

## Chapter DOC 311

### OBSERVATION STATUS

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**Note:** Chapter HSS 311 was renumbered Chapter DOC 311 and revised under s. 13.93 (2m) (b) 1., 2., 6. and 7., Stats., Register, April, 1990, No. 412. Chapter DOC 311, as it existed on May 31, 1998, was repealed and a new chapter DOC 311 was created, Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.01 Purpose.** The purpose of this chapter is to provide for an involuntary or voluntary nonpunitive status to be used for the temporary confinement of an inmate to ensure the inmate's safety and the safety of others if the inmate is mentally ill and dangerous, is dangerous to himself or herself, has a medical problem that requires separation from the population for treatment, or refuses testing for a communicable illness. This is consistent with the department's goal of ensuring personal safety and security within an institution.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.02 Applicability.** Pursuant to authority vested in the department of corrections under s. 227.11 (2), Stats., the department adopts this chapter which applies to the department, the division and all inmates in its legal custody. It interprets ss. 302.07, 302.08 and 302.36, Stats.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.03 Definitions.** In this chapter:

- (1) "Administrator" means the administrator, division of adult institutions, department of corrections, or his or her designee.
- (2) "Clinical services staff member" means a clinician, crisis intervention worker, or psychological services associate employed by the department.
- (3) "Clinician" means an individual trained as a clinical psychologist or an individual employed as a staff psychologist by the department.
- (4) "Communicable illness" means an illness caused by a disease that the department of health services determines, under ch. DHS 145, to be communicable.
- (5) "Crisis intervention worker" means a crisis intervention worker employed by the department or a psychologist designated by the warden to act as a crisis intervention worker.
- (6) "Department" means the department of corrections.
- (7) "Division" means the division of adult institutions, department of corrections.
- (8) "Health services staff member" means a physician, registered nurse or physician's assistant employed by the department.
- (9) "Physician" means an individual licensed as a physician in the state of Wisconsin and employed by the department.
- (10) "Secretary" means the secretary of the department of corrections, or his or her designee.
- (11) "Security director" means the security director of an institution, or his or her designee.
- (12) "Shift captain" means the shift captain of an institution, or his or her designee.
- (13) "Warden" means the warden of an institution, or his or her designee.

(14) "Working days" means all days except Saturdays, Sundays, and legal holidays.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98; corrections in (4) made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, May, 1998, No. 509; corrections in (4) made under s. 13.92 (4) (b) 6. and 7., Stats., Register June 2011 No. 666.

**DOC 311.04 Mental health placement. (1)** Observation for mental health purposes is an involuntary or a voluntary nonpunitive status used for the temporary confinement of an inmate to ensure the safety of the inmate or the safety of others. An inmate may be placed in observation for mental health purposes for one of the following reasons:

- (a) The inmate is mentally ill and dangerous to himself or herself or others.
- (b) The inmate is dangerous to himself or herself.
- (2) An inmate is mentally ill if there is substantial evidence that the inmate 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 there is a substantial probability that the inmate will cause physical harm to himself or herself or others as manifested by any of the following:
  - (a) Recent homicidal or other violent behavior.
  - (b) The reasonable belief of others that violent behavior and serious physical harm is likely to occur because of a recent overt act, attempt or threat to do such physical harm.
  - (c) Serious self-destructive behavior or a threat of such behavior.
  - (d) The inability to cope with life in the institution to the degree that himself or herself or others are thereby endangered.

(4) An inmate may be placed in observation by any of the following:

- (a) A clinician, crisis intervention worker or physician.
- (b) The warden.
- (c) A registered nurse or physician's assistant, if a person under par. (a) is not available for consultation either directly or by telephone.
- (d) The security director or shift captain if a clinician, crisis intervention worker or physician is not available for consultation either directly or by telephone.

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

(6) At the time of placement the inmate shall be informed orally of the reasons for placement.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.05 Examination of mental health placement. (1)** An inmate placed in observation shall be examined by

a clinician, crisis intervention worker or physician. The examination shall include a direct personal evaluation and a review of recent relevant information.

(2) If an inmate is placed in observation by the warden, registered nurse, physician's assistant, security director or shift captain, a clinician, crisis intervention worker or physician shall be notified immediately of the placement and shall examine the inmate within 2 working days.

(3) Within 24 hours or as soon as possible after the examination, the clinician, crisis intervention worker or physician shall advise the inmate orally of the finding of the examination. Written results of the examination shall be provided to the inmate within 10 working days of the examination.

(4) An inmate in observation for a mental health placement will be examined by a clinician, crisis intervention worker or physician at least every 2 working days.

(5) Examination by a clinician, crisis intervention worker or physician may result in a recommendation for continued placement in observation or in a recommendation for the inmate's immediate release from observation.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.06 Continued mental health placement.**

(1) No inmate in observation for a mental health placement may remain in observation for longer than 15 working days from the initial examination without a clinician, crisis intervention worker or physician making a decision for continued placement.

(2) An inmate placed in mental health observation due to mental illness and dangerousness may continue in the placement after 15 working days if both of the following situations exist:

(a) The proceedings for the inmate's civil commitment under ch. 51, Stats., have been initiated or the commitment obtained.

