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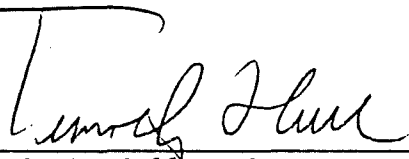
CERTIFICATE

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

I, Timothy F. Cullen, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to approval and supervision of activity groups for inmates of adult correctional institutions, discipline for unauthorized group activities and administrative confinement for gang leaders were duly approved and adopted by this Department on April 30, 1987.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the 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 30th day of April, 1987.



Timothy F. Cullen, Secretary  
Department of Health and Social Services

SEAL:

RECEIVED

MAY 4 1987  
10:05am.  
Revisor of Statutes  
Bureau

7-1-87

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
RENUMBERING, AMENDING AND CREATING RULES

To renumber HSS 303.02(9) to (18); to amend HSS 303.20 and Note, 308.04 (2) and Note; and 308.04(4)(e)4; and to create HSS 303.02(9) and 309.365; relating to approval and supervision of activity groups for inmates of adult correctional institutions, discipline for unauthorized group activities and administrative confinement for gang leaders.

Analysis Prepared by the Department of Health and Social Services

This order creates a new rule, s. HSS 309.365, which establishes procedures and criteria for approval of activity groups for inmates of adult correctional institutions. Activity groups are groups organized by inmates, with the approval of the superintendent, to promote and provide educational, social, religious, cultural, recreational and other leisure-time activities. The Department encourages the formation of activity groups because these groups can help inmates adjust to the prison environment and can provide them with emotional and other support. At the same time, the Department must guard against the formation of groups that threaten, intimidate, coerce or harass inmates, advocate violence, or encourage violations of statutes, rules, or institutional policies and procedures.

Section HSS 309.365 requires the approval of the institution superintendent before a group of inmates can refer to itself by a collective name, conduct meetings, or engage in organized activities. The rule also specifies factors which the superintendent must consider in deciding whether to approve an activity group, identifies types of groups which the superintendent may not approve, specifies conditions which the superintendent may place on approved activity groups, requires each institution to develop policies concerning responsibilities of staff advisors and the financial and off-grounds activities of groups, and lists reasons for which the superintendent may withdraw approval for a group.

This order also amends existing rules to make it an offense to participate in group action that has not been approved by the institution superintendent under s. HSS 309.365. In particular, the proposed rules prohibit activities such as giving signs and wearing insignia which promote identification with inmate gangs. Although this conduct taken alone might not seem serious, in a correctional setting it erodes staff authority and is a prelude to more serious conduct offenses and prison disturbances. The proposed rules also amend s. HSS 308.04(2)(b) to make it clear that identification of an inmate as a gang leader is sufficient evidence of dangerousness to warrant administrative confinement, a nonpunitive segregated confinement, to ensure that security and order are maintained in an institution.

Until the recent promulgation of an emergency rule, the Department did not have a rule relating to inmate activity groups. Authorization and supervision of these groups was left up to each correctional institution. The need for a Department rule became apparent as certain disruptive groups with their origins in city youth gangs have infiltrated the nation's prisons. Although gangs in Wisconsin do not control program assignments or goods and services as they do in many states, gangs here and elsewhere have used threats, intimidation and violence to recruit members and establish power. The U.S. Supreme Court in Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119 (1977) has recognized the need for limiting inmate associational rights in order to protect the security of institutions.

The Department's authority to renumber, amend and adopt these rules is found in ss. 46.03(1) and (6) and 227.11(2), Stats. The rules interpret ss. 53.07 and 53.08, Stats.

Pursuant to authority vested in the Wisconsin Department of Health and Social Services by ss. 46.03(1) and (6) and 227.11(2), Stats., the Department hereby renumbers, amends and creates rules interpreting ss. 53.07 and 53.08, Stats., as follows:

SECTION 1. HSS 303.02(9) to (18) are renumbered HSS 303.02(10) to (19).

SECTION 2. HSS 303.02(9) is created to read:

HSS 303.02(9) "Inmate gang" means a group of inmates which threatens, intimidates, coerces or harasses other inmates or engages in activities which intentionally violate or encourage the intentional violation of statutes, administrative rules or institutional policies and procedures.

