

Clearinghouse Rule 97-014

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

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STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

I, Jon E. Litscher, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rules, relating to inmate visitation, were duly approved and adopted by the Department on April 19, 2000.

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections
149 E. Wilson Street in the City of Madison, this 19th day of April, 2000.

SEAL

Jon E. Litscher
Secretary



7-1-00
97-014

ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND CREATING RULES

The Wisconsin department of corrections proposes an order to repeal DOC 309.10, 309.11, 309.12, 309.13, 309.14, 309.15, 309.16, 309.165, 309.17, and 309.18, relating to inmate visitation; and to create DOC 309.06, 309.07, 309.08, 309.09, 309.10, 309.11, 309.12, and 309.13.

Statutory authority: ss. 301.02, 301.03 (1) and (2), and 227.11 (2), Stats.
Statutes interpreted: ss. 302.08, Stats.

Analysis by the Department of Corrections

Some provisions of the department of corrections administrative rules relating to inmate visitation have not been updated since the rule was created. With over 18 years of experience working with the rule, the department proposes to update the rule.

This rule:

1. Makes technical changes.
2. Adds definitions for “revoke,” “suspend,” and “terminate.”
3. Deletes language allowing inmates and visitors to embrace and kiss at the beginning and end of each visit, as well as holding children. This may be allowed through institution policy and procedure
4. Deletes the provision requiring the visitors to be known to the inmate.
5. Requires that children under the age of 18 have written approval of a non-incarcerated custodial parent or legal guardian, or a court order directing the visit.
6. Requires inmates to provide accurate and complete information for visitation requests
7. Permits an institution to require or utilize information from other sources in determining suitability for visitation.
8. Provides for the Warden to make the determination regarding approval for visiting.
9. Allows Warden to deny visit if Warden has reasonable grounds to believe the visitor may be subjected to victimization.

10. Allows Warden to deny visit if visitor has been incarcerated within the last twelve months. This amends language that denied visitors who were probationers, parolees or ex-offenders discharged within the last 6 months.
11. Removes language requiring visiting privileges not be denied based on visitor's marital status.
12. Removes requirement that immediate family members be routinely approved for visiting if requested by inmate.
13. Removes the definition of immediate family members.
14. Maintains requirement that institutions develop policies and procedures regarding visitation, but deletes enumerated list of factors.
15. Removes requirement that the administrator of the division of adult institutions approve these policies.
16. Removes requirement that each institution permit visits on weekends or some weekday nights, or both, and requires that the visitation schedule be consistent with other institution activities and available resources.
17. Visitation for inmates in segregation status are changed in the following way:

<u>Status</u>	<u>Current</u>	<u>Proposed</u>
Adjustment	1 hr/wk	1 hr/wk
Program	2-4 hr/month	1 hr/wk
Control	none	Warden approval
Administrative (Observation)	3x2hrs/month	Warden approval

18. Removes requirement that institutions have written policies and procedures relating to visits to inmates in segregation and allows institutions to limit visitation for inmates in segregation by restricting minor visitors, number of visitors, hours and location of visits or if Warden determines the visit poses a threat to safety.
19. Permits Warden, in addition to security director, to impose no-contact visiting.
20. Permits wardens to impose no-contact visiting for either an initial application or subsequent review of visiting status.
21. Allows the Warden to impose no-contact visiting for more than one year and inmate may appeal to administrator.

22. Removes the time limits for suspending visiting privileges and removes the inmate appeal specifically related to visitation. Inmates still maintain appeal rights under the disciplinary process.
23. Removes requirement that the administrator approve revocation of visiting privileges and removes language allowing reapplication for visiting privileges.
24. Repeals provision related to inter-institution visits of family members

SECTION 1. DOC 309.06, 309.07, 309.08, 309.09, 309.10, 309.11, 309.12, and 309.13 are created to read:

DOC 309.06 Visitation. The department shall administer a visitation program which regulates visitation of inmates by family members, friends, and others consistent with resources available, the department's responsibility for the secure and orderly operation of institutions, public safety, and the protection of visitors, staff and inmates.

