

- (d) According to established institution custom; or
 - (e) With permission from the appropriate staff member.
- (2) "Bodily injury" means injury or physical pain, illness or any impairment of physical condition.
- (3) "Administrator" means administrator of the division of adult institutions, department of corrections, or designee.
- (4) "Case record" means any file folder or other method of storing information which is accessible by the use of an individual inmate's name or other identifying symbol.
- (5) "Communicate" means:
- (a) To express verbally;
 - (b) To express in writing; or
 - (c) To express by means of gesture(s) or other action(s).
- (6) "Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. A person under 15 years of age is incapable of consent as a matter of law. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence:
- (a) A person who is 15 to 17 years of age;
 - (b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct; or
 - (c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (7) "Department" means the department of corrections.
- (8) "Division" means the division of adult institutions, department of corrections.
- (9) "Inmate gang" means a group of inmates which threatens, intimidates, coerces or harasses other inmates or engages in activities which intentionally violate or encourage the intentional violation of statutes, administrative rules or institutional policies and procedures.
- (10) "Harass" means to annoy or irritate persistently.
- (11) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions, to include: LSD, heroin, cocaine, marijuana, alcoholic drinks, paint thinner or glue. Tobacco is not included.
- (12) "Negotiable instrument" is a writing, signed by the maker or drawer, which contains an unconditional promise to pay which is payable on demand or at a specified time, and which is payable to the order of the bearer.
- (12m) "No-contact visiting" means visitation during which no physical contact is permitted between an inmate and a visitor.
- (13) "Overt behavior" means behavior which is open and observable.

(14) "Possession" means on one's person, in one's quarters, in one's locker or under one's immediate physical control.

(15) "Sexual contact" means:

(a) Kissing;

(b) Handholding;

(c) Touching by the intimate parts of one person to any part of another person. In this subsection, "intimate part" means breast, penis, buttocks, scrotum, or vaginal area, whether clothed or unclothed; or

(d) Any touching by any part of one person or with any object or device of the intimate parts of another person.

(16) "Sexual intercourse" means any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration by any part of the body or an object into the anus or vagina of another person.

(17) "Security director" means the security director at an institution, or designee.

(18) "Superintendent" means the superintendent of an institution, or designee.

(19) "Without consent" means no consent in fact or that consent is given for any of the following reasons:

(a) Because the actor put the victim in fear by the use or threat of imminent use of physical violence on him or her, or on a person in his or her presence, or on a member of his or her immediate family; or

(b) Because the actor purported to be acting under legal authority; or

(c) Because the victim did not understand the nature of the thing to which he or she consented, either by reason of ignorance, or mistake of fact or of law other than criminal law, or by reason of youth, or by reason of defective mental condition—whether permanent or temporary.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; renum. (14) to (16) to be (16) to (18), cr. (14) and (15), Register, April, 1985, No. 352, eff. 5-1-85; emerg. renum. (9) to (18) to be (10) to (19), cr. (9) eff. 12-5-86; renum. (9) to (18) to be (10) to (19), cr. (9), Register, June, 1987, No. 378, eff. 7-1-87; cr. (12m), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.03 Lesser included offenses. (1) If one offense is a lesser included offense of another, then if an inmate is charged with the greater offense, the inmate is deemed to be charged with the lesser included offense as well.

(2) An inmate may be found guilty of a lesser included offense of the offense charged, even if he or she was not expressly charged with the lesser included offense.

(3) An inmate may not be found guilty of 2 offenses or punished for 2 offenses based on a single incident if one offense is a lesser included offense of the other.

(4) No offense may be considered a lesser included offense of another unless it is so listed in the following table:

DOC 303.21 Conspiracy. (1) If 2 or more inmates plan or agree to do acts which are forbidden under this chapter, all of them are guilty of an offense.

(2) An inmate who plans or agrees with a noninmate to do acts which are forbidden under this chapter is guilty of an offense.

(3) The penalty for conspiracy may be the same as the penalty for the most serious of the planned offenses.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; renum. (2) to be (3), cr. (2), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.22 Escape. (1) An inmate who does any of the following without permission and with the intent to escape is guilty of an offense:

(a) Leaves an institution;

(b) Leaves the custody of a staff member while outside of the institution;

(c) Does not follow his or her assigned schedule; or

(d) Leaves the authorized area to which he or she is assigned and does not return promptly.

(2) Any inmate who makes or possesses any materials with the intent to use them to escape is guilty of an offense.

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

DOC 303.23 Disguising identity. Any inmate who intentionally conceals, alters or disguises his or her usual appearance with the intention of preventing identification is guilty of an offense.

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

OFFENSES AGAINST ORDER

DOC 303.24 Disobeying orders. (1) Any inmate who disobeys any of the following is guilty of an offense:

(a) A verbal or written order from any staff member, directed to the inmate or to a group of which the inmate is or was a member;

(b) A bulletin which applies to the inmate and which was posted or distributed in compliance with s. DOC 303.08; or

(c) Any other order which applies to the inmate and of which he or she has actual knowledge.

(2) An inmate is guilty of an offense if he or she intentionally commits an act which violates an order, whenever the inmate knew or should have known that the order existed.

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

DOC 303.25 Disrespect. Any inmate who overtly shows disrespect for any person performing his or her duty as an employe of the state of Wisconsin is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes, but is not limited to, derogatory or profane writing, remarks or gestures, name-calling, spitting, yelling, and other acts intended as public expressions of disrespect for authority and made to other inmates and

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staff. Disrespect does not include all oral or written criticism of staff members, criticism of them expressed through the mail, thoughts and attitudes critical of them, or activity in therapy groups.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.26 Soliciting staff. An inmate who intentionally does any of the following is guilty of an offense:

(1) Offers or gives anything of value to a staff member or the family of a staff member. *Exception:* in accordance with contraband regulations, property of an inmate may be entrusted to a designated staff member for the purpose of storage or sending it to a friend or relative of the inmate;

(2) Requests or accepts anything of value from a staff member or the family of a staff member. *Exceptions:* state property which the staff member is authorized to issue or property belonging to the inmate which was in storage or which has been sent or brought in;

(3) Buys anything from, or sells anything to, a staff member or the family of a staff member. *Exception:* hobby items for sale to the public in accordance with institutional procedures; or

(4) Requests a staff member or family of a staff member to purchase anything for him or her. *Exception:* the superintendent may allow this by special authorization, or may designate a staff member to handle such requests.

(5) Directs another person to give anything of value to a staff member, or agrees with another person to give anything of value to a staff member.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; cr. (5), Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.27 Lying. Any inmate who knowingly makes a false written or oral statement to a staff member which directly affects the integrity, safety or security of the institution is guilty of an offense.

