

CR 90-16

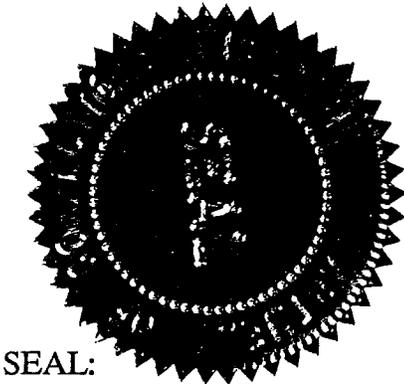
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

I, Stephen E. Bablitch, Secretary of the Department of Corrections and custodian of the official records of the Department, do hereby certify that the annexed permanent rules relating to community residential confinement were duly approved and adopted by this Department on August 8, 1990.

I further certify that this copy has been compared by me with the original in 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 8th day of August, 1990.



SEAL:

Stephen E. Bablitch

Stephen E. Bablitch, Secretary
Department of Corrections

RECEIVED

AUG 10 1990
8:10 am
Revisor of Statutes
Bureau

10-1-90

ADMINISTRATIVE RULES - CH. DOC 327
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO s. 227.19(3), STATS.

Need for Rules

Under community residential confinement (CRC), an inmate is confined to the inmate's home or to another place of residence designated by the Department. That residence thereby becomes a correctional institution under the charge of a superintendent. The Department electronically monitors inmates in CRC placements to make sure they are in the place of residence when they are scheduled to be there. If an inmate intentionally fails to remain within the area of his or her confinement or fails to return to that area within the time prescribed by the superintendent, the inmate may be criminally prosecuted for escape under s. 946.42(3)(a), Stats. Persons in CRC placements are considered inmates under the care and control of the Department's Division of Adult Institutions and subject to the same or similar rules and discipline as inmates of other correctional institutions.

These rules establish a new security classification called minimum security/community residential confinement, and describe how an inmate would receive the classification. While this security classification is a condition for CRC placement, actual placement of the inmate requires approval of a CRC program review committee (PRC) or the CRC superintendent following an investigation by a CRC staff member. The investigation includes an evaluation of the inmate's proposed residence, employment or school and community treatment plans.

Specific rules of conduct for inmates in CRC placements are established in the rules. These are intended to protect the public and promote the inmate's reintegration into the community. An inmate may be terminated from a CRC placement for a variety of reasons including the Department's determination, after a disciplinary hearing, that the inmate violated a CRC conduct rule. A procedure for disciplining inmates and terminating them from the CRC program is included in the rules.

The rules also cover procedures for handling inmate funds, inmate access to legal materials, medical care, religious services and leisure time activities, and security measures relative to inmates in CRC placements, including electronic surveillance, use of force, mechanical restraints, a plan of action in the event of an escape or another emergency, searches and drug testing.

Response to Clearinghouse Recommendations

All of the Legislative Council Rules Clearinghouse comments were accepted except the following:

1. Comment: 2.d. In s. DOC 327.03(2), delete ", after approval by appropriate CRC staff in accordance with s. DOC 327.06." This material is not necessary to the definition.

Response: It is important to retain the quoted language to eliminate confusion between the classification process and the placement process.

2. Comment: 2.g. In s. DOC 327.09(2), it may be clearer if all sections which do not apply were referenced in one paragraph.

Response: Section DOC 327.09(2) has to be read in conjunction with ch. DOC 303. It will be easier for staff to locate the relevant offense if the offenses are arranged in the same numerical order as ch. DOC 303.

3. Comment: 2.h. In s. DOC 327.09(2)(d)2, it appears that the phrase "may be" should be replaced by the word "is." In par. (s) the word "and" should be inserted after the word "leaving."

Response: Section DOC 327.09(2)(d)2 reads: "The penalty for conspiracy may be the same as the penalty for the most serious of the planned offenses." It would be inappropriate to replace "may be" with "is" because the penalties are not fixed amounts, but are maximums allowable.

In par. (s), the title of the offense is leaving assigned area. It refers to the title of the corresponding offense under s. DOC 303.51.

4. Comment: 2.j. In s. DOC 327.14(6), the citation to "1983 Wisconsin Act 528" should be replaced by specific references to statutory material.

Response: 1983 Wisconsin Act 528 refers to current s. 53.11, Stats., concerning good time calculations. Because of "ex post facto" concerns current s. 53.11, Stats., does not apply to inmates who committed crimes before June 1, 1983. The law that applies to these inmates is the 1981-82 version of s. 53.11, Stats. To avoid confusing staff with two versions of s. 53.11, Stats., the rules refer to 1983 Wisconsin Act 528. The department refers to this Act in other chapters of Corrections administrative rules and references in ch. DOC 327 should be consistent with references in other chapters.

5. Comment: 2.m. Throughout the rule, there are cross-references to DOC administrative rules in other DOC chapters. Since these chapters and their provisions have not yet been promulgated (which will be done mostly by renumbering current Department of Health and Social Services rules), the DOC should mention, in a note to this new chapter, that such cross-references in the rule are to provisions which will be promulgated in the future.

Response: The Revisor of statutes has made revisions to this chapter and all other corrections rules under s. 13.93(2m)(b)1, 2, 6 and 7, Stats. The revisions change the prefix from HSS to DOC, refer to the statutory renumbering enacted under 1989 Wisconsin Act 31 and change the definitions to refer to the new Department of Corrections. These revisions are expected to become effective June 1, 1990.

6. Comment: 5.d. Should subs. (7) and (8) be combined? Under sub. (10), an inmate may appeal a PRC denial; may a denial by the classification chief also be appealed?

Response: Subsections (7) and (8) should not be combined. Subsection (8) contains criteria that should be applied to the PRC's decision under sub. (5) as well as the classification chief's decision under sub. (7). The classification chief makes the final decision in assigning the MS/CRCC. The inmate cannot appeal that decision administratively, but may appeal the decision to court.

7. Comment: 5.k. In s. DOC 327.09(1)(a), does "drugs" refer to both prescription and non-prescription drugs or just prescription drugs? This should be clarified. Also, the phrase "marijuana, narcotic, or drugs" is confusing since marijuana is a drug and narcotic is a form of drug. Can a reference to controlled substances under ch. 161, Stats., be substituted?

Response: A reference to intoxicating substances as defined under s. DOC 303.02(11) has been substituted. Section DOC 303.02(11) reads: "'Intoxicating substance' means anything which if taken into the body may alter or impair normal mental or physical functions, to include: LSD, heroin, cocaine, marijuana, alcoholic drinks, paint thinner or glue. Tobacco is not included."

8. Comment: 5.r. It appears that the agreement referred to in s. DOC 327.15(2) might more appropriately be placed in the list in s. DOC 327.09(1).

Response: The reference now appears in both places in the rule because the material discusses a part of the agreement concerning inmate funds.

9. Comment: 5.s. In s. DOC 327.15(6), it appears that this subsection would more appropriately be placed as a paragraph in sub. (5). Otherwise, it appears that subs. (5)(c) and (6) conflict.

Response: Subsection (6) has been revised to read: "Prior to disbursing funds under sub. (5)(c), the business manager or designated financial institution may disburse money from the inmate's CRC account to pay, either in full or proportionately, the inmate's obligations that have been acknowledged by the inmate in writing or that have been reduced to judgment." Disbursements under sub. (5) are mandatory whereas disbursements under sub. (6) are discretionary.

10. Comment: 5.x. In s. DOC 327.25(3), presumably the phrase "the administrative rules of the department" refer to the provisions of ch. DOC 327. If so, this reference should be made. Also, the rule's breadth may be clarified by an appropriate definition of "emergency."

Response: Section DOC 327.25(3) is revised to read: "If an emergency occurs that prevents the normal functioning of the CRC program, the superintendent may suspend those sections of this chapter or other

administrative rules to which this chapter refers that specifically relate to the emergency until the emergency is ended."

Emergency is defined under sub. (1) to read: "An emergency is an immediate threat to the safety of CRC staff, inmates or the public. An emergency may include, but is not limited to:

- (a) Failure of the CRC inmate's electronic surveillance equipment;
- (b) Malfunctioning of the CRC inmate's telephone system; or
- (c) A strike of department employees."

