

Chapter DOC 374

ADMINISTRATIVE CONFINEMENT IN TYPE 1 SECURED CORRECTIONAL INSTITUTIONS

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Note: Chapter HSS 334 as it existed on June 30, 2000 was repealed and a new Chapter DOC 374 was created, Register, June, 2000, No. 534, effective July 1, 2000.

DOC 374.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11 (2), 301.03 and 938.48 (16), Stats., to provide for the administrative confinement in a secure setting of a youth in a type 1 secured correctional facility when the youth's presence in the general population poses a serious threat to life, property, self, staff, or other youth, or to the security or orderly operation of the institution. Youth misconduct shall be handled under ch. DOC 373.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.02 Applicability. This chapter applies to the department of corrections and all youth in type 1 secured correctional facilities.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.03 Definitions. In this chapter:

(1) "ACRC" means the administrative confinement review committee appointed by the superintendent, consisting of 3 members, one of whom shall be from security, one from the youth's treatment team and one of whom shall be a supervisor who will serve as the committee chair.

(2) "Administrative confinement" means an involuntary non-punitive status for the confinement of a youth because the youth's behavior presents a danger to self or others, or poses a serious risk to institution security, including but not limited to, escape risk or disturbance.

(3) "Administrator" means the administrator of the department's division of juvenile corrections or that person's designee.

(4) "Close confinement" means restriction of a youth to the youth's assigned room with a minimum of one hour of out-of-room time per day.

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

(6) "Disturbance" means a serious disruption to institution order or security by 2 or more youth.

(7) "Hearing record" means the exhibits presented at hearing, a summary of witness statements and the views of each ACRC member.

(8) "Institution" means a type 1 secured correctional facility.

(9) "Modified confinement" means restriction of a youth to the youth's assigned room with a minimum of 4 hours of out-of-room time per day.

(10) "Staff" means an employee of the institution where the youth is housed.

(11) "Superintendent" means the superintendent of a type 1 secured correctional facility or the superintendent's designee.

(12) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19), Stats.

(13) "Youth" means a person or persons under the supervision of the department in an institution consistent with the requirements of law and regardless of age.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.04 Criteria. A superintendent may place a youth in administrative confinement if the superintendent reasonably believes that any of the following is true:

(1) The youth presents a significant risk of harm to self, another person or institution security as evidenced by a behavior or a history of homicidal, assaultive or other violent behavior or by an attempt or threat to cause harm, including prior to and after institution placement.

(2) The youth's presence in the general population poses a significant risk of escape.

(3) The youth's continued presence in general population poses a significant risk of a disturbance.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.05 ACRC hearing. (1) When a superintendent places a youth in administrative confinement, the ACRC shall conduct a hearing within the time limits in sub. (3) to determine if a youth has been properly placed in administrative confinement under s. DOC 374.04.

(2) The superintendent shall give a youth written notice of the hearing to be conducted by the ACRC within 24 hours of placement in administrative confinement. The notice shall include:

(a) The reason that administrative confinement is considered necessary.

(b) The evidence to be considered at the hearing, which may include documents which have been amended to conceal the identity of persons whose disclosure would threaten personal safety or institution security.

(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 the youth's rights at the hearing under sub. (4), including the right to an advocate, the procedure for requesting an advocate and the role of the advocate at the hearing.

(f) The date, time and place of the hearing and an order directing the youth to appear at the hearing.

(3) The ACRC shall conduct a hearing after the youth is placed in confinement, to be held no sooner than one day and no later than 7 days after service of the notice in sub. (2). A youth may request that the ACRC delay the hearing for additional preparation time. Unless there are good reasons for not granting additional time, the ACRC shall grant a reasonable amount of additional time.

(4) At a hearing conducted by the ACRC, a youth shall have all of the following rights:

(a) The right to be present at the hearing.

(b) The right to deny the allegations.

(c) The right to present documentary evidence.

(d) The right to call and question witnesses.

(e) The right to be assisted by an advocate.

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

(g) The right to appeal the finding under s. DOC 374.07 (2).

(5) At the hearing, all of the following shall occur:

(a) The ACRC committee chair shall read aloud the reason for placing the youth in administrative confinement.

(b) All witnesses for or against the youth shall have an opportunity to speak, including staff who recommended placement and the youth.

(c) The ACRC may require medical or physical evidence to be offered.

(d) The ACRC may permit the youth or the youth's advocate, if any, to ask direct questions of the witnesses or require the youth or the youth's advocate, if any, to submit questions to the ACRC to be asked of the witnesses. If the ACRC requires the youth or the youth's advocate to submit questions, the ACRC shall provide a reasonable amount of time to the youth or the youth's advocate to create the questions.