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

DOC 303.271 Lying about staff. (1) Any inmate who knowingly makes a false written or oral statement about a staff member with the intent to harm the staff member and makes that false statement public is guilty of an offense.

(2) This section applies to all false statements, including those made in the inmate complaint review system, which are revealed to persons outside the complaint system.

(3) A staff member who believes he or she is the subject of a false statement may not write the conduct report. The staff member may contact his or her supervisor who shall do an investigation, and; if the supervisor believes a violation has occurred, the supervisor shall write a conduct report. An inmate complaint investigator may not write a conduct report alleging lying about staff.

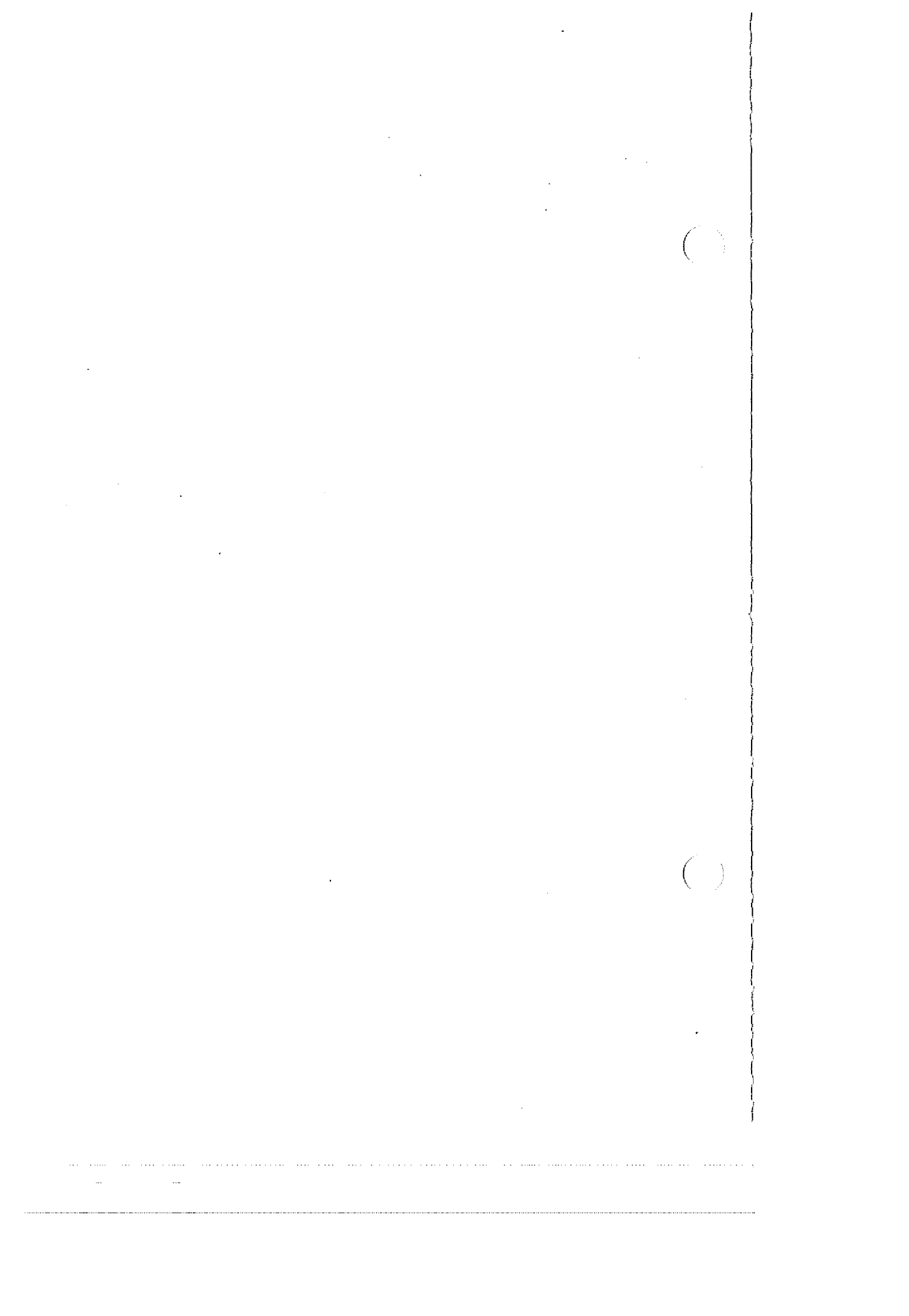
History: Cr. Register, April, 1985, No. 352, eff. 5-1-85.
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DOC 303.28 Disruptive conduct. Any inmate who intentionally or recklessly engages in, causes or provokes disruptive conduct is guilty of an offense. "Disruptive conduct" includes physically resisting a staff mem-

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2. A major penalty as defined in s. DOC 303.68 (1) (a) will be imposed as a result of the test under par. (a);

3. The inmate does not admit the use of intoxicating substances; and

4. The inmate requests a confirmatory test.

(c) Any confirmatory test shall be conducted in accordance with department procedures and shall be a separate test approved by the state laboratory of hygiene using a chemical method different from the first test.

(d) An inmate who requests a confirmatory test shall pay for half the cost of the test. If the inmate does not have sufficient funds to pay for half the cost of the test, the institution in which the inmate is confined shall loan the inmate the necessary funds. If the confirmatory test does not validate the results of the first test, the inmate shall be refunded any money he or she contributed to the cost of the confirmatory test.

(3) The refusal of an inmate to either provide a body fluids specimen or to submit to a physical examination or a breathalyzer test requested in accordance with s. DOC 306.16 is an offense.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. Register, January, 1987, No. 373, eff. 2-1-87; emerg. r. and recr. (2), eff. 3-6-87; r. and recr. (2), Register, July, 1987, No. 379, eff. 8-1-87.

DOC 303.60 Gambling. (1) Any inmate who gambles is guilty of an offense. "Gambles" includes betting money or anything of value on the outcome of all or any part of any game of skill or chance or an athletic contest or on the outcome of any event.

(2) Any inmate who organizes a lottery or betting pool or game played for money or anything of value, is guilty of an offense.

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

DOC 303.61 Refusal to work or attend school. Any inmate who intentionally refuses to perform a work assignment or attend school, and who is physically able to do so, is guilty of an offense, unless he or she has specific permission to do so.

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

DOC 303.62 Inadequate work or study performance. (1) Any inmate whose work fails to meet the standards set for performance on a job or school program and who has the ability to meet those standards, is guilty of an offense.

(2) Each institution may adopt and post specific policies and procedures regulating the use of a shop, work area and classroom. Violation of these policies and procedures is an offense.