Public Hearing

A public hearing was held on the proposed rules in Madison on April 13, 1990. No one testified on the proposed rules. Wayne Mixdorf, CRC Superintendent, appeared for the department. The record was held open for receipt of written comments until April 20, 1990. Martha Askins, Assistant State Public Defender, Madison, submitted written comments.

Testimony Received During Public Review and Modifications Made as a Result of that Testimony

1. Comment: DOC 327.04 makes the agreement "to pay a reasonable electronic monitoring fee as determined by the department" an eligibility requirement for CRC. Our position is that cost or the inmate's ability to pay should not be an eligibility requirement for CRC placements. I believe it raises significant constitutional equal protection questions as well as basic fairness questions. If, however, there is no alternative to imposing costs onto the inmate, I would propose two alternatives: 1) a sliding scale based on ability to pay; and 2) a percentage of CRC "spots" that would be available to indigent inmates free of charge. And, I would propose that there would be no termination solely for failure to pay.

Response: The requirement that inmates pay an electronic monitoring fee in order to be eligible for a CRC placement is mandated by Wisconsin Statutes. Section 301.046(3)(b) states: "(3) ELIGIBILITY. The department shall determine those prisoners who are confined under sub.(1). A prisoner is eligible for this confinement only under all of the following conditions: (b) The prisoner agrees to pay any fee charged under s. 301.135. Section 301.135 states: "The department may charge a fee to offenders under its supervision to cover the costs associated with electronic monitoring."

The CRC rule requires inmates to pay a "reasonable" electronic monitoring fee as determined by the department and failure to pay the fee "may" result in termination of the CRC placement. Currently, the department fixes the exact amount of the fee through CRC policy. This is done to allow changes in the fee schedule to reflect inflation and experience with the program. The intent of the fee schedule is to

provide funds to purchase services for CRC inmates. It is also the intent of the department to limit fees so that most inmates will be capable of making the payments. The current CRC fee policy states: The CRC fee is \$5.00 per day or not more than 1/2 an inmate's net pay. Example: \$70.00 weekly salary = \$35.00 CRC fee; \$50.00 weekly salary = \$25.00 CRC fee; \$435.00 weekly salary = \$35.00 CRC fee. There are exceptions made for inmates who are temporarily unemployed.

Termination from CRC for failure to pay the electronic monitoring fee is discretionary, not mandatory. CRC staff take into consideration whether the inmate made a good faith effort to pay the fees.

2. Comment: DOC 327.09(2)(e) for the most part follows DOC 303.22 except in one important respect. DOC 327.09(2)(e) has omitted the intent element of escape. We urge the addition of the intent element of the offense of escape. The intent element seems especially important as it is often a prosecuted offense, and the interest for CRC inmates to stay in the community no doubt is very significant. DOC 327.09(1)(e) permits a referral for prosecution for escape for leaving the place of confinement or returning late to the place of confinement. In addition, the intent element of the escape offense distinguishes it from other offenses such as "Leaving Assigned Area" or "Being in an Unassigned Area."

Response: The criminal charge of escape from a CRC placement does include the element of intent. Section 301.046(6), Stats., reads: "ESCAPE. Any intentional failure of a prisoner to remain within the extended limits of his or her confinement or to return within the time prescribed by the superintendent is considered an escape under s. 946.42(3)(a)." Since intent is an element of the criminal charge, a proper referral for criminal prosecution should include a factual basis for believing the inmate intended to escape. Consequently, DOC 327.09(1)(e) has been revised to read: "Any intentional failure of the inmate to return to the CRC residence on schedule or leaving the confines of the authorized area to which he or she is assigned without permission, may be referred for prosecution as an escape under s. 946.42(3), Stats."

The institutional disciplinary offense for escape does not include intent. Since CRC inmates are placed in the community and supervised primarily by an electronic monitoring device, the disciplinary offense for escape is an essential tool for protecting the public. Intent to escape is often difficult to prove, because it requires determining what the inmate's state of mind was. It is easy for an inmate to claim that although the inmate did not follow his or her schedule, the inmate did not really intend to escape. Ensuring that inmates remain on the approved schedule is an important component of the CRC program; it protects the public from inmates becoming involved in further criminal activities.

Under the CRC disciplinary code "Leaving Assigned Area" is a lesser included offense of "Escape." According to s. DOC 303.03(3), an inmate

cannot be found guilty of both "Leaving Assigned Area" and "Escape." This avoids the problem of punishing a person twice for essentially the same conduct.

3. Comment: I believe that there should be more "tools" available to CRC staff than termination. I would want the rules to be very clear that termination is not the only appropriate response to a violation.

Response: Subsection DOC 327.11(6) has been revised to make it clear that an inmate does not have to be referred to the PRC for possible termination of the CRC placement after a finding of guilt on every disciplinary infraction. Section DOC 327.13 Disciplinary Procedures and Penalties is very clear that termination is not the only appropriate response to a violation. Each of the major and minor penalties under ch. DOC 303 available to other inmates are available to CRC inmates. These include reprimand, loss of recreation and other privileges, building confinement, restitution and extra duty. Subsection (10) makes provisions for CRC inmates to serve segregation time in state correctional institutions, a county jail or other facilities designated by the department. It is not the intent of the department to terminate inmates from a CRC placement for minor infractions that can be dealt with safely in the community. It is hoped that through the use of minor penalties and restrictions inmates can learn to cope with their new freedoms and reintegrate into society.

4. Comment: DOC 327.09(1)(r) makes inmates responsible for lost, stolen, or damaged electronic monitoring equipment. I would propose that the inmate should not have such responsibility unless there can be a showing that the inmate caused the damage or loss by some action. This equipment is new and no doubt is subject to some malfunction and breakage.

Response: It is not intended that inmates pay for malfunctioning equipment caused by faulty manufacturing. The rule has been revised to read: "An inmate may not tamper with the electronic monitoring equipment. Inmates are responsible for lost, stolen or damaged electronic monitoring equipment, except that inmates are not responsible for malfunctioning of the equipment caused by faulty manufacturing." CRC staff report that to this date there have been very few problems with equipment malfunctioning.

Modifications Made by the Department

Under DOC 327.13(4), the rule has been revised to give CRC staff 4 working days to hand-deliver a conduct report to the accused inmate after it has been reviewed and approved. Originally the proposed rule required staff to mail the conduct report to the inmate within 24 hours of its approval. This was an error since conduct reports have to be hand-delivered so that inmates may be notified of their rights to a hearing and may sign the notice. Four working days is required because the CRC staff person approving the conduct report has to mail it to the CRC staff person serving it upon the inmate. In general, the disciplinary procedure time limits for CRC placements are somewhat longer

because CRC staff may be housed in distant locations from each other and from the inmates.

Final Regulatory Flexibility Analysis

The proposed rules will not impact on small businesses as defined in s. 227.114(1)(a), Stats.

ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING, AMENDING AND CREATING RULES

To amend DOC 302.12(1) (intro.) and 324.04(1); to repeal and recreate 302.13 and 326.04(1); and to create DOC 302.12(1)(f) and 327, relating to community residential confinement of adult inmates in the custody of the Department of Corrections.

Analysis Prepared by the Department of Corrections

Under community residential confinement (CRC), an inmate is confined to the inmate's home or to another place of residence designated by the Department. That residence thereby becomes a correctional institution under the charge of a superintendent. The Department electronically monitors inmates in CRC placements to make sure they are in the place of residence when they are scheduled to be there. If an inmate intentionally fails to remain within the area of his or her confinement or fails to return to that area within the time prescribed by the superintendent, the inmate may be criminally prosecuted for escape under s. 946.42(3)(a), Stats. Persons in CRC placements are considered inmates under the care and control of the Department's Division of Adult Institutions and subject to the same or similar rules and discipline as inmates of other correctional institutions.

