

CR 81-135

CERTIFICATE

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STATE OF WISCONSIN)
)
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department, do hereby certify that the annexed rules relating to administrative confinement for youth in correctional institutions were duly approved and adopted by this department on August 24, 1982.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such 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 24th day of August, A.D. 1982.



Donald E. Percy, Secretary
Department of Health and Social Services

SEAL:

11-1-82



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AUG 25 1982

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

Revisor of Statutes
Bureau

To create HSS 334, relating to administrative confinement for youth in correctional institutions.

Analysis Prepared by the Department of Health and Social Services

These rules provide for an involuntary nonpunitive status of secured confinement for a youth solely because he or she is dangerous. Their purpose is to ensure personal safety and security within an institution. The youth is afforded substantial due process rights prior to placement in this status and may remain in the status no longer than 30 days.

Pursuant to the authority vested in the Department of Health and Social Services by s. 227.014(2), Stats., the Department hereby adopts rules interpreting s. 46.03(1) and (6), and ch. 48, Stats., as follows:

SECTION 1. Chapter HSS 334 of the Wisconsin Administrative Code is created to read:

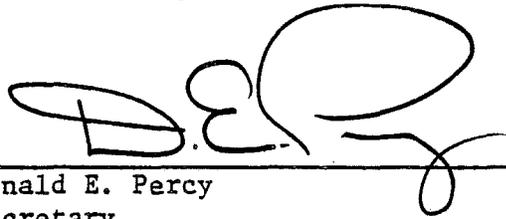
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Dated: 8-24-82

Department of Health and Social Services

By: _____

Donald E. Percy
Secretary

A handwritten signature in black ink, appearing to read 'D.E. Percy', is written over a horizontal line. The signature is stylized and cursive.

SEAL:

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS

ADMINISTRATIVE RULES

CHAPTER HSS 334

Administrative Confinement In
Youth Correctional Institutions

August, 1982

CHAPTER HSS 334

ADMINISTRATIVE CONFINEMENT IN
YOUTH CORRECTIONAL INSTITUTIONS

- HSS 334.01 Purpose
- HSS 334.02 Applicability
- HSS 334.03 Criteria and procedures for placement
- HSS 334.04 Living conditions

HSS 334.01 PURPOSE

The purpose of this chapter is to provide for an involuntary nonpunitive status of secure confinement of a youth solely because he or she is dangerous, to thereby ensure the personal safety of the youth and others within the institution, and to provide appropriate controls for use of this status. Youth misconduct shall be handled through ch. HSS 333, Wis. Adm. Code.

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HSS 334.02 APPLICABILITY

This chapter applies to the department of health and social services and all youth under its legal custody for correctional purposes who are in reception as defined in s. HSS 331.03, Wis. Adm. Code. The chapter interprets ch. 48 and s. 46.03(1) and (6), Stats. The definitions in chs. HSS 331 and HSS 333, Wis. Adm. Code, apply to this chapter.

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HSS 334.03 CRITERIA AND PROCEDURES FOR PLACEMENT

- (1) A youth is dangerous if he or she evidences a substantial probability of physical harm to other persons as manifested by:
 - (a) Recent homicidal or other violent behavior prior to arrival at the institution; or
 - (b) The reasonable fear held by others of violent behavior and serious physical harm because of a recent overt act or attempt or threat to do this physical harm prior to arrival at the institution.
- (2) A youth may be placed in administrative confinement by decision of the superintendent or designee, following a review, within 30 days of the youth's arrival at the institution. Pending the review according to this section, a youth may be placed in prehearing security under ch. HSS 333, Wis. Adm. Code. If a youth is in prehearing security, notice under sub. (3) shall be given within 24 hours of placement in prehearing security.
- (3) A youth shall be given written and oral notice of the review which shall include:
 - (a) The allegation of his or her dangerousness;

- (b) The standard used to determine dangerousness;
- (c) The evidence to be considered at the review;
- (d) The sources of information relied upon unless such disclosure would threaten personal safety or institution security;
- (e) An explanation of the possible consequences of any decision;
- (f) An explanation of his or her rights at the review which are:
 - 1. The right to be present at the review;
 - 2. The right to deny the allegation;
 - 3. The right to present witnesses unless it threatens personal safety or institution security;
 - 4. The right to present documentary evidence;
 - 5. The right to question witnesses;
 - 6. The right to assistance of an advocate;
 - 7. The right to receive a written decision, stating the reasons for it based upon the evidence; and
 - 8. The right to appeal the finding; and
- (g) The date, time, and place of the review, and an order directing the youth to appear at the review.

- (4) The review shall take place not sooner than 2 days and not later than 10 days, excluding Saturdays, Sundays and holidays, after service of notice to the youth. The youth may waive these time limits. A waiver is not an admission of dangerousness.
- (5) The review shall proceed according to procedures analogous to those under s. HSS 333.69(1), Wis. Adm. Code. Whenever the joint planning and review committee or superintendent or designee 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 a written record because personal safety or institution security is implicated, the joint planning and review committee or superintendent or designee shall indicate the fact of the omission in the record.
- (6) After the review, the joint planning and review committee or superintendent or designee shall deliberate in private considering only the evidence presented, the youth's records, and the standard for dangerousness noted under sub. (1). The joint planning panel or persons designated by the superintendent shall decide whether the youth is dangerous and should be placed in administrative confinement. If the vote is not unanimous, the record, with the views of each joint planning panel or person designated by the superintendent, shall be forwarded to the superintendent for a decision. This information shall be shared with the youth who may make known any additional relevant information in writing to the superintendent. The reasons for the decisions of the joint planning and review committee or superintendent or designees shall be given to the youth in writing.