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

DOC 303.63 Violations of institution policies and procedures. (1) Each institution may make specific substantive disciplinary policies and procedures relating to:

(a) Visiting, including no-contact visiting;

(b) Recreation;

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- (c) Smoking;
- (d) Movement within and outside the institution;
- (e) Attire;
- (f) Personal property;
- (g) The use of institution facilities;
- (h) Talking;
- (i) Sale of craft items;
- (j) Authorized enterprises; and
- (k) Reporting illness or injury.

(2) Violations of any specific policies or procedures authorized under sub. (1) are offenses.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (1) (d) and r. (3), Register, April, 1985, No. 352, eff. 5-1-85; am. (1) (a), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.631 Violating conditions of leave. Any inmate who violates conditions imposed under s. DOC 326.07(1) or (2) for leave is guilty of an offense.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85.

DISCIPLINARY PROCEDURE AND PENALTIES

DOC 303.64 Disciplinary violations—possible dispositions. A violation of ss. DOC 303.12 to 303.63 may be dealt with in the following ways:

(1) If a conduct report is not required, the inmate may be counseled and warned. Disposition in this manner is governed by s. DOC 303.65.

(2) A minor violation may be disposed of summarily. Disposition in this manner is governed by s. DOC 303.74.

(3) The violation may be referred to the security supervisor in writing by a conduct report. See s. DOC 303.66. Violations referred to the security supervisor may be dealt with as follows:

(a) The security supervisor may dismiss, alter or correct the report. See s. DOC 303.67.

(b) If the violation is a minor one, the security supervisor shall refer the matter to a hearing officer to be disposed of in accordance with s. DOC 303.75.

(c) If the violation is a major one, the security supervisor shall refer the matter to a hearing officer to be disposed of in accordance with ss. DOC 303.76 to 303.84.

(4) Violations of the criminal law may be referred to the sheriff for further investigation and to the district attorney for prosecution. See s. DOC 303.73.

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

DOC 303.65 Offenses that do not require a conduct report. (1) Staff members are not required to make official conduct reports on all observed violations. Register, April, 1994, No. 460

lations of the disciplinary rules. Under any of the following conditions, the officer may merely inform the inmate that his or her behavior is against the rules and discuss the inmate's behavior and give a warning if:

- (a) The inmate is unfamiliar with the rule;
 - (b) The inmate has not violated the same or a closely related rule recently (whether or not a conduct report was made);
 - (c) The inmate is unlikely to repeat the offense if warned and counseled;
 - (d) Although the inmate's acts were a technical violation of a rule, the purposes of this chapter would not be served by writing a conduct report in the particular situation.
- (2) An offense which is always considered major, in accordance with s. DOC 303.68, may not be disposed of in accordance with this section. A conduct report must be written if a major offense occurs.
 - (3) No official report of dispositions in accordance with sub. (1) is required.
 - (4) The security director may strike a charge if he or she believes a conduct report is inappropriate, in accordance with s. DOC 303.67.

The decision by the security director not to strike or to strike is not reviewable by the hearing officer, adjustment committee or superintendent.

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

DOC 303.66 Conduct report. (1) Except under the conditions described in s. DOC 303.65, any staff member who observes or finds out about a rule violation shall do any investigation necessary to assure himself or herself that a violation occurred, and if he or she believes a violation has occurred, shall write a conduct report. If more than one staff member knows of the same incident, only one of them shall write a conduct report.

(2) In the conduct report, the staff member shall describe the facts in detail and what other staff members told him or her, and list all sections which were allegedly violated, even if they overlap. Any physical evidence shall be included with the conduct report.

(3) There should be only one conduct report for each act or transaction that is alleged to violate these sections. If one act or transaction is a violation of more than one section, only one conduct report is necessary.

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

DOC 303.67 Review by security office. (1) Each working day, the security director shall review all conduct reports written since the previous working day.

(2) Conduct reports which resulted in summary disposition must be reviewed and approved prior to entry in any of the inmate's records.

(3) Conduct reports should be reviewed for the appropriateness of the charges.

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(a) The security director may dismiss a conduct report if he or she believes that, according to s. DOC 303.65, it should not have been written.

(b) The security director shall strike any section number if the statement of facts could not support a finding of guilty of violating that section.

(c) The security director may add any section number if the statement of facts could support a finding of guilty of violating that section and the addition is appropriate.

(d) If no section numbers remain, a conduct report must be destroyed.

(e) The security director may refer a conduct report for further investigation.

(4) The security director shall divide all remaining conduct reports into major and minor offenses.

(a) Minor offenses shall be disposed of in accordance with s. DOC 303.75.

(b) Major offenses and conduct reports charging both major and minor offenses shall be disposed of in accordance with ss. DOC 303.76 to 303.84.

(5) Following the review described in this section, the security director shall sign all reports he or she has approved.

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

DOC 303.68 Major and minor penalties and offenses. (1) (a) A "major penalty" is adjustment segregation as defined in ss. DOC 303.69 and 303.84, program segregation as defined in ss. DOC 303.70 and 303.84, loss of earned good time or extension of mandatory release date under s. DOC 303.84, or all 3 where imposed as a penalty for violating a disciplinary rule. Any minor penalty may be imposed for a violation where a major penalty could be imposed. Restitution may be imposed in addition to or in lieu of any major penalty.

(b) A "minor penalty" is a reprimand, loss of recreation privileges, building confinement, room confinement, loss of a specific privilege, extra duty, and restitution in accordance with ss. DOC 303.72 and 303.84. Restitution may be imposed in addition to or in lieu of any other minor penalty.

(c) A "major offense" is a violation of a disciplinary rule for which a major penalty may be imposed if the accused inmate is found guilty.

(d) A "minor offense" is any violation of a disciplinary rule which is not a major offense under sub. (3) or (5) or which the security director has not classified as a major offense.

(2) Except for an offense listed under sub. (3) or covered by sub. (5), an offense is neither a major nor a minor offense until the security director classifies it as major or minor.

(3) Any violation of the following sections is a major offense:

<u>Section</u>	<u>Title</u>
DOC 303.12	Battery
DOC 303.13	Sexual assault—intercourse
DOC 303.14	Sexual assault—contact
DOC 303.18	Inciting a riot
DOC 303.19	Participating in a riot
DOC 303.22	Escape
DOC 303.23	Disguising identity
DOC 303.37	Arson
DOC 303.41	Counterfeiting and forgery
DOC 303.45	Possession, manufacture and alteration of weapons
DOC 303.57	Misuse of prescription medication
DOC 303.59	Use of intoxicants

(4) An alleged violation of any section other than ones listed in sub. (3) may be treated as either a major or minor offense. The security director shall decide whether it should be treated as a major or minor offense, if the offense has not been disposed of summarily in accordance with s. DOC 303.74. In deciding whether an alleged violation should be treated as a major or minor offense, the security director shall consider the following criteria and shall indicate in the record of disciplinary action the reason for the decision based on these criteria:

(a) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently;

(b) Whether the inmate has recently been warned about the same or similar conduct;

(c) Whether the alleged violation created a risk of serious disruption at the institution or in the community;

(d) Whether the alleged violation created a risk of serious injury to another person; and

(e) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft.