These rules establish a new security classification called minimum security/community residential confinement, and describe how an inmate would receive the classification. While this security classification is a condition for CRC placement, actual placement of the inmate requires approval of a CRC program review committee (PRC) or the CRC superintendent following an investigation by a CRC staff member. The investigation includes an evaluation of the inmate's proposed residence, employment or school and community treatment plans.

Specific rules of conduct for inmates in CRC placements are established in the rules. These are intended to protect the public and promote the inmate's reintegration into the community. An inmate may be terminated from a CRC placement for a variety of reasons including the Department's determination, after a disciplinary hearing, that the inmate violated a CRC conduct rule. A procedure for disciplining inmates and terminating them from the CRC program is included in the rules.

The rules also cover procedures for handling inmate funds, inmate access to legal materials, medical care, religious services and leisure time activities, and security measures relative to inmates in CRC placements, including electronic surveillance, use of force, mechanical restraints, a plan of action in the event of an escape or another emergency, searches and drug testing.

The Department's authority to repeal, amend and create these rules is found in ss. 301.046 and 227.11(2), Stats., and in SECTION 3023(2j) of 1989 Wisconsin Act 31. The rules interpret s. 301.046, Stats.

SECTION 1. DOC 302.12(1)(intro.) is amended to read:

DOC 302.12(1)(intro.) There shall be ~~5~~ 6 security classifications in the Wisconsin correctional system which are:

SECTION 2. DOC 302.12(1)(f) is created to read:

DOC 302.12(1)(f) Minimum security--community residential confinement. In this paragraph, "CRC" means community residential confinement. Inmates in minimum security/community residential confinement classification may be assigned to their homes or to other places of residence in the community approved by CRC staff or they may be assigned to an institution at a more secure level. An inmate in this classification who is in a CRC placement shall be supervised by an electronic monitoring device worn continuously on the inmate's person. An inmate in this classification who is assigned to an institution at a more secure level other than a minimum security institution shall be supervised and have the same restrictions on movement within and outside the institution as an inmate with a minimum security classification at the assigned institution. An inmate in this classification who is assigned to a minimum security institution may move in transit outside the institution under the general supervision of a corrections employe without an escort and shall be supervised and have the same restrictions on movement within the institution as an inmate with a minimum security classification.

SECTION 3. DOC 302.13 is repealed and recreated to read:

DOC 302.13 INSTITUTIONAL SECURITY CLASSIFICATIONS. No inmate may be transferred to an institution unless the inmate has the security classification required for residence in that institution, as indicated below:

<u>Correctional Institution</u>	<u>Inmate Classification</u>			
	Maximum (Close & General)	Medium (Regular & Outside)	Minimum	Minimum/ CRC
Taycheedah (TCI)	X	X	X	X
Dodge (DCI)	X	X	X	X
Waupun (WCI)	X	X	X	X
Columbia (CCI)	X	X	X	X
Green Bay (GBCI)	X	X	X	X
Racine (RCI)	X	X	X	X
Oshkosh (OSCI)		X	X	X
Kettle Moraine (KMCI)		X	X	X
Fox Lake (FLCI)		X	X	X
Oakhill (OCI)			X	X
Wisconsin Correctional Center System (WCCS)			X	X
Community Residential Confinement (CRC)				X
Wisconsin Resource Center (WRC)		X	X	X

SECTION 4. Chapter DOC 327 is created to read:

Chapter DOC 327
COMMUNITY RESIDENTIAL CONFINEMENT

- DOC 327.01 Authority and Purpose
- DOC 327.02 Applicability
- DOC 327.03 Definitions
- DOC 327.04 Eligibility for Minimum Security/Community Residential
Confinement Classification
- DOC 327.05 Procedure for Application and Approval of Classification
- DOC 327.06 Placement Approval
- DOC 327.07 CRC Placement
- DOC 327.08 Changes in CRC Program Assignments
- DOC 327.09 Inmate Conduct in CRC Placements
- DOC 327.10 Termination of CRC Placement
- DOC 327.11 Termination Procedure
- DOC 327.12 Discipline
- DOC 327.13 Disciplinary Procedure and Penalties
- DOC 327.14 Temporary Lockup for Inmates in CRC Placements
- DOC 327.15 Inmate Funds
- DOC 327.16 Resources for CRC Inmates
- DOC 327.17 Use of Force
- DOC 327.18 Mechanical Restraints
- DOC 327.19 Chemical Agents and Firearms
- DOC 327.20 Escapes
- DOC 327.21 Search of CRC Residence
- DOC 327.22 Search of CRC Inmate
- DOC 327.23 Search of Staff
- DOC 327.24 Use of Test Results and Contraband at Disciplinary Hearings
- DOC 327.25 Emergencies
- DOC 327.26 Other Rules that Apply to CRC Placements

DOC 327.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 227.11(2) and 301.046, Stats., to provide rules for administration of community residential confinement for correctional inmates which the department under s. 301.046, Stats., is required to establish and operate. The purposes of community residential confinement placements are:

(1) To provide a structured program for an inmate in institution status placed in the community on electronic monitoring that represents minimal risk to the public, the inmate and staff;

(2) To provide an opportunity for an inmate to assume responsibility in employment, education, treatment and residential settings to prepare the inmate for a productive life in free society after release;

(3) To provide community resources for education, treatment and work programs not available in another institution;

(4) To provide an inmate with opportunities to demonstrate through responsible behavior that the inmate is ready for parole; and

(5) To fulfill the correctional goals of protection of the public and reintegration of the inmate into society.

DOC 327.02 APPLICABILITY. This chapter applies to the department of corrections and to adult inmates in its custody who are eligible for a minimum security/community residential confinement classification. This chapter and other administrative rules referenced in this chapter are the only administrative rules of the department that apply to inmates in community residential confinement placements. Any inconsistencies between rule provisions within this chapter and other chapters shall be resolved in favor of this chapter.

DOC 327.03 DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the division or that person's designee.

(2) "Community residential confinement placement" or "CRC placement" means an assignment to the department's community residential confinement institution under s. 301.046, Stats., after approval by appropriate CRC staff in accordance with s. DOC 327.06.

(3) "Classification chief" means the division's chief of classification or that person's designee.

(4) "CRC" means community residential confinement or community residential confinement institution.

(5) "Department" means the Wisconsin department of corrections.

(6) "Division" means the department's division of adult institutions.

(7) "Minimum security/community residential confinement classification" or "MS/CRCC" means the inmate security classification described under s. DOC 302.12(1)(f).

(8) "PRC" means the program review committee.

(9) "Secretary" means the head of the department or that person's designee.

(10) "State correctional facility" or "state correctional institution" means the prisons named under s. 302.01, Stats.

(11) "Superintendent" means the superintendent of the department's community residential confinement institution or that person's designee.

DOC 327.04 ELIGIBILITY FOR MINIMUM SECURITY/COMMUNITY RESIDENTIAL CONFINEMENT CLASSIFICATION. To be eligible for minimum security/community residential confinement classification, an inmate shall meet all of the following requirements:

- (1) Shall be parole-eligible under s. 304.06, Stats., and s. DOC 330.04.
- (2) May not be serving a life sentence.
- (3) Shall agree to community residential confinement placement, electronic monitoring and any special condition CRC staff may impose on the placement.
- (4) Shall agree to pay a reasonable electronic monitoring fee as determined by the department. The superintendent may waive the electronic monitoring fee.
- (5) Shall have a CRC plan that includes an intended residence, either a school or job placement or an alternative acceptable to the PRC and a proposal for meeting treatment goals in the community.

DOC 327.05 PROCEDURE FOR APPLICATION AND APPROVAL OF CLASSIFICATION.

- (1) An inmate may apply for minimum security/community residential confinement classification to his or her institution social worker or to a staff member designated for this purpose.
- (2) The application shall include evidence that the inmate satisfies the eligibility requirements under s. DOC 327.04.
- (3) The social worker or designated staff member shall review the inmate's application and shall report on the inmate's eligibility and the feasibility of the inmate's plan to the PRC of the state correctional institution where the inmate is assigned.
- (4) The program review procedure shall be the procedure for changing a security classification under s. DOC 302.19 and this chapter.
- (5) The PRC's recommendation for minimum security/community residential confinement classification shall be by unanimous vote. If a vote is not unanimous, the case shall be treated in accordance with s. DOC 302.19(7).
- (6) Reasons for the PRC's recommendation as to change in the inmate's security classification shall be given to the inmate in writing.
- (7) If referred under sub.(5) or DOC 302.19(7), the classification chief shall approve or deny minimum security/community residential confinement classification.

