

*Procunier v. Martinez*, 416 U.S. 396, 413 (1974); *X v. Gray*, 378 F. Supp. 1185, 1186 (E.D. Wis. 1974), aff'd 558 F. 2d 1033. See also *ACA*, standard 4306, Discussion:

Access to the public is an integral part of rehabilitation. Inmates should be permitted to communicate with their families and friends, as well as with public officials, the courts and their attorneys. All correspondence should be uncensored.

Chapter HSS 309 governs the use of the mail by inmates. Basically, inmates may correspond with anyone unless the inmate or the correspondent abuses the privilege. Then, the right to correspond with a particular person may be terminated pursuant to ch. HSS 309 or as part of a disciplinary hearing. Sub. (1) only comes into play if the right to correspond with a particular person has already been terminated. If the inmate nonetheless corresponds with that person, for example by enclosing a message inside a letter or package to someone else, the inmate has violated this section.

The purposes of sub. (2) are the same as the purposes of HSS 303.42 and 303.46. See the notes to those sections. Inmates should not be allowed to send away, for safekeeping, items which were improperly acquired, such as money, drugs, weapons or the property of others. This section is only intended to apply to situations where the inmate personally puts items into an envelope or package. For example, if money from the inmate's account is sent out to pay for a purchase, there is no violation.

A person should not be charged with a violation of HSS 303.30 and this section for the same act.

**Note: HSS 303.49 to HSS 303.52.** In general, all of the sections concerning movement have the following purposes: (1) to prevent escape by monitoring inmates' movements; (2) to prevent fights, assaults and disturbances by preventing gathering of groups except in closely supervised situations; and (3) to permit the effective monitoring of inmate activity both in the institution and while the inmate is on work or study release. In addition, HSS 303.49, Punctuality and attendance, is intended to promote the smooth running of all programs of work, study and recreation, and to promote development of punctual habits by inmates. HSS 303.52 has the additional purposes of preventing theft and other illicit activity. HSS 303.50 is not intended to prohibit normal conversation between inmates who are walking.

These sections were originally derived from the former policies and procedures 4.02-4.07 which were in effect prior to 1979. The policies entitled "Group Movement" and "Individual Movement" were eliminated in the initial promulgation of HSS 303 in August 1980, for the following reasons: (1) the 2 rules were not uniform from institution to institution, so it would be better to use posted policies; and (2) in most cases the offenses described were adequately covered by one of the other 4 sections or by HSS 303.20, Group Resistance.

**Note: HSS 303.54.** The purposes of this section are to aid in the enforcement of the contraband rules and to prevent possible poisoning or misuse of items due to improper labeling. The exact list of items which are covered by this section will be posted at each institution; this section only names the types of items which are likely to be covered.

**Note: HSS 303.55.** In the close living conditions of a prison, a messy or dirty room could become a breeding ground for bacteria or a haven for pests such as insects or mice, and thus threaten the health and safety of the inmate of that room and of others. Where two or more inmates share quarters, differences in habits of neatness could lead to arguments or to an unpleasant environment for one person. Finally, development of the habit of neatness is part of rehabilitation. For all of these reasons, neatness and cleanliness of rooms is regulated. However, since the layout of rooms, the laundry arrangements and the content of rooms varies greatly among institutions, the particular requirements are not contained in this section but instead will be posted at each residence hall or institution. See HSS 303.08, Institutional policies and procedures.

The organization of living quarters is also important because it is essential for staff to be able to observe quarters and because rooms can be arranged in a way that creates a fire hazard. Thus, the organization of rooms is also subject to rule-making.

Violation of HSS 303.24, Disobeying orders, should not be charged when an inmate violates this section, unless the inmate has been warned and still refuses to clean up. Also, in many cases of violation of this section, a conduct report is probably not necessary. See HSS 303.65, Offenses which do not require a conduct report.