DOC 309.07 Conduct during visits. Visitors and inmates shall obey the administrative rules and institution policies and procedures regarding visitation.

DOC 309.08 Visiting list. (1) Each inmate shall have an approved visitor's list.

(a) Except as otherwise provided under this section, the warden shall only permit visitors on the inmate's approved list to visit the inmate. Except as provided under par. (c), the warden shall only permit each inmate 12 adult visitors on the visiting list.

(b) Children of the inmate and children of approved visitors who have not attained their 18th birthday may visit and the warden shall not count them against the 12 visitors permitted. In order to be permitted to visit an inmate, children shall have written approval of a non-incarcerated custodial parent or legal guardian, or have a court order directing the visit, and their names must appear on the approved visitors list.

(c) The warden may approve more than 12 visitors on the visiting list if the first 12 visitors on the visiting list are close family members.

(d) The institution may require inmates to provide accurate and complete information regarding proposed visitors, including, but not limited to, the name and address of the proposed visitor, the inmate's relationship to the proposed visitor, and date of birth of the proposed visitor.

(e) The institution may require and utilize information from other sources in determining a proposed visitor's suitability for visitation.

(f) An inmate may not make any changes in an inmate's visiting list for a minimum of six months from the date of its original approval or for a minimum of six months after each subsequent approval or disapproval determination is made.

(2) The department shall establish procedures for the formulation and maintenance of visiting lists.

(3) The warden may place additional limitations or conditions on the visitation of inmates during periods of intensive programming or special placement for an individual inmate or a class of inmates. The additional limitations shall be related to the special programs or placements for security or program reasons. Limitations may include the number of visits or visitors and time or duration of visits. Conditions may include no contact visits or visitation provided by technological means not requiring direct personal contact, such as video connections.

(4) The warden shall determine whether a person may be approved for visiting, including no-contact visiting, or removed from a visiting list based on the following:

(a) The requesting inmate has provided falsified, incorrect, or incomplete information.

(b) The proposed visitor has provided falsified, incorrect, or incomplete information.

(c) There is no signed and dated approval of a non-incarcerated custodial parent or legal guardian for a proposed visitor less than 18 years of age or there is no court order directing the visit.

(d) The warden has reasonable grounds to believe the visitor has attempted to bring contraband into any penal facility, as defined in s.19.32 (1e), Stats., or that the visitor otherwise poses a threat to the safety and security of visitors, staff, inmates or the institution.

(e) The warden has reasonable grounds to believe that the inmate's reintegration into the community or rehabilitation would be hindered.

(f) The warden has reasonable grounds to believe that the inmate's offense history indicates there may be a problem with the proposed visitation.

(g) The warden has reasonable grounds to believe that the proposed visitor may be subjected to victimization.

(h) The proposed visitor has been incarcerated within the last twelve months.

(i) A visitor was approved for visiting by mistake or based on inadequate information.

(j) The proposed visitor is a current or former employe, volunteer, contract agent or similarly situated individual within the past 12 months.

(5) A custodial parent, or authorized adult who is on the approved list, shall accompany visitors who have not attained their 18th birthday, unless the visitor is the spouse of the inmate.

(6) If the warden disapproves a proposed visitor or approves a proposed visitor for no-contact visiting only, the warden shall inform the visitor of the reasons for the action in writing. The proposed visitor may appeal this decision in writing to the warden. An inmate may appeal this decision through the inmate complaint review system.

(7) The warden may permit occasional visits by people not on an inmate's visiting list. The warden may require notification in advance of such a visit.

DOC 309.09 Regulation of visits for inmates. (1) The department shall establish policies and procedures governing visitation in prisons. Each institution shall establish written policies and procedures regarding visitation and shall make them available to inmates and visitors at each institution.

(2) Each institution shall establish a visitation schedule consistent with other institution activities and available resources.

