

ORDER OF THE DEPARTMENT OF CORRECTIONS

CR 11-022

INTRODUCTORY CLAUSE

The Wisconsin Department of Corrections proposes an order **to repeal and recreate** ch. DOC 303, **to repeal** ch. DOC 303 APPENDIX, ss. DOC 308.03 (6) and (8), 309.02 (13), 309.55 (4) (e) 4., 5., and 6., 327.09 (2) (g), (j), and (n), **to amend** ss. DOC 302.17 (11) (c), 302.21 (3) (b) 1., 302.33 (1) (b), 302.34 (1) (a), 302.35 (1) (a), 304.04 (2), 306.05 (4) (a), 308.03 (4) (intro.), (b), and (d), 308.04 (4) (e) 5., (5) (a) 2., and (10), 308.04 Note to sub. (4), 309.02 (5), 309.04 (4) (e) 2. and (6), 309.20 (4) (a) 5., (4) (c) 3., (4) (d) 2., and (7), 309.365 (5) (c) 2., 310.08 (3), 310.10 (7), 310 APPENDIX DOC 310.16, PARA. 3, 311.07 (2) (f) 3., 313.08 (10), 324.12 (1) (j), 324.13 (6), 327.09 (1) (a), (2) (intro.), (a), (b), (c), (d) (intro.), (e) (intro.), (f), (h), (i), (m) 1., (q) (intro.), (r), (s), (t), (u), (v), (w), (x) (intro.), (y), (z) (intro.), and (3), 327.13 (intro.), (2), (3), (4), (5), (6), (7), (8), (9), and (10), 327.16 (6) (c) 4. and (d), and **to create** DOC 308.03 (8m), 309.55 (4) (e) 4. and 5., relating to the discipline of inmates.

ANALYSIS PREPARED BY THE DEPARTMENT OF CORRECTIONS

RULE SUMMARY

A. Statutes interpreted: ss. 301.02, 301.03 (2), 302.04, 302.07, 302.08 and 302.11 (2), Stats.

B. Statutory Authority to Promulgate the Rule: ss. 301.02, 301.03 (2), 302.04, 302.07, 302.08, 302.11 (2), and 227.11 (2), Stats.

C. Explanation of agency authority:

The department of corrections is responsible for the supervision of all inmates, including their discipline for violations of institution and department regulations.

D. Related statute or rule:

Chapters DOC 302, 304, 306, 308, 309, 310, 311, 313, 314, 316, 324, 325, 326, and 327, relating to the supervision of inmates.

E. Plain Language Analysis:

The rule:

1. Reorganizes and updates the rule chapter.
2. Repeals the following definitions: administrative committee, bodily injury, consent, disruptive conduct, fight, inmate gang, public, riot, staff, and steals.
3. Amends the following definitions: authorized, case record, communicate, contraband, gambling, intoxicating substance, possession, and sexual

- contact. (Section DOC 303.02.)
4. Creates the following definitions: bodily harm, body specimen, close family member, corporal punishment, department policy, disciplinary separation, disturbance, employee, great bodily harm, hearing officer, member of a household, personally identifiable information, record, security threat group, serious mental illness, stalking, staff member, substantial bodily harm, substantial involvement, suffer serious emotional distress, targeted person, and victim. (Section DOC 303.02.)
 5. Moves definitions which were in the body of the rule into the definition section: contraband, evidence, and gambles. (Section DOC 303.02.)
 6. Repeals the following offenses: battery, fighting, inciting a riot, participating in a riot, arson, causing an explosion or fire, creating a hazard, and violation of institution policies and procedures.
 7. Creates the following offenses: assault, aggravated assault, assault on employee, sexual contact or intercourse, sexual assault, sexual assault-aggravated, stalking, endangering safety, inciting a disturbance, participating in a disturbance, taking a hostage, possession of tobacco, and possession of electronic communication or data storage devices. (Sections DOC 303.11, 303.12, 303.13, 303.15, 303.16, 303.17, 303.19, 303.20, 303.21, 303.22, 303.23, 303.46, and 303.48.)
 8. Modifies the table of automatic major offenses to reflect changes in practice and technologies. (Section DOC 303.71.)
 9. Modifies the schedule of penalties to allow more flexibility and use of disciplinary segregation, now disciplinary separation, in place of adjustment segregation. (Section DOC 303.72.)
 10. Requires the retention of property until a final decision is made on a complaint. (Section DOC 303.09 (2).)
 11. Modifies the current rule to allow temporary lock up (TLU) to await placement in appropriate security level. (Section DOC 303.10.)
 12. Changes battery and fighting to assault, aggravated assault and assault on an employee to increase consistency in application of the rule and ensure decision makers have accurate information about dynamics of the offense. (Sections DOC 303.11, 303.11, and 303.12.)
 13. Changes charges related to sexual behavior and assault to sexual conduct, sexual harassment, sexual contact or intercourse, sexual assault, and sexual assault aggravated to more accurately reflect changes related to the federal Prison Rape Elimination Act (PREA) and improve communication of actual dynamics of the offense. (Sections DOC 303.14, 303.15, 303.16, and 303.17.)
 14. Creates the offense of stalking to clearly identify inmate misconduct. (Section DOC 303.19.)
 15. Creates the offense of taking a hostage in response to inmate conduct that was not currently addressed. (Section DOC 303.23.)
 16. Modifies the elements of “disruptive conduct” as a violation to better capture behaviors that are disruptive to the orderly operation of facilities. (Section DOC 303.33.)
 17. Modifies the elements of “unauthorized forms of communication” to better identify problematic conduct. (Section DOC 303.34.)
 18. Removes the phrase “or someone not on the inmate’s approved visiting list without prior written authorization by the warden” from s. DOC 303.40 as proposed in the draft which was submitted to the Legislative Council. As the

department reviewed the implications of this change from the current rule language, the department determined it was unworkable. If the department determines that an inmate is “strong-arming” another inmate into arranging for property to be delivered to him or her, then there are other rule provisions which can be used to stop the conduct. (Section DOC 303.40.)

19. Modifies the elements of “possession, manufacture, or use of weapons” to include the use of an otherwise allowable property item as a weapon as a violation. (Section DOC 303.45.)
20. Creates the offense of “possession of tobacco” to reflect the ban on smoking and use of tobacco products. (Section DOC 303.46.)
21. Creates the offense of “possession of electronic communication or data storage devices” to address the added threat to security that the possession of this type of property poses. (Section DOC 303.48.)
22. Expands the elements of the offense of “unauthorized use of the mail” to include sending any item not allowed under this chapter and falsifying the name of the receiver or address. (Section DOC 303.49.)
23. Expands the coverage of the misuse of medications to include both prescription and nonprescription medications. (Section DOC 303.58.)
24. Requires consideration of an inmate’s serious mental illness during due process hearings and disposition stage. (Section DOC 303.68 (1) (e) 7. and 303.85 (1) (k).)
25. Clarifies how to impose a requirement for restitution when the actual amount is not known at the time of disposition. (Section DOC 303.70 (7).)
26. Deletes the use of program segregation and adjustment segregation as penalties. The loss of good time associated with these penalties has not had a sufficient deterrent effect to warrant the extra work to recalculate release dates and the deletion eliminates a liberty interest and simplifies due process requirements. (Section DOC 303.72.)
27. Modifies the processes and terminology for disciplinary transactions from summary through full due process. (Sections DOC 303.65 through 303.90.) Permits summary disposition for major violations. (Section DOC 303.78.) Modifies minor hearing process to be more similar to summary disposition. (Section DOC 303.76.) Limits inmate and witness written statements to 500 words on 2 sheets of paper. (Section DOC 303.84 (3).) More clearly describes what an inmate may appeal. (Sections DOC 303.76 and 303.78.)
28. Changes the term “controlled segregation” which is used for inmates who are disruptive while in disciplinary separation to “controlled separation.” This change is consistent with the deletion of program segregation and adjustment segregation. The change eliminates any question whether the status of controlled segregation should result in the loss of good time. The status is intended to be of short duration for the purpose of giving an inmate who is disruptive, destructive or out of control an opportunity to regain control of himself or herself. (Section DOC 303.74.)
29. Corrects references to ch. DOC 303 in other DOC chapters.

F. Summary of and Comparison with Existing or Proposed Federal Regulations that are intended to address the activities to be regulated by the proposed rule:

There are no federal regulations that regulate the activities addressed by the proposed rule.

G. Comparison of similar rules in adjacent states:

1. Illinois

Illinois rules concerning discipline apply to both incarcerated adults and juveniles. The rules in some cases have different requirements, depending on whether they apply to adults or juveniles. For example, disciplinary proceedings against an adult must be commenced within 8 days of service of a disciplinary report but only 4 days against a juvenile offender. (20 ILAC 504.30 (f)) Wisconsin has a separate set of rules which addresses incarcerated juveniles.

Illinois prohibits corporal punishment and disciplinary restrictions on diet, medical or sanitary facilities, mail, or access to legal materials. (730 ILCS 5/3-8-7 (b) (1); 20 ILAC 504.20 (c)) Wisconsin rules prohibit corporal punishment. Illinois rules also require that the disciplinary restrictions on visitation, work, education, or program assignments and use of the library be as closely related as practicable to the abuse of the privileges. But the Illinois rule specifically excludes the applicability of this section to segregation or isolation of offenders for purposes of institutional control. (20 ILAC 504.20 (d))

Illinois requires that disciplinary actions resulting in the loss of good time credit or the eligibility to earn good time credit or disciplinary actions resulting in the imposition of disciplinary segregation and isolation are heard by a disciplinary board appointed by the director of prisons. Other disciplinary actions are heard at the institution level. (730 ILCS 5/3-8-7 (d) and (e)) Illinois prohibits any person who initiated a disciplinary charge from determining the disposition of the charge. (730 ILCS 5/3-8-7 (e) (1)) Wisconsin prohibits any person who has substantial involvement in the incident which is the subject matter of the hearing from serving as a hearing officer.

Illinois rules specify in detail the content of a disciplinary report. (20 ILAC 504.30 (d)) Wisconsin rules provide a more general description of the content of a conduct report. The department has policies and procedures which specify the content of the report.

Illinois rules require service of the disciplinary report on the inmate within 8 days of the incident giving rise to the report. (20 ILAC 504.30 (f)) Wisconsin rules require service of a conduct report for a major offense within 2 working days of the security director's approval of the report.

Illinois rules require that an inmate placed in temporary lockup (TLU) be reviewed within 3 days following placement. Illinois also requires that the inmate be interviewed regarding the placement within 14 days. The maximum period of time in TLU is 30 days. (20 ILAC 504.05 (b) and (c) (3) and (4)) Wisconsin requires a review of a TLU placement within 2 working days. The maximum period of time in TLU status is 21 days. This period may be extended by an additional 21 days by the administrator of the division of adult institutions. The status of an inmate placed in TLU must be reviewed every 7 days by the security director.

Illinois rules require that if an inmate is found not guilty of a disciplinary offense, placement in TLU shall be terminated and the disciplinary report expunged from the inmate's records. A copy of the report shall be maintained in an expungement file. (20 ILAC 504.50 (4)) There is a comparable provision requiring the expungement of the disciplinary report following a hearing and a finding that the inmate did not commit the offense. (20 ILAC 504.80 (k) (1)) Wisconsin does not have a similar provision.

Illinois rules have a different procedure for inmates at correctional centers. (20 ILAC 504.60) Wisconsin does not have a similar provision.

Illinois rules provide for the composition of its adjustment committee ("to extent possible, a person representing the counseling staff; and at least one minority staff") and the composition of its program unit (staff who serve as hearing officers) ("at least one member of the unit shall be a minority staff member"). (20 ILAC 504.70) Wisconsin has no similar provision.

Illinois rules require that a disciplinary hearing be commenced within 14 days after commission of the offense unless the inmate is unable to participate in the hearing. (20 ILAC 504.80 (a)) Wisconsin requires that the hearing be held between 2 working days following the inmate being served with the approved or amended conduct report and 21 calendar days. The 21 calendar day period may be extended for any reason by the security director.

Illinois rules provide that questioning of witnesses is done by the submission of written questions which the hearing officer asks. Questions which are cumulative, irrelevant, or a threat to the safety of individuals or the security of the institution are not allowed. Similarly, an inmate's request to call witnesses may be denied if the testimony is deemed to be cumulative, irrelevant, or would jeopardize the safety or disrupt the security of the institution. (20 ILAC 504.80 (h) (2), (4), and (5)) Wisconsin permits the direct questioning of witnesses and the submission of written questions but prohibits repetitive, disrespectful, or irrelevant questions.

Illinois rules specifically state that an inmate is not entitled to retained or appointed counsel. Also, an inmate may only request the assistance of a staff member in the preparation of his or her defense if the inmate is illiterate or does not speak English or when other circumstances exist that preclude the inmate from adequately preparing his or her defense. (20 ILAC 504.80 (i)) Wisconsin does not limit the assignment of staff representatives.

Illinois rules specify that the provisions dealing with penalties following a hearing do not restrict or limit the Illinois department of corrections from administratively changing an inmate's job, educational program, or housing assignment, to restrict privileges, or to transfer the inmate to another institution. (20 ILAC 504.80 (k) (5)) Wisconsin has a similar provision.

Illinois rules provide for the director, deputy director or chief administrative officer to remand a decision to the administrative committee for new proceedings if the proceedings are found to be defective due to: procedural error, lack of impartiality, improper exclusion of witnesses, failure to provide exonerating

information to the inmate prior to the hearing. In addition, a new proceeding may be ordered in other circumstances as determined by one of the named officials. Finally, one of the named officials may request clarification, correction, or additional information. (20 ILAC 504.90) Wisconsin has no similar provision. However, Wisconsin provides for an inmate appeal process (DOC 303.82). In addition, if an inmate is not satisfied with the decision following appeal, the inmate may file an inmate complaint (Ch. DOC 310). At any time, the warden of a Wisconsin institution may review the conduct report.

Illinois rules limit the penalty for multiple offenses arising out of one incident to the maximum penalty for the most serious offense of which the inmate is found guilty. (20 ILAC 504.110 (a)). Wisconsin has a similar provision.

Illinois has a provision for the placement of an inmate into indeterminate segregation. (20 ILAC 504.115) Wisconsin has a provision for administrative confinement which is a non-punitive status.

Illinois rules provide for credit against the term of segregation placement for the time spent in TLU. (20 ILAC 504.120 (a)) Wisconsin specifically does not permit the crediting of time spent in TLU. Wisconsin has a process to reduce time spent in segregation based on adjustment.

Illinois rules provide for the reduction in grade for inmates in centers who are found guilty of a disciplinary offense. (20 ILAC 504.130) Wisconsin has no similar provision.

Illinois rules list offenses in Appendix A and penalties in Appendix B. (20 ILAC 504 App. A and B) Wisconsin lists and defines offenses and sets maximum penalties based on major and minor offenses.

2. Iowa

Iowa statutes have one provision which addresses inmate disciplinary procedures. ICA s. 904.505 (1) provides that inmates who disobey disciplinary rules of the institution shall be punished in accordance with the following: (1) to ensure that sanctions are imposed only at such times and to such a degree as is necessary to regulate inmate behavior and to promote a safe and orderly institution; (2) to control inmate behavior in an impartial and consistent manner; (3) to ensure that disciplinary procedures are fair and that sanctions are not capricious or retaliatory; (4) to prevent the commission of offenses through the deterrent effect of available sanctions; (5) to define the elements of each offense and the penalties which may be imposed for violations, in order to give a fair warning of prohibited conduct; and (6) to provide procedures for preparation of report or disciplinary actions, for conducting disciplinary hearings, and for processing of disciplinary appeals.

ICA s. 904.505 (2) requires the warden to maintain a register of all penalties imposed on inmates and the penalties imposed.

ICA s. 904.505 (4) provides that a reasonable administrative fee for filing a report of a major disciplinary rule infraction for which an inmate is found guilty

may be charged. The fee must be deposited in the general fund of the state.

Iowa does not have administrative rules which govern the discipline of inmates in prison. The Iowa Department of Corrections has issued a policy and procedure which addresses rules and discipline in institutions. (Policy Number IO-RD-01 (eff. 4/2009))

3. Michigan

Michigan rules provide that a violation of department rules by an inmate is classified as a major or minor misconduct on the basis of the seriousness of the act and the disciplinary sanction imposed. (Mich. Admin. Code R. 791.5501 (1)) Wisconsin has a similar provision. An inmate charged with a major misconduct is entitled to a formal hearing. An inmate charged with a minor misconduct is entitled to a fact-finding hearing. (Mich. Admin. Code R. 791.5501 (2)) The Michigan Department of Corrections has a hearings division which conducts administrative hearings regarding inmates. (Mich. Admin. Code R. 791.3301) Wisconsin also differentiates between the processes for handling major and minor violations.

All hearings have two phases: fact determination phase and disposition phase. (Mich. Admin. Code R. 791.3305) At a fact finding hearing, an inmate shall be permitted to be present and speak on his or her own behalf and to receive a copy of any department document specifically relevant to the hearing unless disclosure of the document would threaten the order and security of the institution or a person. An inmate may waive the fact finding phase. (Mich. Admin. Code R. 791.3310) While Wisconsin's rules are not identical, there is a similarity between the two processes.