(5) Any conduct report containing at least one charge of a major offense shall be handled as a major offense, even if it also includes minor offenses.

(6) Any alleged violation of a rule which may result in a suspension of visiting or correspondence privileges, work or study release, or leave or

which may result in imposition of no-contact visiting shall be treated as a major offense, although the inmate may waive this.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (1) (d), renum. (2) to (5) to be (3) to (6) and am. (4) (intro.), cr. (2), Register, April, 1985, No. 352, eff. 5-1-85; am. (1) (a), Register, February, 1987, No. 374, eff. 3-1-87; am (6), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.69 Major penalties: adjustment segregation. (1) CONDITIONS. Adjustment segregation may not exceed 8 days. It may only be imposed for a major offense by the adjustment committee or the hearing officer. Only one person shall be kept in each segregation cell, except when overcrowding prevents it. Each cell must meet the following minimum standards: clean mattress, sufficient light to read by at least 12 hours per day, sanitary toilet and sink, and adequate ventilation and heating.

(2) **NECESSITIES.** The following shall be provided promptly upon request for each inmate in adjustment segregation but may not necessarily be kept in the cell: adequate clothing and bedding; a toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use his or her own such hygiene supplies; paper, envelopes, stamps and pens (the cost of stamps may be deducted from the inmate's account); and holy books. The same diet as provided to the general population at the institution shall be provided.

(3) **OTHER PROPERTY.** Inmates in adjustment segregation may have material pertaining to legal proceedings and books provided by the institution librarian in adjustment segregation.

(4) **VISITS AND TELEPHONE CALLS.** Inmates in adjustment segregation shall be permitted visitation, including no-contact visiting, and telephone calls in accordance with ch. DOC 309.

(5) **MAIL.** Inmates in adjustment segregation may receive and send mail in accordance with the departmental rules relating to inmate mail.

(6) **SHOWERS.** Inmates in adjustment segregation shall be permitted to shower at least once every 4 days.

(7) **SPECIAL PROCEDURES.** No property is allowed in the cell except that described in subs. (1), (2) and (3), and letters received while in adjustment segregation. Smoking is forbidden. Each institution may establish specific procedures relating to talking. No yelling or whistling is permitted.

(8) **LEAVING CELL.** Inmates in adjustment segregation may not leave their cells except for urgent medical or psychological attention, showers, visits and emergencies endangering their safety in the cell. They may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the superintendent or designee determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(9) **GOOD TIME.** An inmate shall not earn extra good time while he or she is in adjustment segregation. Wages are not paid to inmates in adjustment segregation.

(10) **OBSERVATION.** A person placed in observation while in adjustment segregation receives credit toward the penalty being served.

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(11) **TRANSFER.** An inmate may be transferred from one institution to another while in adjustment segregation in accordance with ch. DOC 302.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. am. (8), eff. 11-18-85; am. (8), Register, May, 1986, No. 365, eff. 6-1-86; am. (4), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.70 Major penalties: program segregation. (1) CONDITIONS. Program segregation may not exceed the period specified in s. DOC 303.84. It may only be imposed for a major offense by the adjustment committee or the hearing officer. Only one person shall be kept in each segregation cell, unless overcrowding prevents it. Each cell must meet the following minimum standards: clean mattress, sufficient light to read by at least 12 hours per day, sanitary toilet and sink and adequate ventilation and heating.

(2) **NECESSITIES.** The following shall be provided promptly upon request for each inmate in program segregation: adequate clothing and bedding; a toothbrush, toothpaste, soap, a towel, a face cloth and a small comb, unless the inmate is allowed to use his or her own such hygiene supplies; paper, envelopes, stamps and pens (the cost of stamps may be deducted from the inmate's account); and holy books. The same diet as provided to the general population at the institution shall be provided.

(3) **PROPERTY.** (a) Inmates in program segregation may have in their cells documents and other materials pertaining to legal proceedings as well as books provided by the institution librarian.

(b) Inmates in program segregation may not have electronic equipment or typewriters in their cells except as permitted in accordance with written policy of the institution. Every institution shall have a written policy providing for incentives for inmates in program segregation to earn the privilege of having personal electronic equipment or typewriters in program segregation. The administrator shall approve each institution's policy before it takes effect to ensure that it is reasonable. Each institution shall post its approved policy and implementation procedures within 30 days after January 1, 1985.

(c) This subsection applies to all program segregation status imposed for conduct committed before, on or after January 1, 1985.

(4) **VISITS AND TELEPHONE CALLS.** Inmates in program segregation shall be permitted visitation, including no-contact visiting, and telephone calls in accordance with ch. DOC 309.

(5) **MAIL.** Inmates in program segregation may receive and send mail in accordance with departmental rules relating to mail.

(6) **SHOWERS.** Inmates in program segregation shall be permitted to shower at least once every 4 days.

(7) **SERVICES AND PROGRAMS.** Social services, clinical services and program and recreation opportunities shall be provided as possible but must be provided at the individual's cell, unless otherwise authorized by the security director. A program of exercise shall be provided for inmates in program segregation.

(8) **LEAVING CELL.** Inmates in program segregation may not leave their cells except for medical or clinical attention, showers, visits, exer-

cise and emergencies endangering their safety in the cell. They may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the superintendent or designee determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(9) **GOOD TIME AND PAY.** Inmates in program segregation earn neither extra good time nor compensation.

(10) **CANTEEN.** Inmates in program segregation may have approved items brought in from the canteen but may not go to the canteen in person.

(11) **SPECIAL RULES.** Smoking is permitted if no hazard is thereby caused. Talking is permitted in a normal tone during approved times. No yelling or whistling is permitted.

