first, the

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offenses for which an inmate is sentenced at a single hearing are usually based on a single incident and may be closely related to each other, and second, the punishments begin to lose effectiveness as a deterrent beyond a certain point.

The terms in sub. (2) (a) are *maximums* and should be imposed rarely.

The limits on loss of good time which are found in sub. (2) (b) are required by s. 53.11 (2), Stats. This statute limits the number of days of good time which can be lost to 5 for the first offense, 10 for the second, and 20 for each subsequent offense. This section also creates an intermediate stage of the loss of 15 days. In addition, this section follows current practice by limiting loss of good time to serious offenses. On the other hand, loss of good time must be imposed by the committee or hearing officer—it is never automatic.

See HSS 303.68-303.72 and notes.

Note: HSS 303.86. This section makes clear that the rules of evidence are not to be strictly followed in a disciplinary proceeding. Neither the officers nor the inmates have the training necessary to use the rules of evidence, which in any case were developed haphazardly and may not be the best way of insuring the reliability of evidence. Thus, a more flexible approach is used. The main guidelines are that the hearing officer or committee should try to allow only reliable evidence and evidence which is of more than marginal relevance. Hearsay should be carefully scrutinized since it is often unreliable; the statement is taken out of context and the demeanor of the witness cannot be observed. However, there is no need to find a neatly labeled exception; if a particular piece of hearsay seems useful, it can be admitted.

Subs. (3) and (4) address the problem of the unavailable witness. Sub. (3) contemplates that the statement and the identity of the maker will be available to the accused. Sub. (4) permits the identity of the witness to be withheld after a finding by the committee or hearing officer that to reveal it would substantially endanger the witness. This is not often a problem, but it does arise, particularly in cases of sexual assault. To protect the accused, it is required that there be corroboration; that the statement be under oath; that the content of the statement be revealed, consistent with the safety of the inmate. In addition, the committee or hearing officer may question the people who give the statements.

Sub. (5) deals with the handling of information received from a confidential informant. This information will not be placed in the inmate's case record where it would be accessible to him or her, but will be filed only in the security office.