At least 24 hours prior to a formal hearing, an inmate shall receive written notice of a formal disciplinary hearing. The notice shall include the charges, a description of the circumstances giving rise to the hearing, and the date of the hearing. The inmate shall identify necessary witnesses the inmate wishes to have interviewed, request documents specifically relevant to the issue for the hearing, and request assistance of a staff investigator to gather evidence or speak for the inmate. An inmate may waive the 24 hour notice requirement in writing. (Mich. Admin. Code R. 791.3315 (1) – (3))

At a formal hearing the inmate has the right to be present and offer evidence, to compel disclosure of documents specifically relevant to the issue being heard, unless disclosure poses a threat to safety and security, to call witness who can give necessary, relevant, and material evidence, unless to do so would be unduly hazardous to institutional or safety goals, to present the report of the staff investigator, to submit questions to the hearing officer to ask of witnesses, and to request disqualification of a hearing officer for personal bias based on an affidavit containing specific evidence of personal bias. (Mich. Admin. Code R. 791.3315 (6)) The hearing officer shall render a written decision or recommendation in every case, setting forth the reasons for the decision, a statement of facts, and the evidence relied upon, and any sanctions imposed. Within 48 hours of the conclusion of a hearing on a major misconduct charge the decision shall be posted for staff information the name of the inmate charged, the violations

charged and whether the inmate was found guilty. The information should be posted in an area accessible to staff but not usually accessible to inmates. (Mich. Admin. Code R. 791.3315 (8) and (9))

An inmate may appeal a determination made at a fact finding or informal hearing. The inmate must indicate orally his or her intention to appeal at the conclusion of the hearing and within 24 hours of receiving the written decision file a written appeal. The procedures are found in policies and procedures, not the rules. (Mich. Admin. Code R. 791.3320 (1)) An inmate may appeal a determination made at a formal hearing within 30 days of the determination. Appeals shall be reviewed based on a written summary or record of the hearing. The decision may be affirmed, reversed, or remanded for a new hearing. (Mich. Admin. Code R. 791.3320 (2) and (4))

Michigan rules provide for the earning of good time and disciplinary credit. Violations of prison rules may result in the forfeiture of additional earned and special good time and disciplinary credits. (Mich. Admin. Code R. 791.5513 (1)) In addition, an inmate may be subject to disciplinary time when he or she is found guilty of a violation of prison rules. The range of time includes: all disciplinary time for a homicide; 180 days of disciplinary time for any act that constitutes a felony under state law, assault resulting in serious physical injury, escape, possession of a weapon, inciting a riot or a strike or rioting or striking, and sexual assault; 35 days of disciplinary time for assault and battery, creating a disturbance, possession of dangerous contraband, possession of money, substance abuse, failure to disperse; 15 days of disciplinary time for bribery, fighting, sexual misconduct, threatening behavior, and smuggling; 10 days disciplinary time for destruction or misuse of property with value of \$10.00 or more, disobeying a direct order, insolence, theft or possession of stolen property, and unauthorized occupation of a cell or room; 7 days of disciplinary time for failure to maintain employment, gambling or possession of gambling paraphernalia, interference with the administrative rules, out of place, possession of forged documents or forgery. (Mich. Admin. Code R. 791.5515 (2))

If an inmate is found guilty of more than one violation arising from the same incident, the disciplinary time must run concurrently. (Mich. Admin. Code R. 791.5515 (3)) Disciplinary time may be reduced for exemplary good conduct. However, the director of the department of corrections must establish the amount of disciplinary time that may be reduced for exemplary good conduct. (Mich. Admin. Code R. 791.5515 (4)) If an inmate is subsequently found guilty of a major misconduct, the some portion of the reduced time may be restored. (Mich. Admin. Code R. 791.5515 (5))

4. Minnesota

Minnesota statutes permit the imposition of a sanction on an inmate who refuses to perform an available work assignment either through the loss of good time or by the serving of disciplinary confinement period. (MSA s. 243.18) Minnesota statutes also permit the development of disciplinary sanctions for an inmate who submits a frivolous or malicious claim to a court or licensing agency or who is determined by a court or licensing agency to have testified falsely or to have submitted false evidence. The sanctions may include loss of privileges, punitive

segregation, loss of good time, or adding discipline confinement time. (MSA s. 244.035) The department of corrections operating statute authorizes the commissioner of corrections to enact rules and procedures that govern the operations of prisons. (MSA s. 241.01)

Minnesota does not have administrative rules which govern the discipline of inmates in prison. The Minnesota department of corrections has issued a policy which addresses rules and discipline in prisons. (Policies, Directives and Instructions Manual, Policy 303.010 (eff. 9/1/2005))

H. Summary of the factual data and analytical methodologies that DOC used in support of its determination of the rule's fiscal effect on small businesses under s. 227.114, Stats.:

See attached.

I. Any analysis and supporting documents that DOC used in support of the department's determination of the proposed rule's effect on small businesses or that was used when the DOC prepared an economic impact report:

See attached.

J. Effect on small businesses:

See attached.

K. Agency contact person:

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(608) 240-5049; FAX (608) 240-3306
Kathryn.Anderson@Wisconsin.gov

L. Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule will be accepted and receive consideration if they are received by May 6, 2011. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

FISCAL ESTIMATE: See attached.

ANY STATEMENT, SUGGESTED CHANGES, OR OTHER MATERIAL SUBMITTED TO THE AGENCY BY THE SBRRB.

NA

A COPY OF ANY ECONOMIC IMPACT ANALYSIS PREPARED BY THE AGENCY.

See attached.

A COPY OF ANY REVISED ECONOMIC IMPACT ANALYSIS PREPARED BY THE AGENCY.

See attached.

LEGISLATIVE COUNCIL STAFF CLEARINGHOUSE REPORT:

See attached.

STATEMENT OF THE BASIS AND PURPOSE OF THE RULE INCLUDING HOW THE RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The department of corrections proposes to make modifications and additions to ch. DOC 303, Discipline, for the following purposes:

1. The department is seeking revision of ch. DOC 303 to reflect changes in law and correctional practice and to clarify existing provisions relating to discipline of inmates. The last full review of the chapter occurred over 20 years ago. Since that time there have been many changes in the procedures and practices due to developing case law.
2. More details and a listing of significant changes can be found in the Plain Language Analysis Section of this document. (See pages 42 through 44.)

A SUMMARY OF PUBLIC COMMENTS TO THE PROPOSED RULE AND THE AGENCY'S RESPONSE TO THOSE COMMENTS, AND AN EXPLANATION OF ANY MODIFICATION MADE IN THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENTS OR TESTIMONY RECEIVED AT A PUBLIC HEARING:

A. Summary of comments and the department's response to those comments:

1. Concern expressed about renumbering. Suggested keeping the current numbering and inserting new paragraphs without renumbering the entire chapter.

Response: Rejected. The department decided to review the entire chapter for its organization, numbering and substance. The department is taking steps, including training, to avoid problems and confusion to staff and inmates as it implements the revised chapter.

2. Concern expressed that penalties for ss. DOC 303.28 (disobeying orders), 303.34 (unauthorized forms of communication), 303.38 (damage or alteration of property), and 303.47 (possession of contraband—miscellaneous) are too high.

Response: Rejected. The penalties that are listed are the maximum penalties that can be imposed. A lower penalty may be imposed based on the circumstances and facts of a situation.

B. Explanation of modifications made to the proposed rule in response to public comments received:

No changes were made to the rule in response to public comments.

LIST OF PERSONS WHO APPEARED OR REGISTERED FOR OR AGAINST THE PROPOSED RULE AT A PUBLIC HEARING.

A. Two public hearings were held on the rule:

April 28, 2011 10:00 a.m. State Office Building, Conference Rm. 45
819 North 6th Street, Milwaukee, WI

April 28, 2011 2:30 p.m. Department of Administration
Yahara Conference Room—1st Floor
101 East Wilson Street, Madison, WI

B. List of persons who appeared or registered for or against the proposed rule at the public hearings:

In person:

Public hearing held on April 28, 2011 in Milwaukee, WI.

There were no appearances.

Public hearing held on April 28, 2011 in Madison, WI.

There were no appearances.

Persons who submitted written comments:

Mark Olson
Oscar McMillian, DOC #042747

EXPLANATION OF ANY CHANGES THAT HAVE BEEN MADE TO THE RULE SUMMARY OR THE FISCAL ESTIMATE:

CHANGES TO THE RULE SUMMARY:

The department made changes to the following sections in the Rule Summary:

B. Statutory authority to promulgate the rule:

In response to the Legislative Council comment, regarding this section, the department expanded the listing of statutory sections which give the department authority to promulgate the rule.

E. Plain language analysis:

Inserted in each numbered paragraph references to the proposed rule section.

The department created the term “staff member” to differentiate a staff member from other persons who are in the institution, performing work on behalf of the department but who might not be actual department employees. For example, volunteers are included in the definition of employee. A volunteer may write a conduct report and is responsible for reporting violations under this chapter but a volunteer is not responsible for conducting a disciplinary hearing or imposing discipline.

In proposed rule sections the department used the term “hearing officer,” instead of the term “disciplinary committee.”

Paragraph 4. In addition to the definitions previously listed as being created, the department also created a definition for the terms: hearing officer and staff member. In response to the Legislative Council comment, the department deleted the term: disciplinary committee.

Paragraph 27. The department clarified in the text of the rule and in the plain language summary that written statements of witnesses and inmates must be legibly written and limited to 500 words or fewer on not more than two sheets of paper. (Section 303.80 (1) (e) 1. and 2. (notice) and (5) (b) and (c) (hearing).)

Paragraph 28. Created a new paragraph 28. The department changed the term “controlled segregation” which is used for inmates who are disruptive while in disciplinary separation to “controlled separation.” This change is consistent with the deletion of program segregation and adjustment segregation. The change eliminates any question whether the status of controlled segregation should result in the loss of good time. The status is intended to be of short duration for the purpose of giving an inmate who is disruptive, destructive or out of control an opportunity for the inmate to regain control of himself or herself.

Paragraph 29. Renumbered paragraph 28 to 29.

CHANGES TO THE FISCAL ESTIMATE:

There were no substantive changes to the fiscal estimate and economic impact analysis.

RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS IN THE CLEARINGHOUSE REPORT:

1. Statutory authority.
 - a. The proposed rule makes numerous references to departmental policies and institutional procedures. The department should review these references in relation to the definition of “rule” in s. 227.01 (13), Stats., to ensure that the contents of these policies and procedures do not need to be promulgated by rule. See, for example, ss. DOC 303.07, 303.09, 303.14 (1) (f), 303.28 (3), and 303.92.

Department of Corrections Response: Accepted. The department reviewed the sections identified. The department revised the sections to clarify its intent. Given the broad array of inmate actions or conduct which are governed by these rules, including inmate conduct which might be considered inappropriate or unacceptable, the department has developed policies specific to the division of adult institutions and procedures specific to individual institutions. Having the policies and procedures in division and institution format permits greater flexibility and change as needed. Inmates are given notice of these policies and procedures.

The department is creating a new term, department policy, for the purpose of identifying the written policies, procedures and notices which the department, division of adult institutions, and prisons issue to implement the statutes and rules. For example, the department does not promulgate by rule the list of allowable inmate property since the list is continuously under review to reflect changes in vendors, available items, and safety and security issues. However, the department gives inmates notice of the list of allowable property.

The department reviewed the rule proposal to make sure that the new term is being used consistently and correctly. The department removed references to institution procedures.

- b. In s. DOC 303.09 (2), what statutory authority permits the department to transmit contraband funds to the state general fund?

Department of Corrections Response: Accepted. Section 25.20, Stats., provides that all “moneys in the state treasury not specifically designated in any statute as belonging to any other funds constitute the general fund.” In addition, under s. 301.32 (1), Stats., unclaimed inmate funds are to be deposited into the state general fund. The proposed rule requires the department to deposit into the general fund all contraband funds. The department applied the same procedure to contraband funds as unclaimed funds. Other tangible property which is deemed contraband will be disposed of in accordance with s. DOC 309.20 (4) and department policy.

2. Form, style and placement in administrative code.

- a. In the introductory clause to the rule, “, relating to discipline of inmates” should go at the end. Also, “ch.” should be inserted before “DOC 303.”

Department of Corrections Response: Accepted.

- b. In the citation of statutory authority in the rule summary, the department should cite “s. 227.11 (2), Stats.” not “ss. 227.11 (2), Stats.”

Department of Corrections Response: Accepted.

- c. In the plain language analysis of the rule summary, item 13. Refers to

“PREA.” The department should spell out this acronym on its first use.

Department of Corrections Response: Accepted.

- d. In the rule summary’s comparison of similar rules in adjacent states, the department provides extensive citations to the Wisconsin Administrative Code in comparison to the rules in the State of Illinois. These citations are not present in comparison to the rules of other states. The department should consider either expanding the citations to other states or removing them from the summary of Illinois rules.

Department of Corrections Response: Accepted. The department removed the citations to Wisconsin rule provisions from the Illinois comparison.

- e. In the treatment clause of Section 1 of the proposed rule, “Chapter” should be placed at the beginning of the clause.

Department of Corrections Response: Accepted.

- f. In the table of contents for ch. DOC 303, the titles of ss. DOC 303.79, 303.80, 303.81, and 303.91 need to be consistent with the titles in the text.

Department of Corrections Response: Accepted.

- g. In s. DOC 303.01 (1), the department refers to “section,” “subsection,” and “chapter.” Are these references accurate, or should they be revised in order to be consistent with one another? In the same subsection, what is the relevance of the phrase “regardless of the inmates’ physical custody?”

Department of Corrections Response: Accepted. The department clarified the references to section, subsection, and chapter. An inmate who has been convicted in Wisconsin and under the department’s legal custody might be held in an out of state prison or in a Wisconsin county jail. The provisions of this chapter apply to inmates under the department’s legal custody, despite their being physically held in a facility not owned or operated by the department.

- h. Generally, in s. DOC 303.02, the department defines several terms to include “or designee.” Given the specific duties assigned to these defined individuals later in ch. DOC 303, is the inclusion of “or designee” overly broad?

Department of Corrections Response: The department intentionally included the phrase “or designee” to clearly authorize the actor (division administrator, warden or security director) to designate another person to act in his or her stead. This averts any challenge to the authority of the specified individual to act.

- i. In s. DOC 303.02 (4), the use of the phrase “but not limited to” is

superfluous.

Department of Corrections Response: Accepted.

- j. In s. DOC 303.02 (6), the department should revise the use of semicolons and commas to ensure consistent use. Additionally, is it necessary to define the term “parent surrogate” as it is used in the definition of “close family member?”

Department of Corrections Response: Accepted. The department changed the term “parent surrogate” to “surrogate parent.” The department modified the definition of “close family member” to include a definitional description of surrogate parent. The department does not intend the modifier “surrogate” to have a special meaning but only a commonly understood dictionary meaning of the person being a “substitute parent.” For example, if the person acted as a parent by living in the family home for a long period of time but had no legally recognized relationship to the inmate, such as being a foster, adoptive, or step parent.

- k. In s. DOC 303.02 (12), the permissibility of a “committee of one” in the definition of “disciplinary committee” is misleading given the plain language definition of “committee.” The department should consider whether a “committee of one” is an appropriate manner in which a disciplinary committee may be formed and, if so, whether reference to a “committee” remains appropriate in the disciplinary context.

Department of Corrections Response: Accepted. The department removed the term “disciplinary committee” and has substituted a new term, “hearing officer.”

- l. In s. DOC 303.02 (16), the department should avoid use of the slash in the definition of “employee.” Additionally, is the department’s definition of “employee” consistent with its uses elsewhere in the chapter? For example, by its definition of employee and reference to an employee in the definition of “disciplinary committee,” a volunteer could be appointed to a disciplinary committee. Did the department intend for the definition of employee to be construed in this manner?

Department of Corrections Response: Accepted. Accepted the punctuation comments. In addition, the department reviewed the use of the term “employee” in the proposed rule and clarified the use of the term. The department changed the term “employee” to “staff” or “staff member” when the department intended only state employees to perform the identified actions.

- m. In s. DOC 303.02 (23), is the definition of “intoxicating substance” overly broad? For example, common pain relievers, or even water, if consumed in high enough quantity, could satisfy the definition to the extent that normal physical functions would be altered or impaired.

Department of Corrections Response: Rejected. The department intended the term to be broad. It has been the department’s experience

that a broad array of substances has been used by inmates to achieve intoxication. The misuse or abuse of any substance to achieve intoxication is intended to be included.

- n. In s. DOC 303.02 (25) and (34), “means” should replace “is.”

Department of Corrections Response: Accepted.

- o. In s. DOC 303.02 (30), the definition of “security threat group” should be revised to state, “...the violation of statutes, administrative rules, department policies, or institutional procedures.”

Department of Corrections Response: Accepted.

- p. In s. DOC 303.02 (31), the definition of “serious mental illness” should be revised to state, “...psychotic symptoms, significant functional impairments, or both.” Also, the parenthetical material should be worked into the text – “...functional impairments, including schizophrenia, bipolar...” The latter comment also applies to s. DOC 303.66 (1) (b).

Department of Corrections Response: Accepted.

- q. In Table DOC 303.03, the department should revise the table so that the full contents of each cell are visible. For example, the reference to s. DOC 303.48 appears incomplete. In s. DOC 303.03 (5), the department refers to “each note.” In an administrative rule, a “note” is a term of art that appears to be used incorrectly in s. DOC 303.03 (5).

Department of Corrections Response: Accepted.

- r. In s. DOC 303.03 (5), should “major offense” replace “completed offense?”

Department of Corrections Response: Accepted. The department revised s. DOC 303.03 (5) to clarify its meaning and created s. DOC 303.03 (6).

