

Chapter HSS 311**OBSERVATION STATUS IN ADULT CORRECTIONAL INSTITUTIONS**

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HSS 311.01 Purpose. The purpose of this chapter is to provide for an involuntary or voluntary nonpunitive status used for the temporary confinement of an inmate to ensure his or her safety and the safety of others if the inmate is mentally ill and dangerous or has a medical problem that requires separation from the population for treatment. This is consistent with the division's goal of ensuring personal safety and security within an institution.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

HSS 311.02 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, 53.08, and 53.36, Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

HSS 311.03 Definitions. In this chapter:

(1) "Adjustment committee" or "committee" means the adjustment committee authorized under the departmental disciplinary rules ch. HSS 303 to impose disciplinary measures for inmate misconduct.

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

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

(4) "Misconduct" means behavior in violation of state or federal statutes or the rules of the department.

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

(6) "Security director" means the security director of an institution, or designee.

(7) "Shift captain" means the shift captain of an institution, or designee.

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

(9) "TLU" or "temporary lockup" is described under the departmental disciplinary rules, ch. HSS 303.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

HSS 311.04 Observation. (1) Observation is an involuntary or voluntary nonpunitive status used for the temporary confinement of an inmate to ensure his or her safety and the safety of others if:

(a) The inmate is mentally ill and dangerous to self or others; or

(b) The inmate has, or is suspected of having, a medical problem such as tuberculosis, alcoholism, drug dependence, or a communicable disease or infection that requires separation from the population for treatment by a physician.

(2) An inmate is mentally ill if there is substantial evidence that he or she has a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life in an institution, but does *not* include alcoholism.

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

(a) Recent homicidal or other violent behavior; or

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

(c) Serious self-destructive behavior or such a threat; or

(d) The inability to cope with life in the institution to the degree that self or others are thereby endangered.

(4) An inmate may be placed in observation by:

(a) A clinical psychologist, clinical social worker, or physician;

(b) The adjustment committee;

(c) The superintendent;

(d) A clinical or medical services staff member if a clinical psychologist, clinical social worker, or physician is not available for consultation either directly or by telephone; or

(e) The security director or shift captain if a clinical psychologist, clinical social worker, or physician is not available for consultation either directly or by telephone.

(5) (a) If an inmate is placed in observation by the adjustment committee, superintendent, staff member, shift captain, or security director, the inmate shall be informed orally of the reasons for the placement. A clinical psychologist, clinical social worker, or physician shall be notified immediately of the placement and should examine the inmate within 24 hours, but in no case later than 5 days after placement. Within 24 hours or as soon as feasible after the examination, the inmate shall receive written notification of the reasons for the placement.

(b) If the inmate is placed in observation under sub. (1) (a), the examination may result in the inmate's continued confinement in observation for a period of 10 working days from the date of examination or immediate release from observation.

(c) If the inmate is placed in observation under sub. (1) (b) the inmate shall receive periodic reviews of this status by a physician as needed and may appeal under sub. (20) (a) at any time following decision to continue the status.

(d) The appropriate privileges and properties to be allowed the inmate in observation shall be determined after a consultation with the supervisor of the unit (see sub. (15)).

(6) Any staff member or inmate may recommend to any person noted under sub. (4) that an inmate be placed in observation. The staff member or inmate shall state the reasons for the recommendation and describe the inmate's conduct that underlies the recommendation.

(7) No inmate may remain in observation for longer than 10 consecutive working days from the examination under sub. (5) if admitted under sub. (1) (a) unless notice of review of the inmate's status in accordance with sub. (9) has been served and mandatory commitment proceedings have been initiated pursuant to sub. (8). An inmate admitted under sub. (1) (b) may remain in observation for a reasonable period of time for diagnosis and, if necessary, treatment until the disease is in remission or the inmate has passed the communicable stage of the disease or infection.

(8) If, in the opinion of the attending clinical psychologist, clinical social worker, or physician, an inmate in observation under sub. (1) (a) is in need of additional treatment at a mental health or medical facility, such recommendation shall be made to the superintendent for approval and the inmate may be transferred pursuant to s. 51.37 (5) or 51.20, Stats.

(9) If there is substantial evidence that an inmate is mentally ill and dangerous and requires continued confinement in observation under sub. (1) (a) in excess of the 10 working day period noted under sub. (7) and commitment proceedings have been initiated, a clinical psychologist, physician, or clinical social worker may make a decision for continued confinement of the inmate following notice under sub. (10). An inmate may then be continued in observation after a review in accordance with this section.