SECTION 3. HSS 303.20 and Note are amended to read:

HSS 303.20 GROUP RESISTANCE AND PETITIONS. (1) Any inmate who intentionally participates in any group action activity which is not approved under s. HSS 309.365 or is contrary to the provisions under of this chapter, to

institution policies and procedures or to a direct verbal order from a staff member, but which does not create a serious risk of injury to persons or property, is guilty of an offense.

(2) Any inmate who intentionally joins in or solicits another to join in any group petition or statement is guilty of an offense, except that the following activities are not prohibited:

(a) Group complaints in the inmate complaint review system;

(b) Group petitions to courts; or

(c) Authorized ~~group~~ activity by ~~authorized groups, such as the lifers group and rap committees~~ approved by the superintendent under s. HSS 309.365 or legitimate activities required to submit a request under s. HSS 309.365(3) or(4); or

(d) Group petitions to people outside an institution, for example, to legislators or newspapers.

(3) ~~Subsection (2) only applies to petitions made within an institution. It does not apply to petitions made to people outside an institution, for example, to legislators or newspapers.~~ Any inmate who intentionally participates in any activity with the purpose of identifying himself or herself with an inmate gang, as defined in s. HSS 303.02(9), is guilty of an offense.

Note: HSS 303.20. HSS 303.20 is designed for a non-violent disturbance - for example, a sitdown strike. HSS 303.20(1) differs from conspiracy (HSS 303.21) in that under this section each individual must actually disobey a rule

or participate in unauthorized group activity, while under HSS 303.21 an inmate may be punished for merely planning an offense. Also, under HSS 303.21 a plan or agreement is required, while under sub. (1) spontaneous group action can be punished. Finally, punishment under this section can be added to punishment for the particular rule violated, while punishment for conspiracy cannot, because conspiracy is a lesser included offense of the planned offense.

Sub. (2) substantially follows the old policy and procedure of 14.03. The inmate complaint review system is the appropriate method for bringing group complaints. To permit such complaints or statements outside the system could seriously disrupt a prison. Experience has proven that it is important that there be as few opportunities as possible for coercion of one inmate by another. Unrestricted rights to petition in groups generates intimidation and coercion as inmates try to force others to join them. The authorized methods are thought to protect inmates' rights to petition and to express their views.

~~Other problems are also created by unrestricted group petitions. It disrupts orderly movement and security by requiring more freedom of movement than is safe. It is also disruptive of programs and contributes to the formation of gangs, which pose a serious threat to institutions. Like many prison rules, this one is aimed at conduct which taken alone might not seem serious to people without experience in corrections. In Wisconsin, the experience has been that permitting such activity creates serious problems and can contribute to the erosion of authority which leads to serious prison disturbances. States that have permitted such activity have uniformly had serious problems in their institutions.~~

Furthermore, complaints outside the complaint system create confusion among staff. There is already provision for the investigation of complaints in the system. Staff (and their union) are frequently reluctant to cooperate in investigations made outside the system. This makes adequate investigation impossible and hurts morale and institutional security. It also makes an adequate response to the complaint impossible.

The complaint system, on the other hand, provides a structured way to investigate and respond to complaints. It requires, for example, time limits for responses to insure that the complaints are addressed. It requires that complaints be signed. Without this, adequate investigation is usually impossible.

On balance, reliance on the complaint system seems to restrict first amendment rights only as is necessary to permit the maintenance of order in institutions.

~~Sub. (3) makes clear that sub. (2) only applies to petitions within an institution.~~ Sub. (2) prohibits petitions only within an institution. There is no intention to limit petitions addressed to those outside an institution. Typically, this activity is a letter signed by more than one inmate to a newspaper or public official.

Sub. (3) makes it an offense to identify with a gang by some overt act such as signing. Gangs pose a serious threat to institutions. Like many prison rules, this one is aimed at conduct which taken alone might not seem serious to people without experience in corrections. In Wisconsin, the experience has been that permitting such activity creates significant problems and can contribute to

the erosion of authority which leads to serious prison disturbances. States that have permitted such activity have uniformly had major problems in their institutions.

See the notes to HSS 303.18 and 303.21.

