

Clearinghouse Rule 97-027

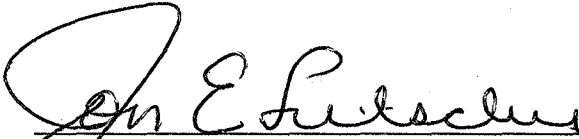
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF CORRECTIONS )

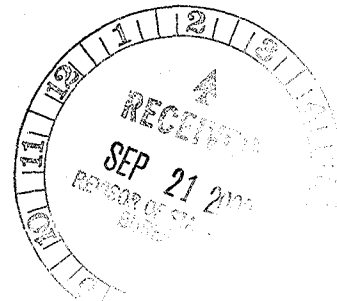
I, Jon E. Litscher, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rules, relating to mental health treatment for inmates were duly approved and adopted by the Department on September 21, 2000.

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

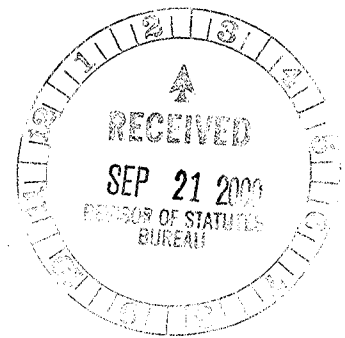
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections  
149 E. Wilson Street in the City of  
Madison, this 21st day of September, 2000.

SEAL

  
\_\_\_\_\_  
Jon E. Litscher  
Secretary



97-027  
12/1/00



ORDER OF THE  
DEPARTMENT OF CORRECTIONS  
REPEALING AND RECREATING RULES

The Wisconsin department of corrections proposes an order to repeal and recreate DOC 314, relating to mental health treatment for inmates.

Statutory authority: ss. 51.61, 301.02, 301.03 (2), and 301.03 (6) and 227.11 (2), Stats.  
Statutes interpreted: ss. 51.20 and 51.61 Stats.

Analysis by the Department of Corrections

The proposed rules repeal and recreate the current rules related to mental health treatment for inmates. The current rules have been effective for over 14 years and do not represent current law relative to involuntary administration of psychotropic medication.

Pursuant to statute, these rules provide for the involuntary commitment of an inmate to a state treatment facility following consideration of voluntary commitment. These rules require a physician or psychologist to inform the inmate about the inmate's treatment needs; the mental health services that are appropriate and available to the inmate, including appropriate voluntary treatment available in either a correctional institution or state treatment facility; and the inmate's rights under s. 51.61, Stats.

These rules provide for 2 situations in which an inmate may be treated involuntarily with psychotropic medication: (1) when an inmate is in a state treatment facility under an involuntary commitment for the treatment of mental illness and the court has found the inmate not competent to refuse psychotropic medication; and (2) when the court has found the inmate not competent to refuse psychotropic medication, and has committed the inmate as an outpatient to a correctional institution and the inmate refuses to take the medication voluntarily.

The rules provide for involuntary administration of psychotropic medication after the inmate has been counseled and has continued to refuse to take the psychotropic medication voluntarily.

The department is promulgating this rule under ss. 301.02, 301.03 (3), and 301.03 (6). The department is required to direct the correctional psychiatric service in all state correctional institutions under s. 301.03 (6). In order to accomplish this requirement, the department must interpret s. 51.20.

SECTION 1. DOC 314 is repealed and recreated to read:

CHAPTER DOC 314

INVOLUNTARY MENTAL HEALTH TREATMENT FOR INMATES

- DOC 314.01 Authority, applicability and purpose
- DOC 314.02 Definitions
- DOC 314.03 Involuntary Commitment
- DOC 314.04 Informing the Inmate
- DOC 314.05 Involuntary treatment
- DOC 314.06 Review of an inmate on psychotropic medication

DOC 314.01 AUTHORITY, APPLICABILITY AND PURPOSE. (1) This chapter is promulgated pursuant to the authority vested in the department by ss. 301.02, 301.03 (2), 301.03 (6) and 227.11 (2), Stats., and applies to the department and to all adult inmates in its legal custody in correctional institutions. This chapter interprets s. 51.20, Stats.

(2) The department has authority to provide specialized treatment for inmates and shall assess and direct inmates into treatment programs.

(3) The department may consider involuntary mental health treatment when the inmate otherwise cannot be treated adequately and when ordered by a court. Whenever feasible and appropriate, the department intends to use other forms of treatment for mental illness, including voluntary treatment in the correctional institution or state treatment facility or transfer to another more appropriate correctional institution. This chapter provides guidance to correctional institution staff concerning the times when it will become necessary to provide an inmate involuntary treatment.

DOC 314.02 DEFINITIONS. In this chapter:

- (1) "Correctional institution" means a facility named in s. 302.01, Stats.
- (2) "Department" means the department of corrections.
- (3) "Nurse practitioner" means a person who meets the qualifications under s. 411.16, Stats.
- (4) "Outpatient" means an inmate receiving treatment for a mental disorder in a correctional institution.

(5) "Physician" means a person licensed to practice medicine in Wisconsin under ch. 448, Stats.

(6) "Physician assistant" means a person licensed to practice as a physician assistant in Wisconsin under ch. 448, Stats.

(7) "Psychiatrist" means a person licensed to practice medicine in Wisconsin under ch. 448, Stats. and who is board certified to practice as a psychiatrist.

(8) "Psychologist" means a person licensed to practice psychology in Wisconsin under ch. 455, Stats.

(9) "Psychotropic medication" means controlled medication that is used to influence psychological functioning, behavior or experience.

