

Chapter HSS 308

ADMINISTRATIVE CONFINEMENT IN ADULT
CORRECTIONAL INSTITUTIONS

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HSS 308.01 Purpose. The purpose of this chapter is to provide for an involuntary nonpunitive status for the segregated confinement of an inmate solely because he or she is dangerous, to ensure personal safety and security within an institution.

History: Cr. Register, April, 1981, No. 304, eff. 6-1-81.

HSS 308.02 Applicability. Pursuant to authority vested in the department of health and social services under s. 227.014 (2), Stats., the department adopts this chapter which applies to the department, the division of corrections, and all adult inmates in its legal custody. It interprets ss. 53.07 and 53.08, Stats.

History: Cr. Register, April, 1981, No. 304, eff. 6-1-81.

HSS 308.03 Definitions. In this chapter:

(1) "Department" means the department of health and social services.

(2) "Director of the bureau of institutions" means the director of the bureau of adult institutions of the division of corrections, or designee.

(3) "Division" means the department of health and social services, division of corrections.

(4) "Misconduct" means behavior in violations of state or federal statutes or the administrative rules of the division.

(5) "PRC" or "program review committee" or "committee" means the program review committee created under ch. HSS 302.

(6) "Superintendent" means the superintendent at an institution, or designee.

History: Cr. Register, April, 1981, No. 304, eff. 6-1-81.

HSS 308.04 Administrative confinement. (1) Administrative confinement is an involuntary nonpunitive status for the segregated confinement of an inmate solely because he or she is dangerous, to ensure personal safety and security within the institution. Inmate misconduct shall be handled through the disciplinary procedures.

(2) An inmate is dangerous if he or she evidences a substantial probability of physical harm to other persons as manifested by:

(a) Recent homicidal or other violent behavior; or

(b) The reasonable fear held by others of violent behavior and serious physical harm, because of a recent overt act or attempt or threat to do such physical harm.

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(3) An inmate may be placed in administrative confinement only after a review by the program review committee (PRC) in accordance with this section. An inmate may be placed in administrative confinement from the general population or any form of segregation and may be confined in temporary lockup (TLU) in accordance with the departmental rules, pending a review according to this section.

(4) An inmate shall be given written notice of the review which shall include:

- (a) The allegation of his or her dangerousness;
- (b) The standard used to determine dangerousness;
- (c) The evidence to be considered at the review;
- (d) The sources of information relied upon unless such disclosure would threaten personal safety or institution security;
- (e) An explanation of the possible consequences of any decision;
- (f) An explanation of his or her rights at a review which are:
 1. The right to be present at the review;
 2. The right to deny the allegation;
 3. The right to present witnesses unless so doing threatens personal safety or institution security;
 4. The right to present documentary evidence;
 5. The right to question witnesses in accordance with the hearing procedures for major disciplinary offenses and sub. (6);
 6. The right to assistance of an advocate;
 7. The right to receive a written decision, stating the reasons for it based upon the evidence; and
 8. The right to appeal the finding; and
- (g) The date, time, and place of the review and an order that the inmate appear at the review.

(5) The review shall take place not sooner than 2 days and not later than 10 days after service of notice to the inmate. The inmate may waive these time limits in writing.

(6) At the review, the allegation of the inmate's dangerousness shall be read aloud and all witnesses for or against the inmate, including the inmate and the staff member who recommended the placement into administrative confinement, shall have a chance to speak. The PRC may require medical or physical evidence to be offered. The PRC may permit direct questions or require the inmate or his or her advocate (if any) to submit questions to the PRC to be asked of the witnesses. Repetitive, disrespectful, or irrelevant questions may be forbidden. Whenever the PRC determines that a witness shall not be called, or that the identities of sources of information shall not be relied upon, or that any statements or evidence shall not be included in a written record because personal safety or institution security is implicated, the PRC shall indicate the fact of the omission in the record.

(7) After the review, the PRC shall deliberate in private considering only the evidence presented to it, the inmate's records, and the standard for dangerousness noted under sub. (2). The PRC shall decide whether an inmate is dangerous and upon a finding of dangerousness shall place the inmate in administrative confinement. If the vote is not unanimous, the record, with the views of each PRC member, shall be forwarded to the superintendent for a decision. This information except portions regarding the identities of sources of information or statements or evidence implicating a danger to personal safety or institution security, upon disclosure, shall be shared with the inmate who may make known any additional relevant information in writing to the superintendent. The reasons for the decisions of the PRC and superintendent shall be based upon the evidence and given to the inmate in writing.

(8) An inmate shall have either the right to appeal the PRC's unanimous decision to the superintendent within 30 days of the date of the decision, and again to the director of the bureau of institutions within 30 days of the date of the superintendent's decision; or the right to appeal the superintendent's decision following a nonunanimous PRC vote under sub. (7) within 30 days of its date to the director of the bureau of institutions.

(9) An inmate's progress in administrative confinement shall be reviewed by the PRC at least once every 3 months following the procedures for review under this section.

(10) If an inmate has been in administrative confinement for 6 months or longer, the superintendent and director of the bureau of institutions shall automatically review a decision by the PRC to continue the inmate's confinement in this status and affirm, reverse, or remand it within 10 working days of the earlier decision. A decision to affirm, reverse, or remand the earlier decision must state the reasons for it based on the evidence and shall be sent to the PRC and inmate. A failure to issue a decision within the time allotted shall constitute an affirmation of the earlier decision.