(8) The inmate's eligibility under s. DOC 327.04, the criteria under s. DOC 302.14 and any other factors which relate to whether the inmate will be able to maintain himself or herself in a community residential confinement placement without engaging in criminal or disciplinary activity may be considered in making the decision under this section.

(9) The inmate shall be recommended for minimum security/community residential confinement classification by the PRC and approved for that classification by the classification chief before any further placement efforts are undertaken.

(10) An inmate may appeal a PRC denial of minimum security/community residential confinement classification to the classification chief within 10 days after receipt of notice of the denial.

(11) If the classification chief approves the minimum security/community residential confinement classification, the inmate shall be classified as minimum security/community residential confinement. An inmate with that classification has the appropriate status for CRC placement but is not assigned to a CRC placement unless he or she is approved for placement under s. DOC 327.06. Prior to approval for CRC placement, an inmate with a security classification of minimum security/community residential confinement may be assigned to any correctional institution.

DOC 327.06 PLACEMENT APPROVAL. (1) Upon the classification chief's approval for minimum security/community residential confinement classification, the referring institution's PRC or the classification chief shall send a copy of the CRC plan to a CRC staff person designated by the superintendent.

(2) Upon receipt of the CRC plan, the CRC staff person designated by the superintendent shall carry out an investigation to determine if the plan is appropriate and shall include in that investigation assessments of the inmate's proposed residence, employment, school and community treatment plan.

(3) The designated CRC staff person shall contact the inmate's parole agent for information on the adequacy of the plan, the probable reaction to the inmate in the community where the inmate proposes to reside and other relevant information.

(4) The designated CRC staff member shall document the results of the investigation under subs. (2) and (3) and submit that information to the CRC PRC.

(5) For the purpose of placement approval, the CRC PRC shall consist of 2 members including a social worker and the staff person designated by the superintendent who completed the investigation under subs. (2) and (3). The superintendent may designate persons to sit as alternates.

(6) After reviewing all relevant information, the CRC PRC shall decide whether to approve or deny the CRC placement.

(7) CRC PRC approval for CRC placement shall be by unanimous vote. If the vote is not unanimous, the case shall be referred to the superintendent for decision.

(8) The inmate's eligibility under s. DOC 327.04, the adequacy of the inmate's plan, the criteria under s. DOC 302.14 and any other factors which relate to whether the inmate will be able to maintain himself or herself in a CRC placement without engaging in criminal or disciplinary activity may be considered in making the decision.

(9) If CRC placement is approved, the superintendent may impose in writing any special conditions, such as restrictions on associations or possessions, that are appropriate.

(10) Upon placement approval, the CRC PRC staff shall notify the classification chief. The notification shall include, if applicable:

- (a) Date placement is to begin;
- (b) Site of residence;
- (c) Job, school and treatment plans;
- (d) Transportation arrangements between state correctional facility and CRC placement; and
- (e) Other information that may be required to prepare for the placement.

DOC 327.07 CRC PLACEMENT. (1) Before the inmate's placement:

(a) A CRC staff person designated by the superintendent shall advise the inmate's employer, appropriate school administrators and persons sharing the residence with the inmate of their responsibilities to the inmate and the program. Other occupants of the residence shall agree in writing to searches of the residence, including the grounds, in accordance with s. DOC 327.21.

(b) The inmate shall sign an agreement to abide by the rules of CRC placement, electronic monitoring and any special conditions imposed on the inmate's placement.

(c) The department shall notify the committing court, the municipal police chief, the county sheriff and district attorney for the area where the inmate plans to reside.

(2) CRC staff and the division's central office staff shall coordinate transportation arrangements between the state correctional facility and the approved CRC placement. The department is not required to provide transportation to the inmate.

(3) A CRC staff person shall meet with the inmate at the CRC residence to activate the electronic surveillance.

(4) The CRC staff member shall explain to the inmate the rules of CRC placement and the special conditions of the inmate's placement. The CRC staff member shall describe how the electronic monitoring equipment works, any special limitations on transportation methods or routes, the places the inmate is authorized to visit, the hours the inmate is authorized to be absent from his or her residence, and the area designated as the limits of the inmate's confinement.

(5) An inmate in a community residential confinement placement remains in the legal custody of the department and is an inmate in institution status.

DOC 327.08 CHANGES IN CRC PROGRAM ASSIGNMENT. (1) In this section, "program assignment" means assignment to work, school, treatment or an approved alternative program, or to a combination of these. It does not include a more specific assignment, such as a particular job within a work assignment.

(2) For the purposes of considering a change in an inmate's program assignment after initial CRC placement approval under s. DOC 327.06, not including termination of the CRC placement under s. DOC 327.10, a CRC PRC shall consist of 2 members including a social worker and correctional officer. The superintendent may designate persons to sit as alternates.

(3) CRC PRC approval or disapproval for a change in program assignment shall be by unanimous vote. If the vote is not unanimous, the case shall be referred to the superintendent for a decision.

(4) The criteria under s. DOC 302.16, the availability of programs in the community and any other factor relevant to the inmate's rehabilitation and the protection of the community may be considered in making the decision.

(5) Reasons for the decision concerning a program assignment shall be given to the inmate in writing.

(6) An inmate may appeal the PRC's decision concerning a program assignment to the superintendent within 10 days after receipt of the decision.

(7) Although PRC approval is not necessary, an inmate may not change his or her schedule or specific job, school or treatment activities without prior approval by a CRC staff member designated by the superintendent.

DOC 327.09 INMATE CONDUCT IN CRC PLACEMENTS. (1) The following provisions apply to the conduct of inmates in community residential confinement placements and shall be included in the agreement signed by an inmate under s. DOC 327.07(2):

(a) An inmate may not possess or use any form of alcohol, or other intoxicating substance as defined under s. DOC 303.02(11) except as authorized and directed by an approved physician;

(b) An inmate shall abide by all the rules of the inmate's employer or the educational or training facility to which the inmate is assigned;

(c) Except for retaining an attorney, an inmate may not enter into a contract or other agreement without prior approval by the superintendent. Contracts which require prior approval include but are not limited to the purchase of property, time payments and marriage.

(d) An inmate shall abide by this chapter and other rules referenced in this chapter, the specific policies, procedures and rules of any facility in which the inmate is housed, any special conditions imposed on the CRC placement, and all pertinent state and federal statutes and local ordinances. In addition, if an inmate is housed in a state correctional institution he or she shall abide by all of the department's administrative rules for institutions;

(e) Any intentional failure of the inmate to return to the CRC residence on schedule or leaving the confines of the authorized area to which he or she is assigned without permission, may be referred for prosecution as an escape under s. 946.42(3), Stats;

(f) An inmate may not remain in a community residential confinement placement if, as a result, a medical or psychological problem of the inmate would go untreated;

(g) If an inmate is attending school, the inmate shall attend all regularly scheduled classes even if the instructor does not require attendance, unless the inmate obtains an excuse from CRC staff;

(h) If an inmate attending school fails to maintain passing grades in all courses and a cumulative 2 point (2.0) grade point average (C average) or better on a 4 point (4.0) scale or receives one or more incompletes, the PRC may terminate the CRC placement;

(i) Unless approved in advance by CRC staff, an inmate may not enroll in or attend evening courses, courses requiring attendance at events away from the school site, theater activities, field trips, athletic functions or social events;

(j) Inmates shall report all arrests or official police contacts to CRC staff immediately;

(k) Inmates shall submit a schedule of activities to CRC staff as directed by the staff;

(l) Inmates shall make themselves available for tests and searches ordered by CRC staff in accordance with this chapter;

(m) Inmates shall attend and participate in programs and treatment mandated by department staff;

(n) An inmate may not change his or her schedule or CRC program including specific residence, work or treatment situation without prior approval by appropriate CRC staff;

(o) An inmate may not purchase, lease, trade, sell, or operate a motor vehicle without advance approval by CRC staff. To obtain approval to operate a motor vehicle, the inmate shall demonstrate proof of insurance, have a valid Wisconsin driver's license and, if the vehicle is owned by another person, have the permission of the owner to operate the vehicle;

(p) An inmate shall be responsible for maintaining telephone service compatible with the CRC electronic monitoring equipment and CRC programming needs. Personal use of the telephone line may be restricted to allow for proper functioning of the electronic monitoring equipment;

(q) An inmate shall wear an electronic device continuously on the inmate's person and comply with other requirements of the electronic monitoring system as directed by appropriate CRC staff;

(r) An inmate may not tamper with the electronic monitoring equipment. Inmates are responsible for lost, stolen or damaged electronic monitoring equipment, except that inmates are not responsible for malfunctioning of equipment caused by faulty manufacturing.