SECTION 4. HSS 309.365 is created to read:

HSS 309.365 INMATE ACTIVITY GROUPS. (1) DEFINITIONS. In this section:

(a) "Activity group" means a group of inmates organized to promote educational, social, cultural, religious, recreational or other lawful leisure time activities.

(b) "Inmate union" means an organization of inmates formed for the sole purpose of serving the inmates' collective interest with respect to conditions of confinement issues such as inmate wages, working conditions, housing conditions, programming and services.

(2) APPROVAL REQUIRED. (a) With the exception of organizational activities approved by the superintendent under sub. (3), no group of inmates may refer to itself by a collective name, conduct meetings or engage in any organized activity which promotes identification with a particular group unless the group has been approved by the superintendent under sub. (5).

(b) With the exception of organizational activities approved by the superintendent under sub. (3), no individual inmate or other person from inside or outside the institution may attempt to carry out organized activities within an institution which promote identification with a particular group unless the group has been approved under sub. (5).

(3) APPROVAL OF ORGANIZATIONAL ACTIVITIES. A group of inmates or an inmate on behalf of a group may submit a written request to the superintendent for permission to engage in organizational activities necessary to formulate a request for approval as an activity group under sub. (4). The request submitted under this subsection shall state the objectives and proposed activities of the proposed activity group and the activities necessary to formulate a request for approval under sub. (4). Using the criteria listed in sub. (5)(b)1, the superintendent shall determine within 14 calendar days after receipt of the request whether to permit the requested organizational activities.

(4) REQUESTS FOR APPROVAL. A group of inmates or an inmate on behalf of a group may submit a written request to the superintendent for approval as an activity group. The request shall include:

(a) The name of the group;

(b) The group's mailing address and phone number, if other than that of the institution;

(c) The names of the group's officers;

(d) The group's objectives and proposed activities;

(e) The inmate population the group intends to include;

(f) The group's charter, constitution or by-laws, or all three documents;

(g) The institutional services and resources, such as staff time or meeting rooms, needed for the group's activities; and

(h) The anticipated length and frequency of group meetings or activities.

(5) CRITERIA FOR APPROVAL OF GROUPS. (a) The decision to approve a group as an activity group rests solely with the superintendent.

(b) In determining whether to approve a group, the superintendent shall:

1. Consider whether the objectives of the group promote educational, social, cultural, religious, recreational or other lawful leisure time interests of the inmates who will participate in the group's activities;

2. Consider whether the proposed activities can be accommodated within the available resources of the institution;

3. Balance the benefits of the group's activities and services against the necessary allocation of staff time and institution resources to the group. The consideration of the group's benefits to inmates is subject to s. HSS 309.61(1)(a).

4. Consider whether the activities, services or benefits offered by the group are adequately provided by existing programs, groups or resources readily available to the inmate population.

(c) The superintendent may not approve:



1. An inmate union; or

2. A group that he or she has reasonable grounds to believe is an inmate gang, as defined in s. HSS 303.02(9).

(d) The superintendent shall approve or disapprove a request submitted under sub. (4) within 14 calendar days after receipt of the request.

(e) If the superintendent approves an activity group, he or she shall specify in writing:

1. The types of activities the group may undertake;

2. The times at which the group may hold its meetings and activities;

3. The places where the group may hold its meetings and activities;

4. The maximum number of members of the group;

5. Whether persons from outside the institution may participate in the group's meetings or activities, and the maximum number of those persons permitted;

6. The name of the staff member assigned as advisor to the group;

7. Whether a staff member's presence is required at group meetings and activities;

8. Whether the group is required to provide the superintendent with an agenda prior to meetings, minutes of its meetings, and a list of inmates and other persons who attend its meetings; and

9. Whether the group is required to provide the superintendent with an up-to-date list of group members.

(6) INSTITUTIONAL POLICIES. Each superintendent shall establish written policies which cover:

- (a) Money-making activities by groups;
- (b) Group membership dues;
- (c) Group activities off-grounds;
- (d) The responsibilities of staff advisors to groups; and
- (e) Fiscal responsibility requirements of groups.