(10) "Registered nurse" means a person licensed to practice as a registered nurse in Wisconsin under ch. 441, Stats.

(11) "State treatment facility" has the meaning given in s. 51.01 (15), Stats.

DOC 314.03 INVOLUNTARY COMMITMENT. The department may file a petition for an inmate's involuntary commitment to a state treatment facility under s. 51.20, Stats., following consideration of voluntary treatment.

DOC 314.04 INFORMING THE INMATE. (1) Before filing a commitment petition under s. DOC 314.03 for an inmate's involuntary commitment for mental health care, a physician or psychologist shall inform the inmate about all of the following:

(a) The inmate's treatment needs.

(b) The mental health services that are appropriate and available to the inmate, including a description of the appropriate voluntary treatment available in either a correctional institution or state treatment facility.

(c) The inmate's rights under s. 51.61, Stats. Inpatients have all rights specified in s. 51.61, Stats.

(d) Outpatients have only the rights under s. 51.61, Stats., that are specified in s. 51.61 (1) (a), (d), (h), and (k), Stats.

(2) The correctional institution shall give the inmate an opportunity to consent to voluntary treatment, including voluntary placement in a state treatment facility or voluntary treatment with psychotropic medication.

(3) Correctional institution staff shall tell the inmate that the inmate retains the status as an inmate upon commitment under s. 51.20, Stats., and that the inmate is subject to the same rules as other inmates of the department, which include for outpatients the grievance procedure under ch. DOC 310 and for inpatients the grievance procedure required under s. 51.61 (5), Stats.

(4) Any information conveyed under subs. (1) to (3) shall be in a manner that is reasonably calculated to best enable the inmate to understand the information.

DOC 314.05 INVOLUNTARY TREATMENT. An inmate may be treated involuntarily with psychotropic medications only under the following circumstances:

(1) While the inmate is in a state treatment facility under an involuntary commitment under ch. 51 Stats., for the treatment of mental illness and the court has found the inmate not competent to refuse psychotropic medication under s. 51.61.

(2) If the inmate is committed under s. 51.20, Stats., as an outpatient in a correctional institution, the court has found the inmate not competent to refuse psychotropic medication, and the inmate refuses to take the medication voluntarily. All of the following steps shall be followed:

(a) Psychotropic medication shall be administered by a registered nurse, nurse practitioner, physician assistant, physician, or a designee.

(b) The registered nurse, nurse practitioner, physician assistant or physician shall give the inmate an opportunity to take the medication voluntarily.

(c) When an inmate has been adjudicated under ch. 880, Stats., to be incompetent to consent to treatment, the department of corrections shall obtain consent to voluntary treatment from the inmate's guardian.

(d) When the inmate refuses, the registered nurse, nurse practitioner, physician assistant or physician shall counsel the inmate and attempt to persuade the inmate to take the medication.

(e) If the inmate continues to refuse and there is a current physician order to involuntarily administer the psychotropic medication, the registered nurse, nurse practitioner, or physician assistant shall contact the physician who wrote the order to assess the situation. The physician shall decide the course of action to be taken. Possible actions may include all of the following:

1. Take no action for a period of time.

2. Transfer the inmate to a special unit within the correctional institution for treatment of mental illness.

3. Place the inmate in observation status pursuant to ch. DOC 311.
4. Recommend transfer of the inmate to an alternate correctional institution pursuant to ch. DOC 302.
5. Recommend transfer of the inmate to a state treatment facility, pursuant s. 51.20, Stats.
6. Direct that the medications be administered.

(f) If directed by the attending physician, the registered nurse, nurse practitioner, or physician assistant shall instruct the inmate to take the medication. If the inmate persists in refusing to take the medication, security staff will restrain the inmate while the registered nurse, nurse practitioner, physician assistant, or physician administers the psychotropic medication involuntarily.

314.06 REVIEW OF AN INMATE ON PSYCHOTROPIC MEDICATION. The department of corrections staff psychiatrist or psychologist shall review the need to request an extension of the court order 60 days prior to the end of the court order.

SECTION 2. DOC 314 Appendix is repealed.

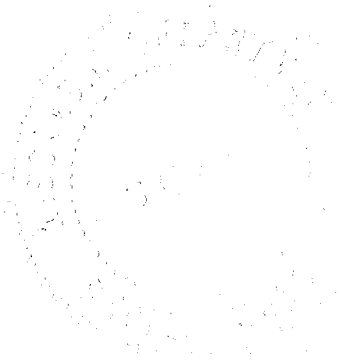
This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

Date: 9/21/00

By: Jon E. Litscher  
Jon E. Litscher  
Secretary

Seal:



Tommy G. Thompson  
Governor

Jon E. Litscher  
Secretary



**State of Wisconsin**  
**Department of Corrections**

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September 21, 2000

Bruce Munson  
Revisor of Statutes Bureau  
131 West Wilson Street, Room 800  
Madison, Wisconsin 53703-3222

Dear Mr. Munson:

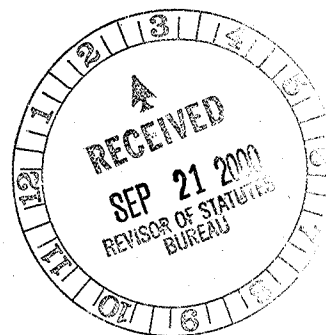
Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified and uncertified copy of DOC 314 relating to mental health treatment for inmates.

If you have any questions, please contact Julie Kane, Office of Legal Counsel, at (608) 267-9839.

Sincerely,

A handwritten signature in cursive script that reads "Jon E. Litscher".

Jon E. Litscher  
Secretary



Attachment