(s) An inmate shall pay a reasonable electronic monitoring fee as determined by the department unless the superintendent waives the fee. Failure of an inmate to make payments on schedule may result in the inmate's termination from a CRC placement. Inmates may not be terminated from a CRC placement solely for failure to pay an electronic monitoring fee; and

(t) An inmate shall acknowledge the department's authority to collect all funds earned and compensation received by the inmate while in a CRC placement and to disburse those funds in accordance with s. DOC 327.15.

(2) All the offenses listed in ss. DOC 303.12 to 303.631 apply to inmates in community residential confinement placement with the following exceptions, substitutions and modifications:

(a) Section DOC 303.15 on sexual conduct does not apply.

(b) The following is substituted for s. DOC 303.18 on inciting a riot: Any inmate who intentionally encourages, directs, commands, coerces or signals one or more other persons to participate in a riot is guilty of an offense. "Riot" means a serious disturbance caused by a group of 2 or more persons which creates a serious risk of injury to persons or property.

(c) Section DOC 303.20 on group resistance and petitions does not apply.

(d) The following is substituted for s. DOC 303.21 on conspiracy:

1. If an inmate plans or agrees to do acts which are forbidden under this chapter with another person or persons, the inmate is guilty of an offense.

2. The penalty for conspiracy may be the same as the penalty for the most serious of the planned offenses;

(e) The following is substituted for s. DOC 303.22 on escape:

1. An inmate who does any of the following without permission is guilty of an offense:

- a. Leaves an institution;
- b. Leaves the custody of a staff member;
- c. Does not follow his or her assigned schedule;
- d. Leaves the confines of the authorized area to which he or she is assigned and does not return promptly; or
- e. Does not return to the CRC residence on schedule;

(f) The following is substituted for s. DOC 303.27 on lying: Any inmate who knowingly makes a false written or oral statement to a staff member is guilty of an offense;

(g) Section DOC 303.29 on talking does not apply;

(h) Section DOC 303.30 on unauthorized forms of communication does not apply;

(i) The following is substituted for s. DOC 303.32 on enterprises and fraud: Any inmate who offers to buy or orders any item with the intention of not paying for it or incurs debt without permission is guilty of an offense;

(j) Section DOC 303.33 on attire does not apply;

(k) Section DOC 303.40 on unauthorized transfer of property does not apply;

(l) Section DOC 303.42 on possession of money does not apply;

(m) The following is substituted for s. DOC 303.43 on possession of intoxicants:

1. Except as specifically authorized by CRC staff, any inmate who knowingly has in his or her possession any intoxicating substance as defined under s. DOC 303.02(11) is guilty of an offense; and

2. All intoxicating substances prohibited by this section shall be confiscated, whether or not any violation of this section occurred;

(n) Section DOC 303.46 on possession of excess smoking materials does not apply;

(o) The following is substituted for s. DOC 303.47 on possession of contraband - miscellaneous: Any inmate who knowingly possesses any items of a type which is not allowed under s. DOC 327.16(6)(c)1 or 5 or under the inmate's special conditions of CRC placement is guilty of an offense;

(p) Section DOC 303.48 on unauthorized use of the mail does not apply;

(q) The following is substituted for s. DOC 303.49 on punctuality and attendance: Inmates shall attend and be on time for all events, classes, meetings, appointments, jobs and other activities for which they are scheduled. Any inmate who violates this section is guilty of an offense, unless one of the following applies:

1. The inmate is sick and the appropriate CRC staff member has been notified;

2. A CRC staff member has granted the inmate permission to be in some other location; or

3. The inmate has been authorized to change his or her schedule by a CRC staff member;

(r) Section DOC 303.50 on loitering does not apply;

(s) The following is substituted for s. DOC 303.51 on leaving assigned area: Any inmate who leaves an area where he or she is attending a scheduled activity or who leaves the immediate area of a work or school assignment before the activity or the work or school assignment is over is guilty of an offense, unless absence from the assigned area has been approved by an appropriate CRC staff member;

(t) Section DOC 303.52 on entry of another inmate's quarters does not apply;

(u) Section DOC 303.54 on improper storage does not apply;

(v) Section DOC 303.55 on dirty quarters does not apply;

(w) Section DOC 303.56 on poor grooming does not apply;

(x) The following is substituted for s. DOC 303.57 on misuse of prescription medication: Any inmate who knowingly does any of the following is guilty of an offense:

1. Takes more of a prescription medication than was prescribed;

2. Takes a prescription medication more often than was prescribed;

3. Takes a prescription medication which was not prescribed for him or her; or

4. Obtains a prescription for medication without approval by CRC staff.

(y) Section DOC 303.59 on use of intoxicants applies except that subs.(2)(a) and (3) are modified to include tests, examinations and specimens requested in accordance with this chapter; and

(z) The following is substituted for s. DOC 303.63 on violations of institution policies and procedures:

1. The CRC superintendent may make specific substantive disciplinary policies and procedures for inmates in CRC placements. The violation of any specific disciplinary policy or procedure is an offense. Each inmate in a CRC placement shall be given or mailed a copy of policies and procedures applicable to him or her;

2. Violation of any special conditions imposed on an inmate's CRC placement is an offense; and

3. Violation of the CRC agreement is an offense.

(3) In addition to the rules listed under sub.(1) and the list of offenses under ss. DOC 303.12 to 303.631 as affected by sub.(2), CRC staff may develop additional written rules and specific conditions for an inmate's CRC placement. These specific rules and conditions may be modified at any time with written notice to the inmate.

(4) Violation of this section may result in termination of the CRC placement under s. DOC 327.10.

DOC 327.10 TERMINATION OF CRC PLACEMENT. An inmate's CRC placement may be terminated for any of the following reasons:

(1) At the inmate's request, subject to approval of the PRC;

(2) If there is a change of circumstances including a medical condition or the loss of a job, school or treatment program; or

(3) If the department determines that the inmate has committed one or more of the following:

(a) Violation of a state or federal statute or local ordinance;

(b) Violation of the rules of any facility in which the inmate is held or to which the inmate is assigned;

(c) Violation of the administrative rules of the department with the modifications described in s. DOC 327.09;

(d) Violation of the community residential confinement agreement; or

(e) Violation of any special condition imposed on the inmate's CRC placement.

DOC 327.11 TERMINATION PROCEDURE. (1) For the purpose of considering the termination of a CRC placement, the CRC PRC shall consist of 3 members including a social worker, a correctional officer and a department supervisory staff member. The superintendent may designate persons to sit as alternates.

(2) The procedure for termination at the inmate's request under s. DOC 327.10(1) or as the result of a change in circumstance under s. DOC 327.10(2) shall be as follows:

(a) The division may transport the inmate to any state correctional institution, a county jail or any other facility that has agreed to hold CRC inmates in lockup status; and

(b) No hearing under s. DOC 327.13 is required. However, the termination shall be subject to PRC approval in accordance with the procedures under sub. (6).

(3) If the placement is terminated under s. DOC 327.10(3), the inmate shall be afforded a hearing under s. DOC 327.13 for the purpose of determining whether the alleged violation occurred.