(3) Each institution shall permit each inmate in the general population the opportunity for visitation at least 9 hours per week according to the visitation schedule established under sub. (2).

(4) Each institution shall permit each inmate in a segregated status the opportunity for visitation at least 1 hour per week with the exception of controlled segregation and observation, which require the approval of the warden.

(5) Institutions shall require visitors to provide identification before permitting the visit.

(6) Institutions may limit visitation for inmates in segregation by issuing restrictions concerning minor visitors, number of visitors, hours and location of visits, or if the warden determines that the visit poses a threat to the proposed visitor, staff or inmates.

DOC 309.10 Special visits. (1) Public officials and members of private and public organizations who provide services to inmates may visit institutions with the approval of the warden. These visitors shall make arrangements for all such visits in advance with the warden to minimize interference with normal operations and activities. The warden may limit the duration of such visits for security reasons. A person who has not attained the age of 18 may not participate in any group visit except with the approval of the warden, unless the person is a family member on the inmate's approved visitor list.

(2) The warden shall permit attorneys, attorney aides, and law students to visit their inmate clients to provide professional services during institution business hours on weekdays. The warden shall permit pastoral visits during institution business hours on weekdays. The warden shall not count these persons against the allowable number of visitors or hours of visits of the inmate. The warden

may require advance notice of these visits. The warden may approve visits of this type outside institution business hours in emergencies.

DOC 309.11 No-contact visiting. (1) (a) The warden may impose no-contact visiting in response to an initial application to visit or upon subsequent review of the visiting status of an inmate or visitor. In making such determination, the warden shall consider the criteria in s. DOC 309.08 (4). After a period of one year the inmate or visitor may request review of the conditions of visiting.

(b) If the warden imposes no-contact visiting on an inmate, the warden may apply no-contact visiting to all visitors of the inmate.

(c) If the warden imposes no-contact visiting on a visitor, the warden may apply no contact visiting to all visits of the visitor, and may recommend to the administrator the no-contact visits be imposed at all other institutions. The administrator may approve the recommendation.

(2) The security director may impose no contact visiting if:

(a) The security director finds that an inmate or visitor has introduced contraband into any institution or engaged in other behavior that threatens security or interferes with the rights of others.

(b) An inmate is in temporary lockup, observation, voluntary confinement, adjustment segregation, program segregation, controlled segregation, disciplinary separation, or administrative confinement.

(3) (a) If staff allege an inmate has violated visitation rules or institution policies or procedures relating to visitation, staff shall write and dispose of a conduct report in accordance with the rules providing for disciplinary procedures. For a visiting violation, staff may impose any penalty provided in the disciplinary rules.

(b) In addition to any penalty imposed in sub. (a), for a visiting violation the security director may impose no-contact visiting for up to one year, and the inmate may appeal this to the warden.

(c) In addition to any penalty imposed in sub. (a), for a visiting violation, the warden may impose no-contact visiting for more than one year, and the inmate may appeal this to the administrator.

(4) If staff allege a visitor has violated visitation rules or institution policies and procedures relating to visitation, the security director shall investigate and decide if a violation occurred. If the security director determines a violation occurred, the security director may impose no-contact visiting restrictions on that visitor. The visitor may appeal the no-contact visiting restrictions in accordance with sub. (3). The warden shall inform the visitor and inmate of the restriction promptly in writing and the reasons for it.

DOC 309.12 Revocation, suspension, and termination of visiting privileges. (1) In this section:

(a) “Revoke” means to remove visiting privileges based upon new information or changed circumstances that affects visiting approval.

(b) “Suspend” means to restrict the visits of an inmate by a specific visitor for a specific period of time due to an investigation or review process because of an alleged violation of visitation rules, policies and regulations.

(c) “Terminate” means the stopping of a visit in progress, usually based on an alleged violation of visitation rules, policies and regulations during the visit.

(2) A supervisor may terminate a visit, and the warden or security director may suspend or revoke visiting privileges.

