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 employes 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 two 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 wavied 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.

Appendix

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 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 303.85. See the department rules relating to adult offender-based records, chapter HSS 307, for more specific information on recordkeeping.

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. ~~See ch. HSS 307 for the handling of records which are classified "restricted."~~