

## Chapter DOC 311

### APPENDIX

Observation is a nonpunitive measure taken to ensure the safety of the inmate or others during the crisis period. Hopefully, by confining the inmate under observation for a short time, the personal crisis will subside without any harm being done to the inmate or to others. Examples of personal crisis are situations in which an inmate receives discouraging or disheartening news from his or her family and evidences a mental health problem and dangerousness and temporarily needs emotional support and observation because of the possibility of attempted self harm or harm to others; or when an inmate is in an emotional depression and needs to be carefully watched because of the possibility of attempted self harm or harm to others; or when an inmate has attempted to commit suicide and shows signs of another attempt.

Alcoholic and drug dependent inmates shall be placed in observation only if treatment is necessary and cannot be provided while the inmate is in the general population.

Section DOC 311.04 sets forth the standards to be used in determining dangerousness and mental illness. They are similar to the standards used to determine dangerousness and mental illness for involuntary civil commitment under s. 51.20, Stats. The analogy between the standards is apt since both are vehicles for removing dangerous persons from the population in which they live.

Sections DOC 311.04 and 311.10 authorize certain people to place an inmate in observation. Ideally, placement should be made by highly trained personnel, and the clinician, crisis intervention worker, physician or warden should authorize all placements. However, experience teaches that this is not always possible. Thus, others are authorized to place inmates in observation, but in such cases the clinician, crisis intervention worker, or physician review that placement in no longer than 2 working days. The clinician, crisis intervention worker or physician decides on the necessity of continued placement with allowed privileges, and properties or the immediate release of the inmate from observation.

Subsection DOC 311.05 (4) provides for a review of the inmate's status at least once every 2 working days for mental health placements in observation. An earlier review may occur. These time periods provide for regular and appropriate reviews of placements in observation.

The kinds of property and privileges allowed in observation may differ substantially, and great care should be exercised in determining which properties and privileges should be allowed an inmate.

If, in the opinion of the clinician, crisis intervention worker, or physician, observation is not sufficient to properly handle the mental health concerns, commitment procedures under s. 51.20, Stats., or transfer procedures under s. 51.37 (5), Stats., should be pursued. However, experience teaches that mental health institutions are reluctant to accept transfers of inmates for placement or transfer under ss. 51.20 and 51.37 (5), Stats., and hopefully the provisions under ss. DOC 311.04 to 311.07 will be adequate to handle an inmate's crisis.

Sections DOC 311.07 and 311.12 provide that an inmate may be continued in observation after a special review. Review of continued mental health placement contains due process protections

of the major disciplinary hearing. Due process protections are important and are afforded the few inmates affected by this provision because the seriousness of this confinement parallels civil commitment. At these special reviews, dangerousness and mental illness shall be the only criteria for placement in this status.

Section DOC 311.07 provides the inmate with adequate written notice of the review. Subsection (3) (g) notes that safety and security may be breached if certain testimony or evidence is allowed into the open record. In such cases, review shall deal with the omissions as noted under s. DOC 311.07 (3) (h). See the major disciplinary procedures.

Subsection DOC 311.07 (2) provides for the time of the review. The inmate may waive the review as well as the time limits. To ensure that any waiver is a knowing intelligent one, the inmate must be informed of his or her right to a review and what that entails; the inmate must be informed of what the review will be like if he or she waives the time limits; and the waiver must be in writing. The waiver is not an admission of dangerousness or mental illness.

Placement of an inmate in observation status is not thought to implicate the interests cited in *Vitek v. Jones* 100 S.Ct. 1254 (1980). In *Vitek*, the transfer was to a separate institution which was solely for mentally ill people. A person in observation status in Wisconsin frequently will remain in his or her own cell or room. Sometimes, the person is transferred to a different cell, for their own protection or so that they can be more carefully observed to prevent self-destructive conduct.

If in the opinion of the clinician, crisis intervention worker, or physician additional treatment is needed, commitment proceedings pursuant to ch. 51, Stats., are commenced. These proceedings do more than *Vitek* requires for the transfer of an inmate to a mental health institution.

A staff member must have direct access to an inmate in the event that a problem develops, and a staff member must observe the inmate often to ensure that the inmate is safe.

If observation is not continued under s. DOC 311.09 or the inmate is not transferred under s. 51.20 or 51.37 (5), Stats., the inmate is returned to his or her previous status. Since observation is a nonpunitive status, every attempt should be made to have inmates resume previous assignments.

Section DOC 311.10 provides for the placement of an inmate in medical observation if the inmate is suspected of having a medical problem which requires the inmate to be separated from the general population or if the inmate refuses testing for a communicable disease. Section DOC 311.12 provides that an inmate may be continued in observation for a reasonable period of time for diagnosis, treatment or as needed as determined by a physician. An inmate in medical observation is to receive periodic reviews of the medical placement as determined by the physician.

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 standards 3-4238, 3-4241, 3-4243-4246, 3-4249, and 3-4261.