

Chapter HSS 308**ADMINISTRATIVE CONFINEMENT IN ADULT
CORRECTIONAL INSTITUTIONS**

HSS 308.01 Purpose
HSS 308.02 Applicability

HSS 308.03 Definitions
HSS 308.04 Administrative confinement

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.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81.

HSS 308.02 Applicability. Pursuant to authority vested in the department of health and social services under s. 227.11 (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 and 53.08, Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; correction made under s. 13.93 (2m) (b) 7, Stats; Register, June, 1987, No. 378.

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 violations 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.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81.

HSS 308.04 Administrative confinement. (1) Administrative confinement is 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 the institution. Inmate misconduct shall be handled through the disciplinary procedures.

(2) An inmate may be placed in administrative confinement for 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;

Register, June, 1987, No. 378

(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).

(3) An inmate may be placed in administrative confinement only after a review by the program review committee (PRC) in accordance with this section. An inmate may be placed in administrative confinement from the general population or any form of segregation and may be confined in temporary lockup (TLU) in accordance with the departmental rules, pending a review according to this section.

(4) An inmate shall be given written notice of the review which shall include:

(a) The reason under sub. (2) that administrative confinement is considered necessary;

(b) The evidence to be considered at the review;

(c) The sources of information relied upon unless the disclosure would threaten personal safety or institution security;

(d) An explanation of the possible consequences of any decision;

(e) 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 documentary evidence;

4. The right to present and question witnesses in accordance with sub. 6 and the hearing procedures for major disciplinary offenses 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.

5. The right to assistance of an advocate;

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; and

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

(5) The review shall take place not sooner than 2 days and not later than 10 days after service of notice to the inmate. The inmate may waive these time limits in writing. Prior to the waiver, the inmate shall be informed what type of review he or she will receive if he or she waives the time limits.

(6) At the review, the reason for placing the inmate in administrative confinement shall be read aloud and all witnesses for or against the inmate, including the inmate and the staff member who recommended the placement, shall have a chance to speak. The PRC may require medical or physical evidence to be offered. The PRC may permit direct questions or require the inmate or his or her advocate, if any, to submit questions to the PRC to be asked of the witnesses. Repetitive, disrespectful, or irrelevant questions may be forbidden.

(7) After the review, the PRC shall deliberate in private considering only the evidence presented to it that supports or refutes the need for administrative confinement and the inmate's records. The PRC shall decide whether the evidence and the records support the need for administrative confinement and, if so, shall order the placement. If the vote is not unanimous, the record, with the views of each PRC member, shall be forwarded to the superintendent for a decision. This information, except portions regarding the identities of sources of information or containing statements or evidence that could, upon disclosure, threaten personal safety or institution security, 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 30 days of the date of the decision, and again to the director of the bureau of institutions within 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 sub. (7) within 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 3 months following the procedures for review under this section.

(10) If an inmate has been in administrative confinement for 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 10 working days of the earlier decision. A decision to affirm, reverse, or remand the earlier decision must state the reasons for it based on the evidence and shall be sent to the PRC and inmate. A failure to issue a decision within the time allotted shall constitute an affirmance of the earlier decision.

(11) An inmate who does not continue to exhibit the behavior for which he or she was placed in administrative confinement, after spending a reasonable period of time in that status shall be given the opportunity to show that the placement is no longer necessary through gradually increased contact with persons both inside and outside of his or her cell. This contact shall be carefully supervised to ensure the safety of others. Records of the contact shall be kept.

(12) While in administrative confinement, an inmate:

(a) Shall reside alone and have a classification of maximum security-close; supervision, movement, and program shall be in accordance with ss. HSS 302.12 (1) (a) and 306.09;

(b) Shall be allowed to have any property in his or her cell that is allowed to inmates in the general population. An inmate who resides in the segregation building shall be allowed to have any property in his or her cell that is allowed to any inmate in program segregation;

(c) Shall be permitted visitation in accordance with ch. HSS 309;

(d) May receive and send mail in accordance with ch. HSS 309;

(e) Shall be permitted to shower at least once every 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) Who is eligible may earn extra good time credit in accordance with ch. HSS 302, and all inmates may earn compensation in accordance with ch. HSS 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.

Sub. (2) establishes the conditions under which administrative confinement may be used. 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.

Sub. (3) requires special review by the PRC. This review combines components of the standard PRC review under ch. HSS 302 and the major disciplinary hearing. This review is provided despite the fact that the U.S. Supreme Court has indicated that due process does not require this review for these transfers. *Meachum v. Fano*, 427 U.S. 215 (1976); *Montanye v. Haymes*, 427 U.S. 236 (1976). Due process protections are important and are afforded to few

inmates affected by this provision because of the seriousness of the prolonged social isolation of administrative confinement. At this special review, in this status, there must be proof, from evidence presented at the hearing and from the inmate's records, that he or she meets one of the criteria for administrative confinement under sub. (2). The responsibility for placement rests solely with the PRC, and the decision therefore is a classification decision. An appeal is provided first to the superintendent and then to the director of the bureau of adult institutions, one of the highest levels in the division, in recognition of the potential serious consequences of prolonged segregation in administrative confinement.

Sub. (4) gives the inmate certain rights. It requires that adequate written notice of the review be given the inmate. If necessary, a verbal explanation of the notice should be made in accordance with the inmate's needs. The rights also include the right to present and question witnesses in the same manner as for due process hearings, s. HSS 303.81.

Sub. (5) provides for the time of the review. The inmate may waive these time limits. To ensure that any waiver is a knowing and 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 that administrative confinement is necessary.

Sub. (9) provides for a review of the inmate's status at least once every 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.

Sub. (10) reflects the view that administrative confinement may have serious consequences and that extreme care should be exercised at the highest level in assessing the need for continued confinement.

Sub. (11) indicates that an inmate will be given every opportunity consistent with his or her status and behavior to show that continued confinement is not necessary. This may be done by increasing his or her personal contacts through enhanced visitation privileges and movement from the cell. Great care should be taken to ensure the safety of others and to keep adequate records.

This gradual "stepping-down" process allows the inmate to demonstrate to the PRC that he or she no longer needs to be confined. However, compliance with departmental rules alone may not be sufficient and an inmate may continue to be confined if there is still reasonable fear of violent behavior, harm to others or riots.

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, 4203-4206, 4208, 4210, 4212-4221, 4381, and 4383.

History: Cr. Register, April, 1981, No. 304, eff. 5-1-81; r. and recr. (2) and (4), am. (5), (6), (7) and (11), Register, April, 1985, No. 352, eff. 5-1-85; emerg. am. (12) (a), eff. 11-18-85; am. (12) (a) Register, May, 1986, No. 365, eff. 6-1-86; emerg. am. (2) (b), eff. 12-5-86; r. and recr. (12) (g), Register, February, 1987, No. 374, eff. 3-1-87; am. (2) and (4) (e) 4., Register, June, 1987, No. 378, eff. 7-1-87.