(3) If staff allege an inmate has violated visitation rules, policies or procedures during a visit, staff shall write and dispose of a conduct report in accordance with the rules provided for in disciplinary procedures. In addition to any disciplinary penalty, the warden or security director may suspend or revoke visiting privileges, and a supervisor may terminate a visit.

(4) If staff allege a visitor has violated these sections or institution policies and procedures relating to visits, the security director shall investigate and decide if such a violation occurred. If the security director determines that such a violation occurred, the security director may suspend visiting privileges with that visitor. The visitor may appeal the suspension of visiting privileges in accordance with sub. (2). The security director shall inform the visitor and inmate of the suspension promptly in writing and the reasons for it.

DOC 309.13 Special events. Special events may be held in correctional institutions subject to the approval and regulation of the warden.

SECTION 2. DOC 309 Appendix is created to read:

Note: DOC 309.06. Although visitation serves several important corrections objectives: maintenance of family and community ties, maintenance of morale and motivation of inmates, opportunity for the exchange of ideas and information, the department must regulate visitation of inmates consistent with resources, security and orderly operation of institutions.

Note: DOC 309.07. DOC 309.07 requires visitors as well as inmates to obey visiting rules.

Note: 309.08. DOC 309.08 regulates visitation and the criteria for approval to visit. Each inmate is to have an approved visiting list. It may have only 12 people on it because institutions cannot accommodate unlimited numbers of visitors. Setting a limit by number has the virtue of permitting a substantial number of family visitors for those who desire them and of permitting people without family to include a substantial number of friends. It is an easier system to administer and, on the whole, seems fairer. It leaves to the inmate the choice of who may visit.

People who have not attained their 18th birthday who are the children of visitors or the inmate do not count against the 12. This is to enlarge the number of visitors and for the convenience of visitors. Children who have not attained the age of 18 are required to have written approval of a non-incarcerated custodial parent or legal guardian or there is a court order directing the visit.

Subsection (d) is to prevent hardship to inmates with large families. This exception to the limit of 12 requires that only close family members be on the visiting list.

Subsection (1) (d) requires inmates to provide accurate and complete information. Under subsection (4), the warden, in determining whether to approve visitation, is required to consider whether the inmate has provided falsified, incorrect, or incomplete information.

In determining whether to approve visitation, subsection (1) (d) permits staff to acquire and utilize information from other sources other than that provided by the inmate.

Subsection (1) (f) is to limit the administrative burden that results from frequent changes of visitors on the list.

Subsection (3) permits the warden to place other limits on visitations, including, the number of visits, visitors, or the time or duration of visits.

Subsection (4) states the criteria for a warden approving or removing a person from a visiting list.

The purpose of sub. (6) is to make known to non-approved or no-contact visitors and inmates the reasons for non-approval or no-contact visiting and to permit review of the decision.

An example is the best way to illustrate what is contemplated under sub. (8). An inmate may have a relative in California who visits Wisconsin once a year. Such a person may be allowed to visit the inmate without being added to the inmate's visiting list.

Note: DOC 309.09. DOC 309.09 regulates some aspects of visiting by requiring institutions to make policies and procedures. Flexibility is needed in the rules relating to visitation because of the great differences among institutions. For example, at maximum security institutions with large populations, visitation can be during daytime, nighttime, and weekends, to accommodate

the large numbers of visitors, the difficulty some visitors have getting to institutions except at night and on weekends, and the need to avoid unnecessary disruption of correctional programs.

On the other hand, some correctional centers are in remote areas of the state. The majority of inmates are working in the community during the day, and the camps are not heavily staffed. Therefore, visitation is feasible only on weekends and by special arrangement.

For the above reasons, the rules simply direct each institution to make policies and procedures and set some minimal requirements. In some cases, no change in present policy is necessary.

Subsection (3) requires the opportunity for a minimum of 9 hours of visitation per week per inmate in general population. Subsection (4) requires the opportunity for a minimum of one hour of visitation per week for inmate in segregation, except for the inmate in controlled segregation or observation. Visitation for inmates in controlled segregation and observation requires the approval of the warden.