- s. In s. DOC 303.10 (2), it appears the last sentence should refer to a determination by the security director or correctional center superintendent. In s. DOC 303.10 (3), the department should say “may not” in place of “shall not.”

Department of Corrections Response: Accepted.

- t. Throughout the rule, the department refers to “staff member.” Based on its definition of “employee” in s. DOC 303.02, did the department intend to distinguish between employees and staff members for purposes of these references? See, for example, ss. DOC 303.13, 303.30, and 303.32.

Department of Corrections Response: Accepted. The department changed the definition of “employee” and created a definition for the term

“staff member.” (See s. DOC 303.02 (34).) In addition, the department reviewed the proposed rule to assure that if the term “staff member” or “staff” were used, it was intentional. The term “employee” includes persons who are not employed by the department. However, there are situations when the broader definition is needed to clarify that inmate conduct involving those persons included under the definition of “employee” is a violation. In contrast there are situations when the department only intends for staff members to perform certain duties and responsibilities.

- u. In s. DOC 303.16, is the reference to consensual acts in sub. (2) superfluous given the reference to force or threat of force in the sub. (1)? Could sub. (2) be deleted, and sub. (1) combined with the (intro.)?

Department of Corrections Response: The department intends to retain sub. (2) in s. DOC 303.16 and s. DOC 303.17 to avoid the claim that the sexual contact was not a violation of the administrative code because the activity was “consensual.”

- v. In s. DOC 303.18, subs. (1) to (3) should end with periods and “or” should be deleted from sub. (2).

Department of Corrections Response: Accepted.

- w. The department should compare its definitions of offenses throughout the chapter. In particular, certain definitions refer to each offense in the text of the section, i.e., an inmate is guilty of stalking, while other definitions state “an inmate...is guilty of an offense.” The former style of reference is preferable, the department may wish to revise definitions in the chapter in or to consistently use that form.

Department of Corrections Response: Accepted.

- x. In s. DOC 303.28 (1), what does the department intend when it applies the definition of disobeying orders to “a group of which the inmate is *or* was a member...?” (Emphasis added.)

Department of Corrections Response: The department intentionally worded the section as it is to clarify that an inmate who was a member of a group at the time the staff member gave an order remains under the obligation of the order, despite the inmate claiming at a later time that he or she is no longer a member of the group.

- y. In ss. DOC 303.29 and 303.63, the department should avoid the use of “and/or” and may wish to substitute “or.”

Department of Corrections Response: Accepted.

- z. In s. DOC 303.35, the department should delete stricken material in subs. (2) and (3).

Department of Corrections Response: Accepted.

aa. In s. Doc 303.42 (5), and through the rule, “the” should replace “such.”

Department of Corrections Response: Accepted.

bb. In s. DOC 303.60 (3), the department refers to “a prescribed time frame.” Where is the time frame prescribed?

Department of Corrections Response: Accepted. The department removed the phrase “within a prescribed time frame” and modified the phrase “body specimen” with the word “timely.” The institution shall require an inmate who is suspected of this offense to provide a body specimen for testing purposes. The collection of evidence in a timely manner is critical.

cc. In s. DOC 303.65 (2), “ss.” should replace “s.”.

Department of Corrections Response: Accepted.

dd. In s. DOC 303.67, and throughout the rule, “shall” should replace “will.”

Department of Corrections Response: Accepted.

ee. In s. DOC 303.71 (3), who is responsible for the designation referenced in the subsection?

Department of Corrections Response: Accepted. The department included the phrase “by the security director” and inserted a reference to s. DOC 303.68 (1) (e) to clarify who the actor is.

ff. In ss. DOC 303.72 and 303.75, the department should substitute “more than” for “over.”

Department of Corrections Response: Accepted.

gg. In s. DOC 303.73 (2) (b), what does the department intend by the phrase “unless the inmate is allowed to use person hygiene supplies?” Is this an exception to the rule regarding when items may be kept in a cell? The department should clarify its use of this phrase.

Department of Corrections Response: Accepted. The department revised the sentence to read: “A toothbrush, toothpaste, soap, a towel, a face cloth and a small comb.”

hh. In s. DOC 303.74 (4) (a), the department refers to possession of property described in subs. (2) and (3). Subsection (3) refers to visits, not the possession of property. The department should clarify its intent regarding this cross-reference.

Department of Corrections Response: Accepted.

- ii. A number of changes are needed in s. DOC 303.79. Subsection titles should be written in capital letters and plain text. If any subsections have titles, they all should. The (intro.) should be numbered sub. (1). These comments also apply to s. DOC 303.77. In making these changes, the department should review s. DOC 303.80, in which all of these things were done correctly.

Department of Corrections Response: Accepted.

- jj. In s. DOC 303.81, sub. (5) should have a title.

Department of Corrections Response: Accepted.

- kk. In s. DOC 303.83 (1) (b), the department might consider mandatory reassignment (“shall” instead of “may”) in cases of conflict of interest.

Department of Corrections Response: Rejected. The department leaves the determination of a conflict for a staff representative to the warden. Staff are encouraged to notify the warden if the staff member thinks there might be a conflict of interest. However, the discretion rests with the warden.

- ll. In s. DOC 303.85 (1), the department should delete the requirement that one member of a disciplinary committee must be a supervisor; this requirement is included in the definition of disciplinary committee in s. DOC 303.02.

Department of Corrections Response: Accepted. The department changed the entity which conducts disciplinary hearings from a disciplinary committee to a hearing officer. Proposed section DOC 303.85 was renumbered to DOC 303.80 and renamed “Hearing Officer.” If a disciplinary committee is formed to conduct a disciplinary hearing, one of the members of the committee must be a hearing officer. A hearing officer is defined as a supervisor under s. DOC 303.02 (20).

- mm. In s. Doc 303.87 (2), the department should insert “DOC” after “Table.”

Department of Corrections Response: Accepted. The department also moved the table to s. DOC 303.72.

- nn. In Table DOC 303.87, the department should revise the table to ensure that all fields are fully visible. Also, it should clarify where the asterisk-footnote is intended to apply. The numbering of s. DOC 303.87 should be reviewed. Did the department intend for the table to be considered sub. (2) (a)? In s. DOC 303.87 (2) b), the department refers to Table 303.84. Did the department intend to refer to Table DOC 303.87? No table appears in s. DOC 303.84. Are new tables necessary in s. DOC 303.87 (2) (e) and (f)?

Department of Corrections Response: Accepted. The department

reviewed and corrected the formatting and numbering of Table DOC 303.87. The department also moved the table to s. DOC 303.72. The department removed the footnote from the table. The department did not create two additional tables per se for par. (e) and (f) but did reformat the information and changed the text for better clarity.

- oo. In s. DOC 303.88 (1), pars. (c) and (d) do not appear to qualify as “situations” as referenced in sub. (1) (intro.). Also, in sub. (1) (intro.), “department” should replace “Department.”

Department of Corrections Response: Accepted. The department renumbered s. DOC 303.88 to 303.87.

- pp. In SECTION 2 of the proposed rule, “Chapter” should be placed before “DOC.”

Department of Corrections Response: Accepted.

- qq. The contents of SECTIONS 3 to 5 should be reviewed and new SECTIONS of the proposed rule should be created as necessary to place the contents of the proposed rule in sequential order.

Department of Corrections Response: Accepted.

- rr. In ss. DOC 306.05 (4) (a) and 308 (10), the contents of the sections should be revised to refer to disciplinary separation and review of disciplinary separation, not program segregation and the segregation review process.

Department of Corrections Response: Accepted.

- ss. In s. DOC 308.03 (4) (b), all of the underscored material should follow the stricken material.

Department of Corrections Response: Accepted.

- tt. In s. DOC 309.04 (4) (e) 2. and (6), the department should insert the more direct cross-reference of s. DOC 303.09 (2).

Department of Corrections Response: Accepted.

- uu. In s. DOC 327.09 (2) (t), did the department intend to refer to s. DOC 303.54 instead of s. DOC 303.50?

Department of Corrections Response: Accepted. The department corrected to citation.

- vv. In s. DOC 327.09 (2) (z) (intro.), the department should refer to the terms mentioned in its cross-reference: “department policies and facility procedures.”

Department of Corrections Response: Accepted.

ww. In s. DOC 327.13 (6), the department should modify the new contents of s. DOC 303.83 rather than simply inserting a new cross-reference.

Department of Corrections Response: Accepted.

xx. In s. DOC 327.13 (9), did the department intend to refer to Table DOC 303.87?

Department of Corrections Response: Accepted. The department corrected the cross-reference.

yy. In s. DOC 327.13 (10), should the department modify the rule text as well as the cross-reference to include references to “disciplinary separation” as described in s. DOC 303.73?

Department of Corrections Response: Accepted.

4. Adequacy of references to related statutes, rules and forms.

a. Is s. 227.11 (2), Stats., the source of the department’s authority to promulgate Clearinghouse Rule 11-022? The rule summary and s. DOC 303.01 (1) should provide citations to all applicable sources of statutory authority.

Department of Corrections Response: Accepted. The department added to the list its general authority to govern the operations of the prisons.

b. In s. DOC 303.02 (14) (e), “take any of the actions under pars. (a) to (d)” should replace “do any of the above.”

Department of Corrections Response: Accepted. The department also renumbered the section to s. DOC 303.02 (13) (e).

c. In s. DOC 303.87 (1) (h), “Wis.” should be deleted.

Department of Corrections Response: Accepted. The department also renumbered the section to s. DOC 303.72 (1) (a).

5. Clarity, grammar, punctuation and use of plain language.

a. The rule summary and proposed rule should be comprehensively reviewed to ensure that adequate punctuation ends each sentence, title, and clause. Generally, a title or sentence should end with a period and an introductory clause should end with a colon.

Department of Corrections Response: Accepted.

- b. In s. DOC 303.58 (7), a hyphen should connect “nonprescribed” and an apostrophe should be placed in “medications.”

Department of Corrections Response: Accepted.

- c. In s. DOC 303.62, the department should delete the commas after “school.”

Department of Corrections Response: Accepted.

- d. In s. DOC 303.68, it appears the department intended to insert “may” between “and” and “do” in sub. (1) (intro.).

Department of Corrections Response: Accepted.

- e. In s. DOC 303.76, is “Notwithstanding” the correct term? Should the SECTION begin “In addition to enforcing this chapter, the department shall...?”

Department of Corrections Response: Accepted.

6. Potential Conflicts with, and Comparability to, related Federal Regulations.

N/A

7. Compliance with Permit Action Deadline Requirements.

N/A

FINAL REGULATORY FLEXIBILITY ANALYSIS: The department of corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.1145, Stats.

TEXT OF RULE

SECTION 1. Chapter DOC 303 is repealed and recreated to read:

Chapter DOC 303

DISCIPLINE

Subchapter I — General Provisions

- DOC 303.01 Applicability and purposes.
- DOC 303.02 Definitions.
- DOC 303.03 Lesser included offenses.
- DOC 303.04 Conspiracy.
- DOC 303.05 Attempt.

- DOC 303.06 Aiding and abetting.
- DOC 303.07 Department policy.
- DOC 303.08 Notice of disciplinary rules.
- DOC 303.09 Seizure and disposition of contraband.
- DOC 303.10 Temporary lock up: use.

Subchapter II — Offenses Against Bodily Security

- DOC 303.11 Assault.
- DOC 303.12 Aggravated assault.
- DOC 303.13 Assault on employee.
- DOC 303.14 Sexual conduct.
- DOC 303.15 Sexual contact or intercourse.
- DOC 303.16 Sexual assault.
- DOC 303.17 Sexual assault-aggravated.
- DOC 303.18 Threats.
- DOC 303.19 Stalking.

Subchapter III — Offenses Against Institutional Security

- DOC 303.20 Endangering safety.
- DOC 303.21 Inciting a disturbance.
- DOC 303.22 Participating in a disturbance.
- DOC 303.23 Taking a hostage.
- DOC 303.24 Group resistance and petitions.
- DOC 303.25 Cruelty to animals.
- DOC 303.26 Escape.
- DOC 303.27 Disguising identity.

Subchapter IV — Offenses Against Order

- DOC 303.28 Disobeying orders.
- DOC 303.29 Disrespect.
- DOC 303.30 Soliciting an employee.
- DOC 303.31 Lying.
- DOC 303.32 Lying about an employee.
- DOC 303.33 Disruptive conduct.
- DOC 303.34 Unauthorized forms of communication.
- DOC 303.35 False names and titles.
- DOC 303.36 Enterprises and fraud.

Subchapter V — Offenses Against Property

- DOC 303.37 Theft.
- DOC 303.38 Damage or alteration of property.
- DOC 303.39 Misuse of state or federal property.
- DOC 303.40 Unauthorized transfer of property.
- DOC 303.41 Counterfeiting and forgery.

Subchapter VI — Contraband Offenses

- DOC 303.42 Possession or use of money or negotiable instruments.
- DOC 303.43 Possession of intoxicants.
- DOC 303.44 Possession of intoxicant paraphernalia.
- DOC 303.45 Possession, manufacture or use of weapons.
- DOC 303.46 Possession of tobacco.
- DOC 303.47 Possession of contraband—miscellaneous.
- DOC 303.48 Possession of electronic communication or data storage devices.
- DOC 303.49 Unauthorized use of the mail.

Subchapter VII — Movement Offenses

- DOC 303.50 Punctuality and attendance.
- DOC 303.51 Loitering.
- DOC 303.52 Leaving assigned area.
- DOC 303.53 Being in an unassigned area.
- DOC 303.54 Entry into another inmate's assigned living area.

Subchapter VIII — Offenses Against Safety And Health

- DOC 303.55 Improper storage.
- DOC 303.56 Dirty assigned living area.
- DOC 303.57 Poor personal hygiene.
- DOC 303.58 Misuse of medication.
- DOC 303.59 Disfigurement.

Subchapter IX — Miscellaneous Offenses

- DOC 303.60 Use of intoxicants.
- DOC 303.61 Gambling.
- DOC 303.62 Refusal to work or attend school.
- DOC 303.63 Inadequate work or school performance.
- DOC 303.64 Violating conditions of leave.

Subchapter X — Disciplinary Procedure And Penalties

- DOC 303.65 Disciplinary violation dispositions.
- DOC 303.66 Offenses that do not require a conduct report.
- DOC 303.67 Conduct report.
- DOC 303.68 Review by security office.
- DOC 303.69 Minor offenses.
- DOC 303.70 Minor penalties.
- DOC 303.71 Major offenses.
- DOC 303.72 Major penalties.
- DOC 303.73 Major penalty: disciplinary separation.
- DOC 303.74 Controlled separation.
- DOC 303.75 Referral for prosecution.
- DOC 303.76 Uncontested minor disposition.
- DOC 303.77 Contested minor disposition.
- DOC 303.78 Uncontested major disposition.
- DOC 303.79 Hearing officer.
- DOC 303.80 Contested major disposition.
- DOC 303.81 Contested major disposition: waiver of due process hearing.
- DOC 303.82 Appeal of contested major or minor disposition or contested major waiver.
- DOC 303.83 Due process hearing: staff representative.
- DOC 303.84 Due process hearing: witnesses.
- DOC 303.85 Disposition considerations.
- DOC 303.86 Recordkeeping.
- DOC 303.87 Evidence.
- DOC 303.88 Harmless error.
- DOC 303.89 Warden-initiated review.
- DOC 303.90 Administrative assignment or transfer.

Subchapter I — General Provisions

DOC 303.01 Applicability and purposes. (1) Pursuant to authority vested in the department of corrections by s. 227.11 (2), Stats., the department adopts this chapter which applies to all inmates in its legal custody regardless of the inmates' physical placement. This section does not preclude another jurisdiction that has physical custody of the inmate from enforcing its rules related to inmate behavior. This chapter implements ss. 301.03 (2), 302.04, 302.07, 302.08 and 302.11 (2), Stats. The rules governing inmate conduct under this chapter describe the conduct for which an inmate may be disciplined and the procedures for the imposition of discipline.

(2) Discipline includes the dispositions described in ss. DOC 303.70 and DOC 303.72. The objectives of the disciplinary rules under this chapter are the following:

- (a) The maintenance of order in correctional facilities.
 - (b) The maintenance of a safe setting in which inmates can participate in constructive programs.
 - (c) The rehabilitation of inmates through the development of their ability to live with others, within rules.
 - (d) Fairness in the treatment of inmates.
 - (e) The development and maintenance of respect for authority, the correctional system, and for our system of government through fair treatment of inmates.
 - (f) Punishment of inmates for misbehavior.
 - (g) Deterrence of misbehavior.
- (3) Corporal punishment of inmates is prohibited.

DOC 303.02 Definitions. In this chapter:

(1) "Administrator" means an administrator of a division of the department, or designee.

(2) "Authorized" means any of the following:

- (a) According to departmental rules.
- (b) According to policies, procedures and handbooks.
- (c) According to the direction of an employee.
- (d) With permission from the appropriate employee.

(3) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(4) "Body specimen" means biological specimen, including a sample of urine, breath, blood, stool, hair, finger nails, saliva, semen, skin cells, or DNA.

(5) "Case record" means a method of storing information which is accessible by the use of an individual inmate's name or department identification number.

(6) "Close family member" means natural, adoptive, step and foster parent, spouse, domestic partner, children, grandparent, grandchildren, or sibling. A surrogate parent is within the definition of parent if it is substantiated that the claimed surrogate has stood in the place of a parent and has been charged with the parent's rights, duties, and responsibilities, either by virtue of voluntary assumption or court appointment.