(4) Pending the outcome of the hearing or the PRC review under sub. (6), the department may take any action with reference to the inmate that it considers necessary for protection of the public including temporary removal from the CRC placement if the conditions for temporary lockup under s. DOC 327.14 are met.

(5) The due process fact-finding hearing shall be conducted in accordance with s. DOC 327.13.

(6) In order to terminate the CRC placement, if the inmate is found under sub.(5) to have committed the violation alleged, the case shall be referred to the CRC PRC for review. The PRC may recommend a termination in the inmate's CRC placement, a change in the inmate's security classification, a transfer or take any other action considered appropriate. PRC review of the inmate's CRC placement shall be conducted in accordance with ss. DOC 302.19 and 302.20.

(7) An inmate who has been removed from a CRC placement pending a hearing and who is found not guilty of the alleged violation shall be returned to the placement as soon as practicable following the determination.

(8) If an inmate is unable to attend work, school or treatment programs due to a pending hearing or PRC review, CRC staff shall notify the appropriate school official, employer or treatment staff.

DOC 327.12 DISCIPLINE. An inmate in a CRC placement may be disciplined if the department determines, after conducting a hearing under s. DOC 327.13, that the inmate has committed one of the following:

(1) A violation of a state or federal statute or a local ordinance;

- (2) A violation of the rules of any facility or program in which the inmate is held or to which the inmate is assigned;
- (3) A violation of this chapter;
- (4) A violation of the community residential confinement agreement; or
- (5) A violation of any special conditions imposed on the inmate's CRC placement.

DOC 327.13 DISCIPLINARY PROCEDURE AND PENALTIES. The due process fact finding hearing to determine if the inmate has committed a violation under s. DOC 327.12 shall be conducted in accordance with the procedures under ss. DOC 303.64 to 303.87, modified as follows:

- (1) Any department supervisory staff member may be substituted for the security director or shift supervisor.
- (2) Under s. DOC 303.67, on review by the security office, the person who wrote the conduct report shall send it to the department supervisory staff person designated to review conduct reports in his or her area within 24 hours after writing the conduct report. The staff person who is designated to review the conduct report shall review it under s. DOC 303.67 within 24 hours after receipt.
- (3) Under s. DOC 303.68(3), in addition to the listed offenses, the violation of any of the following sections is a major offense: s. DOC 303.43 on possession of intoxicants; s. DOC 303.44 on possession of drug paraphernalia; s. DOC 303.51 on leaving assigned area; and s. DOC 303.511 on being in an unassigned area.
- (4) Under s. DOC 303.76(1) on hearing procedure for major violations, a copy of the approved conduct report shall be given to the inmate within 4 working days after approval under s. DOC 303.67.
- (5) Under s. DOC 303.76(4), the due process hearing may take place at the CRC residence, any state correctional institution, a county jail or other facility designated by the department.
- (6) Section DOC 303.78(1) is modified to read: The superintendent may designate or hire staff members to serve as advocates for inmates in disciplinary hearings at the institution, or staff members may volunteer to serve as advocates. The superintendent shall assign advocates to inmates. If an inmate objects to the assignment of a particular advocate because the advocate has a known and demonstrated conflict of interest in the case, the superintendent shall assign a different staff member to serve as the inmate's advocate.
- (7) Under s. DOC 303.81(3), if an inmate witness must be transported to another institution or facility to testify, the inmate does not have to attend the disciplinary hearing. However, the hearing officer shall attempt to get a signed statement from the witness to be used at the disciplinary hearing or

the advocate shall attempt to interview the witness and report on the testimony to the committee in lieu of a personal appearance by the witness.

(8) Under ss. DOC 303.75(3) and 303.82, any department staff member designated by the superintendent may serve on an adjustment committee or serve as a hearing officer.

(9) A penalty listed in s. DOC 303.84 need not be imposed as a result of a finding of guilt.

(10) Under ss. DOC 303.69 and 303.70, adjustment segregation or program segregation may be served in any state correctional institution, a county jail or other facility designated by the department to hold CRC inmates in adjustment segregation or program segregation status.

DOC 327.14 TEMPORARY LOCKUP FOR INMATES IN CRC PLACEMENTS. (1) In this section, "TLU" means temporary lockup.

(2) An inmate may be placed in TLU by any CRC staff member or by a law enforcement officer at the request of CRC staff.

(3) CRC supervisory staff shall review the placement of an inmate in TLU within 3 working days after it takes place. Before this review and the review provided for in sub.(3), the inmate shall be provided with the reason for TLU and with an opportunity to respond, either orally or in writing. Review of the decision shall include consideration of the inmate's response to TLU. If, upon review, it is determined that TLU is not appropriate, the inmate shall be returned to his or her CRC placement.

(4) No inmate may remain in TLU more than 21 days, except that the superintendent, with notice to the administrator, may extend this period for up to 21 additional days for cause. After the review under sub. (2), CRC supervisory staff shall review the status of each inmate in TLU every 7 days to determine whether TLU continues to be appropriate. If upon review it is determined that TLU is not appropriate, the inmate shall be returned to his or her CRC placement.

(5) An inmate may be placed in TLU and kept there only if the decision maker is satisfied that it is more likely than not that one or more of the following is true:

(a) If the inmate remains in the CRC placement, the inmate will seek to intimidate a witness in a pending investigation, disciplinary action or termination action;

(b) If the inmate remains in the CRC placement, the inmate will encourage others by example, expressly, or by the inmate's presence, to defy staff authority and thereby erode staff's ability to control a particular situation;

(c) If the inmate remains in the CRC placement, it will create a substantial danger to the physical safety of the inmate or other person;

(d) If the inmate remains in the CRC placement, there is a substantial danger that the inmate will try to escape;

(e) If the inmate remains in the CRC placement, a criminal, disciplinary or termination investigation will thereby be inhibited; or

(f) If the inmate remains in the CRC placement, a medical or psychological problem of the inmate would go untreated.

(6) When an inmate is placed in TLU, the person who makes the placement shall state the reasons on the appropriate form and shall include the facts upon which the decision is based. The inmate shall be given a copy of the form. Upon review, the supervisory staff person shall indicate on the form approval or disapproval of TLU.

(7) TLU for CRC inmates may be at any state correctional institution, a county jail or any other facility designated by the department for holding CRC inmates in TLU status. If 1983 Wisconsin Act 528 does not apply to the inmate, he or she shall continue to earn extra good time credit. The inmate may be required to wear mechanical restraints, as defined in s. DOC 306.09(1), while outside the cell.

DOC 327.15 INMATE FUNDS. (1) An inmate in a CRC placement is not eligible for compensation under s. DOC 309.55.

(2) The inmate shall sign an agreement acknowledging the department's authority to collect all funds earned and compensation received by the inmate while in a CRC placement and to disburse those funds in accordance with this section. Refusal to sign shall make an inmate ineligible for participation.

(3) The CRC business manager or a financial institution designated to handle CRC inmate accounts shall establish a separate CRC account for each inmate and make disbursements in accordance with this section. All paychecks from CRC work assignments and other funds received for inmates shall be sent to the CRC business manager or a financial institution designated to handle CRC inmate accounts.

(4) Upon an inmate's placement in CRC, funds in an inmate's general account shall be transferred to his or her CRC account.

(5) The CRC business manager or the designated financial institution shall disburse money received while an inmate is in a CRC placement in the following order:

(a) Payment of the crime victim and witness assistance surcharge under s. 973.045(4), Stats. and s. DOC 309.465;

(b) Unless waived by the superintendent, a reasonable electronic monitoring fee as determined by the department; and

(c) The balance to the inmate in a CRC placement, consistent with CRC procedures.

(6) Prior to disbursing funds under sub.(5)(c), the business manager or designated financial institution may disburse money from the inmate's CRC account to pay, either in full or proportionately, the inmate's obligations that have been acknowledged by the inmate in writing or that have been reduced to judgment.

(7) Income earned by or received for the benefit of an inmate while in a CRC placement is not subject to release account deductions under s. DOC 309.466.