(7) WITHDRAWAL OF APPROVAL. (a) A superintendent may withdraw approval of an activity group if he or she has reasonable grounds to believe that:

- 1. The group has created a disturbance as defined in s. HSS 306.22;
- 2. The group poses a threat to the order and security of the institution;
- 3. The group has developed a purpose or practice outside the scope of its original charter, constitution or by-laws;

4. The group's purposes and activities no longer provide benefits to inmates which, on balance, warrant the staff time and institution resources which must be allocated to the group; or

5. The group has violated a statute, administrative rule or institutional policy or procedure.

(b) The superintendent shall notify the activity group in writing of the withdrawal of approval and of the reasons for the withdrawal.

SECTION 5. HSS 308.04(2) and Note and (4)(e)4 are amended to read:

HSS 308.04(2) An inmate may be placed in administrative confinement for ~~either~~ any of the following reasons:

(a) The inmate presents a substantial risk of serious physical harm to another person as evidenced by recent homicidal, assaultive or other violent behavior or by an attempt or threat to cause that harm; ~~or~~

(b) The inmate's recent activity gives a staff member or another inmate reason to believe that the inmate's continued presence in the general population will result in a riot as defined under s. HSS 303.18 or in a disturbance as defined under s. HSS 306.22(1); or

(c) The inmate has identified himself or herself as a leader of an inmate gang or there are reasonable grounds to believe that the inmate is a leader of an inmate gang, as defined in s. HSS 303.02(9), and there is reason to believe that the inmate's continued presence in the general population will result in a riot as defined under s. HSS 303.18 or in a disturbance as defined under s. HSS 306.22(1).

HSS 308.04(4)(e)4 The right to present and question witnesses in accordance with sub.6 and the hearing procedures for major disciplinary offenses and sub. (6) except that, in the case of a confidential informant, a designated security staff member shall investigate to determine whether testifying would pose a significant risk of bodily harm to the witness. If the designated staff member finds a significant risk of bodily harm, he or she shall attempt to obtain a signed statement under oath from the witness and determine that the statement is corroborated in accordance with s. HSS 303.86(4). The designated staff member shall edit the signed, corroborated statement to avoid revealing the identity of the witness. A copy of the edited statement shall be delivered to the inmate. A copy of the edited statement shall also be delivered to the PRC and may be considered as evidence. The security staff member on the PRC shall have access to the original signed statement and may question the confidential informant if available. The original signed statement shall be available to the superintendent and director of adult institutions upon review and shall be kept for at least 6 months and throughout any pending litigation commenced during that 6 month period.

Note: HSS 308.04(2). Sub. (2) establishes the conditions under which administrative confinement may be used. They are similar to a commitment under s. 51.20, State, although not the same. 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. Administrative confinement is a vehicle for removing dangerous persons from the general population to protect the safety and security of the institution. Proper use of administrative confinement includes dealing with dangerous gang activity, particularly the ringleaders of such activity. It should be clear to inmates that participating in dangerous gang activity or identification as a leader of a gang that participates in dangerous activities will inevitably result in long periods of administrative confinement. It is better for the inmates and the credibility of the system to deal with the problem of inmate gangs directly. Without the ability to confine gang leaders, institution staff will have to exercise discretion in dealing with a dangerous situation which threatens the security and order of the institution.


Inmate misconduct is handled through the disciplinary process. Segregation in administrative confinement cannot be a penalty for misconduct, but may result either prior to or subsequent to a disciplinary proceeding or independent of any such proceeding.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Department of Health and  
Social Services

Dated: April 30, 1987

By:

  
Timothy F. Cullen  
Secretary

Seal:

1-2-14/265



State of Wisconsin

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson  
Governor

RECEIVED

Timothy F. Cullen  
Secretary

April 30, 1987

MAY 4 1987

Mailing Address:  
Post Office Box 7850  
Madison, WI 53707

Revisor of Statutes  
Bureau

Mr. Orlan Prestegard  
Revisor of Statutes  
9th Floor - 30 on the Square  
Madison, Wisconsin 53702


Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 309.365, administrative rules relating to approval and supervision of activity groups for inmates of adult correctional institutions, discipline for unauthorized group activities and administrative confinement for gang leaders.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rule changes do not affect small businesses as defined in s. 227.114(1)(a), Stats., because they apply to adult correctional institutions and to inmates of those institutions.

Sincerely,

  
Timothy F. Cullen  
SECRETARY

Enclosure