**Note: HSS 303.56.** The purpose of this section is to protect the health and safety of all inmates and staff. Pests or infections can easily spread from person to person. This section does not, however, impose standards of taste upon inmates. For example, any hair style is acceptable as long as the hair is washed and combed often enough to prevent diseases or pests, and as

## Appendix

long as on-the-job policies concerning hair are followed. This is in conformity with the ACA, standard 4303:

4303: *Written policy and procedure allow freedom in personal grooming, except where a valid state interest justifies otherwise. (Essential)* Discussion: Inmates should be permitted freedom in personal grooming so long as their appearance does not conflict with the institution's requirements for safety, identification and hygiene. All regulations imposed should be the least restrictive necessary.

Note: HSS 303.57. Use of prescription medications must be carefully monitored because many of the medications have mind-altering qualities and could be abused just as controlled substances such as heroin, cocaine, marijuana, or alcohol can be abused. See note HSS 303.43, Possession of intoxicants, for the reasons behind the policy of not allowing inmates to use any mind-altering drugs.

Because the very same policy explains HSS 303.43 and 303.59, and this section, inmates should not be found guilty of violating both this section and one of the others on a single occasion unless more than one type of drug was involved. Rather, the reporting officer, or the hearing officer or adjustment committee, should decide which of the sections is most appropriate.

Lesser included offense: HSS 303.40, Unauthorized Transfer of Property.

Note: HSS 303.58. The purpose of this section is to protect the safety and health of the inmates. Tattooing, ear piercing and other forms of self-mutilation can lead to serious infections. In addition, some forms of disfigurement could lead to identification problems.

The wearing of pierced earrings is allowed, but inmates whose ears are not already pierced may not get them pierced while in prison.

This section is only intended to cover injury to oneself or to another person with that person's consent. Injury to another person without his or her consent is covered by HSS 303.12, Battery.

This section is derived from former policy and procedure 13.02.

Note: HSS 303.59. The reasons for the policy of not allowing inmates to use any kind of intoxicating drugs, including alcohol, are explained in the note to HSS 303.43.

Misuse of prescription medications is not covered by this section because it is already an offense covered by HSS 303.57. For the purpose of deciding which of the 2 sections applies, "prescription medication" means only drugs obtained properly or improperly, directly or indirectly, from pharmacy supplies at the institution. The fact that a particular drug is sometimes prescribed by some doctor somewhere does not make it a "prescription medication" for purposes of this section.

Note: HSS 303.60. Gambling is forbidden for the following reasons: (1) it can result in some players being cheated or taken advantage of; (2) it can lead to serious debts which in turn lead to violence, intimidation and other problems; (3) even without cheating or large debts, it can create strong emotions leading to violence or other discipline problems; (4) some inmates have a psychological dependence on gambling (similar to alcoholism) which has been associated with criminal behavior in the past. Removing the opportunity for gambling could help such inmates to overcome this problem.

On the outside, although all gambling except licensed bingo or lotteries is forbidden (s. 945.02, Stats.), the statute is often not enforced against persons who engage in small-scale, private, non-commercial gambling with no links to organized crime. K. Davis *Police Discretion* (1975), p. 5. However, this section is aimed at just such activity.

Thus, for example, betting a pack of cigarettes on the outcome of a TV football game is an offense. It would also violate HSS 303.40, Unauthorized transfer of property, if the bet was paid. The experience of staff is that even this type of betting can lead to serious problems for the reasons listed earlier.

Sub. (2) provides that even a non-gambler can be guilty of an offense if that person organizes a game, lottery or pool.

This section is derived from the former policy and procedure 3.07.

Note: HSS 303.61. See the note to HSS 303.62.

Note: HSS 303.62. Performance of work assignments is vital to the operation of each institution. Laundry, food preparation, cleaning, and maintenance are among the tasks performed by inmates. Enforcement, through the disciplinary process, of the duty to work is necessary to the smooth running of the institution. This section is not intended to require work on