

HEALTH AND SOCIAL SERVICES

HSS 303

61

(c) Reverse the adjustment committee's decision. In this case, all records of the decision must be removed from all offender-based files. Records may be kept for statistical purposes only.

(7) If the punishment is reduced or eliminated by appeal, the superintendent shall order the change immediately.

(8) An inmate may waive the time limits set in subs. (3) and (5) at any time in writing.

**History:** Cr. Register, August, 1980, No. 296, eff. 9-1-80.

**HSS 303.79 Due process hearing: advocates.** (1) At each institution, the superintendent may designate staff members to serve as advocates or they may volunteer. The names of advocates who are available to serve that week shall be put on a list and given to the hearing officer. The inmate shall be permitted to choose the advocate from a list of 3, though the caseloads of advocates may be regulated by the superintendent.

(2) The advocate's purpose is to help the accused to understand the charges against him or her and to help in the preparation and presentation of any defense he or she has, including gathering evidence and testimony, and preparing the accused's own statement. The advocate may speak on behalf of the accused at a disciplinary hearing or may help the accused prepare to speak for himself or herself.

(3) A training program for advocates should be conducted as often as possible. The training program should cover the following subjects:

- (a) Proper role of the advocate;
- (b) Techniques of interviewing the accused;
- (c) Conduct covered and not covered in each disciplinary rule including the significance of lesser included offenses;
- (d) Techniques of factual investigation;
- (e) The elements of violations in the rules; and
- (f) Defenses.

**History:** Cr. Register, August, 1980, No. 296, eff. 9-1-80.

**HSS 303.80 Due process hearing: place.** The due process hearing may take place at the institution where the alleged conduct occurred, at a county jail or at the institution to which an inmate has been transferred.

**History:** Cr. Register, August, 1980, No. 296, eff. 9-1-80.

**HSS 303.81 Due process: witnesses.** (1) Requests for witnesses may be made by the accused to the advocate who shall deliver them to the security office. Except for good cause, an inmate may present no more than 3 witnesses. If an inmate does not have an advocate, the request shall be sent directly to the security office. Such requests must be made within 2 days of the service of notice as provided in HSS 303.76.

(2) After all witness requests have been received, the hearing officer shall review them and do any investigation necessary to determine whether the witnesses should be called.

HSS 303

(3) Witnesses requested by the accused should be required to attend the disciplinary hearing unless:

(a) There is a significant risk of bodily harm to the witness if he or she testifies; or

(b) The inmate's witness does not want to testify; or

(c) The testimony is irrelevant to the question of guilt or innocence; or

(d) The testimony is merely cumulative of other evidence and would unduly prolong the hearing; or

(e) If an inmate witness must be transported to a county jail to testify, the advocate may be required to interview the witness and report on the testimony to the committee in lieu of a personal appearance by the witness.

(4) If an inmate witness will be unavailable due to hospitalization, transfer or release, or if a staff member witness will be unavailable due to illness, no longer being employed at the location, vacation or being on a different shift, but there is no other reason to exclude the witness's testimony under sub. (3), then the hearing officer shall attempt to get a signed statement from the witness to be used at the disciplinary hearing.

(5) If a witness's testimony would be relevant and useful to the adjustment committee but the witness does not wish to testify, or if testifying would pose a significant risk of bodily harm to the witness, the hearing officer may attempt to get a signed statement to be used at the disciplinary hearing. See HSS 303.86, Evidence, for the circumstances under which the adjustment committee can consider such a statement without revealing the name of the witness.

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

(7) After determining which witnesses will be called for the accused, the hearing officer shall notify the inmate of the decision in writing and schedule a time for a hearing when all of the following people can be present:

(a) Adjustment committee members;

(b) Advocate, if any;

(c) Officer who wrote the conduct report;

(d) Other witnesses against the accused (if any);

(e) Accused; and

(f) Witnesses for accused (if any).

(7m) In the case of inmate witnesses and the accused, an attempt should be made to avoid conflict with off ground activities, but these persons may be required to attend the hearing even if it conflicts with other activities.