Note: DOC 309.10. DOC 309.10 regulates visits by state officials, groups, attorneys, and clergy.

It is important that state officials and the public have access to correctional institutions. Such access develops an understanding of the correctional process, dispels misconceptions, and encourages the exchange of ideas and information among leaders and members of the public, inmates, and correctional staff. Such visits are not subject to the restrictions under DOC 309.09, but advance notice is necessary to accommodate groups. Such visitors should have virtually unlimited access to institutions, unless a security problem dictates that the visit be limited. Staff and visitors should also be sensitive to the inmates' desire for privacy and try to be as unobtrusive as possible.

Attorneys and clergy are permitted access to their clients any time during business hours. No attempt is made to define "clergy." Superintendents are now making the decision as to who should be admitted based on the activity that ensues, not on the credentials of the leader of the activity. This same access is accorded law students and aides who have written authorization from their referring attorney. *Pell v. Proconier*, 417 U.S. 817 (1974). In emergencies, efforts should be made to allow lawyers and clergy to visit outside of business hours. Advance notice is desirable though not always possible. Of course, visits by attorneys, clergy, law students, and attorneys' aides do not count against allowable visitation hours.

This section is consistent with present policy and in substantial agreement with the ABA, standards 6.2 (d) and (f), and substantially satisfies ACA, standard 4306.

Note: DOC 309.11: No-contact visiting refers to the inability of the inmate and visitor to physically touch during a visit. DOC 309.11 (1) states the policy for no-contact visits. The need to decrease the risk to the security of the institution may require such action.

Subsection (2) permits the warden to impose no-contact visiting based on criteria in s. DOC 309.98 (4). No-contact visiting may be imposed up to a year. After the year, the inmate or visitor may request a review of the no-contact visiting.

Subsection (3) permits the security director or adjustment committee to impose no-contact visiting if the inmate is found guilty of violation of administrative rules, institution policies or procedures, or a violation of the listed rules. Sub. (6) permits no-contact visiting for up to a year if imposed by the adjustment committee and appealed to the warden.

Under sub. (4), if no-contact visiting is imposed on an inmate or a visitor, no-contact visits may apply to all visitors of the inmate and to all visits. Under sub. (5), if no-contact visiting is imposed on a visitor, it applies to all visits.

Subsection (8) permits no-contact visiting to be imposed for the period of time an inmate is in segregation.

Note: DOC 309.12. DOC 309.12 (2) provides for the termination, suspension, or rescission of visiting privileges for violations of administrative rules or institution policies or procedures relating to visiting.

SECTION 3. DOC 309.10, 309.11, 309.12, 309.13, 309.14, 309.15, 309.16, 309.165, 309.17, and 309.18 are repealed.

SECTION 4. DOC Appendix is repealed.

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.

Wisconsin Department of Corrections

Date: 4/19/2000

By Jon E. Litscher
Jon E. Litscher
Secretary

Seal:

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



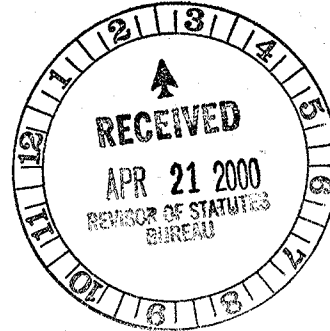
State of Wisconsin
Department of Corrections

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April 19, 2000

Bruce Munson
Revisor of Statutes Bureau
131 West Wilson Street, Room 800
Madison, Wisconsin 53703-3222



Dear Mr. Munson:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified and uncertified copy of DOC 309 relating to inmate visitation.

If you have any questions, please contact Julie Kane, Office of Legal Counsel, at (608) 267-9839.

Sincerely,

A handwritten signature in cursive script that reads "Jon E. Litscher".

Jon E. Litscher
Secretary

Attachment