(7) "Communicate" means to express verbally, in writing, or by means of a gesture or other action, to include electronic transmission.

(8) "Contraband" means any of the following:

(a) Any item which inmates may not possess under this chapter or is not authorized by department policy.

(b) Any item which is not state property and is on the institution grounds but not in the possession of any person.

(c) Any allowable item which comes into an inmate's possession through unauthorized means or is required to be on the inmate's property list and is not.

(d) Stolen property.

(e) Damaged or altered property.

(f) Items deemed contraband by the disciplinary committee or hearing officer.

(g) Items directly or indirectly derived from or realized through the commission of any offense under this chapter.

(h) Item used in the commission of any offense under this chapter.

(i) Items in excess of allowable limits.

(9) "Corporal punishment" means the deliberate infliction of pain as retribution for an offense or requiring the performance of tasks meant to humiliate or degrade.

(10) "Department" means the department of corrections.

(11) "Department policy" means any department or division policy, facility procedure, inmate or unit handbook, or other official notice available to the inmate.

(12) "Disciplinary separation" means a punitive, segregated status which is the result of a major penalty.

(13) "Disturbance" means a riot or other disturbance to institutional order caused by a group of two or more inmates that may include one of the following:

(a) An assault on any person by two or more inmates.

(b) The taking of one or more hostages.

(c) The destruction of state property or the property of another by two or more inmates.

(d) The refusal by two or more inmates, acting in concert, to comply with an order.

(e) Any words or acts which incite or encourage inmates to take any of the actions under paras. (a) to (d).

(14) "Division" means the division of adult institutions, department of corrections.

(15) "Employee" means any department staff member, an employee of a contract agency, an independent contractor, or a volunteer of the department or institution.

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

(17) "Gambling" means betting 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, or participation in any lottery or sweepstakes.

(18) "Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(19) "Harass" means to annoy or irritate persistently.

(20) "Hearing officer" means a supervisor assigned to conduct disciplinary hearings.

(21) "Institution" means a correctional institution or correctional facility defined under s. 302.01, Stats.

(22) "Intimate parts" means breast, penis, buttocks, anus, scrotum, or vaginal area or any other parts of the body that may result in sexual arousal or gratification for either party.

(23) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions.

(24) "Member of a household" means a person who regularly resides in the household of another or who within the previous 6 months regularly resided in the household of another.

(25) "Negotiable instrument" means a writing, signed by the maker or drawer, which contains a promise to pay which is payable on demand or at a specified time, and which is payable to the order of the bearer.

(26) "Personally identifiable information" means information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

(27) "Possession" means on one's person, in any area to which the inmate has been assigned, or under one's control.

(28) "Record" means any material on which written, drawn, printed, spoken, visual, electromagnetic, electronic or other information recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority.

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

(30) "Security threat group" means a group of individuals which threatens, intimidates, coerces or harasses others or which engages in any activity which violates or encourages the violation of statutes, administrative rules or department policy.

(31) "Serious mental illness" means a diagnosed major mental disorder that is usually characterized by psychotic symptoms, significant functional impairments, or both, including schizophrenia, bipolar disorder, or major depressive disorder.

(32) "Sexual contact" means any of the following:

(a) Touching by the intimate parts of one person to any part of another person whether clothed or unclothed.

(b) Any touching by any part of one person or with any object or device of the intimate parts of another person or any other parts of the body that may result in sexual arousal or gratification for either party.

(33) "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.

(34) "Staff member" or "staff" means a person employed by the department as permanent, project and limited term employee.

(35) "Stalking" means an act by an inmate with the purpose of causing that person to suffer emotional distress or to fear bodily injury or death of himself or herself or a member of his or her family or household.

(36) "Substantial bodily harm" means bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

(37) "Substantial involvement" means direct involvement with an alleged infraction, including being a witness or victim or serving as an investigator of an incident.

(38) "Suffer serious emotional distress" means to feel terrified, intimidated, threatened, harassed, or tormented. For an offense to be proved, it is not required that a victim has received or shall receive treatment from a mental health professional in order to prove that the victim suffered serious emotional distress.

(39) "Targeted person" means a person who is the subject of stalking. Targeted person may include a close family member, friend, co-worker or household member of the targeted person.

(40) "Temporary lock up" or "TLU" means a temporary nonpunitive segregated status allowing an inmate to be separated from the general population pending further administrative action.

(41) "Victim" means a person, other than the actor, against whom a violation under this chapter or a crime has been committed.

(42) “Warden” means the warden of an institution, or designee.

(43) “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.

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

(c) Because the victim did not understand the nature of the act, conduct, or other matter, to which the victim consented.

(44) “Working days” means all days except Saturdays, Sundays, and state legal holidays.

DOC 303.03 Lesser included offenses. (1) If an offense is a lesser included offense of another and the reporting employee charges an inmate with the greater offense, the inmate is also charged with the lesser included offense.

(2) The hearing officer may find an inmate guilty of a lesser included offense even if the reporting employee did not expressly charge the inmate with the lesser included offense.

(3) The hearing officer may not find an inmate guilty of 2 offenses or punish the inmate for 2 offenses based on a single incident if one offense is a lesser included offense of the other.

(4) The hearing officer may not find an offense a lesser included offense of another unless it is so listed in the following table:

Table DOC 303.03

GREATER OFFENSE	LESSER INCLUDED OFFENSE
DOC 303.11 Assault	DOC 303.33 Disruptive conduct
DOC 303.12 Aggravated assault	DOC 303.11 Assault
	DOC 303.33 Disruptive conduct
DOC 303.13 Assault on employee	DOC 303.33 Disruptive conduct
DOC 303.16 Sexual assault	DOC 303.11 Assault
	DOC 303.12 Aggravated assault
	DOC 303.14 Sexual conduct
DOC 303.17 Sexual assault—aggravated	DOC 303.11 Assault
	DOC 303.12 Aggravated assault
	DOC 303.14 Sexual conduct
	DOC 303.15 Sexual contact or intercourse
	DOC 303.16 Sexual assault
	DOC 303.45 Possession, manufacture or use of weapons
DOC 303.19 Stalking	DOC 303.18 Threats
	DOC 303.34 Unauthorized forms of communication
	DOC 303.49 Unauthorized use of the mail
DOC 303.20 Endangering safety	DOC 303.38 Damage or alteration of

	property
	DOC 303.39 Misuse of state or federal property
	DOC 303.47 Possession of contraband—miscellaneous
DOC 303.21 Inciting a disturbance	DOC 303.22 Participating in a disturbance
	DOC 303.24 Group resistance and petitions
	DOC 303.33 Disruptive conduct
DOC 303.22 Participating in a disturbance	DOC 303.24 Group resistance and petitions
	DOC 303.33 Disruptive conduct
DOC 303.26 Escape	DOC 303.52 Leaving assigned area
	DOC 303.53 Being in an unassigned area
DOC 303.37 Theft	DOC 303.40 Unauthorized transfer of property
	DOC 303.47 Possession of contraband—miscellaneous
DOC 303.42 Possession or use of money or negotiable instruments	DOC 303.47 Possession of contraband—miscellaneous
DOC 303.43 Possession of intoxicants	DOC 303.40 Unauthorized transfer of property
	DOC 303.47 Possession of contraband—miscellaneous
DOC 303.44 Possession of intoxicant paraphernalia	DOC 303.47 Possession of contraband—miscellaneous
DOC 303.45 Possession, manufacture or use of weapons	DOC 303.47 Possession of contraband—miscellaneous
DOC 303.46 Possession of tobacco	DOC 303.47 Possession of contraband—miscellaneous
DOC 303.48 Possession of electronic communication or data storage devices	DOC 303.34 Unauthorized forms of communication
	DOC 303.47 Possession of contraband—miscellaneous
DOC 303.58 Misuse of medication	DOC 303.40 Unauthorized transfer of property
	DOC 303.47 Possession of contraband—miscellaneous
Any substantive offense	DOC 303.04 Conspiracy
	DOC 303.05 Attempt
	DOC 303.06 Aiding and abetting

(5) All offenses which are lesser included offenses of a substantive offense are listed in Table DOC 303.03.

(6) Aiding and abetting, attempt, and conspiracy are lesser included offenses of any offense.

DOC 303.04 Conspiracy. (1) If 2 or more inmates or others plan or agree to commit one or more acts which are prohibited under this chapter, all inmates may be guilty of an offense.

(2) An inmate who plans or agrees with individuals to commit one or more 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. See Table DOC 303.72.

(4) The number used for conspiracy, in recordkeeping and conduct reports, shall be the number of the offense plus the suffix C.

DOC 303.05 Attempt. (1) An inmate is guilty of attempt to violate a rule if either of the following is true:

(a) The inmate planned to commit one or more acts which would have been a rule violation if actually committed.

(b) The inmate committed one or more acts which showed a plan to violate the rule when the act or acts occurred.

(2) The number used for attempt, in recordkeeping and conduct reports, shall be the offense's number plus the suffix A.

(3) The penalty for an attempt may be the same as for the completed offense. See Table DOC 303.72.

DOC 303.06 Aiding and abetting. (1) An inmate who does any of the following is guilty of aiding and abetting a rule violation:

(a) Directs, requests, or hires another to commit a rule violation.

(b) Assists another in planning or preparing for a rule violation.

(c) Assists another during commission of an offense, whether or not the assistance was planned in advance.

(d) Assists another to prevent discovery of a violation or the identity of the person who committed it.

(e) Has knowledge of a major violation under this chapter that may also violate a criminal law and fails to report the information to an employee.

(2) The reporting employee may charge and the disciplinary committee may find an inmate guilty of aiding and abetting even if no one is charged or found guilty of committing the offense. The principal should, if possible, be identified when the inmate is charged.

(3) The disciplinary committee may impose the same penalty for aiding and abetting as for the substantive offense. See Table DOC 303.72.

(4) The penalty for aiding and abetting shall be based on an appropriate assessment of the facts and the individual's involvement and need not be the same for all participants.

(5) The number used for aiding and abetting, in recordkeeping and conduct reports, shall be the offense's number plus the suffix B.

DOC 303.07 Department policy. (1) Institutions may make specific procedures for the operation of the institution in accordance with department policy. Inmates may be disciplined for violations of department policy, including institution regulations or procedures.

(2) Each institution shall maintain at least one official method for notifying inmates about notices of general applicability.

DOC 303.08 Notice of disciplinary rules. (1) The department shall provide inmates with a copy of this chapter when they enter the prison system.

(2) The department shall provide notice of any published changes to this chapter.

DOC 303.09 Seizure and disposition of contraband. (1) SEIZURE. Any employee who believes that an item is contraband may seize the item. The institution shall return property which is not contraband to the owner or dispose of the property in accordance with s. DOC 309.20 (4) and department policy.

(2) DISPOSITION. The hearing officer or security director shall dispose of items in accordance with s. DOC 309.20 (4) and department policy. If an inmate files a complaint under ch. DOC 310 regarding the seizure or disposition of property, the institution shall retain the property until the final decision on the complaint is made in the inmate complaint review system. Contraband funds shall be deposited in the state general fund.

(3) INMATE REPORTING. Inmates shall immediately report to staff any property item that becomes damaged.

DOC 303.10 Temporary lock up: use. (1) A security supervisor, security director, correctional center superintendent or warden may place an inmate in TLU.

(2) If the security supervisor places an inmate in TLU, the security director or correctional center superintendent shall review this action within 2 working days. Before this review and the review provided for in sub. (3), the institution shall provide the inmate with the reason for confinement and with an opportunity to respond, either orally or in writing. If upon review, the security director or the correctional center superintendent determines that TLU is not appropriate, the institution shall release the inmate from TLU as soon as practicable.

(3) The institution may not allow any inmate to remain in TLU more than 21 days, except that the warden may extend this period for up to 21 additional days. The administrator may extend an inmate's time in TLU for a second time. The security director or correctional center superintendent shall review the status of each inmate in TLU every 7 days to determine whether TLU continues to be appropriate.

(4) The institution may place or retain an inmate in TLU for one or more of the following reasons:

(a) The inmate's presence in general population may impede a pending investigation or disciplinary action.

(b) The inmate's presence in general population may be disruptive to the operation of the institution.

(c) The inmate's presence in general population may create a danger to the physical safety of the inmate or another.

(d) The inmate's presence in general population may create a risk that the inmate shall try to escape from the institution.

(e) If the inmate completes disciplinary separation or administrative confinement and is awaiting placement at the appropriate security level or status.

(5) Institution staff shall document the reasons for TLU placement and shall notify the inmate of the reasons.

(6) The institution shall continue to compensate an inmate who had been earning institution compensation at the rate earned in the inmate's previous status, except that the institution shall compensate an inmate employed by prison industries in accordance with ch. DOC 313.

(7) If 1983 Act 528 does not apply to the inmate, the inmate shall continue to earn extra good time credit. If an inmate was eligible for positive adjustment time under s.

302.113, 2009 Stats., or under s. 304.06, 2009 Stats., the inmate may earn positive adjustment time while in TLU status between October 1, 2009 and August 3, 2011.

(8) TLU time shall not be considered time served for disciplinary penalty purposes.

Subchapter II — Offenses Against Bodily Security

DOC 303.11 Assault. An inmate who does any of the following is guilty of assault: (1) Causes bodily harm to another.

(2) Engages in a physical altercation with another person.

DOC 303.12 Aggravated assault. An inmate who does any of the following is guilty of aggravated assault: (1) Causes substantial bodily harm or great bodily harm to another.

(2) Impedes the normal breathing or circulation of blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

(3) Spits, throws or uses body fluids or waste or any substance on another.

(4) Causes the death of another.

(5) Uses any item as a weapon to cause bodily harm to another.

DOC 303.13 Assault on employee. An inmate who does any of the following is guilty of assault on an employee: (1) Causes bodily injury or harm to an employee.

(2) Impedes the normal breathing or circulation of blood by applying pressure on the throat or neck or by blocking the nose or mouth of an employee.

(3) Spits, throws or uses bodily fluids or waste or any substance on an employee.

(4) Causes the death of an employee.

(5) Uses any item as a weapon to cause bodily harm to an employee.

DOC 303.14 Sexual conduct. (1) An inmate who does any of the following is guilty of sexual conduct:

(a) Requests, hires or tells another person to have sexual intercourse, sexual contact, or engage in sexual conduct.

(b) Exposes the inmate's own intimate parts to another person for the purpose of sexual arousal or gratification.

(c) Has contact with or performs acts with an animal that would be sexual intercourse or sexual contact if with another person.

(d) Clutches, fondles, or touches the inmate's own intimate parts, whether clothed or unclothed, while observable by another.

(e) Simulates a sexual act while observable by another.

(f) Kissing, hand holding, hugging, stroking or other physical displays of affection except for that allowed under department policy.

(g) Engages in sexual harassment including repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature.

(2) Consensual acts are prohibited under this section.

DOC 303.15 Sexual contact or intercourse. (1) An inmate who does any of the following is guilty of sexual contact or intercourse:

(a) Has sexual intercourse.

(b) Has sexual contact.

(c) Commits an act of sexual gratification with another person.

(2) Consensual acts are prohibited under this section.

DOC 303.16 Sexual assault. (1) An inmate who does any of the following with another person with force or the threat of force is guilty of sexual assault:

- (a) Has sexual intercourse.
 - (b) Has sexual contact.
 - (c) Commits an act of sexual gratification.
- (2)** Consensual acts are prohibited under this section.

DOC 303.17 Sexual assault-aggravated. (1) An inmate who does any of the following is guilty of sexual assault-aggravated:

- (a) Causes physical injury as a result of a sexual assault.
 - (b) Uses a weapon in the commission of a sexual assault.
 - (c) Has sexual contact or sexual intercourse with a person who has not attained the age of 16 years.
- (2)** Consensual acts are prohibited under this section.

DOC 303.18 Threats. An inmate who communicates intent to do any of the following to a person is guilty of threats:

- (1)** Physically harm, harass or intimidate that person or another.
- (2)** Cause damage to or loss of that person's or another person's property.
- (3)** Make an accusation he or she knows is false.

DOC 303.19 Stalking. An inmate who engages in, causes, or requests a person to engage in any of the acts described in subs. (1) to (12) is guilty of stalking:

- (1)** Maintaining a visual or physical proximity to the targeted person.
- (2)** Approaching or confronting the targeted person.
- (3)** Appearing at the targeted person's residence, place of employment, or places the targeted person frequents.
- (4)** Contacting the targeted person or the targeted person's neighbors, friends, co-workers, household members, or family members.
- (5)** Causing the targeted person's telephone to ring repeatedly or continuously, regardless of whether a conversation ensues.
- (6)** Photographing, videotaping, audio taping, or, through any other means, monitoring, recording, or logging the activities of the targeted person, regardless of where the act occurs and regardless of the means by which the monitoring, recording, or logging is conducted.
- (7)** Sending material by any means to the targeted person.
- (8)** Making information available about the targeted person by any means, whether true or false, to any person or in a manner in which the information would become available to any person.
- (9)** Touching or placing an object on or delivering an object to property owned, leased, or occupied by the targeted person.
- (10)** Seeking out in any way or possessing documents with personal identifying information pertaining to the targeted person.
- (11)** Possessing a photograph of, or media article pertaining to, a targeted person whom the inmate has previously been found guilty of stalking. This section shall not apply to an inmate who possesses a photograph of, or media article pertaining to, the inmate's child, so long as the possession is not otherwise prohibited.

(12) Falsely representing himself or herself as the current or former spouse, boyfriend, girlfriend, close family member, relative, or household member of the targeted person.