(e) Repetitive, disrespectful or irrelevant questions may be forbidden.

(f) Whenever the ACRC determines that a witness shall not be called or that the identities of sources of information relied upon or any statements or evidence should not be included in the written record because personal safety or institution security is implicated, the ACRC shall indicate the fact of the omission in the hearing record which may consist of a written summary of the proceedings.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.06 ACRC hearing: advocates. (1) A superintendent shall designate staff to serve as advocates for youth at ACRC hearings. Preference shall be given to staff who volunteer. A youth may select an advocate, subject to the individual's consent and availability. Staff involved in the decision to place a youth in administrative confinement may not act as the youth's advocate.

(2) Before the ACRC hearing, the advocate shall help the youth understand the issues and help in the preparation and presentation of any defense, including gathering evidence and witness testimony and preparing the youth's own statement. The advocate may speak on behalf of the youth at the ACRC hearing or may help the youth state a defense. After the ACRC hearing, the advocate shall discuss the issues with the youth, ensure that the youth understands what happened at the ACRC hearing and answer any questions.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.07 ACRC hearing decision and youth appeal. (1) The ACRC shall do all of the following after the hearing under s. DOC 374.05 is completed:

(a) Deliberate in private considering only the youth's institution records and the evidence presented at the hearing that supports or refutes the need for administrative confinement.

(b) Issue a written decision by majority vote within 3 days after the hearing that does one of the following:

1. States that the evidence and the youth's institution records support the need for administrative confinement. The decision shall state the period of time the youth shall remain in confinement and may provide the conditions that must be met before the youth can be released from administrative confinement.

2. States that the evidence and the youth's institution records do not support the need for administrative confinement, in which case the ACRC shall issue a written order that requires the immediate release of the youth from administrative confinement.

(c) Provide the youth with a copy of the decision and a copy of the summary of the hearing record, except portions regarding the identities of sources of information or containing statements

or evidence that could, upon disclosure, threaten personal safety or institution security.

(2) A youth may appeal an ACRC hearing decision to the superintendent within 5 days of the date of the decision and may appeal a superintendent's decision to the administrator within 5 days of the date of the superintendent's decision. The superintendent or administrator shall issue a written decision within 7 days of receipt of the appeal. Failure to issue a decision affirms the prior decision.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.08 Reviews by the ACRC and superintendent. (1) The ACRC shall review the need for administrative confinement at least every 7 days after the issuance of the hearing decision under s. DOC 374.07. The ACRC may release a youth from administrative confinement or continue administrative confinement consistent with the decision under s. DOC 374.07. An ACRC decision to continue confinement under this subsection shall be submitted in writing to the superintendent and the youth.

(2) A superintendent may review a decision of the ACRC at any time, whether or not there has been an appeal by a youth, and may remand the decision to the ACRC for reconsideration or terminate the administrative confinement.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.09 Appeals by youth of ACRC review decisions. (1) The youth may submit a written appeal of an ACRC review decision, under s. DOC 374.08 (2), to the superintendent within 5 days of receipt of the ACRC decision under this section. If the youth has difficulty writing the appeal, the advocate or other staff not involved in the decision to place the youth in administrative confinement shall assist the youth to write the appeal.

(2) The superintendent shall review the appeal and affirm, reverse, or remand the decision within 7 days of receipt of the appeal. The superintendent shall issue a decision in writing, including the reasons for the decision, and send it to the ACRC and the youth. Failure to issue a decision affirms the ACRC decision.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

DOC 374.10 Living conditions. While in administrative confinement, a youth:

(1) Shall reside alone in a locked room. The locked room may be in a segregated building or area. A youth may be placed in close confinement or modified confinement. While outside of the assigned room, the youth shall be directly supervised by one or more staff.

(2) Shall be given the opportunity to participate in any program that is consistent with the services offered in the area in which the youth is confined, may participate in limited exercise and therapy and may keep in the assigned room any legal, educational, religious or other reading material, consistent with safety and security.

(3) Shall be allowed to have any property in the assigned room that is consistent with s. DOC 373.82.

(4) Shall be permitted visitation in accordance with s. DOC 379.07.

(5) Shall be permitted to receive and send mail in accordance with s. DOC 379.04.

(6) Shall be permitted to shower at least 3 times every 7 days. When possible, the institution shall permit daily showers.

(7) Shall be provided religious, social, and other services that are consistent with the services offered in the area in which the youth is confined.

(8) May be awarded canteen privileges in accordance with s. DOC 379.20 (9).

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.