(12) **REVIEW OF PROGRAM SEGREGATION.** An inmate's status in program segregation may be reviewed at any time and he or she may be placed in the general population at any time by the superintendent. Such status must be reviewed every 30 days by the superintendent. Such review shall include a recommendation by the security director as to whether the inmate should remain in program segregation and an evaluation of the inmate by either the crisis intervention officer or the adjustment program supervisor, or both. In deciding whether an inmate should be removed from program segregation and placed in the general population, the superintendent shall consider:

(a) The offense, including:

1. Its nature and severity;
2. Mitigating factors;
3. Aggravating factors; and
4. Length of sentence to program segregation;

(b) Motivation and behavior of the inmate, including:

1. Attitude toward himself or herself and others and changes in his or her attitude;
2. Goals of the inmate;
3. Physical and mental health; and
4. Attempt to resolve emotional and mental disorders;

(c) Institutional adjustment, including:

1. Disciplinary record;
2. Program involvement;
3. Relationship to staff and inmates; and
4. Security problems created by release;

(d) Programs, including:

1. Social and clinical services available to help the inmate; and

2. Any programs available to help the inmate.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. r. and recr. (3), eff. 7-24-84; r. and recr. (3) and (10), Register, December, 1984, No. 348, eff. 1-1-85; emerg. am. (8), eff. 11-18-85, am. (8), Register, May, 1986, No. 365, eff. 6-1-86; am. (4), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.71 Controlled segregation. (1) USE. Any inmate in TLU or segregation of any kind who exhibits loud and seriously disruptive behavior or destructive behavior toward the contents of the cell or himself or herself may be put into controlled segregation upon order of the shift supervisor. No inmate may be placed in controlled segregation unless a conduct report is written for the conduct giving rise to the use of controlled segregation. The adjustment committee shall review the report to determine if disciplinary action is appropriate. Controlled segregation normally lasts for not more than 72 hours for a single inmate, but the security director may extend the placement for uncontrollable behavior. Extensions shall be reviewed every 24 hours. When the behavior is brought under control, the inmate shall be removed from this status.

(2) CONDITIONS. Only one person shall be kept in each segregation cell, except in emergencies. Each cell must meet the following minimum standards: clean mattress, sufficient light to read by for at least 12 hours per day, sanitary toilet and sink and adequate ventilation and heating.

(3) NECESSITIES. The following shall be provided for each inmate in controlled segregation: adequate clothing, essential hygiene supplies upon request, and the same diet as provided to the general population. While an inmate is acting in a disruptive manner, close control of all property shall be maintained.

(4) VISITS. Inmates in controlled segregation may not receive visits, including no-contact visits, except from their attorney or with permission from the security director.

(5) MAIL. Inmates in controlled segregation may receive and send mail in accordance with departmental rules relating to mail. Correspondence materials may be provided if they do not pose a threat to anyone.

(6) SPECIAL RULES. (a) No property is allowed in the cell except that described in subs. (2) and (3), letters received while in controlled segregation and legal materials. Smoking is forbidden. Talking is permitted in a normal tone. No yelling or whistling is permitted.

(b) Inmates in controlled segregation may not leave their cells except in emergencies endangering the inmate's safety in the cell or with permission from the security director or designee. They may be required to wear mechanical restraints, as defined in s. DOC 306.09 (1), while outside their cells if the superintendent or designee determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

(7) GOOD TIME. An inmate in controlled segregation earns compensation if he or she earned compensation in the previous status. If 1983 Wis. Act 528 does not apply to the inmate, he or she earns extra good time if he or she earned extra good time in the previous status.

(8) RECORDS. Inmates in controlled segregation shall be visually checked every half hour. A written record or log entry shall be made at each such interval noting the emotional condition of the inmate.

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(9) **CREDIT.** An inmate in controlled segregation receives credit toward a term of program segregation and adjustment segregation during such period of confinement.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (1), Register, April, 1985, No. 352, eff. 5-1-85; emerg. am. (6) (b), eff. 11-18-85; am. (6) (b), Register, May, 1986, No. 365, eff. 6-1-86; am. (7), Register, February, 1987, No. 374, eff. 3-1-87; am. (4), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.72 Minor penalties. Minor penalties in accordance with ss. DOC 303.68 and 303.84 shall include:

(1) **REPRIMAND.** A reprimand is any oral statement by the committee or hearing officer to an inmate when the inmate is found guilty of a disciplinary offense. The reprimand should only be recorded if no other penalty is given.

(2) **LOSS OF RECREATION PRIVILEGES.** Recreation privileges include sports or exercise periods, movies, and leisure activities outside the cell, either on grounds or off grounds.

(3) **ROOM AND CELL CONFINEMENT.** Room and cell confinement may be imposed at any time for a maximum of 10 days. During the hours of confinement, the inmate may not leave his or her quarters without specific permission. Permission may be granted for attendance at religious services, medical appointments, showers, and visits from outside persons, if these must occur during the hours of confinement. Any or all electronic equipment may be removed from an inmate's quarters if room confinement is imposed.

(4) **LOSS OF A SPECIFIC PRIVILEGE.** Specific privileges which may be lost if abused include but are not limited to: use of inmate's own TV, radio or cassette player; phone calls; participation in off grounds activities; having meals in the dining room; and canteen privileges. These privileges may be taken away for up to 30 days for the first offense, for up to 60 days for the second, and permanently for the third. However, visiting and mail may be suspended for periods of time in accordance with ss. DOC 309.05 and 309.17. No-contact visiting may be imposed in accordance with ss. DOC 309.16 and 309.165.

(5) **RESTITUTION.** Restitution is payment to the owner for the replacement or repair of stolen, destroyed and damaged property or for medical bills. Property for which restitution is ordered shall be valued at the cost of replacing or repairing such property, whichever is less. An inmate may be ordered to make full or partial restitution. Money may be withheld from earnings or taken from an inmate's account to satisfy the requirements to make restitution.

(6) **EXTRA DUTY.** An inmate may be assigned extra work or school duty for a specific number of hours without pay or be required to report as ordered to a school or a work assignment for as long as 10 days.

(7) **BUILDING CONFINEMENT.** This is confinement to the building in which the inmate resides.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (3) and (4), Register, April, 1985, No. 352, eff. 5-1-85; am. (4), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.73 Referral for prosecution. (1) The superintendent of each institution shall, in conjunction with the local district attorney, develop Register, April, 1994, No. 460

a policy stating which offenses should be referred for prosecution. The policy should cover the following points:

- (a) Which statutory crimes should be considered for prosecution;
- (b) The amount of evidence needed before prosecution should be considered;
- (c) The circumstances in which, even though a violation of the criminal statute can be proved, there should not be prosecution (for instance, less serious battery); and
- (d) Which disciplinary offenses may include a crime which is referred for prosecution.

(2) When one of the offenses mentioned in sub. (1) (d) above is alleged in a conduct report, the security director shall review the conduct report in light of the policy to determine if the case should be referred to the district attorney.

(a) If necessary, the security director shall order an investigation to determine if sufficient evidence exists for referral to the district attorney.

(b) If the security director refers the offense to the district attorney, the district attorney shall decide whether to bring charges against an inmate.