Subchapter III — Offenses Against Institutional Security

DOC 303.20 Endangering safety. An inmate who endangers the health or safety of employees, inmates, others, or property by any means is guilty of endangering safety.

DOC 303.21 Inciting a disturbance. An inmate who encourages, directs, commands, coerces or signals one or more other persons to participate in a disturbance is guilty of inciting a disturbance.

DOC 303.22 Participating in a disturbance. An inmate who participates in a disturbance, or who remains in a group where some members of the group are participating in a disturbance, is guilty of participating in a disturbance.

DOC 303.23 Taking a hostage. An inmate who seizes, confines, or restrains one or more persons is guilty of taking a hostage.

DOC 303.24 Group resistance and petitions. An inmate who does any of the following is guilty of group resistance and petitions:

(1) Participates in any group activity which is not approved by the warden or is contrary to provisions of this chapter.

(2) Joins in or solicits another to join in any group petition or statement. The following activities are not prohibited:

(a) Authorized activity by groups approved by the warden.

(b) Group petitions to the courts.

(c) Complaints properly prepared under ch. DOC 310.

(3) Participates in any activity associated with any security threat group or possesses any written materials, symbols or symbolism related to a security threat group.

DOC 303.25 Cruelty to animals. An inmate who causes bodily injury or the unauthorized death of an animal is guilty of cruelty to animals.

DOC 303.26 Escape. (1) An inmate who does any of the following without permission is guilty of escape:

(a) Leaves an institution.

(b) Leaves the custody of an employee or law enforcement personnel while outside of the institution.

(c) Does not follow the inmate's assigned schedule.

(d) Leaves the authorized area to which the inmate is assigned.

(e) Leaves a work or study release site.

(2) Any inmate who makes or possesses any material for use in escape is guilty of an offense.

(3) Any inmate who removes restraints or tampers with doors, locks, or other security devices while outside the institution is guilty of an offense.

DOC 303.27 Disguising identity. Any inmate who conceals or disguises the inmate's usual appearance is guilty of disguising identity.

Subchapter IV — Offenses Against Order

DOC 303.28 Disobeying orders. (1) Any inmate or group of inmates who disobeys a verbal or written directive or order from any employee is guilty of disobeying orders.

(2) Any inmate who commits an act which violates an order, whether the inmate knew or should have known that the order existed, is guilty of disobeying orders.

(3) Any inmate who violates any administrative rule or department policy is guilty of disobeying orders.

DOC 303.29 Disrespect. Any inmate who shows disrespect to any person is guilty of disrespect, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes derogatory or profane writing, remarks or gestures, name calling, yelling, and other acts which are made outside the formal complaint process, which are expressions of disrespect, and which have a reasonable potential to negatively affect institution security, safety, order, or inmate discipline.

DOC 303.30 Soliciting an employee. An inmate who does any of the following is guilty of soliciting an employee:

(1) Offers or gives anything to an employee, an acquaintance, or family of an employee. This subsection does not apply to anything authorized by these rules or department policy.

(2) Requests or accepts anything from an employee, an acquaintance, or family of an employee. This subsection does not apply to anything authorized by these rules or department policy.

(3) Buys anything from, or sells anything to, an employee, an acquaintance or family of an employee. This subsection does not apply to items for sale in accordance with department policy.

(4) Requests an employee, an acquaintance or family of a staff member of an employee to purchase anything for the inmate. This subsection does not apply to anything authorized by these rules or department policy.

(5) Requests another person to give anything to an employee, or agrees with another person to give anything to an employee, or an acquaintance of an employee, or family of an employee.

(6) Conveys affection to, or about staff verbally or in writing whether personally written or commercially written or by drawings; or asks for addresses, phone numbers, favors or requests special attention of an employee, or an acquaintance of an employee, or family of an employee.

DOC 303.31 Lying. Any inmate who makes a false written or oral statement which may affect the orderly operation, safety or security of the institution is guilty of lying.

DOC 303.32 Lying about an employee. Any inmate who makes a false written or oral statement about an employee outside the complaint review system under ch. DOC 310 is guilty of lying about an employee.

DOC 303.33 Disruptive conduct. Any inmate who engages in, causes or provokes

disruptive conduct, or whose actions disrupt the orderly operation of the institution, is guilty of disruptive conduct. Disruptive conduct includes physically resisting an employee, horseplay, arguing, any behavior which is loud, offensive or vulgar, or passive behavior which disrupts the orderly operation of the institution.

DOC 303.34 Unauthorized forms of communication. Any inmate who does any of the following is guilty of unauthorized forms of communication:

- (1) Communicates with another person by a method or with a device not authorized by the department.
- (2) Communicates with persons where a court order exists prohibiting contact.
- (3) Communicates with persons whom the department has prohibited contact.
- (4) Communicates with a victim of a crime for which the inmate has been convicted, or a read-in offense, or victim's family unless approved by the warden.
- (5) Communicates in a manner that harms, harasses or intimidates any person.
- (6) Communicates with any person that has not attained the age of 18 unless the person is on the approved visiting list, is approved by the warden, is the inmate's minor child, or is the minor child of a close family member and the person is not the victim of the inmate's crime.
- (7) Communicates in a manner that is intended to be in code or in a manner that hinders staff's ability to readily translate, understand or interpret the communication.

DOC 303.35 False names and titles. Any inmate who uses any of the following is guilty of false names and titles:

- (1) A title for the inmate other than Mr., Ms., Miss, or Mrs., as appropriate.
- (2) A name, other than the name under which the inmate was committed to the department, unless the name was legally changed.
- (3) The legally changed name without including the name under which the inmate was committed to the department.

DOC 303.36 Enterprises and fraud. (1) Any inmate who engages in a business or enterprise, whether or not for profit, or who sells anything except as specifically allowed under other sections is guilty of enterprises and fraud, except for the following situations:

(a) An inmate who was owner or part owner of any lawful business or enterprise prior to sentencing may communicate with the inmate's manager, partner, or attorney concerning the management of the enterprise or business.

(b) An inmate may write and seek publication of works in accordance with these rules and department policy.

(2) Any inmate who offers to buy or orders any item with the intention of not paying for it or buys it on credit is guilty of enterprises and fraud.

(3) Any inmate who obtains anything of value through any of the following is guilty of enterprises and fraud:

(a) Violating federal or state laws, local ordinances, these rules or department policy.

(b) The fraudulent use of information.

(4) Any inmate who provides or possesses information that could be used to receive access to telephone or other telecommunication services that are not authorized for use by the department is guilty of enterprises and fraud.

(5) Any inmate who provides or possesses false, fraudulent or unauthorized information that could be used to obtain money, property items, or other services of value, is guilty of enterprises and fraud.

(6) Any inmate who obtains or possesses personally identifiable information of any other

person with the intent to fraudulently acquire goods or services, or to cause loss or harm, is guilty of enterprises and fraud.

(7) Any inmate who collects, sells or distributes personally identifiable information of another person is guilty of enterprises and fraud.

Subchapter V — Offenses Against Property

DOC 303.37 Theft. Any inmate who steals the property of another person or of the state is guilty of theft.

DOC 303.38 Damage or alteration of property. (1) Any inmate who damages, destroys or alters any property of the state or of another person without written authorization by staff is guilty of damage or alteration of property.

(2) Any inmate who damages, destroys, alters, or disposes of the inmate's own property, contrary to department policy, is guilty of damage or alteration of property.

DOC 303.39 Misuse of state or federal property. Any inmate who uses government property in an unauthorized manner is guilty of misuse of state or federal property.

DOC 303.40 Unauthorized transfer of property. Any inmate who gives, receives, sells, buys, exchanges, barter, lends, borrows, or takes any property from another inmate without authorization is guilty of unauthorized transfer of property.

DOC 303.41 Counterfeiting and forgery. Any inmate who makes, uses, possesses, or alters any document so it appears that the document was made or signed by a different person; or that the document was signed at a different time or with different provisions is guilty of counterfeiting and forgery.

Subchapter VI — Contraband Offenses

DOC 303.42 Possession or use of money or negotiable instruments. Except as specifically authorized, any inmate who has in the inmate's possession or who uses any of the following is guilty of possession or use of money or negotiable instruments:

- (1) Coins or paper money.
- (2) A check.
- (3) A money order.
- (4) A savings bond.
- (5) A credit card, debit card, gift card, phone card, or information allowing access to or use of the cards or accounts.
- (6) Any other negotiable instrument.

DOC 303.43 Possession of intoxicants. Except as specifically authorized, any inmate who possesses any intoxicating substance is guilty of possession of intoxicants.

DOC 303.44 Possession of intoxicant paraphernalia. Any inmate who possesses any device used in the manufacture of an intoxicating substance or any device used or intended for use in taking an intoxicating substance into the body is guilty of possession of

intoxicant paraphernalia.

DOC 303.45 Possession, manufacture or use of weapons. (1) Any inmate who makes or alters an item making it suitable for use as a weapon is guilty of possession, manufacture or use of weapons.

(2) Any inmate who possesses an item which is designed to be used as a weapon is guilty of possession, manufacture or use of weapons.

(3) Any inmate who possesses an item which could be used in the manufacture of a weapon is guilty of possession, manufacture or use of weapons.

(4) Any inmate who uses an item as a weapon is guilty of possession, manufacture or use of weapons.

DOC 303.46 Possession of tobacco. (1) Any inmate who possesses a tobacco product is guilty of possession of tobacco.

(2) Any inmate who possesses materials to facilitate the use of tobacco is guilty of possession of tobacco.

DOC 303.47 Possession of contraband—miscellaneous. (1) Each institution shall maintain and make available to inmates a list of property which inmates are allowed to possess in accordance with department policies relating to personal property.

(2) Any inmate who possesses any of the following is guilty of possession of contraband-miscellaneous:

(a) Items which are not allowed.

(b) Items which are required to be listed but are not listed on the inmate's property list.

(c) Items which do not belong to the inmate, except state property issued to the inmate.

(d) Personally identifiable information relating to any employee or the employee's close family member or any other person without the authorization of the warden.

DOC 303.48 Possession of electronic communication or data storage devices. Except as specifically authorized, any inmate who possesses any electronic communication, data storage device or related accessories is guilty of possession of electronic communication or data storage devices.

DOC 303.49 Unauthorized use of the mail. Any inmate who does any of the following is guilty of unauthorized use of the mail:

(2) Uses a postal service to communicate with a person with whom the inmate has been denied correspondence privileges.

(3) Sends through the mail anything which could be considered contraband.

(4) Makes or alters any postage stamp or alters or erases a postal cancellation mark or possesses any postage stamp that has been altered.

(5) Mails any letter or parcel on which is affixed a canceled postage stamp.

(6) Uses a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.

(7) Attempts to circumvent the requirements under s. DOC 309.04 by sending a letter to a destination with the intent it be forwarded.

(8) Sends food through the mail.

(9) Sends a foreign substance, body fluids, or body wastes, including hair, through the mail.

(10) Sends correspondence which harms, harasses or intimidates any person.

- (11) Falsifies the identity or location of the actual recipient of a letter or parcel.
- (12) Mailing or attempting to mail items using a non-institution mailbox or mail collection.

Subchapter VII — Movement Offenses

DOC 303.50 Punctuality and attendance. Inmates shall attend and be on time for scheduled activities. An inmate who violates this section is guilty of punctuality and attendance, unless one of the following exists:

- (1) The inmate is sick and reports this fact as required by department policy.
- (2) The inmate is authorized to be in another location.
- (3) The inmate is authorized to be absent from the activity.

DOC 303.51 Loitering. Inmates shall proceed at a normal pace and without stopping or delay, following a designated route when going to and from all activities. Any inmate who violates this section or department policy relating to this section is guilty of loitering.

DOC 303.52 Leaving assigned area. Any inmate who leaves a room or area either inside or outside the institution where the inmate is required to be is guilty of leaving assigned area, unless one of the following exists:

- (1) The inmate receives permission to leave from an employee supervising the activity.
- (2) The inmate has authorization to be elsewhere at that time.

DOC 303.53 Being in an unassigned area. Any inmate who, without an employee's permission, enters or remains in a room or area either inside or outside the institution other than the one to which the inmate is assigned is guilty of being in an unassigned area.

DOC 303.54 Entry into another inmate's assigned living area. Any inmate who reaches, leans or puts any object or part of the body into the assigned living area of another inmate or permits another to do the same in their assigned living area, is guilty of entry into another inmate's assigned living area, unless the entry is the result of one of the following:

- (1) Part of a work assignment and under the supervision of an employee.
- (2) Allowed according to department policy.

Subchapter VIII — Offenses Against Safety And Health

DOC 303.55 Improper storage. Any inmate shall keep toiletries, hobby materials, medications, cleaning supplies, food and any other items in the original containers, and in a designated area. Any inmate who stores any of these items in a different container or in an unauthorized area is guilty of improper storage.

DOC 303.56 Dirty assigned living area. Any inmate who does not comply with department policy for orderly and clean assigned living area is guilty of dirty assigned living area, provided the inmate had knowledge of the condition of his or her assigned living area and had the opportunity to clean or rearrange it.

DOC 303.57 Poor personal hygiene. (1) Any inmate whose personal hygiene is a health risk to the inmate or others, or is offensive to others, and who has knowledge of this condition and the opportunity to correct it, but does not, is guilty of poor personal hygiene.

(2) Any inmate who fails to comply with department policy regarding personal hygiene is guilty of poor personal hygiene.

DOC 303.58 Misuse of medication. Any inmate who does any of the following is guilty of misuse of medication:

(1) Takes more of a prescription medication than prescribed.

(2) Takes a prescription medication more often than prescribed.

(3) Takes a prescription medication which was not prescribed for the inmate.

(4) Possesses or takes any prescription medication except at the time and place specified by the department.

(5) Improperly stores or disposes of medication.

(6) Deceives or attempts to deceive staff as to whether medication has been consumed.

(7) Takes a non-prescribed medication more often than recommended by the medication's label or health services unit employees.

(8) Gives to or receives from a person any medication without authorization.

(9) Uses or takes medication in a manner that is not prescribed or intended.

DOC 303.59 Disfigurement. (1). Any inmate who disfigures, cuts, pierces, removes, mutilates, discolors or tattoos any part of his or her or another person's body, is guilty of disfigurement.

(2) Any inmate who possesses any item which has been used, altered, or intended to be used to disfigure cut, pierce, remove, mutilate, discolor or tattoo is guilty of disfigurement.

Subchapter IX — Miscellaneous Offenses

DOC 303.60 Use of intoxicants. (1) Any inmate who takes into the inmate's body any intoxicating substance, except prescription medication in accordance with the prescription, is guilty of use of intoxicants.

(2) When a test on an inmate's body specimen or a physical examination of an inmate indicates use of an intoxicating substance, the inmate is guilty of use of intoxicants. Confirmation tests shall be completed as follows:

(a) The institution shall confirm results of a test conducted under sub. (2) by a second test if the inmate requests a confirmatory test in accordance with department policy.

(b) An inmate who requests a confirmatory test shall pay for the cost of the test. If the inmate does not have sufficient funds to pay for 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 institution shall refund any money the inmate contributed to the cost of the confirmatory test.

(3) An inmate who fails to provide a timely body specimen, refuses to provide a body specimen, submit to a physical examination, or a breathalyzer test, substitutes or attempts to substitute the specimen, or introduces or attempts to introduce a foreign substance into the specimen, is guilty of use of intoxicants.

DOC 303.61 Gambling. Any inmate who gambles, is involved in gambling, or possesses any gambling material is guilty of gambling.

DOC 303.62 Refusal to work or attend school. Any inmate who refuses to perform a work assignment or attend school is guilty of refusal to work or attend school.

DOC 303.63 Inadequate work or school performance. Any inmate whose work fails to meet the standards set for performance on a work assignment, including a work release placement and project crew, or school program, including study release, and who has the ability to meet those standards, or an inmate who fails to follow work or school rules or safety standards, is guilty of inadequate work or school performance.

DOC 303.64 Violating conditions of leave. Any inmate who violates conditions of leave imposed under ch. DOC 326 is guilty of violating conditions of leave.

Subchapter X — Disciplinary Procedure And Penalties

DOC 303.65 Disciplinary violation dispositions. The institution may deal with a violation of ss. DOC 303.11 to 303.64 in the following ways:

(1) If a staff member determines that a conduct report is not required, the staff member may counsel and warn the inmate under s. DOC 303.66.

(2) The staff member may dispose of a minor violation under s. DOC 303.76 or 303.77.

(3) Employees may refer any violation to the security director by writing a conduct report as provided under s. DOC 303.67 or an incident report if further investigation is necessary. The security director may deal with these reports as follows:

(a) Dismiss, alter or correct the conduct report as provided under s. DOC 303.68.

(b) Refer the matter to a supervisor to be disposed of in accordance with s. DOC 303.76 or 303.77 if the violation is a minor one.

(c) Refer the matter to a hearing officer to be disposed of in accordance with ss. DOC 303.78, 303.80, or 303.81 if the violation is a major one.

(d) Assign the report for further investigation.

(4) The security director may refer violations of criminal law to law enforcement authorities. The institution may continue the disciplinary process under this chapter regardless of action taken by law enforcement.

(5) If the hearing officer finds an inmate guilty, the hearing officer may refer the inmate to classification to review the inmate's custody level or location.

DOC 303.66 Offenses that do not require a conduct report. (1) The department does not require employees to write conduct reports on all observed violations of the disciplinary rules. Under any of the following conditions, employees may inform the inmate that the inmate's behavior is against the rules, discuss the inmate's behavior, offer an informal resolution and give a warning if one of the following applies:

(a) The inmate is unfamiliar with the rule.