(10) An inmate placed in observation under sub. (1) (a) shall be given written notice within 10 working days of examination under sub. (5) of the review under sub. (9). Notice shall include:

- (a) The allegation of the inmate's mental illness and dangerousness;
- (b) The standards used to determine mental illness and 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 the inmate's rights at the review which are:
 1. The right to be present at the review;
 2. The right to deny the allegation;

3. The right to an advocate in accordance with HSS 303.79 and the right to present or have the advocate present information obtained from witnesses;

4. The right to present documentary evidence;

5. The right to question witnesses in accordance with sub. (12);

6. The right to receive a written decision, stating the reasons for it based upon the evidence; and

7. The right to appeal the finding in accordance with sub. (20); and

(g) The date, time, and place of the review and an order that the inmate appear at the review.

(11) The review under sub. (9) shall take place not sooner than 2 working days and not later than 5 working days after service of notice to the inmate. The inmate may waive this review or the time limits under this sub.. The waiver shall be in writing.

(12) At the review under sub. (9), the allegations of the inmate's dangerousness and mental illness shall be read aloud and all witnesses present including the inmate and the staff member who recommended the placement into observation, shall have a chance to speak. The clinical psychologist, physician, or clinical social worker may require medical evidence to be offered. Direct questions may be permitted or the inmate may be required to submit questions to be asked of the witnesses. Repetitive, disrespectful, or irrelevant questions may be forbidden. Whenever the clinical psychologist, physician, or clinical social worker determines that a witness shall not be called, or that the identities of sources of information relied upon or any statements or evidence should not be included in a written record because personal safety or institution security is implicated, the fact of the omission in the record shall be recorded.

(13) After the review, the clinical psychologist, physician, or clinical social worker shall deliberate in private concerning only the evidence presented, the inmate's records, and the standard for dangerousness as defined under sub. (3) and mental illness as defined under sub. (2). The clinical psychologist, physician, or clinical social worker shall decide whether an inmate is mentally ill and dangerous and, if so, the inmate shall be continued in observation under sub. (1) (a). The reasons for the decision shall be given to the inmate in writing.

(14) There shall be a review of a inmate in observation under sub. (1) (a) at least once every 15 working days and the procedures for review under this section shall be followed.

(15) An inmate in observation shall be confined alone in a comfortably warm, well-ventilated, sanitary, secure cell equipped with an observation port and shall be entitled to the same privileges and properties as an inmate in the general population *unless*:

(a) The staff member under sub. (4) who places the inmate in observation reasonably believes that these privileges or properties may be used by the inmate, or another inmate also in observation, for self harm or to harm others; or

(b) The properties cannot be moved conveniently to the observation cell; or

(c) The privileges cannot be offered due to the secured nature of the observation unit.

(16) A staff member shall have immediate access to an inmate admitted under sub. (1) (a), shall observe the inmate at least once every 15 minutes, and shall accompany the inmate at all times while out of the cell.

(17) If any of the privileges or properties noted under sub. (15) is used by the inmate or another inmate also in observation for self harm or harm to others, it shall be withdrawn immediately by the staff member noting the problem; and the security director shall reevaluate and either approve the withdrawal or reinstate the privilege or property as soon as possible.

(18) Unless there is a continuation under sub. (9), or a transfer or commitment under sub. (8), the inmate shall be returned to previous status and assignment if possible and advisable or shall be reassigned by the PRC after expiration of the initial 10 working day period under sub. (7). An inmate may be returned at any earlier time upon the written recommendation of the attending clinical psychologist, clinical social worker, or physician. Similarly, after any termination of a continuation or after return transfer from a mental health or medical facility, the inmate shall resume his or her assignment or be reassigned.

(19) All placements into, releases from, and transfers from observation as well as any suicide attempts prior to or during placement in observation shall be reported to the security office. The attending physician, clinical psychologist, or clinical social worker shall be informed by the security director of any suicide attempts made prior to placement in observation.

(20) (a) An inmate placed in observation under sub. (1) (a) who does not receive timely reviews in accordance with this section or who has had a decision under sub. (13), as well as any inmate placed in observation under sub. (1) (b) for more than 5 days who wishes to challenge his or her placement, shall have the immediate right to appeal such placement to the directors of the bureau of adult institutions and program resources. The directors of the bureaus of adult institutions and program resources may request an additional clinical or medical assessment of the inmate's condition prior to the directors' written decision which shall be issued to the inmate and appropriate staff within 5 working days of receipt of the appeal.

(b) An inmate may appeal a decision under sub. (5) (a) to the administrator who shall issue a written decision within 5 working days.

(21) A daily entry shall be made in the inmate's record describing progress with treatment. Specific descriptions of incidents that may reveal the inmate's mental illness and dangerousness, or lack of these, or other medical condition shall be recorded.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

Note: HSS 311.04 provides for the temporary confinement of an inmate who is mentally ill and dangerous or who has, or is suspected of having, a disease or condition requiring treatment and isolation from the population.