(3) Whether or not the review described in sub. (2) results in prosecution being started, the incident may be handled as a disciplinary offense.

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

DOC 303.74 Summary disposition procedure. (1) An inmate may be summarily found guilty and punished for minor rule infractions in accordance with this section.

(2) Before an inmate is summarily found guilty and punished, a staff member:

(a) Shall inform the inmate of the nature of the alleged infraction and the contemplated penalty; and

(b) Shall inform the inmate that the incident may be handled summarily or that it may be handled through the formal disciplinary process.

(3) If the inmate agrees to summary disposition, the staff member shall inform the inmate of the punishment.

(4) Before imposing the punishment, the staff member shall get the oral or written approval of the shift supervisor. If the shift supervisor disapproves of the summary disposition, the alleged infraction shall either be handled through the formal disciplinary process or the disposition shall be altered so that it is approved by the shift supervisor.

(5) Punishments imposed pursuant to this section shall not exceed the following:

(a) Reprimand;

(b) Loss of a specific privilege for 1 to 15 days, except visits, including no-contact visiting, and mail;

- (c) Two nights in room confinement;
- (d) Loss of recreation privilege for 1 to 15 days;
- (e) Extra duty beyond the normal work day; or
- (f) Building confinement.

(6) A record of dispositions made pursuant to this section shall be written on an appropriate form indicating that summary disposition has been made and approved by the shift supervisor.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (5) (b), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.75 Hearing procedure for minor violations. (1) NOTICE. When an inmate is alleged to have committed a minor violation and the security director or designee has reviewed the conduct report pursuant to s. DOC 303.67 and the conduct report has not been disposed of summarily in accordance with s. DOC 303.74, a copy of the approved conduct report shall be given to the accused inmate. The conduct report shall include the offense or offenses charged, the facts upon which the charges are based, the sources of information and the date of the hearing, and shall notify the inmate of the time of the hearing and that the hearing may be conducted without the inmate being present if the inmate refuses to appear at the hearing.

(2) **TIME LIMITS.** Except as provided in this subsection, the hearing may not be held until at least 2 working days after the inmate receives the approved conduct report, or later than 21 days after the inmate receives the approved conduct report. The inmate may request more time to prepare, and this request shall be granted by the hearing officer unless there is a good reason to deny the request. An inmate may waive in writing the time limits provided in this section.

(3) **HEARING OFFICER.** The superintendent shall appoint one or more staff members to serve as hearing officers. Only persons who are eligible to serve on the adjustment committee may be appointed. A hearing officer with substantial involvement in the conduct report may not hold a hearing on that conduct report.

(4) **HEARING.** At the hearing, a hearing officer shall review the conduct report and discuss it with the inmate. The inmate shall be provided with an opportunity to respond to the report and make a statement about the alleged violation. The hearing officer may question the inmate. The inmate has no right to a staff advocate, to confront witnesses or to have witnesses testify on his or her behalf. If an inmate refuses to attend a hearing, the hearing may be conducted without the inmate being present.

(5) **DECISION AND DISPOSITION. (a)** The hearing officer shall decide the guilt or innocence of the inmate on each charge, decide the punishment, and announce these decisions to the inmate. Penalties for minor violations shall be imposed in accordance with s. DOC 303.72. Penalties for major violations when a due process hearing is waived under s. DOC 303.76(6) shall be imposed in accordance with ss. DOC 303.83 and 303.84.

(b) The institution shall establish guilt based on the preponderance of the evidence.

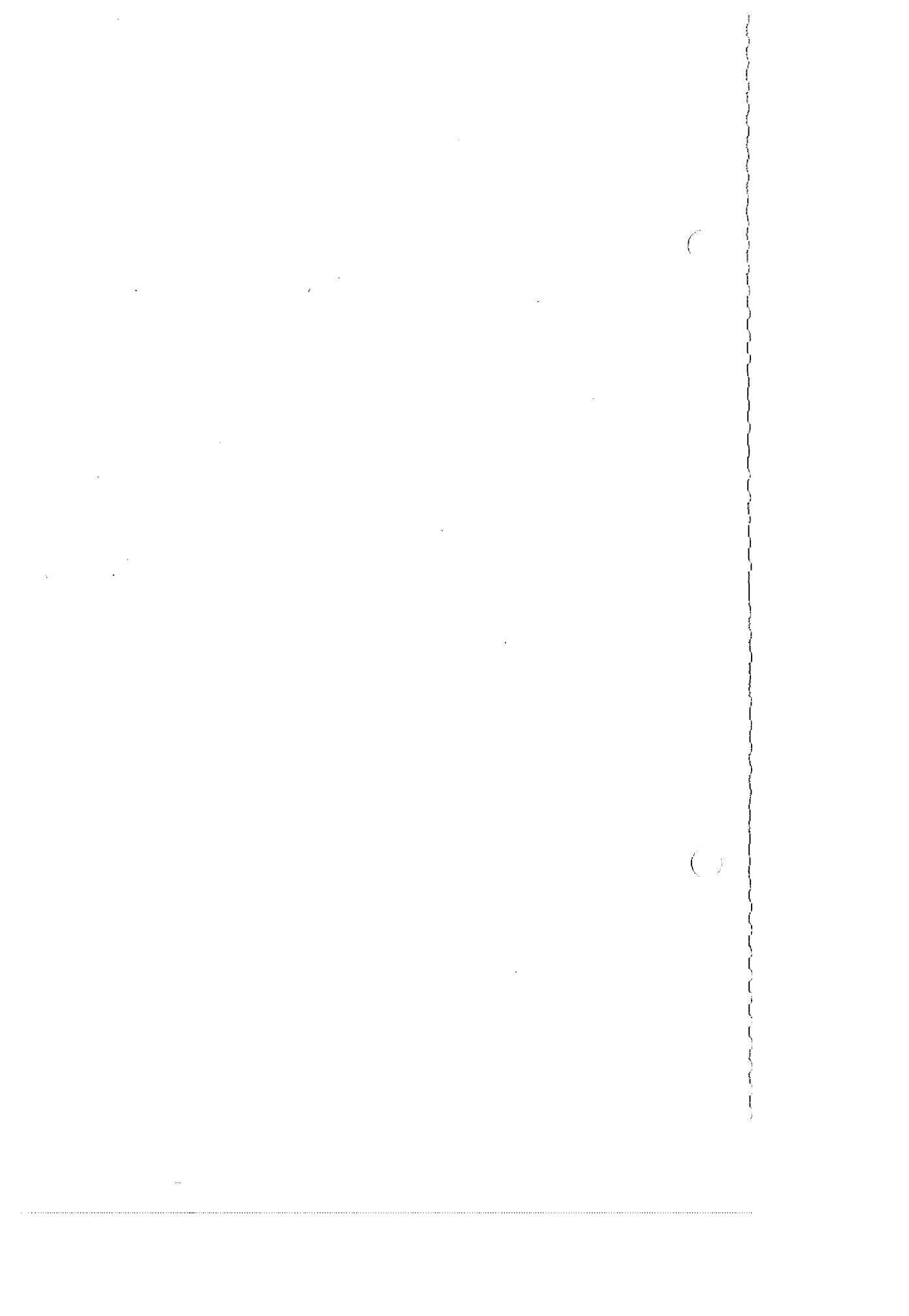
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(c) The hearing officer shall state in writing the finding of guilt for each charge, the punishment and the reasons for it on the conduct report and return it to the security office for record entry and compliance with the disposition.

