

CR 86-160

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

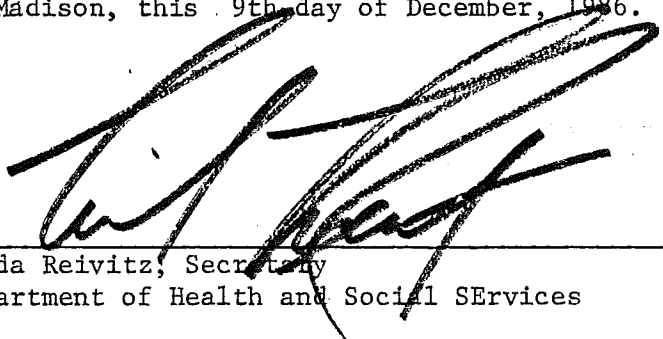
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DEC 10 1986
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Revisor of Statutes
Bureau

I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to religious rights and practices of inmates of adult correctional institutions were duly approved and adopted by this Department on December 9, 1986.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy 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 at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 9th day of December, 1986.



SEAL:

Linda Reivitz, Secretary
Department of Health and Social Services

2-1-87

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

To create HSS 309.61, relating to religious rights of inmates of adult correctional institutions.

Analysis Prepared by the Department of Health and Social Services

This proposed rule, s. HSS 309.61, Wis. Adm. Code, prohibits discrimination against an inmate based upon the inmate's religious beliefs. The rule recognizes the importance to inmates of religious beliefs in adjusting to institutional life and preparing for reintegration into the community. At the same time it recognizes that the special needs of the correctional setting require limits on certain religious practices. This rule regulates an inmate's ability to practice his or her religion and curtails religious practices that conflict with such correctional objectives as orderly confinement, the security of the institution and rehabilitation of inmates. These limits on inmate religious practices accord with national standards of the American Bar Association (ABA) and the American Correctional Association (ACA).

Section HSS 309.61 establishes a procedure for an inmate to request permission from the superintendent to participate in specific religious practices. Criteria for judging whether to permit a requested practice are taken from the ACA standards. The rule also addresses specific religious practices, such as receipt of religious literature, religious services and prayers, religious attire and symbols and special religious diets, which have generated questions in the past. The rule provisions are consistent with national standards which allow practices that do not conflict with legitimate correctional objectives or place an unreasonable burden on the correctional institution.

The rule requires institutions, to the extent feasible, to provide inmates with facilities and other resources for permitted religious practices. Section HSS 309.61(4) suggests alternative means institutions may employ to meet the religious needs of inmates. A chaplain or other designated staff person with appropriate religious training is required to coordinate religious services and resources from outside the institution. The diversity of inmate religious preferences which change frequently make it impractical for institutions to provide all services internally. The chaplain or designated staff person is encouraged to develop community resources to provide those services either on a paid or volunteer basis. The American Correctional Association standards stress the importance of community resources to fulfill inmate religious needs.

Pursuant to authority vested in the Department of Health and Social Services by ss. 46.03(1) and (6) and 227.11(2), Stats., the Department of Health and Social Services hereby creates rules interpreting ss. 46.066 and 53.07, Stats., as follows:

SECTION 1. HSS 309.61 is created to read:

HSS 309.61 RELIGIOUS BELIEFS AND PRACTICE. (1) GENERAL PRINCIPLES.

(a) The division may not discriminate against an inmate or an inmate group on the basis of the inmate's or group's religious beliefs. The division recognizes that religious beliefs can provide support to inmates which may aid in their adjustment to institutional life and can lead to development of community ties which may aid in the inmates' successful reintegration into the community upon release.

(b) Inmates may pursue lawful religious practices required or encouraged by their respective religions which are consistent with their orderly confinement, the security of the institution and fiscal limitations.

(c) The division may not require inmates to participate in religious activities and may not maintain information concerning an inmate's religious activities other than records required for administrative purposes.

(d) To the extent feasible, institutions shall make facilities and other resources available to inmates for religious practices permitted under sub. (2).