(8) After approval for a CRC placement, an inmate may receive a single disbursement from his or her release account under s. DOC 309.466 for initial expenses such as security deposits, clothing, fees, tuition and books, if approved by the superintendent.

(9) Upon termination of a CRC placement, funds in an inmate's CRC account shall be deposited in the inmate's general account after disbursements under sub.(5)(b) are made.

(10) Before releasing an inmate to field supervision from a CRC placement, the CRC business manager shall inform the parole agent of the balance in the inmate's CRC account. The agent shall instruct the business manager as to where the funds shall be transferred. Following release, the former inmate may use funds formerly held in the CRC account with the approval of the agent.

DOC 327.16 RESOURCES FOR CRC INMATES. (1) DISCLAIMER. The department does not assume responsibility for the condition or safety of any CRC residence, including the inmate's food and property at the residence, or for the safety of others or their property at a CRC residence.

(2) ACCESS TO LEGAL MATERIALS. Inmates with documented legal needs shall be permitted to do legal research at local law libraries. If local law libraries are not available, efforts shall be made to accommodate reasonable requests of inmates for legal materials by borrowing copies of requested materials from the criminal justice reference and information center at the University of Wisconsin law school or from correctional institution law libraries. CRC staff shall inform inmates how legal materials may be obtained. An inmate, at his or her request, may be transferred from a CRC placement to an institution with a law library if the inmate requires access to a library and materials made available pursuant to this subsection are inadequate.

(3) MEDICAL CARE. (a) All medical care for inmates shall be authorized by the superintendent upon recommendation of correctional health services staff in accordance with this subsection.

(b) Inmates with private health insurance may use any medical personnel and facilities covered by their policy with prior approval of the superintendent and correctional health services staff.

(c) Inmates without private health insurance may be required to use department facilities for ordinary medical and dental care.

(d) For emergency medical care, an inmate shall use a facility in the area approved by the department for emergency medical care. All emergency medical care requires the superintendent's prior authorization unless this is not possible because of the nature and time limitation of the emergency.

(e) An inmate requiring hospitalization for nonemergency medical care shall use a facility in the area approved by the department for hospitalization of CRC inmates. All nonemergency hospitalizations require the prior approval of the superintendent and correctional health services staff.

(f) An inmate's serious medical care need may be cause for termination of a CRC placement under s. DOC 327.10 and transfer to a state facility for treatment.

(4) RELIGIOUS SERVICES. With the approval of the superintendent, inmates motivated by religious beliefs shall be given reasonable opportunities to attend religious services.

(5) LEISURE TIME ACTIVITIES. (a) In this subsection, "leisure time activities" mean activities outside the inmate's residence other than those required for job, school or treatment programs and include, but are not limited to, attending religious services, access to law libraries, exercise and recreational activities.

(b) After 30 days of being in a CRC placement, an inmate shall be permitted to participate in leisure time activities for at least 4 hours per week. The 30 day waiting period may be waived by the superintendent.

(c) A request to participate in a leisure time activity shall be made by an inmate in writing to the appropriate CRC staff member. All leisure time activities shall have prior approval by the appropriate CRC staff member and shall be included in the inmate's schedule.

(d) An inmate may lose the privilege of participating in leisure time activities through the disciplinary process under s. DOC 327.13.

(6) PROPERTY. (a) Inmates may have personal property in their possession or in their residence in accordance with this subsection and any special conditions imposed on an inmate's CRC placement.

(b) An inmate's property shall be signed out to him or her at the sending correctional institution prior to placement in CRC. The department is not responsible for an inmate's property after that point.

(c) An inmate in a CRC placement may possess any personal property except:

1. Property which is prohibited by state, federal or local law or this chapter;

2. Alcohol beverages as defined in s. 125.02(1), Stats., or a controlled substance as defined in s. 161.01(4), Stats.;

3. Any item designed exclusively to be used as a weapon or to be used in the manufacture of a weapon;

4. Drug paraphernalia, as defined in s. DOC 303.44; and

5. Obscene material, as defined in s. DOC 309.05(6)(c)8.

6. Property which is prohibited by an inmate's special conditions of CRC placement.

(d) Items not permitted under this section or under an inmate's special conditions of CRC placement are contraband. They may be seized in accordance with s. DOC 303.10. An inmate may be subject to discipline for possessing contraband.

(7) INMATE CONTACTS. (a) Special conditions may be placed on an inmate's contacts while in a CRC placement, including mail, visits and telephone, if it is warranted by the rehabilitation of the inmate or the protection of the public.

(b) An inmate shall inform the superintendent of any contact with the news media.

(c) Visits between inmates who are family members shall be regulated under s. DOC 309.15.

DOC 327.17 USE OF FORCE. The use of force on inmates in CRC placements shall comply with s. DOC 306.06, modified as follows:

(1) In addition to the conditions for use of non-deadly force under s. DOC 306.06(3), non-deadly force may be used by correctional staff against a CRC inmate if the user of force reasonably believes it is necessary to prevent the inmate from fleeing the control of the correctional staff member;

(2) Deadly force may not be used by CRC staff against a CRC inmate except to prevent death or great bodily injury to oneself or another; and

(3) If the CRC inmate is held in a state correctional institution, the use of force rules under ch. DOC 306 apply.

DOC 327.18 MECHANICAL RESTRAINTS. (1) This section regulates the use of mechanical restraints on inmates in CRC placements.

(2) Mechanical restraints are limited to handcuffs, handcuffs with restraining belt or chain, restraining chain, leg restraints, and leather and plastic restraints.

(3) Mechanical restraints may be used only in the following circumstances:

(a) To protect staff or others from a CRC inmate who poses an immediate risk of flight or physical injury to others unless restrained;

(b) To protect a CRC inmate who poses an immediate threat of physical injury to himself or herself unless restrained;

(c) When taking a CRC inmate into custody; or

(d) To transport a CRC inmate.

(4) Mechanical restraints may not be used:

(a) As a method of punishment;

(b) About the head or neck of an inmate;

(c) In a way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of the inmate; or

(d) To restrain an inmate to a moving vehicle.

(5) A staff member shall observe a CRC inmate in restraints at least once every 15 minutes until the restraints are removed or the inmate is admitted to a state correctional institution, a detention facility, a mental health facility or a medical facility.

(6) If feasible, an inmate shall be released from restraints to perform bodily functions and for meals.

(7) Except when restraints are used to take a CRC inmate into custody or to transport an inmate, a record shall be kept of each time the inmate is placed in restraints. The record shall include:

(a) The inmate's full name, number, and the date and time the inmate was placed in restraints;

(b) The name of the staff member who placed the inmate in restraints;

(c) The reason for placing the inmate in restraints; and

(d) A statement indicating when and under what circumstances the restraints were removed.

(8) CRC staff shall periodically examine the supply of mechanical restraints. Any excessively worn or defective restraints shall be removed from the supply. Only commercially manufactured mechanical restraints may be used.

(9) If the CRC inmate is held in a state correctional institution, the mechanical restraints rules under ss. DOC 306.09 and 306.10 apply.

DOC 327.19 CHEMICAL AGENTS AND FIREARMS. (1) Chemical agents may not be used by CRC staff against CRC inmates.

(2) CRC staff may not carry firearms or other weapons during their working hours.

DOC 327.20 ESCAPES. (1) PLAN. The superintendent shall have a written plan to be implemented if an escape occurs from a CRC placement. The plan shall be developed by the superintendent who shall review and update it annually. A copy of the plan shall be filed with the administrator. The plan shall provide for the following:

(a) If CRC staff believe that an inmate may have escaped because the inmate has left an assigned area, the inmate does not return to the CRC residence on schedule, the electronic monitoring equipment indicates someone has tampered with it or because CRC staff have received other relevant information, CRC staff shall attempt to contact the inmate.

(b) If CRC staff believe the inmate has escaped or if an inmate is 4 or more hours late returning to the CRC residence without authorization from appropriate CRC staff, CRC staff shall place an apprehension request on the inmate;

(c) After an apprehension request has been placed on an inmate, the escape shall be reported orally and in writing to the superintendent and the administrator;

(d) The escape shall be reported to law enforcement officials; and

(e) The administrator and law enforcement agencies shall be notified by CRC staff when an inmate who has escaped is apprehended.