(b) The inmate has not violated the same or a closely related rule within the previous year, regardless of whether or not a conduct report was issued.

(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) The employee shall write a conduct report if an inmate commits a major offense listed

under s. DOC 303.71.

DOC 303.67 Conduct report. (1) Except as provided under s. DOC 303.66, any employee who observes or becomes aware of a rule violation shall verify that a violation has occurred and shall write a conduct report. If more than one employee knows of the same incident, only one of them shall write a conduct report.

(2) In the conduct report, the employee shall describe the facts and list the sections of this chapter which were allegedly violated.

(3) If more than one conduct report is written for an inmate for the same incident, the institution shall only complete the disciplinary process on one conduct report.

DOC 303.68 Review by security office. (1) The security director shall review any conduct report not processed under s. DOC 303.76 or 303.77 within 5 working days and may do any of the following:

(a) Dismiss a conduct report.

(b) Strike any section number if the statement of facts could not support a finding of guilty of violating that section.

(c) 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) Refer a conduct report for further investigation.

(e) Determine whether the conduct report should be processed as a major or minor offense. 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:

1. Whether the inmate has previously been found guilty of the same or a similar offense, how often, and how recently.

2. Whether the inmate has recently been warned about the same or similar conduct.

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.

5. The value of the property involved.

6. Whether the alleged violation created a risk of serious financial impact.

7. Psychological services input for seriously mentally ill inmates.

(2) The security office shall treat any alleged violation of a rule which may result in a suspension of visiting or mail privileges under ch. DOC 309, work or study release under ch. DOC 324, or leave under ch. DOC 325 or 326, as a major offense.

(3) The security office shall treat any conduct report containing at least one charge of a major offense as a major offense, even if it also includes minor offenses.

(4) The security director shall only process one conduct report for an inmate for the same incident.

(5) The security director's decision under sub. (1) is final.

DOC 303.69 Minor offenses. A minor offense is any violation of a disciplinary rule which is not a major offense under s. DOC 303.71 or which the security director has not classified as a major offense.

DOC 303.70 Minor penalties. Minor dispositions are limited to one or more of the following penalties:

(1) Reprimand. A reprimand is an oral statement to an inmate addressing the inmate's behavior when the inmate is found guilty of an offense. The hearing officer or supervisor

shall only record the reprimand if no other penalty is given.

(2) Loss of recreation privileges. Recreation privileges include sports and leisure activities outside the cell, either on grounds or off grounds. Recreation privileges may be suspended for a period of time as follows:

- (a) 1 to 60 days for inmates in the general population.
- (b) 1 to 8 days for inmates in disciplinary separation.

(3) Building confinement. Building confinement is confinement to the building in which the inmate resides. During the period of confinement, the inmate may not leave the building without specific permission. The warden may authorize movement to other areas, including religious services, medical appointments, showers, and visits. Building confinement may be imposed for a period of 1 to 30 days.

(4) Room or cell confinement. During the hours of confinement, the inmate may not leave the inmate's assigned living area without specific permission. The warden may authorize movement to other areas, including attendance at religious services, medical appointments, showers, and visits, if these must occur during the hours of confinement. Room or cell confinement may be imposed for a period of 1 to 15 days.

(5) Loss of privileges. One or more privileges may be suspended for a single offense, including use of inmate electronics, phone calls, participation in off grounds activities, eating meals in the dining area, or canteen privileges. Specified privileges may be suspended for a period of time as follows:

- (a) 1 to 60 days for inmates in general population.
- (b) 1 to 8 days for inmates in disciplinary separation.

(6) Assignments without pay. An inmate may be required to work or attend school for up to 80 hours without pay. Work assignments under this provision may be in addition to current assignments.

(7) Restitution. Full or partial restitution may be imposed as a penalty. Restitution is payment to reimburse any person or organization which has incurred expenses or sustained loss by reason of the inmate's violation of ch. DOC 303 or the violation of ch. DOC 303 by those with whom the inmate acted, including the replacement cost of property, the expenses for medical goods and services, the costs of apprehending, holding, and return of an escaped inmate or inmates, and the costs of investigation of the violation of this chapter. Restitution may be taken from an inmate's account or from any other assets of the inmate. If the inmate has insufficient assets to pay the ordered restitution in full at the time of the hearing, his or her obligation to pay the restitution shall remain in full force and effect until the time it has been paid in full. Transfer to another institution, release from incarceration, or release from custody of the department shall not terminate the inmate's obligation to pay ordered restitution. When the amount of restitution is unknown at the time of the hearing, the hearing officer may impose an estimated maximum restitution amount. If the actual amount of restitution is less than the estimated amount, only the actual amount shall be assessed. Restitution may not exceed the estimated amount.

(8) Secure work crews. The hearing officer may give uncompensated secure work crew assignments under ch. DOC 304 as a minor disciplinary sanction to inmates.

DOC 303.71 Major offenses. **(1)** A major offense is a violation of a disciplinary rule for which a major penalty may be imposed.

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

Section	Title
DOC 303.11	Assault.

- DOC 303.12 Aggravated assault.
- DOC 303.13 Assault on employee.
- DOC 303.14 Sexual conduct.
- DOC 303.16 Sexual assault.
- DOC 303.17 Sexual assault—aggravated.
- DOC 303.19 Stalking.
- DOC 303.20 Endangering safety.
- DOC 303.21 Inciting a disturbance.
- DOC 303.22 Participating in a disturbance.
- DOC 303.23 Taking a hostage.
- DOC 303.25 Cruelty to animals.
- DOC 303.26 Escape.
- DOC 303.27 Disguising identity.
- DOC 303.30 Soliciting an employee.
- DOC 303.43 Possession of intoxicants.
- DOC 303.44 Possession of intoxicant paraphernalia.
- DOC 303.45 Possession, manufacture or use of weapons.
- DOC 303.46 Possession of tobacco.
- DOC 303.48 Possession of electronic communication or data storage devices.
- DOC 303.58 Misuse of medications.
- DOC 303.59 Disfigurement.
- DOC 303.60 Use of intoxicants.

(3) Except for an offense listed under sub. (2), an offense may be designated by the security director as either a major or a minor offense under s. DOC 303.68 (1) (e).

DOC 303.72 Major penalties. (1) A major disposition must include one or more of the following and may include one or more of the penalties under s. DOC 303.70:

- (a) Extension of release date for inmates under one of the following:
 1. Loss of good time for an inmate who is eligible for credit under s. 53.11 or 53.12, 1981 Stats.
 2. Extension of the mandatory release date for an inmate who is eligible for mandatory release under s. 302.11, Stats.
 3. Extension of extended supervision date for an inmate who is eligible for release under s. 302.113 (3), Stats.
- (b) Disciplinary separation under s. DOC 303.73.
- (c) Room or cell confinement of 16 to 30 calendar days.
- (d) Loss of recreation privileges for more than 60 calendar days for inmates in the general population.
- (e) Loss of out of cell recreation privileges for more than 8 calendar days for inmates in disciplinary separation.
- (f) Building confinement for more than 30 calendar days.
- (g) Loss of specific privileges for more than 60 calendar days for inmates in the general population.
- (h) Loss of specific privileges for more than 8 calendar days for inmates in disciplinary separation.

(2) The maximum disposition which may be imposed is the most severe disposition the inmate could receive for any individual offense of which the inmate is found guilty. The disposition may not exceed the schedule of penalties in Table DOC 303.72.

**Table DOC 303.72
SCHEDULE OF PENALTIES
(Maximum in days)**

OFFENSES	DISCIPLINARY SEPARATION	GOOD TIME LOSS	EXTENSION OF MANDATORY RELEASE OR EXTENDED SUPERVISION DATE
OFFENSES AGAINST BODILY SECURITY			
DOC 303.11 Assault	360	20	40
DOC 303.12 Aggravated assault	360	20	40
DOC 303.13 Assault on employee	360	20	40
DOC 303.14 Sexual conduct	360	20	40
DOC 303.15 Sexual contact or intercourse	360	20	40
DOC 303.16 Sexual assault	360	20	40
DOC 303.17 Sexual assault-aggravated	360	20	40
DOC 303.18 Threats	180	15	30
DOC 303.19 Stalking	360	20	40
OFFENSES AGAINST INSTITUTIONAL SECURITY			
DOC 303.20 Endangering safety	360	20	40
DOC 303.21 Inciting a disturbance	360	20	40
DOC 303.22 Participating in a disturbance	360	20	40
DOC 303.23 Taking a hostage	360	20	40
DOC 303.24 Group resistance and petitions	360	20	40
DOC 303.25 Cruelty to animals	360	20	40
DOC 303.26 Escape	360	20	40
DOC 303.27 Disguising identity	180	15	30

OFFENSES AGAINST ORDER			
DOC 303.28 Disobeying orders	360	15	30
DOC 303.29 Disrespect	180	15	30
DOC 303.30 Soliciting an employee	360	20	40
DOC 303.31 Lying	180	15	30
DOC 303.32 Lying about an employee	360	20	40
DOC 303.33 Disruptive conduct	360	20	40
DOC 303.34 Unauthorized forms of communication	360	20	40
DOC 303.35 False names and titles	180	15	30
DOC 303.36 Enterprises and fraud	360	20	40
OFFENSES AGAINST PROPERTY			
DOC 303.37 Theft	360	20	40
DOC 303.38 Damage or alteration of property	360	20	40
DOC 303.39 Misuse of state or federal property	180	10	20
DOC 303.40 Unauthorized transfer of property	180	10	20
DOC 303.41 Counterfeiting and forgery	360	20	40
CONTRABAND OFFENSES			
DOC 303.42 Possession or use of money or negotiable instruments	360	20	40
DOC 303.43 Possession of intoxicants	360	20	40
DOC 303.44 Possession of intoxicant paraphernalia	360	20	40
DOC 303.45 Possession, manufacture or use of weapons	360	20	40
DOC 303.46 Possession of tobacco	360	20	40
DOC 303.47 Possession of contraband—miscellaneous	180	10	20
DOC 303.48 Possession of electronic communication or data storage devices	360	20	40
DOC 303.49 Unauthorized use of the mail	360	20	40

MOVEMENT OFFENSES			
DOC 303.50 Punctuality and attendance	180	10	15
DOC 303.51 Loitering	180	10	15
DOC 303.52 Leaving assigned area	180	15	30
DOC 303.53 Being in an unassigned area	180	15	30
DOC 303.54 Entry into another inmate's assigned living area	360	20	40
OFFENSES AGAINST SAFETY AND HEALTH			
DOC 303.55 Improper storage	90	5	10
DOC 303.56 Dirty assigned living area	90	5	10
DOC 303.57 Poor personal hygiene	90	5	10
DOC 303.58 Misuse of medication	360	20	40
DOC 303.59 Disfigurement	360	20	40
MISCELLANEOUS OFFENSES			
DOC 303.60 Use of intoxicants	360	20	40
DOC 303.61 Gambling	180	15	30
DOC 303.62 Refusal to work or attend school	90	5	10
DOC 303.63 Inadequate work or school performance	120	10	20
DOC 303.64 Violating conditions of leave	360	20	40
DOC 303.04 Conspiracy	Maximum for completed offense		
DOC 303.05 Attempt	Maximum for completed offense		
DOC 303.06 Aiding and abetting	Maximum for completed offense		

(3) Disciplinary separation shall be given for a specific term of 1 to 30 days, and thereafter in increments of 30 days not to exceed the maximum penalty under Table DOC 303.72.

(4) More than one minor or major disposition may be imposed for a single offense and both a major and minor disposition may be imposed for a major offense.

(5) Loss of accumulated good time or extension of the mandatory release or extended supervision date may be imposed as a disposition only where the violation is listed as a major offense under s. DOC 303.71 or is designated as a major offense by the security director under s. DOC 303.68.

(6) For those inmates to whom s. 53.11 or 53.12, 1981 Stats., applies, 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:

NUMBER OF PRIOR OCCASIONS GOOD TIME LOST OR RELEASE DATE EXTENDED DUE TO VIOLATIONS OF CH. DOC 303	MAXIMUM NUMBER OF DAYS GOOD TIME LOST
None	5
One	10
Two or more	20

(7) For those inmates to whom s. 302.113 (2) or 302.113 (3), Stats., applies, the number of days the mandatory release date or term of confinement portion of a bifurcated sentence 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 or term of confinement extended but shall not exceed the following:

NUMBER OF PRIOR OCCASIONS GOOD TIME LOST OR RELEASE DATE EXTENDED DUE TO VIOLATIONS OF CH. DOC 303	MAXIMUM NUMBER OF DAYS MANDATORY RELEASE DATE OR TERM OF CONFINEMENT EXTENDED
None	10
One	20
Two or more	40

(8) TLU time may not be considered as time served for disciplinary disposition purposes.

DOC 303.73 Major penalty: disciplinary separation. (1) CONDITIONS. Disciplinary separation may not exceed the period specified in s. DOC 303.72 (2). The hearing officer may impose disciplinary separation for a major offense. The institution shall provide inmates in disciplinary separation all of the following:

- (a) Clean mattress.
- (b) Sufficient light by which to read at least 12 hours per day.
- (c) Sanitary toilet and sink.
- (d) Adequate ventilation and heating.

(3) NECESSITIES. The institution shall allow the following for each inmate in disciplinary separation, but the items need not be kept in the cell based on safety and security concerns as determined by the warden:

- (a) Adequate clothing and bedding.
- (b) A toothbrush, toothpaste, soap, a towel, a face cloth and a small comb.
- (c) Religious texts.
- (d) Nutritionally adequate meals.

(4) OTHER PROPERTY. The institution may allow inmates in disciplinary separation access to material pertaining to legal proceedings, law books, and other property allowed by department policy.

(5) VISITS AND TELEPHONE CALLS. The institution shall permit inmates in disciplinary separation visitation and telephone calls in accordance with ch. DOC 309.

(6) CORRESPONDENCE. (a) Inmates in disciplinary separation may receive and send first class mail in accordance with these rules and department policy, relating to mail.

(b) Indigent inmates in disciplinary separation may, upon request, receive writing materials and postage in accordance s. DOC 309.51 and department policy.

(7) SHOWERS. The institution shall allow inmates in disciplinary separation to shower at least once every 4 calendar days.

(8) SERVICES AND PROGRAMS. The institution shall provide social services, psychological and medical services, program opportunities and an opportunity to exercise for an inmate in disciplinary separation, but the institution shall provide these services at the inmate's cell, unless otherwise authorized by the warden.

(9) LEAVING CELL. Inmates in disciplinary separation may not leave their cells except as needed for urgent medical or psychological attention, showers, visits, recreation and emergencies endangering their safety in the cell or other reasons as authorized by the warden. The warden may require inmates in disciplinary separation to wear mechanical restraints, as defined in s. DOC 306.02 (13), while outside their cells.

(10) RELEASE DATES. Release dates are not impacted by disciplinary separation.

(11) PAY. Inmates in disciplinary separation shall not earn compensation.

(12) CANTEEN. Inmates in disciplinary separation may have approved items brought in from the canteen but may not go to the canteen in person.

(13) SPECIAL PROCEDURES. Institutions may establish procedures for the orderly operation of facilities for inmates in disciplinary separation.

(14) REVIEW OF DISCIPLINARY SEPARATION. The warden may review an inmate's status in disciplinary separation at any time and may place the inmate in the general population at any time. The warden shall review inmates in disciplinary separation at least every 30 days.

DOC 303.74 Controlled separation. (1) USE. A security supervisor may order into controlled separation any inmate in segregated status who exhibits disruptive, destructive, or out of control behavior. Staff shall not place an inmate in controlled separation unless a conduct report or incident report is written for the conduct giving rise to the use of controlled separation. When the inmate's behavior is no longer disruptive, destructive or out of control, a security supervisor shall remove the inmate from controlled separation.

(a) A security supervisor may not order controlled separation for more than 72 hours.

(b) The security director may extend the placement if the behavior continues. The security director shall review extensions every 24 hours.

(2) CONDITIONS. (a) The institution shall provide inmates in controlled separation all of the following:

1. Clean mattress.
2. Sufficient light by which to read at least 12 hours per day.
3. Sanitary toilet and sink.
4. Adequate ventilation and heating.
5. Clothing consistent with the level of risk.
6. Essential hygiene supplies.
7. Nutritionally adequate meals.

(b) While an inmate is acting in a disruptive manner, the institution shall maintain close control of all property in subd. (a) 1., 5., and 6.

(3) VISITS. Inmates in controlled separation may not receive visits, except from their attorney or with permission from the warden or security director.

(4) SPECIAL RULES. (a) Inmates in controlled separation may not possess any property in the cell except the property described in sub. (2), letters received while in controlled separation, legal materials, and writing materials as long as the property

does not pose a security risk. Institutions may establish procedures for the orderly operation of the facilities for inmates in controlled separation.

(b) Inmates in controlled separation may not leave their cells except in emergencies endangering their safety in the cell or with permission from the warden or security director. The warden may require inmates in controlled separation to wear mechanical restraints, as defined in s. DOC 306.02 (13), while outside their cells if the use of mechanical restraints is necessary to protect employees or inmates or to maintain the security of the institution.

(5) PAY. An inmate in controlled separation shall earn compensation if the inmate earned compensation in the previous status.

(6) RECORDS. Staff shall visually check inmates in controlled separation at least once every 30 minutes and make a written record or log entry at each interval noting the condition of the inmate.