(2) INMATE PARTICIPATION IN RELIGIOUS PRACTICES. (a) An inmate who wants to participate in religious practices that involve others or that affect the inmate's appearance or institution routines shall submit a written request to the superintendent for permission to participate in specific religious practices. The request shall include a statement that the inmate professes, or adheres to, a particular religion and shall specify the practices of the religion in which the inmate requests permission to participate.

(b) Upon receipt of the request, the superintendent, with the assistance of the chaplain or designated staff person with appropriate religious training, shall determine if the request is motivated by religious beliefs.

(c) In determining whether the request is motivated by religious beliefs, the superintendent may consider:

1. Whether there is literature stating religious principles that support the beliefs; and
2. Whether the beliefs are recognized by a group of persons who share common ethical, moral or intellectual views.

(d) In determining whether the request is motivated by religious beliefs, the superintendent may not consider:

1. The number of persons who participate in the practice;
2. The newness of the beliefs or practices;
3. The absence from the beliefs of a concept of a supreme being; or
4. The fact that the beliefs are unpopular.

(e) If the superintendent determines that the request is not motivated by religious beliefs, he or she shall deny the request.

(f) If the superintendent determines that the request is motivated by religious beliefs, he or she shall grant permission to participate in practices that are consistent with orderly confinement, the security of the institution and fiscal limitations.

(g) The superintendent shall establish guidelines consistent with this section to govern inmate participation in religious practices and the guidelines shall be posted in a conspicuous place or distributed to all inmates.

(3) RELIGIOUS SERVICES AND PRAYERS. To the extent feasible, each superintendent, upon the recommendation of the chaplain or designated staff person with appropriate religious training, shall arrange the institution's schedule so that inmates may attend religious services, pray or meditate at the times prescribed or encouraged by their religion.

(4) CHAPLAINS. (a) The superintendent may employ one or more chaplains to coordinate and supervise the institution's religious programs.

(b) The chaplain shall hold services, provide counseling and provide other pastoral services or shall arrange for other qualified persons to provide these pastoral services.

(c) The chaplain or designated staff person with appropriate religious training shall develop and maintain close relationships with religious resources from outside the institution and shall encourage religious groups from outside the institution to take part in institution religious activities.

(d) The superintendent, upon the recommendation of the chaplain or designated staff person with appropriate religious training, may permit representatives of religious groups from outside the institution to visit inmates, hold services, provide counseling, perform marriages and provide other services commonly provided by chaplains. The superintendent may compensate these representatives.

(5) RELIGIOUS LITERATURE. Religious literature transmitted through the U.S. mail or otherwise distributed shall be delivered to inmates unless the security director has reasonable grounds to believe that the literature will jeopardize the safety of the institution or that the literature promotes illegal activity.

(6) SYMBOLS. Inmates may wear garments, religious medals and other symbols required by their religion, unless this interferes with the identification of inmates or the security of the institution.

(7) DIETARY LAWS. (a) Upon request of an inmate, the superintendent shall provide the inmate with a list of the contents of each meal in advance of the meal.

(b) To the extent feasible, institutions shall plan meals so that an inmate may maintain a nutritious diet while complying with dietary restrictions prescribed by the inmate's religion.

(c) An institution may accommodate inmate requests for special foods for religious observances.

Note: HSS 309.61. HSS 309.61 prohibits discrimination against an inmate based on the inmate's religious beliefs, but regulates an inmate's ability to practice his or her religion. Inmates do not lose their constitutional right under the first amendment to hold whatever religious beliefs they wish or to hold no religious beliefs. See U.S. v. Reynolds, 98 U.S. 145 (1878). However, the extent to which an inmate may practice his or her religion may be curtailed in a correctional setting because consideration must be given in these settings to security, order and fiscal limitations. Although the beliefs of each inmate must be respected, it would be impossible to provide a regular service or ritual for every denomination or sect represented in the general population. The limits on religious practice included in the section are consistent with ACA, Standards for Adult Correctional Institutions, standard 2-4468 (2d ed. 1985) (hereinafter ACA) and the Proposed Standards of the American Bar Association's Joint Committee on the Legal Status of Prisoners amended and approved by the American Bar Association's House of Delegates (1981), standard 6.5(b) (hereinafter ABA).