(2) REPORTS OF ESCAPES. Reports of escapes required to be made under sub.(1) shall include, if known:

(a) The method of escape;

(b) Who was involved in the escape;

(c) A description of the escapee, including clothing worn;

(d) Action taken by the institution;

(e) A brief evaluation of the factors which may have contributed to the escape; and

(f) The identification of persons who may have information about the escape.

(3) ORDER TO DUTY. In the event of an escape, the superintendent may order any off-duty staff member to work.

(4) AUTHORITY OF HOSTAGE. If a correctional staff member, including the superintendent, is taken as a hostage in an escape or escape attempt, that hostage has no authority to order any action or inaction by correctional staff. Any orders issued by a hostage shall be disregarded by the correctional staff.

(5) PURSUIT. The pursuit of escapees shall be done under the supervision of local law enforcement authorities. Until local law enforcement authorities are able to supervise a pursuit, it shall be supervised by the superintendent. Correctional staff and law enforcement officers may take a CRC inmate into custody from his or her CRC residence.

(6) USE OF PRIVATE CARS IN PURSUIT. The superintendent may authorize CRC staff members to use their own cars to pursue escapees if state-owned cars are unavailable.

DOC 327.21 SEARCH OF CRC RESIDENCE. (1) A search of a CRC inmate's residence, including the grounds, his or her vehicle, areas occupied by other occupants of the residence or any property under the inmate's control, may be made at any time by any correctional staff member. There is no requirement that there be evidence that contraband is concealed in the residence before a search is conducted.

(2) Before the search occurs, it shall be approved by a CRC supervisor unless exigent circumstances, such as suspicion the inmate will destroy contraband or use a weapon, require search without approval.

(3) There shall be a written record of all searches conducted under sub.(1). This record shall be prepared by the CRC supervisor or the staff member who conducted the search. The report shall state:

(a) The identity of the staff member who conducted the search and the supervisor who approved it;

(b) The date and time of the search;

(c) The identity of the inmate whose residence or property was searched;

(d) The reason for conducting the search. If the search was a random one, the report shall state that fact;

(e) Any objects which were seized pursuant to the search; and

(f) Whether any damage was done to the premises during the search.

(4) If any objects were seized or property damaged during the search of an inmate's residence or property, the inmate shall be informed in writing. The inmate shall be reimbursed for damage to any property which is not contraband. Property which is damaged shall be valued at its fair market value, not the cost to replace it.

(5) In conducting a search, correctional staff shall disturb the effects of the inmate as little as possible, consistent with thoroughness.

(6) Staff shall not read legal materials belonging to the inmate during a search.

DOC 327.22 SEARCH OF CRC INMATE. (1) Searches of inmates approved for CRC placements shall comply with s. DOC 306.16, modified as follows:

(a) In addition to the reasons for a personal search of an inmate listed under s. DOC 306.16(2), a personal search of an inmate in a CRC placement may be conducted by any correctional staff member before an inmate enters and after an inmate leaves the security enclosure of a jail or detention facility and when an inmate is taken into custody;

(b) In addition to the reasons for a strip search of an inmate listed under s. DOC 306.16(3), a strip search may be conducted before an inmate enters and after an inmate leaves the security enclosure of a jail or detention facility and when an inmate is taken into custody;

(c) In addition to the reasons for a body contents search listed under s. DOC 306.16(5), a body contents search may be conducted:

1. Immediately before transfer to the CRC placement;
2. Upon arrival at the CRC placement;
3. If an inmate is found to possess intoxicating substances or intoxicating substances are detected or found in the inmate's residence or in an area controlled, occupied or inhabited by the inmate;
4. As part of a random testing program of all CRC inmates. Selection of inmates for random testing may not be done for the purpose of harassing or intimidating inmates; or
5. Periodically, if an inmate has a history of alcohol or other drug abuse.

(2) If the CRC inmate is held in a correctional institution, the search rules under ss. DOC 306.13, 306.14, 306.15 and 306.16 apply.

DOC 327.23 SEARCH OF STAFF. Section DOC 306.18 regulates the search of CRC staff except that a search is authorized before and after a staff member has contact with a CRC inmate or if there are reasonable grounds to believe the staff member is concealing an unauthorized object.

DOC 327.24 USE OF TEST RESULTS AND CONTRABAND AS EVIDENCE AT DISCIPLINARY HEARINGS. (1) Contraband seized during a search which is done in violation of this chapter may be used as evidence at a disciplinary hearing conducted pursuant to s. DOC 327.13.

(2) Results of physical examinations and tests performed on body content specimens for the purpose of detecting intoxicating substances may be used as evidence at a disciplinary hearing conducted pursuant to s. DOC 327.13.

DOC 327.25 EMERGENCIES. (1) An emergency is an immediate threat to the safety of CRC staff, inmates or the public. An emergency may include, but is not limited to:

- (a) Failure of the CRC inmate's electronic surveillance equipment;
- (b) Malfunctioning of the CRC inmate's telephone system; or
- (c) A strike of department employees.

(2) The superintendent shall have a written plan to be implemented in the event of an emergency that complies with the requirements of s. DOC 306.23(2) and (3).

(3) If an emergency occurs that prevents the normal functioning of CRC, the superintendent may suspend those sections of this chapter or other administrative rules to which this chapter refers that specifically relate to the emergency until the emergency is ended.

DOC 327.26 OTHER RULES THAT APPLY TO CRC PLACEMENTS. The following chapters apply to inmates in community residential confinement placements:

(1) Chapter HSS 30 on parole;

(2) Chapter DOC 310 on complaint procedures in adult correctional institutions, modified as follows:

(a) Under s. DOC 310.08(2), the complaint shall be considered denied and may be appealed if the superintendent does not send his or her decision to the complainant within 23 calendar days after the ICI's receipt of the complaint; and

(b) Under s. DOC 310.03(2), the superintendent may designate a CRC staff member to function as ICI in addition to other duties. Complaint investigation does not have to be the primary responsibility of this person;

(3) Chapter DOC 314 on mental health treatment for inmates;

(4) Chapter DOC 325 on temporary release under supervision; and

(5) Chapter DOC 326 on leave for qualified inmates.

SECTION 5. DOC 324.04(1) is amended to read:

DOC 324.04(1) An inmate shall have a security classification of minimum as described in s. DOC 302.12(1)(e) or a security classification of minimum/community residential confinement as described in s. DOC 302.12(1)(f). Upon initial assignment of an inmate to a security classification of minimum or minimum/community residential confinement, or upon transfer of an inmate from another state correctional facility, the superintendent of the state correctional facility where the inmate is assigned may observe the inmate in minimum security or minimum security/community residential confinement for 30

days to determine his or her adjustment to minimum security or minimum security/community residential confinement before the inmate becomes eligible for work or study release status. At the end of the 30-day period the superintendent shall inform the PRC of the inmate's adjustment;

SECTION 6. DOC 326.04(1) is repealed and recreated to read:

DOC 326.04(1) The inmate shall have a security classification of minimum or minimum/community residential confinement. If the inmate has a security classification of minimum, he or she shall have had that classification for at least 30 days prior to application.

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

WISCONSIN DEPARTMENT OF CORRECTIONS

Dated: 8-8-90

By:


Stephen E. Bablitch
Secretary

Seal:

A:\Adult\5-14-5.CRC

Tommy G. Thompson
Governor

Stephen E. Bablitch
Secretary



Mailing Address
1 West Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

State of Wisconsin Department of Corrections

August 8, 1990

Mr. Bruce E. Munson
Revisor of Statutes
7th Floor - 30 On The Square
Madison, WI 53702

RECEIVED

AUG 8 1990
3pm
Revisor of Statutes
Bureau

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of DOC 327, administrative rules relating to community residential confinement (CRC).

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

These rules concern CRC inmates. They do not directly affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Stephen E. Bablitch
Secretary

SEB:mlc
8-6-18/sec

Enclosure