(11) An inmate who fails to evidence dangerousness after spending a reasonable period of time in administrative confinement, shall be given the opportunity to show that he or she is not dangerous through gradually increased contact with persons both inside and outside of his or her cell. Such contact shall be carefully supervised to ensure the safety of others. Records of the contact shall be kept.

(12) While in administrative confinement, an inmate:

(a) Shall reside alone and have a classification of maximum security-close; supervision, movement, and program shall be in accordance with HSS 302.12 (1) (a);

(b) Shall be allowed to have any property in his or her cell that is allowed to inmates in the general population. An inmate who resides in the segregation building shall be allowed to have any property in his or her cell that is allowed to any inmate in program segregation;

(c) Shall be permitted visitation in accordance with ch. HSS 309;

(d) May receive and send mail in accordance with ch. HSS 309;

(e) Shall be permitted to shower at least once every 4 days;

(f) Shall be provided religious, social, and clinical services as possible, however, they must be provided at the inmate's cell unless otherwise authorized by the superintendent;

(g) May earn extra good time credit and compensation in accordance with chs. HSS 302 and 309;

(h) May not go to the canteen in person but may have approved items from the canteen delivered to him or her; and

(i) May have any other properties and privileges consistent with his or her status and the departmental rules, at the discretion of the superintendent.

Note: Administrative confinement under HSS 308.04 is a nonpunitive measure taken to ensure personal safety and security within the institution. This measure may be infrequently needed and of short duration but, as to a particular inmate, the reasonable needs of safety and security of others within the institution may require continuing close confinement.

Sub. (2) sets forth the standard to be used in determining dangerousness. It is similar to one of the standards used to determine dangerousness for involuntary civil commitment under s. 51.20, Stats. The analogy between the administrative confinement and involuntary civil commitment standards is apt since both are vehicles for removing dangerous persons from the population in which they live.

An inmate's dangerousness may be manifested by a recent act, violent behavior or, there may conceivably be cases in which an inmate who has acted in complete compliance with required prison behavior is nevertheless considered to be dangerous because of a reasonable fear of violent behavior and harm to others by the inmate. *Taylor v. Percy*, No. 72-C-243 (W.D. Wis. 1977), *aff'd*, unpublished order (7th Cir. 1978). This fear must be grounded in a previous act, or pattern of acts, or attempt or threat of such harm.

Inmate misconduct shall be handled through the disciplinary process. Segregation in administrative confinement shall *not* be a penalty for misconduct, but may result after a finding of dangerousness either prior to or subsequent to a disciplinary proceeding or independent of any such proceeding.

Sub. (3) requires special review by the PRC. This review combines components of the standard PRC review under ch. HSS 302 and the major disciplinary hearing. This review is provided despite the fact that the U.S. Supreme Court has indicated that such transfers may not require due process. *Meachum v. Fano*, 427 U.S. 215 (1976); *Montanye v. Haymes*, 427 U.S. 236 (1976). Due process protections are important and are afforded to few inmates affected by this provision because of the seriousness of the prolonged social isolation of administrative confinement. At this special review, dangerousness shall be the sole criteria for placement in this status. The responsibility for placement rests solely with the PRC, and the decision therefore is a classification decision. An appeal is provided to one of the highest levels in the division in recognition of the potential serious consequences of prolonged segregation in administrative confinement.

Sub. (4) requires that adequate written notice of the review shall be given the inmate. If necessary, an explanation of the notice shall be made in accordance with the inmate's needs. Pars. (d) and (f) 3 note that safety and security may be breached if certain testimony or evidence is allowed into the open record. In such cases, the PRC shall deal with the omissions as noted under sub. (6). See the sections and notes on procedures for major disciplinary hearings.

Sub. (5) provides for the time of the review. The inmate may waive these time limits. To ensure that any waiver is a knowing intelligent one, the inmate must be informed of what the review will be like if he or she waives the time limits; and the waiver must be in writing. The waiver is *not* an admission of dangerousness.

Sub. (9) provides for a review of the inmate's status at least once every 3 months. A review may occur earlier at the discretion of the PRC. This time period balances fairness to the inmate with the practicalities of providing for a meaningful review by the PRC.

Sub. (10) reflects the view that administrative confinement may have serious consequences and that extreme care should be exercised at the highest level in assessing an inmate's dangerousness and need for enduring close confinement.

An inmate shall be given every opportunity consistent with his or her status and behavior to show that he or she is not dangerous. Sub. (11). This may be done by increasing his or her

personal contacts through enhanced visitation privileges and movement from the cell. Great care should be taken to ensure the safety of others and to keep adequate records.

This gradual "stepping-down" process allows the inmate to demonstrate that he or she is no longer dangerous. It also allows the PRC to better judge the likelihood of the inmate evidencing dangerousness if released from this status. However, compliance with departmental rules alone may not be sufficient evidence of nondangerousness, and an inmate may continue to be confined if there is reasonable fear of violent behavior or harm to others.

This chapter is in substantial accord with the provisions regarding the special management of inmates in the American Correctional Association's *Manual of Standards for Adult Correctional Institutions* (1977), standards 4201, 4203-4206, 4208, 4210, 4212-4221, 4381, and 4383.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81.