Paragraph (1)(c) establishes that in addition to an inmate's right to hold religious beliefs, an inmate has the right to be free from pressure to participate in religious practices. Records concerning inmate religious preferences may be kept only for administrative purposes such as issuance of passes to participate in religious activities, dietary restrictions or approval of special religious visits. See ABA standard 6.5(d) and (e).

Subsection (2) describes the procedure for requesting permission to participate in religious practices. The superintendent must make an initial determination that the request is based upon a religious belief and is not a subterfuge for obtaining special privileges. The superintendent should consult with the chaplain or designated staff person with appropriate religious training prior to making his or her determination. A test for what constitutes a religion is difficult to devise. The listed considerations and prohibited concerns are taken from the National Advisory Commission on Criminal Justice Standards and Goals, Corrections Standard 2.6(6) (1973) and ACA standard 2-4468. If the superintendent determines the request has a religious basis, he or she must determine whether to allow the practice. Inmates should be granted permission to pursue religious practices which do not threaten security or order and do not unreasonably burden the institution.

Subsection (4) describes the alternatives that institutions may employ to meet the religious needs of inmates. A chaplain or designated staff person with appropriate training should coordinate religious services and community resources. It is the responsibility of the institution's chaplain or designated staff person to identify the religious needs of the institution's inmate population and to recommend to the superintendent the most appropriate means to meet those needs. The chaplain or designated staff person should have a positive regard for the contributions that all religions make to the inmates involved with them. Due to the changing preferences and diversity of religious beliefs in correctional institutions, resources from outside the institution can fulfill a need in the delivery of religious services. The chaplain or designated staff person should attempt to develop volunteer services. However, if necessary to supplement the volunteer services, institutions may pay religious providers from outside the institution. See ACA standards 2-4463 and 2-4471. The chaplain or designated staff person should be responsible for the recruitment, selection, training and supervision of volunteers providing religious services. He or she should make recommendations to the superintendent concerning scheduling of religious activities, allocation of resources and propriety of requested religious activities.

Subsection (5) states the standard by which religious literature may be withheld from inmates. The standard is consistent with ABA standards 6.1(b) and (c).

Subsection (6) establishes special protections for religious symbols and attire. See ABA standard 6.5(f).

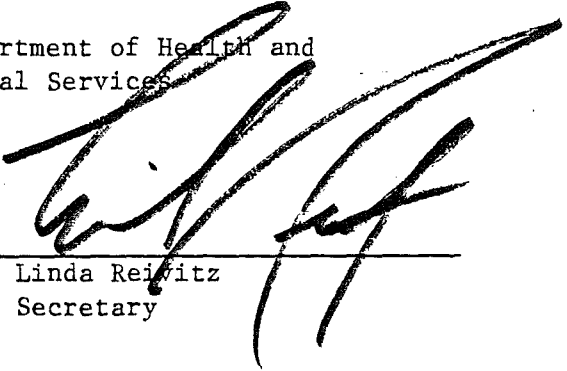
Subsection (7) allows for the special religious diets required by many religious groups. Within the constraints of budget and security, inmates should be provided with a diet sufficient to sustain them in good health without violating religious dietary laws. See ABA standard 6.5(c).

The rule contained in this order shall take effect on the first day of the month following its publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Department of Health and
Social Services

Dated: December 9, 1986

By:



Linda Reivitz
Secretary

Seal:

5-30-7/258



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Anthony S. Earl
Governor

December 9, 1986

Linda Reivitz
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

RECEIVED

DEC 10 1986

Revisor of Statutes
Bureau

Mr. Orlan Prestegard
Revisor of Statutes
9th Floor - 30 on the Square
Madison, Wisconsin 53702

Dear Mr. La Follette:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 309.61, administrative rules relating to religious rights and practices of inmates of adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules changes do not affect small businesses as defined in s. 227.114(1)(a), Stats., because they apply to adult correctional institutions and to inmates of those institutions.

Sincerely,

Linda Reivitz
SECRETARY

Enclosure