(7) CREDIT. The institution shall give an inmate in controlled separation credit toward a term of disciplinary separation during the period of confinement.

DOC 303.75 Referral for prosecution. In addition to enforcing this chapter, the department shall work with local law enforcement and the district attorney so that violations of criminal statutes may be investigated and appropriately referred for prosecution.

DOC 303.76 Uncontested minor disposition. (1) Staff may write a conduct report and summarily find an inmate guilty and punish the inmate for minor rule infractions in accordance with this section.

(2) Before an inmate is found guilty and punished under this section, a staff member shall do the following:

(a) Inform the inmate of the nature of the alleged infraction and the contemplated disposition.

(b) Inform the inmate that a supervisor shall review the contemplated disposition, and may impose a different disposition.

(c) Inform the inmate that the incident may be handled under this section or s. DOC 303.78.

(d) Inform the inmate that a disposition under this section must be agreed to and is not appealable.

(3) If the inmate consents to the disposition, the staff shall submit the contemplated disposition to the supervisor for review.

(a) If the supervisor approves, the inmate shall be notified and sign the conduct report agreeing to the disposition.

(b) If the supervisor disapproves of the disposition under this section, the supervisor may do one of the following:

1. Recommend a different disposition.

2. Refer the alleged infraction for review under s. DOC 303.68.

(c) If the supervisor approves of a different disposition, the staff shall inform the inmate of the supervisor's recommendation. The inmate may agree or disagree with the recommended disposition.

1. If the inmate agrees to the disposition, the inmate shall sign the conduct report.

2. If the inmate disagrees, the report shall be disposed of under s. DOC 303.77.

(4) If the matter is not referred for processing under s. DOC 303.77, the staff shall impose the disposition or dispositions approved by the supervisor and agreed to by the inmate in accordance with s. DOC 303.70.

(5) Staff shall document dispositions under this section in the record indicating the disposition and approval by the supervisor.

(6) An inmate may not appeal an uncontested minor disposition to which he or she has agreed.

DOC 303.77 Contested minor disposition.

(1) Staff may process a conduct report for a minor rule infraction in accordance with this section when an inmate refuses to accept an uncontested minor disposition.

(2) Staff shall do all of the following:

(a) Inform the inmate of the nature of the alleged infraction.

(b) Offer the inmate an opportunity to provide a statement. Staff shall document the inmate's statement on the appropriate form.

(c) Inform the inmate the conduct report and the inmate's statement shall be forwarded to the supervisor for review and determination of disposition.

(3) The supervisor shall review the conduct report and inmate's statement, render a decision and notify the inmate within 5 working days.

(4) If there is a finding of guilt, the supervisor shall impose one or more dispositions in accordance with s. DOC 303.70.

DOC 303.78 Uncontested major disposition. (1) An employee may write a conduct report and a supervisor may summarily find an inmate guilty and discipline the inmate for major rule infractions in accordance with this section.

(2) Before an inmate is found guilty and disciplined under this section, a supervisor shall do all of the following:

(a) Inform the inmate of the nature of the alleged infraction and the contemplated disposition.

(b) Inform the inmate that the security director shall review the contemplated disposition, and may impose a different disposition.

(c) Inform the inmate that a disposition under this section must be agreed to and is not appealable.

(3) If the inmate consents to the disposition, the supervisor shall submit the contemplated disposition to the security director for review.

(a) If the security director approves the disposition under this section, the inmate shall be notified and sign the conduct report agreeing to the disposition.

(b) If the security director disapproves of the disposition under this section, the security director may do one of the following:

1. Recommend a different disposition.

2. Refer the alleged infraction for review under s. DOC 303.68.

(c) If the security director approves of a different disposition, the supervisor shall inform the inmate of the security director's recommended disposition. The inmate may agree or disagree with the recommended disposition.

1. If the inmate agrees to the disposition, the inmate shall sign the conduct report.

2. If the inmate disagrees, the report shall be disposed of under s. DOC 303.80.

(4) The supervisor shall document dispositions under this section in the record, indicating the disposition and approval by the security director.

(5) An inmate may not appeal an uncontested major disposition to which he or she has agreed.

DOC 303.79 Hearing officer. (1) The warden shall assign a hearing officer to conduct a hearing.

(2) The warden may assign a committee to conduct a hearing. No more than three

staff may be assigned. One member of the committee shall be a hearing officer.

(3) No person who has substantial involvement in the incident which is the subject of a hearing may serve as a hearing officer or committee member for that hearing. The hearing officer shall determine the subject matter of the hearing in advance in order to allow substitution of a hearing officer or committee member.

(4) A hearing officer may hold a hearing even if the inmate has waived due process.

DOC 303.80 Contested major disposition. (1) NOTICE. When an inmate is alleged to have committed a major violation and the security director has reviewed the conduct report pursuant to s. DOC 303.68, staff shall give the inmate a copy of the conduct report within 2 working days after review. At any time prior to the hearing, the security director may amend the conduct report to either correct or add information or evidence to be considered at the hearing. The institution shall inform the inmate of all of the following:

(a) The rules which the inmate is alleged to have violated.

(b) The potential dispositions that may be imposed or other results that may occur, including removal from programming or work release.

(c) The right the inmate has to a full due process hearing or to waive this right in writing.

(d) If the inmate waives the right to a full due process hearing, the inmate shall be given a hearing under s. DOC 303.81.

(e) If a full due process hearing is chosen, the inmate shall be informed of all of the following:

1. The inmate may present oral, documentary and physical evidence, and testimony from witnesses in accordance with this section and s. DOC 303.84. The hearing officer shall reject any written statement that fails to conform to s. DOC 303.84 (3) and return the statement to the inmate.

2. The accused inmate may present an oral statement. No written statement by the accused inmate may be submitted, except under extraordinary circumstances as authorized by the security director. A written statement under this paragraph shall only be accepted if the statement is a legibly printed statement limited to 500 words on no more than two sheets of paper, a transcript of an oral statement, or a recorded statement.

3. The inmate may have the assistance of a staff representative in accordance with this section and s. DOC 303.83.

4. The hearing officer may permit direct questions or require the inmate or the inmate's representative to submit questions to the hearing officer to be asked of the witness.

5. The hearing officer may prohibit repetitive, disrespectful or irrelevant questions.

6. If the inmate refuses to attend a hearing or is disruptive and removed, the inmate shall forfeit the right to present a defense or to call witnesses. The hearing officer may conduct the hearing without the inmate being present. The hearing officer shall administratively review the conduct report and render a decision based upon the available evidence.

(3) WAIVER. An inmate may waive the right to a due process hearing in writing at any time. If the inmate waives a due process hearing, the institution shall dispose of the conduct report under s. DOC 303.81. A waiver does not constitute an admission of the alleged violation. A waiver may not be retracted without the security director's approval.

(4) TIME LIMITS. (a) The institution may not hold the hearing until at least 2 working days after the inmate receives notice of disciplinary hearing rights and a copy of either the approved conduct report or amended conduct report, whichever is later. The disciplinary hearing shall be held within 21 days of the inmate receiving notice of disciplinary hearing rights unless the security director authorizes an extension of time. The security director may authorize a hearing beyond the 21 day time limit, either before or after the 21st day.

(b) The inmate may also request more time to prepare, and the security director may

grant the request. An inmate may waive in writing the time limits provided in this section.

(c) The institution shall toll time for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(5) PLACE. The due process hearing may be held in person, by telephone, video conferencing or other virtual communication means at the discretion of the hearing officer.

(6) HEARING. The hearing officer shall conduct the due process hearing by doing all of the following:

(a) Read the conduct report aloud.

(b) Permit the accused inmate to make an oral statement. An inmate may submit a written statement in lieu of an oral statement only under extraordinary circumstances as authorized by the security director. The written statement under this paragraph shall only be accepted if the statement is a legibly printed statement limited to 500 words on no more than two sheets of paper, a transcript of an oral statement, or a recorded statement.

(c) Question approved witnesses. The hearing officer may accept a written witness statement only if it conforms to the requirements under s. DOC 303.84 (3).

(d) Permit the offering of relevant physical evidence.

(e) Permit questions or require the inmate or the inmate's staff representative to submit written questions to the hearing officer to be asked of the witness.

(f) Prohibit repetitive, disrespectful or irrelevant questions.

(g) Mark all documentary and physical evidence received into evidence from the accused as "Submitted By The Inmate."

(h) If an inmate refuses to attend the hearing or disrupts the hearing and is removed, the inmate forfeits the right to present a defense or to call witnesses. The hearing officer shall administratively review the conduct report and render a decision based upon the available evidence.

(7) DECISION. After the hearing the hearing officer shall do all of the following:

(a) Deliberate in private as needed.

(b) Consider all relevant information.

(c) Establish guilt based on a finding that it was more likely than not that the inmate committed the act.

(d) Find the inmate guilty or not guilty on each charge and impose a disposition if found guilty. A committee of three may make a decision if at least two of the three members agree. If the committee is comprised of two members, the decision must be unanimous.

(e) Refer the matter to the warden for a decision if the disciplinary committee members do not agree on a finding of guilt or a disposition.

(f) Consider any of the inmate's defenses or other mitigating factors.

(g) Inform the inmate of the decision.

(h) Provide the accused inmate and the inmate's staff representative, if any, a written copy of the decision with reasons for the decision.

DOC 303.81 Contested major disposition: waiver of due process hearing. (1)

NOTICE. If an inmate has waived a due process hearing under s. DOC 303.80 and the violation is not disposed of in accordance with s. DOC 303.78, the institution shall dispose of it in accordance with this section.

(2) TIME LIMITS. The institution may not hold the hearing until at least 2 working days after the inmate receives notice of disciplinary hearing rights and a copy of either the approved conduct report or amended conduct report, whichever is later. Unless otherwise authorized by the security director, the institution may not hold the hearing more than 21 calendar days after the inmate receives the hearing rights notice and conduct report. The

security director may authorize a hearing beyond the 21 day time limit, either before or after the 21st day. The 21 day time limit is not jurisdictional. The inmate may also request more time to prepare, and the security director may grant the request. An inmate may waive in writing the time limits provided in this section. The institution shall toll time for observation and control placements and for any full or partial day when the inmate is out of the institution on a temporary release order.

(3) HEARING. The inmate has no right to a staff representative, to confront witnesses or to have witnesses testify on the inmate's behalf. The hearing officer shall conduct the hearing by doing all of the following:

(a) Read the conduct report aloud.

(b) Provide the inmate with an opportunity to respond to the report and make a verbal statement about the alleged violation. No written statement by the accused inmate may be submitted.

(c) Permit the offering of relevant evidence.

(d) Mark all documentary and physical evidence received into evidence from the accused as "Submitted By The Inmate."

(4) If an inmate refuses to attend the hearing or disrupts the hearing and is removed, the inmate forfeits the right to provide a statement or evidence. The hearing officer shall administratively review the conduct report and render a decision based upon the available evidence.

(5) PLACE. The due process hearing may be held in person, by telephone, video conferencing or other virtual communication means at the discretion of the hearing officer.

(6) DECISION. After the hearing the hearing officer shall do all of the following:

(a) Consider all relevant information.

(b) Render a decision on each charge.

(c) Establish guilt based on a finding that it was more likely than not that the inmate committed the act.

(d) Find the inmate guilty or not guilty on each charge and impose a disposition if found guilty.

(e) Consider any of the inmate's defenses or other mitigating factors.

(f) Inform the inmate of the decision.

(g) Provide the accused inmate a written copy of the decision with reasons for the decision.

DOC 303.82 Appeal of contested major or minor disposition or contested major waiver. **(1)** The inmate may appeal a disciplinary decision under s. DOC 303.77, DOC 303.80 or 303.81, including procedural errors, to the warden within 10 days after the inmate receives a copy of the decision.

(2) The warden shall review all records and forms pertaining to the appeal and make the decision within 60 days following receipt of the request for appeal.

(3) The warden's decision shall be one or more of the following:

(a) Affirm the decision.

(b) Modify all or part of the decision.

(c) Reverse the decision, in whole or in part.

(d) Return the case for further consideration, to complete or correct the record, to correct any procedural error, or for rehearing.

(7) The warden's decision is final regarding the sufficiency of the evidence. An inmate may appeal claims of procedural error as provided under s. DOC 310.08 (3).

DOC 303.83 Due process: staff representative. **(1)** At each institution, the warden shall

designate staff representatives for inmates in disciplinary hearings at the institution.

(2) If an inmate or staff representative provides information and evidence to the warden that there is a conflict of interest in the case that would impair a staff representative's ability to perform his or her duties, the warden shall evaluate the information and evidence to determine if a different representative should be assigned.

(3) The role of the staff representative is to help the accused inmate understand the charges against the inmate and to provide direction and guidance regarding the disciplinary process. The staff representative may use discretion in the performance of this role, including gathering relevant evidence and testimony and preparing the inmate's own statement. The staff representative may speak on behalf of the accused inmate at a disciplinary hearing or may help the inmate prepare to speak.

DOC 303.84 Due process hearing: witnesses. (1) The accused inmate may make a request to the security director for no more than two identified witnesses in addition to the reporting employee and shall explain the relevance of the witness testimony. The inmate shall make this request within two days of the service of notice of major disciplinary hearing rights. The security director may waive the two day time limit for good cause.

(2) After all witness requests have been received, the security director shall review them to determine whether the witnesses possess relevant information and shall be called.

(3) Written witness statements shall only be accepted if approved by the hearing officer. The hearing officer may consider a legibly printed written statement limited to 500 words on no more than two sheets of paper, a transcript of an oral statement, or a recorded statement.

(4) Witnesses requested by the accused who are staff or inmates shall attend the disciplinary hearing unless one of the following exists:

(a) The risk of harm to the witness if the witness testifies.

(b) The witness is unavailable. Unavailability means death, transfer, release, hospitalization, or escape in the case of an inmate; unavailability means death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of an employee.

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

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

(5) If the security director finds that testifying would pose a risk of harm to the witness, the hearing officer may consider a confidential statement signed under oath from that witness without revealing the witness's identity or a signed statement from an employee getting the statement from that witness. The hearing officer shall reveal the contents of the statement to the accused inmate, except the hearing officer may edit or summarize the statement to avoid revealing the identity of the witness. The hearing officer may question a confidential witness if the witness is available.

(6) The hearing officer may consider written statements that can be corroborated in one of the following ways:

(a) By other evidence which substantially corroborates the facts alleged in the statement, including an eyewitness account by an employee or circumstantial evidence.

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

(c) Two confidential statements by different persons may be used to corroborate each other.

(7) If it is not possible to get a signed statement in accordance with subs. (3) and (5), the hearing officer may consider other evidence of what the witness would say if present.

(8) After determining which witnesses shall be called for the accused inmate, staff shall notify the inmate of the decision in writing.

(9) Witnesses other than inmates or employees may not attend hearings but the staff representative with the hearing officer's permission may contact them. The hearing officer

may designate a staff member to interview the witnesses and report to the hearing officer.

(10) The hearing officer may call additional witnesses as deemed necessary.

(11) After a decision has been reached by the hearing officer, and if a finding of guilt results, the hearing officer shall forward restricted or confidential information to the security director for retention in a restricted file.

DOC 303.85 Disposition considerations. (1) In deciding the disposition for a violation or group of violations, the supervisor making uncontested dispositions or the hearing officer may consider any of the following:

- (a) The inmate's overall disciplinary record, especially during the previous 12 months.
 - (b) The inmate's disciplinary record of the same or similar offenses.
 - (c) The risk of serious disruption at the institution or in the community caused by the violation.
 - (d) The risk of serious injury created by the violation.
 - (e) The value of the property involved.
 - (f) The risk of serious financial impact caused by the violation.
 - (g) Whether the inmate was actually aware that the inmate was committing a crime or offense at the time of the offense.
 - (h) The motivation for the offense.
 - (i) The inmate's attitude toward the offense and toward the victim, if any.
 - (j) Mitigating factors, including coercion, family difficulties which may have created anxiety, and any special circumstances.
 - (k) Psychological input as appropriate regarding mental health status of seriously mentally ill inmates at the time of the behavior.
 - (l) The risk to the security of the institution, inmates, employees or the community caused by the violation.
 - (m) Any other relevant factors.
- (2)** A minor penalty may be imposed for a violation where a major penalty could be imposed.
- (3)** Restitution may be imposed in addition to any other penalty.
- (4)** Any combination of penalties may be imposed.

DOC 303.86 Recordkeeping. (1) The department may keep records of disciplinary infractions in an inmate's case record only if one of the following applies:

- (a) The inmate was found guilty by uncontested disposition procedure.
 - (b) The inmate was found guilty by a supervisor or hearing officer.
- (2)** The department shall make necessary corrections to the record as required by appeal.
- (3)** The department shall take necessary steps to remove any record of a conduct report if there is an order to expunge.
- (4)** The department may keep conduct reports which have been dismissed or in which the inmate was found not guilty for statistical purposes, and security reasons, but the department may not consider them in making program assignment, transfer, or release decisions and the department may not include them in any inmate's record.

DOC 303.87 Evidence. (1) Evidence is relevant if the evidence makes it appear more likely or less likely that the inmate committed the offense of which the inmate is accused.

(2) (a) 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 any state law or any DOC administrative code provision occurred in the process of gathering the evidence.

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

1. Unreliable.
2. Marginally relevant.
3. Unduly cumulative or repetitious.

(c) Request for evidence must be made within two days after the service of notice of major disciplinary hearing rights. This time frame may be extended by the security director for good cause.

