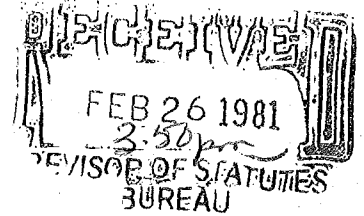


HSS 308

CERTIFICATE

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



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department to hereby certify that the annexed rules relating to administrative confinement for adult correctional inmates were duly approved and adopted by this department on February 26, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such 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 26th day of February, A.D. 1981

Donald E. Percy, Secretary  
Department of Health and Social Services

SEAL:

ORDER OF THE DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES ADOPTING RULES

Relating to a rule concerning administrative confinement for adult correctional inmates.

Analysis prepared by the Department of Health and Social Services.

This rule interprets sections 53.07 and 53.08, Wis. Stats., regarding the maintenance of order and humane treatment and punishment of inmates in adult correctional institutions. A related proposed rule, ch. HSS 311, concerning observation status also interprets sections 53.07 and 53.08, Wis. Stats., and provides for the temporary confinement of an inmate to ensure his or her safety and the safety of others if the inmate is suspected of being mentally ill and dangerous or is suspected of having a disease that requires separation from the population for treatment.

This rule provides for an involuntary nonpunitive status for the segregated confinement of an inmate solely because he or she is dangerous, for the purpose of ensuring personal safety and security within an institution. The inmate is afforded substantial due process rights prior to placement in this status.

Pursuant to authority vested in the Department of Health and Social Services by section 227.014(2), Wis. Stats., the department hereby adopts rules interpreting sections 53.07 and 53.08, Wis. Stats., as follows:

Chapter HSS 308 of the Wisconsin Administrative Code is adopted to read:

HSS 308

ADMINISTRATIVE CONFINEMENT IN  
ADULT CORRECTIONAL INSTITUTIONS

HSS 308.01 Purpose  
HSS 308.02 Applicability

HSS 308.03 Definition  
HSS 308.04 Administrative Confinement

ca/3

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.

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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 violation 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.

- (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 subsection (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.

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 thirty (30) days of the date of the decision, and again to the director of the bureau of institutions within thirty (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 subsection (7) within thirty (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 three (3) months following the procedures for review under this section.
- (10) If an inmate has been in administrative confinement for six (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 ten (10) working days of the earlier decision. A decision to affirm, reverse, or remand the earlier decision must state

- (e) Shall be permitted to shower at least once every four (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.

Subsection (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.



Subsection (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. Subsections (4)(d) and (4)(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 subsection (6). See the sections and notes on procedures for major disciplinary hearings.

Subsection (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.

Subsection (9) provides for a review of the inmate's status at least once every three (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. To avoid needless repetition, the PRC need consider only the evidence and findings of earlier reviews and new facts or allegations regarding an inmate's dangerousness not considered at previous hearings.


Subsection (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.

The rule contained in this order shall take effect as provided in section  
227.026(1), Wis. Stats.

Dated: 2-26-81

Department of Health and Social Services

Seal:

  
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Donald E. Percy, Secretary

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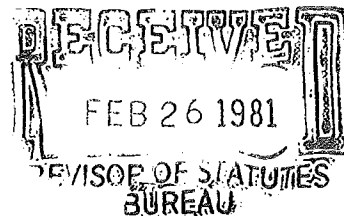
State of Wisconsin \

DEPARTMENT OF HEALTH & SOCIAL SERVICES

OFFICE OF THE SECRETARY  
1 WEST WILSON STREET  
MADISON, WISCONSIN 53702

February 26, 1981

Mr. Orlan Prestegard  
Revisor of Statutes  
411 West, State Capitol  
Madison, Wisconsin 53702



Dear Mr. Prestegard:

As provided in section 227.023, Wis. Stats., there is hereby submitted a certified copy of HSS 308 relating to administrative confinement for adult correctional inmates.

This rule is being submitted to the Secretary of State as required by section 227.023, Wis. Stats.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. E. Percy'.

Donald E. Percy  
SECRETARY

Enclosure