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pointed by the superintendent. Persons eligible to serve on an adjustment committee are: the superintendent, assistant superintendents, supervisors, correctional officers, social workers, and any other equally responsible staff members. Efforts shall be made to place staff from diverse backgrounds on the multi-member adjustment committee. At least one member of every adjustment committee shall be a supervisor.

(2) No person who has personally observed or been a part of an incident which is the subject of a hearing may serve on the committee for that hearing. Committee members should find out the subject matter of the hearing in advance in order to allow replacement of committee members if necessary and thereby avoid the necessity of postponing the hearing. The security director who reviews the conduct report or classifies the offense, as required by ss. DOC 303.67 and 303.68, is not involved in the incident by reviewing the conduct report or classifying the offense to the extent that he or she is automatically disqualified from being on the adjustment committee.

(3) An adjustment committee may hold a hearing even if the inmate has waived due process, if it is more convenient for the committee to hold the hearing than to schedule a hearing before a hearing officer. In that case the committee should follow the procedure for a hearing before a hearing officer.

(4) When a single hearing officer is sitting on the adjustment committee pursuant to sub. (1), or after the waiver of due process, he or she has the same authority as given the adjustment committee under this chapter.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (1) and (2), Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.83 Sentencing considerations. In deciding the sentence for a violation or group of violations, the supervisor making summary disposition or the adjustment committee or hearing officer who is holding the hearing shall consider the following:

(1) The inmate's overall disciplinary record, especially during the last year;

(2) Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently;

(3) Whether the alleged violation created a risk of serious disruption at the institution or in the community;

(4) Whether the alleged violation created a risk of serious injury to another person;

(5) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft;

(6) Whether the inmate was actually aware that he or she was committing a crime or offense at the time of the offense;

(7) The motivation for the offense;

(8) The inmate's attitude toward the offense and toward the victim, if any;

(9) Mitigating factors, such as coercion, family difficulties which may have created anxiety and the like;

(10) Whether the offense created a risk to the security of the institution, inmates, staff or the community; and

(11) The time he or she spent in TLU.

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

DOC 303.84 Sentencing procedure and schedule of penalties. (1) In every case where an inmate is found guilty of one or more violations of the disciplinary rules, one or more of the following penalties shall be imposed, except as provided in sub. (2) and ss. DOC 303.68 to 303.72:

(a) Reprimand;

(b) Loss of recreational privilege for 1 to 30 days;

(c) Room confinement for 1 to 10 days;

(d) Building confinement for 1 to 30 days;

(e) Loss of a specific privilege for 1 to 30 days for the first offense, for 1 to 60 days for the second offense and permanently for the third.

(f) Mail and visiting privileges and no-contact visiting as provided in the departmental rules relating to mail, visiting and no-contact visiting.

(g) Adjustment segregation for 1 to 8 days;

(h) Extra duty without pay for 1 to 10 days;

(i) Program segregation for a specific term of 30, 60, 90, 120, 180 or 360 days;

(j) Loss of good time for an inmate whose crime was committed before June 1, 1984, and who did not choose to have 1983 Wis. Act 528 apply to him or her, or extension of the mandatory release date for an inmate whose crime was committed on or after June 1, 1984, and for other inmates who chose to have 1983 Wis. Act 528 apply to them; or

(k) Restitution.

(2) Punishment imposed pursuant to sub. (1) is subject to the following:

(a) Adjustment segregation, program segregation and loss of good time or extension of the mandatory release date, whichever is applicable, may be imposed for a single major offense. At one hearing, the maximum penalty is the most severe penalty the inmate could receive for any single offense of which he or she is found guilty. The duration of a penalty may not exceed the duration shown in Table 303.84.

TABLE 303.84
SCHEDULE OF PENALTIES
(Maximum in days)

	Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983 Wisconsin Act 528*
Offenses against bodily security				
303.12 Battery	8	360	20	40
303.13 Sexual assault—intercourse	8	360	20	40
303.14 Sexual assault—contact	8	360	20	40
303.15 Sexual conduct	4	120	10	20
303.16 Threats	5	180	10	20
303.17 Fighting	8	180	20	40
Offenses against institutional security				
303.18 Inciting a riot	8	360	20	40
303.19 Participating in a riot	6	360	10	20
303.20 Group resistance and petitions	4	180	10	20
303.21 Conspiracy		Maximum for completed offense		
303.22 Escape	8	360	20	40
303.23 Disguising identity	8	180	20	40
Offenses against order				
303.24 Disobeying orders	6	180	10	20
303.25 Disrespect	8	180	10	20
303.26 Soliciting staff	8	360	20	40
303.27 Lying	5	60	10	20
303.271 Lying about staff	8	360	20	40
303.28 Disruptive conduct	5	360	10	20
303.29 Talking	4	60	0	0
303.30 Unauthorized forms of communication	5	60	10	20
303.31 False names and titles	4	60	0	0
303.32 Enterprises and fraud	6	120	5	10
303.33 Attire	4	60	0	0
Offenses against property				
303.34 Theft	8	360	20	40
303.35 Damage or alteration of property	8	180	15	30
303.36 Misuse of state property	4	60	0	0
303.37 Arson	8	360	20	40
303.38 Causing an explosion or fire	6	180	15	30
303.39 Creating a hazard	6	120	10	20
303.40 Unauthorized transfer of property	5	120	0	0
303.41 Counterfeiting and forgery	8	360	20	40
Contraband offenses				
303.42 Possession of money	8	360	20	40
303.43 Possession of intoxicants	8	360	20	40
303.44 Possession of drug paraphernalia	8	360	20	40