(3) The institution shall place the original conduct report and all due process documents in the inmate's record, excluding evidence which shall be maintained in accordance with department policy.

DOC 303.88 Harmless error. If staff does not adhere to a procedural requirement under this chapter, the error is harmless if it does not substantially affect a finding of guilt or the inmate's ability to provide a defense.

DOC 303.89 Warden-initiated review. The warden may at any time initiate a review of the decision and disposition of a conduct report and act on it unilaterally.

DOC 303.90 Administrative assignment or transfer. Notwithstanding any action taken under this chapter, the department may administratively change an inmate's work, program, or housing assignment, restrict privileges, or transfer the inmate to another institution.

SECTION 2. Chapter DOC 303 APPENDIX and sections DOC 308.03 (6) and (8), 309.02 (13), 309.55 (e) 4., 5., and 6., 327.09 (2) (g), (j), and (n) are repealed.

SECTION 3. Sections DOC 302.17 (11) (c), 302.21 (3) (b) 1., 302.33 (1) (b), 302.34 (1) (a), 302.35 (1) (a), 304.04 (2), 306.05 (4) (a), 308.03 (4) (intro.), (b), and (d), 308.04 (4) (e) 5., (5) (a) 2., and (10), 308.04 Note to sub. (4), 309.02 (5), 309.04 (4) (e) 2. and (6), 309.20 (4) (a) 5., (4) (c) 3., (4) (d) 2., and (7), 309.365 (5) (c) 2., 310.08 (3), 310.10 (7), 310 APPENDIX DOC 310.16, PARA. 3, 311.07 (2) (f) 3., 313.08 (10), 324.12 (1) (j), 324.13 (6), 327.09 (1) (a), (2) (intro.), (b), (c), (d) (intro.), (e) (intro.), (f), (h), (i), (m) 1., (q) (intro.), (r), (s), (t), (u), (v), (w), (x) (intro.), (y), (z) (intro.), and (3), 327.13 (intro.), (2), (3), (4), (5), (6), (7), (8), (9), and (10), and 327.16 (6) (c) 4. and (d) are amended to read:

DOC 302.17 (11) (c) Referral by the ~~institution adjustment committee~~ hearing officer as defined in s. DOC ~~302.21(4)~~ 303.02 (20).

DOC 302.21 (3) (b) 1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, unless that date is extended pursuant to s. DOC ~~303.84~~ 303.72 for violation of a disciplinary rule or the ~~resident~~ inmate waives entitlement to mandatory release in accordance with this chapter;

DOC 302.33 (1) (b) The inmate has not received a major penalty under s. DOC ~~303.68 (4) (a)~~ 303.72 on any day counted toward positive adjustment time.

DOC 302.34 (1) (a) The inmate has not received a major penalty under s. DOC ~~303.68 (4) (a)~~ 303.72 on any day counted toward positive adjustment time.

DOC 302.35 (1) (a) The inmate has not received a major penalty under s. DOC ~~303.68~~

(4) 303.72 on any day counted toward positive adjustment time.

DOC 304.04 (2) Inmates who otherwise meet the eligibility requirements of this section may be assigned to the secure work program as a disciplinary disposition under s. DOC ~~303.72 (9)~~ 303.70 (8).

DOC 306.05 (4) (a) Inmates in protective confinement shall have privileges and property at least equivalent to privileges and property allowed to inmates in ~~program segregation~~ disciplinary separation under s. DOC ~~303.70~~ 303.73.

DOC 308.03 (4) (intro.) “Disturbance” means a riot or other disturbance to institutional order caused by a group of 2 or more inmates that may include one ~~any~~ of the following:

DOC 308.03 (4) (b) The taking of ~~a hostage by an inmate~~ one or more hostages.

DOC 308.03 (4) (d) The refusal by 2 or more inmates, acting in concert, to comply with an order, ~~to return to cells or rooms~~.

DOC 308.04 (4) (e) 5. The right to assistance of ~~an advocate~~ a staff representative in accordance with s. DOC ~~303.78~~ 303.83.

DOC 308.04 (5) (a) 2. Attempt to obtain a signed statement under oath from the witness and determine that the statement is corroborated in accordance with s. DOC ~~303.86 (4)~~ 303.84 (5) if the designated staff member finds a significant risk of bodily injury.

DOC 308.04 (10) An inmate’s progress in administrative confinement shall be reviewed by the ACRC at least every 6 months following the procedures for review under this section. Monthly progress ~~will~~ shall be reviewed consistent with the ~~segregation review process of disciplinary separation~~ as outlined in s. DOC ~~303.70 (12)~~ 303.73 (13).

DOC 308.04 Note to sub. (4). Sub. (4) gives the inmates certain rights. It requires that adequate written notice of the review be given the inmate. If necessary, a verbal explanation of the notice should be made in accordance with the inmate’s needs. The rights also include the right to present and question a witness in the same manner as for due process hearings, s. DOC ~~303.84~~ 303.84.

DOC 309.02 (5) Contraband has the meaning given in s. DOC ~~303.10 (4)~~ 303.02 (8).

DOC 309.04 (4) (e) 2. If the letter is outgoing mail, the department shall provide the sender a notice stating why the letter was not delivered. Correctional staff shall dispose of the letter consistent with s. DOC ~~303.10~~ 303.09 (2).

DOC 309.04 (6) The department shall dispose of contraband found through inspections conducted pursuant to this section in accordance with s. DOC ~~303.10~~ 303.09 (2).

DOC 309.20 (4) (a) 5. Unclaimed property shall be held for a one year period after the date of release, after which time the property shall be disposed of in accordance with s. DOC ~~303.10 (3)~~ 303.09 (2). The institution shall not be responsible for damage due to

prolonged storage.

DOC 309.20 (4) (c) 3. Unclaimed property shall be held for a one year period after the date of death, after which time the property shall be disposed of in accordance with s. DOC ~~303.10 (3)~~ 303.09 (2). The institution shall not be responsible for damage due to prolonged storage.

DOC 309.20 (4) (d) 2. Items which are contraband shall be disposed of in accordance with s. DOC ~~303.40~~ 303.09 (2).

DOC 309.20 (7) Contraband. The institution shall consider items not permitted at an institution or permitted but not on an inmate's property list under sub. (2) contraband and subject the items to seizure and disposition under s. DOC ~~303.40~~ 303.09 (2). The institution may subject an inmate to discipline for possessing contraband under ss. DOC ~~303.43~~ 303.42 through ~~303.48~~ 303.49.

DOC 309.365 (5) (c) 2. A group that he or she has reasonable grounds to believe is an inmate gang a security threat group, as defined in s. DOC ~~303.02 (9)~~ 303.02 (30).

DOC 310.08 (3) After exhausting the appeal process in s. DOC 302.18, ~~303.75, 303.76~~ 303.82, 308.04, or 326.06, an inmate may use the ICRS to challenge only the procedure used in the program review process, the disciplinary process, the administrative confinement review process, or by any decisionmaker acting on a request for authorized leave.

DOC 310.10 (7) The department shall not consider group complaints filed in accordance with this section a group petition within the meaning of s. DOC ~~303.20~~ 303.24 and shall not subject the complainants to discipline under that section.

DOC 310 APPENDIX DOC 310.16, PARA. 3 This is not to say that inmates are free to make threatening or false statements about staff, knowing they are false, especially if those false statements are made public. There have been malicious lies about staff corruption and sexual behavior made in the ICRS. This rule does not prohibit disciplinary action for the bad faith use, or rather abuse, of the ICRS under DOC ~~303.274~~ 303.32.

DOC 311.07 (2) (f) 3. The right to ~~an advocate~~ a staff representative in accordance with s. DOC ~~303.78~~ 303.83.

DOC 313.08 (10) Reporting for work or while at work manifesting any evidence of having used or being under the influence of an intoxicating substance, as defined in s. DOC ~~303.02 (14)~~ 303.02 (23), or in possession of ~~an intoxicating substance~~ intoxicants under s. DOC 303.43 or ~~drug~~ intoxicant paraphernalia ~~or device as defined in~~ under s. DOC 303.44.

DOC 324.12 (1) (j) Failure to report or return from a work or study placement may be referred for prosecution as an escape under s. 946.42 (3), Stats., and may be administratively charged with an escape under s. DOC ~~303.22~~ 303.26.

DOC 324.13 (6) A hearing shall be conducted in accordance with the procedures under ss. DOC ~~303.75~~ 303.78 to 303.84 and 303.80, modified as follows:

(a) In accordance with s. DOC ~~303.84~~ 303.84, with the permission of the hearing

officer, the work release coordinator shall interview employers or school officials who have relevant evidence and report to the hearing officer.

(b) A penalty listed in s. DOC ~~303.84~~ 303.72 need not be imposed as a result of a finding of guilt.

DOC 327.09 (1) (a) An inmate may not possess or use any form of alcohol, or other intoxicating substance as defined under s. DOC ~~303.02 (14)~~ 303.02 (23) except as authorized and directed by an approved physician;

DOC 327.09 (2) (intro.) All the offenses listed in ss. ~~DOC 303.12~~ DOC 303.11 to ~~303.634~~ 303.64 apply to inmates in community residential confinement placement with the following exceptions, substitutions and modifications:

DOC 327.09 (2) (a) ~~Section~~ Sections DOC 303.14 and 303.15 on sexual conduct ~~does~~ do not apply.

DOC 327.09 (2) (b) The following is substituted for s. DOC ~~303.48~~ 303.21 on inciting a ~~riot~~ disturbance: Any inmate who intentionally encourages, directs, commands, coerces or signals one or more other persons to participate in a ~~riot~~ disturbance is guilty of an offense. "~~Riot~~" ~~means a serious disturbance caused by a group of 2 or more persons which creates a serious risk of injury to persons or property.~~ "Disturbance" has the meaning given in s. DOC 303.02 (13).

DOC 327.09 (2) (c) Section DOC ~~303.20~~ 303.24 on group resistance and petitions does not apply.

DOC 327.09 (2) (d) (intro.) The following is substituted for s. DOC ~~303.05~~ 303.04 on conspiracy:

DOC 327.09 (2) (e) (intro.) The following is substituted for s. DOC ~~303.22~~ 303.26 on escape:

DOC 327.09 (2) (f) The following is substituted for s. DOC ~~303.27~~ 303.31 on lying: Any inmate who knowingly makes a false written or oral statement to a staff member is guilty of an offense;

DOC 327.09 (2) (h) Section ~~DOC 303.30~~ DOC 303.34 on unauthorized forms of communication does not apply.

DOC 327.09 (2) (i) The following is substituted for s. DOC ~~303.32~~ 303.36 on enterprises and fraud: Any inmate who offers to buy or orders any item with the intention of not paying for it or incurs debt without permission is guilty of an offense.

DOC 327.09 (2) (m) 1. Except as specifically authorized by CRC staff, any inmate who knowingly has in his or her possession any intoxicating substance as defined under s. DOC ~~303.02 (14)~~ 303.02 (23) is guilty of an offense; and

DOC 327.09 (2) (q) (intro.) The following is substituted for s. DOC ~~303.49~~ 303.50 on punctuality and attendance: Inmates shall attend and be on time for all events, classes, meetings, appointments, job and other activities for which they are scheduled. Any inmate who violates this section is guilty of an offense, unless one of the following applies:

DOC 327.09 (2) (r) Section DOC ~~303.50~~ 303.51 on loitering does not apply;

DOC 327.09 (2) (s) The following is substituted for s. DOC ~~303.54~~ 303.52 on leaving assigned area: Any inmate who leaves an area where he or she is attending a scheduled activity or who leaves the immediate area of a work or school assignment before the activity or the work or school assignment is over is guilty of an offense, unless absence from the assigned area has been approved by an appropriate CRC staff member;

DOC 327.09 (2) (t) Section DOC ~~303.52~~ 303.54 on entry of into another inmate's quarters assigned living area does not apply;

DOC 327.09 (2) (u) Section DOC ~~303.54~~ 303.55 on improper storage does not apply;

DOC 327.09 (2) (v) Section DOC ~~303.55~~ 303.56 on dirty quarters assigned living area does not apply;

DOC 327.09 (2) (w) Section DOC ~~303.56~~ 303.57 on poor grooming personal hygiene does not apply;

DOC 327.09 (2) (x) (intro.) The following is substituted for s. DOC ~~303.57~~ 303.58 on misuse of ~~prescription~~ medication: Any inmate who knowingly does any of the following is guilty of an offense:

DOC 327.09 (2) (y) Section DOC ~~303.59~~ 303.60 on use of intoxicants applies except that subs. (2) ~~(a)~~ and (3) are modified to include tests, examinations and specimens requested in accordance with this chapter; and

DOC 327.09 (2) (z) (intro.) The following is substituted for s. DOC ~~303.63~~ 303.28 (3) on violations of ~~institution policies and procedures~~ disobeying orders:

DOC 327.09 (3) In addition to the rules listed under sub. (1) and the list of offenses under ss. DOC ~~303.42~~ 303.11 to ~~303.63~~ 303.64 as affected by sub. (2), CRC staff may develop additional written rules and specific conditions for an inmate's CRC placement. These specific rules and conditions may be modified at any time with written notice to the inmate.

DOC 327.13 (intro.) **Disciplinary procedure and penalties.** The due process fact finding hearing to determine if the inmate has committed a violation under s. DOC 327.12 shall be conducted in accordance with the procedures under ss. DOC ~~303.64~~ 303.65 to ~~303.87~~ 303.90.

DOC 327.13 (2) Under s. DOC ~~303.67~~ 303.68, on review by the security office, the person who wrote the conduct report shall send it to the department supervisory staff person designated to review conduct reports in his or her area within 24 hours after writing the conduct report. The staff person who is designated to review the conduct report shall review it under s. DOC ~~303.67~~ 303.68 within 24 hours after receipt.

DOC 327.13 (3) Under s. DOC ~~303.68~~ (3) DOC 303.71 (2), in addition to the listed offenses, the violation of any of the following sections is a major offense: s. DOC 303.43 on possession of intoxicants; s. DOC 303.44 on possession of ~~drug~~ intoxicant

paraphernalia; s. DOC ~~303.51~~ 303.52 on leaving assigned area; and s. DOC ~~303.511~~ 303.53 on being in an unassigned area.

DOC 327.13 (4) Under s. DOC ~~303.76 (4)~~ 303.80 (1) on hearing procedure for major violations, a copy of the approved conduct report shall be given to the inmate within 4 working days after approval under s. DOC ~~303.67~~ 303.68.

DOC 327.13 (5) Under s. DOC ~~303.76 (4)~~ 303.80 (4), the due process hearing may take place at the CRC residence, any state correctional institution, a county jail or other facility designated by the department be held in person, by telephone, video conferencing or other virtual communication means at the discretion of the hearing officer.

DOC 327.13 (6) Section DOC ~~303.78 (4)~~ 303.83 (1) is modified to read: The superintendent may shall designate or hire staff members to serve as advocates staff representatives for inmates in disciplinary hearings at the institution, or staff members may volunteer to serve as advocates. The superintendent shall assign advocates to inmates. If an inmate objects to the assignment of a particular advocate because the advocate has a known and demonstrated conflict of interest in the case, the superintendent shall assign a different staff member to serve as the inmate's advocate. If an inmate or staff representative provides information and evidence to the superintendent that there is a conflict of interest in the case that would impair a staff representative's ability to perform his or her duties, the superintendent shall evaluate the information and evidence to determine if a different representative should be assigned.

DOC 327.13 (7) Under s. DOC ~~303.81 (3)~~ 303.84 (4), if an inmate witness must be transported to another institution or facility to testify, the inmate does not have to attend the disciplinary hearing. However, the hearing officer shall attempt to get a signed statement from the witness to be used at the disciplinary hearing or the advocate staff representative shall attempt to interview the witness and report on the testimony to the committee in lieu of a personal appearance by the witness.

DOC 327.13 (8) Under ss. DOC ~~303.75 (3)~~ 303.77 and ~~303.82~~ 303.79, any department staff member designated by the superintendent may shall designate serve on an adjustment committee or serve as a hearing officer.

DOC 327.13 (9) A penalty listed in s. DOC ~~303.84~~ 303.72 need not be imposed as a result of a finding of guilt.

DOC 327.13 (10) Under ss. ~~DOC 303.69 and 303.70~~ s. DOC 303.73, adjustment segregation or program segregation disciplinary separation may be served in any state correctional institution, a county jail or other facility designated by the department to hold CRC inmates in ~~adjustment segregation or program segregation~~ disciplinary separation status.

DOC 327.16 (6) (c) 4. ~~Drug~~ Intoxicant paraphernalia, ~~as defined in~~ under s. DOC 303.44; and

DOC 327.16 (6) (d) Items not permitted under this section or under an inmate's special conditions of CRC placement are contraband. They may be seized in accordance with s. DOC ~~303.40~~ 303.09. An inmate may be subject to discipline for possessing

contraband.

SECTION 4. Sections DOC 308.03 (8m) and 309.55 (4) (e) 4. and 5. are created to read:

DOC 308.03 (8m) “Security threat group” means a group of individuals which threatens, intimidates, coerces or harasses others or which engages in any activity which violates or encourages the violation of statutes, administrative rules or departmental policy.

DOC 309.55 (4) (e) 4. Disciplinary separation under s. DOC 303.73.

DOC 309.55 (4) (e) 5. Controlled separation under s. DOC 303.74.

SECTION 5. Effective date: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats., or January 1, 2015, whichever is later.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats., or January 1, 2015, whichever is later.

Dated: June _____, 2014

Agency: _____

Edward F. Wall
Secretary