(b) The inmate has been served notice of the review of continued mental health placement under s. DOC 311.06 (2).

(3) An inmate placed in mental health observation due to dangerousness to self may continue in the placement after 15 working days only if both of the following situations exist:

(a) The proceedings for a review of dangerousness to himself or herself have been initiated.

(b) The inmate has been served notice of the review of continued mental health placement under s. DOC 311.06 (3).

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.07 Review of continued mental health placement.**

(1) A clinician, crisis intervention worker or physician may continue a mental health placement in observation for longer than 15 working days if there is a review of continued mental health placement under this section.

(2) The inmate shall be given written notice of the review prior to the 15th working day of his or her placement and no less than 2 working days prior to the review. The notice shall include all of the following:

(a) The allegation of the inmate's mental illness and dangerousness to himself or herself or dangerousness to others.

(b) The standards used to determine mental illness and dangerousness to himself or herself or dangerousness to others.

(c) The evidence to be considered at the review.

(d) The sources of information relied upon unless such disclosure would threaten the personal safety of the person providing the information or institution security.

(e) An explanation of the possible consequences of any decision regarding the inmate's mental health placement.

(f) Notice of the inmate's rights at the review. The notice shall include all of the following:

1. The right to be present at the review.

2. The right to deny any allegation which relates to the inmate's observation status.

3. The right to a staff representative in accordance with s. DOC 303.83.

**Note:** Subd. 3. is shown as amended by CR 11-022 eff. 1-1-15. Prior to 1-1-15 it reads:

3. The right to an advocate in accordance with s. DOC 303.78.

4. The right to present or have the advocate present information obtained from witnesses.

5. The right to present documentary evidence.

6. The right to question witnesses.

7. The right to receive a written decision, stating the reasons for the decision based upon the evidence.

8. The right to appeal the review of dangerousness to self decision.

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

(3) The review 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 subsection. The waiver shall be in writing.

(4) At the review, the clinician, physician or crisis intervention worker shall do all of the following:

(a) Read aloud the allegations of the inmate's dangerousness and mental illness or dangerousness to himself or herself.

(b) Provide all witnesses present, including the inmate and the staff member who recommended the placement into observation, a chance to speak.

(c) Require any relevant medical and psychological evidence to be offered.

(d) Allow questioning of the witnesses. Questioning may be direct or the inmate may submit questions to be asked of the witnesses.

(e) Prohibit repetitive, disrespectful or irrelevant questions.

(f) Determine whether a witness shall be called.

(g) Determine whether the identities of sources of information relied upon or any statements or evidence should be included in the written record because personal safety or institution security is implicated.

(h) Record the fact of the omission of the identities of sources of information in the record.

(5) After the review, the clinician, crisis intervention worker or physician, shall deliberate in private on all of the following:

(a) The evidence presented and the inmate's records.

(b) Whether the standard for dangerousness has been met.

(c) Whether the standard for mental illness has been met.

(6) After deliberation, the clinician, crisis intervention worker, or physician shall decide all of the following:

(a) Whether the inmate is mentally ill and dangerous or whether the inmate is dangerous to himself or herself.

(b) Whether the inmate is to continue in observation.

(7) The clinician, crisis intervention worker or physician shall give reasons for the decision to the inmate in writing within 2 working days after the review.

(8) There shall be a clinical review of an inmate in observation at least once every 15 working days and the procedures for review shall be followed.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98; correction in (2) (f) 3. made under s. 13.93 (2m) (b) 7. Stats., Register August 2001 No. 548; CR 11-022: am. (7) Register September 2014 No. 705, eff. 1-1-15.

**DOC 311.08 Civil commitment.** If, in the opinion of the attending clinician, crisis intervention worker or physician, an inmate in observation is in need of additional treatment at a mental health or medical facility, such recommendation shall be made to the warden for approval of the transfer and the inmate may be transferred pursuant to s. 51.37 (5) or 51.20, Stats.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.09 Review of dangerousness to self.**

(1) If, in the opinion of the attending clinician, crisis intervention worker or physician, an inmate in observation is in need of placement in observation longer than 15 working days from the examination under s. DOC 311.05, the attending clinician, crisis intervention worker or physician shall refer the decision to the administrator for review.

(2) The administrator shall assign a psychologist from an institution other than the institution seeking the continued observation placement to conduct the review, to examine the inmate and to review the documentation of the case.

(3) The review shall include all of the following:

- (a) Reasons for belief of dangerousness to himself or herself.
- (b) Reasons for need for continued placement in observation.
- (c) Reasons alternative interventions are inappropriate or inadequate.

(4) The assigned psychologist shall do all of the following:

- (a) Submit a written report of the examination.
- (b) Review the records and findings regarding dangerousness to himself or herself.
- (c) Determine the need for continued placement in observation.
- (d) Determine the availability of alternative interventions.

(5) The inmate and his or her advocate, if one is chosen, shall receive a copy of all of the following:

- (a) The documentation of the review of continued commitment.
- (b) The findings of the review of continued commitment.
- (c) The referral for review of dangerousness to himself or herself.
- (d) The report of the appointed evaluator.