TABLE 303.84 — Schedule of Penalties (Maximum in days) —
continued

	Adjustment Segregation	Program Segregation	Good Time Loss	Extension of Mandatory Release Date Under 1983 Wisconsin Act 528*
303.45 Possession, manu- facture and altera- tion of weapons	8	360	20	40
303.46 Possession of excess smoking materials	4	60	0	0
303.47 Possession of contra- band—miscel- laneous	6	120	10	20
303.48 Unauthorized use of the mail	8	360	20	40
Movement offenses				
303.49 Punctuality and at- tendance	5	120	5	10
303.50 Loitering	4	120	5	10
303.51 Leaving assigned area	5	120	10	20
303.511 Being in unassigned area	5	120	10	20
303.52 Entry of another in- mate's quarters	8	360	20	40
Offenses against safety and health				
303.54 Improper storage	4	60	5	10
303.55 Dirty quarters	4	60	0	0
303.56 Poor grooming	4	60	0	0
303.57 Misuse of prescrip- tion medication	8	360	20	40
303.58 Disfigurement	5	120	10	20
Miscellaneous				
303.59 Use of intoxicants	8	360	20	40
303.60 Gambling	4	60	5	10
303.61 Refusal to work or attend school	4	60	5	10
303.62 Inadequate work or study performance	4	60	5	10
303.63 Violation of institu- tional policies and procedures	6	180	10	20
303.631 Violating conditions of leave	8	360	20	40
303.06 Attempt				Maximum for completed offense
303.07 Aiding and abetting				Maximum for completed offense

* Does not include the mandatory extension of 50% of the number of days spent in segregation status required under par. (e).

(am) More than one minor penalty may be imposed for a single offense and both a major and minor penalty may be imposed for a major offense.

(b) Loss of accumulated good time or extension of the mandatory release date may be imposed as a penalty only where the violation is listed as a major offense under s. DOC 303.68 (3) or is designated as a major offense by the security director because of its nature or the inmate's prior record.

(c) 1. For those inmates to whom 1983 Wis. Act 528 does not apply, the number of days of good time lost on one occasion may be based on the number of prior occasions on which the inmate lost good time but shall not exceed the following:

<u>Number of prior occasions good time lost</u>	<u>Maximum number of days good time lost</u>
None	5
One	10
2 or more	20

2. For those inmates to whom 1983 Wis. Act 528 applies, the number of days the mandatory release date is extended on one occasion may be based on the number of prior occasions on which the inmate lost good time or had his or her mandatory release date extended but shall not exceed the following:

<u>Number of prior occasions good time lost or mandatory release date extended</u>	<u>Maximum number of days mandatory release date extended</u>
None	10
One	20
2 or more	40

(d) Restitution may be imposed in addition to any other penalty.

(e) For those inmates to whom 1983 Wis. Act 528 applies, in addition to other penalties imposed in accordance with this subsection, the inmate's mandatory release date shall be extended by the number of days equal to 50% of the number of days spent in adjustment, program or controlled segregation status.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (1) (intro.) and (h), (2) (a) table, (am) and (b), Register, April, 1985, No. 352, eff. 5-1-85; emerg. r. and recr. (1) (i) and (2), eff. 9-10-86; r. and recr. (1) (i) and (2), Register, February, 1987, No. 374, eff. 3-1-87; renum. (1) (f), (g), (h), (i) and (j) to (1) (g), (h), (i), (j) and (k) and am. (1) (e) and cr. (1) (f), Register, April, 1994, No. 460, eff. 5-1-94.

DOC 303.85 Recordkeeping. (1) Records of disciplinary infractions may be included in an inmate's case record only in the following situations:

(a) If the inmate was found guilty by summary disposition procedure (See DOC 303.74); or

(b) If the inmate was found guilty by a hearing officer or an adjustment committee. Records must be removed if an appeal is successful (See DOC 303.79).

(2) Records of alleged disciplinary infractions which have been dismissed or in which the inmate was found not guilty may be kept for sta-

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tistical purposes, but they may not be considered in making program assignment, transfer, or parole release decisions, nor may they be included in any inmate's case record.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. am. (1) (a), eff. 10-21-80; am. (1) (a), Register, March, 1981, No. 303, eff. 4-1-81; am. (1) (b), Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.86 Evidence. (1) (a) "Evidence" is any statement or object which could be presented at a disciplinary hearing or in a court of law, whether or not it is admissible.

(b) Evidence is relevant if that evidence makes it appear more likely or less likely that the inmate committed the offense of which he or she is accused.

Note: For example: an inmate is accused of threatening another inmate. Testimony that the accused and the other inmate had a loud argument the day before is relevant. It indicates a possible motive for a threat and makes it appear more likely that a threat occurred. An officer testifies that the accused has lied to him or her on previous occasions. This is relevant if the testimony of the accused varies from the conduct report.

(2) (a) An adjustment committee or a hearing officer may consider any relevant evidence, whether or not it would be admissible in a court of law and whether or not any violation of this chapter occurred in the process of gathering the evidence.

(b) An adjustment committee or a hearing officer may refuse to hear or admit relevant evidence for any of the following reasons:

1. The evidence is not reliable, for example: opinions which are not supported by factual observation; hearsay (statements made outside of the hearing); reputation of the witness;

2. The evidence, even if true, would be of marginal relevance, for example: evidence of prior acts by the accused or a witness, to show that he or she is repeating a pattern; or

3. The evidence is merely cumulative of evidence already received at the hearing and is no more reliable than the already admitted evidence, for example: testimony of other inmates corroborating the accused's story, when corroboration has already occurred.

(3) If a witness is unavailable to testify, a written statement, a transcript of an oral statement, or a tape-recorded statement may be considered. Unavailability means death, transfer, release, hospitalization, or escape in the case of an inmate; death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of a staff member.

(4) If a witness refuses to testify in person and if the committee finds that testifying would pose a significant risk of bodily harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity. The contents of the statement shall be revealed to the accused, though the statement may be edited to avoid revealing the identity of the witness. The committee may question the witnesses, if they are otherwise available. Two anonymous statements by different persons may be used to corroborate each other. A statement can be corroborated in either of the following ways:

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(a) By other evidence which substantially corroborates the facts alleged in the statement such as, eyewitness account by a staff member or circumstantial evidence; or

(b) By evidence of a very similar violation by the same person.

(5) After disposition has been reached by the adjustment committee, and if a finding of guilt results, restricted informant material shall then be forwarded to the security office for retention in the restricted security department file with all other copies of the entire hearing results.

(6) The original conduct report and all due process documents shall be placed in the inmate's case record. However, restricted informant reports shall be placed only in the security department restricted file.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; am. (6), Register, April, 1985, No. 352, eff. 5-1-85.

DOC 303.87 Harmless error. If a procedural requirement under this chapter is not adhered to by staff, the error may be deemed harmless and disregarded if it does not substantially affect the rights of the inmate. Rights are substantially affected when a variance from a requirement prejudices a fair proceeding involving an inmate.

History: Cr. Register, April, 1985, No. 352, eff. 5-1-85.