

## Chapter DOC 311

## APPENDIX

**Note: DOC 311.04.** Observation is a nonpunitive measure taken to ensure the safety of the inmate or others during the crisis period. Hopefully, by confining the inmate under observation for a short time, the personal crisis will subside without any harm being done to the inmate or to others. Examples of personal crisis are situations in which an inmate receives discouraging or disheartening news from his or her family and evidences a mental health problem and dangerousness and temporarily needs emotional support and observation because of the possibility of attempted self harm or harm to others; or when an inmate is in an emotional depression and needs to be carefully watched because of the possibility of attempted self harm or harm to others; or when an inmate has attempted to commit suicide and shows signs of another attempt. Sometimes an inmate requires isolation because his or her mental condition has deteriorated to the point that the inmate may be victimized by others or the inmate presents a danger to others.

Alcoholic and drug dependent inmates shall be placed in observation only if treatment is necessary and cannot be provided while the inmate is in the general population.

An inmate who violates a disciplinary rule and satisfies the criteria under sub. (1), may be placed in observation under this section prior to or after disciplinary action. This sometimes occurs because the individual's mental illness becomes apparent during the disciplinary process. Typically, such a mentally ill person is not disciplined, but is placed in observation status. Confinement in observation is *not* a penalty for rule infractions, however. Thus observation is distinguished from the punitive segregated statuses such as temporary lockup (TLU), control, program, or adjustment segregation. Administrative confinement is reserved for an inmate who is found dangerous but not mentally ill. An inmate who is mentally ill and dangerous may be transferred to a medical or mental health facility under s. 51.37 (5) or 51.20, Stats., for treatment if release into the previous status is deemed unwise after the stay in observation. The department must initiate such proceedings within 15 working days of the inmate's placement in observation.

Inmate misconduct is handled through the disciplinary process. Placement in observation is *not* a penalty for misconduct, but may result after a finding of mental illness and dangerousness either prior to or subsequent to a disciplinary proceeding or independent of any such proceeding.

Subsection (2) and (3) set forth in the standards to be used in determining dangerousness and mental illness. They are similar to the standards used to determine dangerousness and mental illness for involuntary civil commitment under s. 51.20, Stats. The analogy between the standards is apt since both are vehicles for removing dangerous persons from the population in which they live.

Subsection (4) authorizes certain people to place an inmate in observation. Ideally, placement should be made by highly trained personnel, and the clinical psychologist, clinical social worker, physician, or superintendent should authorize all placements. However, experience teaches that this is not always possible. Thus, others are authorized to place inmates in observation, but in such cases the clinical psychologist, clinical social worker, or physician review that placement within 24 hours and decide on the necessity of either the examination, continued confinement with allowed privileges, and properties or the immediate release of the inmate from observation. It is anticipated that, if an inmate is placed in observation by a staff member, the inmate will be in observation only overnight prior to such examination. This procedure is in the inmate's best interest because it ensures the inmate's protection if there is indeed a crisis.

The kinds of property and privileges allowed in observation may differ substantially, and great care should be exercised in determining which properties and privileges should be allowed an inmate.

If the time limits in sub. (7) for observation under sub. (1) (a) are not sufficient to properly handle the crisis, the institution must initiate civil

commitment procedures under s. 51.20, Stats., or transfer procedures under s. 51.37 (5), Stats. However, experience teaches that mental health institutions are reluctant to accept transfers of inmates for confinement or transfer under ss. 51.20 and 51.37 (5), Stats., and hopefully the provisions under sub. (9) will be adequate to handle an inmate's crisis.

Subsection (9) provides that an inmate may be continued in observation after a special review. This review contains due process protections of the major disciplinary hearing. Due process protections are important and are afforded the few inmates affected by this provision because the seriousness of this confinement parallels civil commitment. At this special review, dangerousness *and* mental illness shall be the only criteria for placement in this status. Both findings are prerequisites for continuation of confinement in observation.

Subsection (10) provides the inmate with adequate written notice of the review. Subsections (10) (d) and (10) (f) 3 note that safety and security may be breached if certain testimony or evidence is allowed into the open record. In such cases, review shall deal with the omissions as noted under sub. (12). See the major disciplinary procedures.

Subsection (11) provides for the time of the review. The inmate may waive the review as well as the time limits. To ensure that any waiver is a knowing intelligent one, the inmate must be informed of his or her right to a review and what that entails; 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 or mental illness.

Subsection (14) provides for a review of the inmate's status at least once every 15 working days. An earlier review may occur. This time period balances fairness to the inmate with the practicalities of providing for a meaningful review.

Placement of an inmate in observation status is not thought to implicate the interests cited in *Vitek v. Jones* 100 s. ct. 1254 (1980). In *Vitek*, the transfer was to a separate institution which was solely for mentally ill people. A person in observation status in Wisconsin frequently will remain in his or her own cell or room. Sometimes, the person is transferred to a different cell, for their own protection or so that they can be more carefully observed to prevent self-destructive conduct.

More important, if an inmate is in observation status for 15 days, commitment proceedings pursuant to ch. 51, Stats., are commenced. These proceedings do more than *Vitek* requires for the transfer of an inmate to a mental health institution.

A staff member must have direct access to an inmate in the event that a problem develops, and a staff member must observe the inmate often to ensure that the inmate is safe. It is also important that the staff member accompany the inmate, for the inmate's protection, at all times while he or she is out of the cell. Sub. (16).

If observation is not continued under sub. (9) or the inmate is not transferred under s. 51.20 or 51.37 (5), Stats., the inmate is returned to his or her previous status. Since observation is a nonpunitive status, every attempt should be made to have inmates resume previous assignments. If the attending psychologist, clinical social worker, or physician and inmate believe that a return to the assignment would have a harmful effect (e.g., rekindle the emotions that prompted the crisis), the inmate would be recommended for reassignment by the PRC. Sub. (18).

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 4201-4221, 4381, and 4383.