(6) The inmate and the advocate may respond in writing within 5 working days to any or all of the following information:

- (a) The allegations of dangerousness to himself or herself.
- (b) The need for continued placement in observation.
- (c) The availability of alternative interventions.

(7) The assigned psychologist shall decide whether an inmate is dangerous to himself or herself and whether the inmate is in need of continued placement in observation. The reasons for the decision shall be given to the inmate in writing within 2 working days after the decision is made.

(8) An assigned psychologist shall conduct a review of dangerousness to self of an inmate in mental health observation at least once every 30 working days to determine whether the inmate is dangerous to himself or herself, and the procedures for review shall be followed.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.10 Medical placement.** (1) Observation for medical purposes is an involuntary or voluntary, nonpunitive status used for the temporary confinement of an inmate to ensure the inmate's safety and the safety of others if one or both of the following exists:

(a) The inmate has, or is suspected of having, a medical problem that requires separation from the population for treatment by a physician.

(b) An inmate is refusing testing for communicable illness.

(2) An inmate may be placed in observation by any of the following:

- (a) A physician.
- (b) The warden.

(c) A clinical or health services staff member, the security director or the shift captain, if a physician is not available for consultation either directly or by telephone.

(3) Any staff member or inmate may recommend to any person authorized to place an inmate in observation that an inmate be placed in observation. The staff member or inmate shall state the reasons for the recommendation and describe the inmate's symptomatology that underlies the recommendation. The inmate shall be provided with a written copy of the reasons for the recommendation within 10 working days of the recommendation.

(4) At the time of placement the inmate shall be informed orally of the reasons for placement.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.11 Medical examination.** (1) An inmate placed in observation shall be examined by a physician. The examination shall include a direct personal evaluation and a review of relevant information.

(2) If an inmate is placed in observation by a person under s. DOC 311.10 (2), a physician shall be notified immediately of the placement and shall examine the inmate within 2 working days.

(3) Within 24 hours or as soon as possible after the examination, the inmate shall be advised of the reasons for the placement and findings of the examination. The physician shall provide written notification of the findings of the examination within a reasonable period of time.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.12 Continued medical placement.** (1) An inmate placed in medical observation may remain in medical observation for a reasonable period of time for diagnosis and treatment or as needed, as determined by a physician, until such time as a physician determines that the inmate no longer requires separation from the population.

(2) An inmate placed in observation shall receive periodic reviews of the medical placement status by a physician. The frequency of the periodic review shall be based on the inmate's medical diagnosis and the physician's professional judgment.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.13 Appeals.** (1) An inmate placed in observation shall have the immediate right to appeal such placement decision to the administrator under any of the following circumstances:

(a) The inmate has not received a timely review under s. DOC 311.05 (2).

(b) The inmate in observation for mental health purposes due to dangerousness to himself or herself wishes to challenge the review of dangerousness to self decision.

(2) The administrator may request an additional clinical or medical assessment of the inmate's condition prior to the administrator's written decision which shall be issued to the inmate and clinical or medical staff within 5 working days of receipt of the appeal.

(3) An inmate may appeal the administrator's written decision to the secretary who shall issue a written decision within 5 working days of the appeal.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.14 Conditions of confinement while in observation.** (1) An inmate in observation shall be confined alone in a well-ventilated, sanitary, secure cell equipped with an observation port. Conditions, including privileges and properties, shall, insofar as possible, be the same as those in the status from which the inmate came prior to the observation placement. A staff member who is authorized in s. DOC 311.04 (4) to place an inmate in observation may change the inmate's condition of confinement if the staff member reasonably believes any of the following:

(a) These privileges or properties may be used by the inmate, or another inmate also in the observation unit, for self-harm or to harm others.

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

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

(d) The properties or privileges are clinically or medically contraindicated.

**(2)** The appropriate privileges and properties to be allowed the inmate in observation shall be determined by the clinician, crisis intervention worker or physician at the time of the examination of the inmate, after a consultation with the supervisor of the unit.

**(3)** If any of the privileges or properties are used by the inmate or another inmate also in the observation unit for self-harm or harm to others, or otherwise seriously disrupts the safe, efficient operation of the observation unit, the privileges or properties shall be withdrawn immediately by the staff member noting the problem.

**(4)** The warden has final authority regarding privileges or

property of an inmate in observation. The warden shall review and either approve or disapprove a decision regarding inmate privileges or properties. The warden shall take appropriate and prompt action.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.15 Monitoring and recording. (1)** For an inmate placed in observation for mental health purposes, a staff member shall have immediate access to the inmate and shall accompany the inmate at all times while in unsecured areas.

**(2)** Staff shall observe and record the activities of the inmate at least once every 15 minutes with appropriate documentation made of significant incidents involving the inmate.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.

**DOC 311.16 Release from observation.** Upon release from observation the inmate shall be returned to previous status and assignment if possible and advisable.

**History:** Cr. Register, May, 1998, No. 509, eff. 6-1-98.