- (7) The superintendent or designee shall review a youth's placement in administrative confinement at least once every 7 days and follow the procedures for review under this section.
- (8) No youth may remain in administrative confinement for longer than 30 days.
- (9) A youth shall be offered treatment by a psychologist at his or her room daily excluding Saturdays, Sundays and holidays. These services shall be designed to treat the youth and eliminate the danger he or she poses. Any youth who no longer exhibits dangerousness after spending time in administrative confinement shall be given the opportunity to show that he or she is not dangerous through gradually increased contact with persons both inside and outside of his or her room. Such contact shall be carefully supervised with treatment available to ensure the safety of others. Records of the contact shall be kept.

NOTE: This chapter reflects the view that administrative confinement may have serious consequences to youth and it attempts to curb any abuse of the authority.

HSS 334.03 provides for the segregated confinement of a youth who is found to be dangerous by the joint planning and review committee or superintendent's designees upon his or her arrival at the institution after a special review in accordance with this section.

It is not punishment of the youth, but an action taken to ensure personal safety and security within the institution. This measure may be infrequently needed and of short duration, but the reasonable needs of safety and security of others within the institution may require that a particular youth be closely confined.

Subsection (1) sets forth the standard to be used in determining dangerousness. It is similar to one of the standards used to determine dangerousness for involuntary civil commitment under s. 51.20, Stats. The analogy between the administrative confinement and involuntary civil commitment standards is apt since both are vehicles for removing dangerous persons from the population in which they live.

This whole section is directed at the situation where the institution receives a youth who has reportedly engaged in very violent behavior such as attempted murder or life-threatening arson, but other information such as a psychological profile, complete court report, and other social history is not yet available. In such an instance, the JPRC cannot make sound decisions about appropriate program placement. Administrative confinement may be used to safeguard the general population and staff.

A youth's dangerousness may be manifested by a recent act of violent behavior or, conceivably, there may be cases in which a youth who has acted in complete compliance with required behavior is nevertheless considered to be dangerous because of a reasonable fear of violent behavior and harm to others by the inmate. Taylor v. Percy, No. 72-C-243 (W.D. Wis. 1977), aff'd, unpublished order (7th Cir. 1978). This fear must be grounded in a previous act, or pattern of acts, attempt, or threat of such harm.

Youth misconduct should be handled under HSS 333, Discipline. Administrative confinement cannot be a penalty for misconduct but depends on a finding of dangerousness.

Subsection (2) provides that a youth may be placed in administrative confinement after a special review by the joint planning and review committee or superintendent or designee, and decision by the superintendent or designee. The review combines components of the standard joint planning and review conference under ch. HSS 331 and the disciplinary hearing under ss. HSS 333.70 and 333.75. This review is provided despite the fact that the U.S. Supreme Court has indicated that analogous placements for adult inmates need not require due process. Meachum v. Fano, 427 U.S. 236 (1976). Due process protections are important and are afforded the few youth affected by this provision because of the seriousness of the prolonged social isolation of administrative confinement. At this special review, dangerousness shall be the sole criterion for placement in this status. The responsibility for placement rests solely with the superintendent or designee and the decision therefore is a classification decision.

Under subsection (4) the requirements for such a waiver are analogous to those stated in the note to s. HSS 333.70. To ensure that any waiver is a knowing and intelligent one, the youth 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.

Subsection (7) provides for a review of the youth's status at least once every seven days. A more frequent review may occur at the discretion of the superintendent or designee. This time period balances fairness to the youth with the practicalities of providing for a meaningful review by the

superintendent or designee. More frequent reviews are mandated for youth than for adults because a youth's dangerousness may be a temporary, albeit serious, characteristic of his or her difficulty in coping with the problems of adolescence rather than his or her enduring predisposition to violence. To ensure that youth spend no more time in administrative confinement than is necessary to ensure personal safety and security in the institution, weekly reviews are mandated.

Subsection (8) reflects the view that administrative confinement may have serious consequences to youth and that extreme care should be exercised at the higher level in assessing a youth's dangerousness and need for close confinement.

Under subsection (9), a youth is given every opportunity consistent with his or her status and behavior to show that he or she is not dangerous. This may be done by increasing his or her personal contacts through enhanced visitation privileges and movement from his or her room. Great care should be taken to ensure the safety of others, however, and to keep adequate records. This gradual "stepping-down" process allows the superintendent or designee to better judge the likelihood of the youth evidencing dangerousness if released from this status. However, compliance with departmental rules alone may not be sufficient evidence of non-dangerousness, and a youth may continue to be confined if there is reasonable fear of his or her violent behavior and harm to others.

HSS 334.04 LIVING CONDITIONS

(1) While in administrative confinement, a youth:

- (a) Shall reside alone in a locked room. The locked room may be in a segregated building or area. While outside of his or her room, the youth shall be directly supervised by one or more staff members;
- (b) Shall be given the opportunity to participate in any program which does not require the youth to leave his or her room, may participate in limited exercise and in therapy and may keep in his or her room any legal, educational, religious or other reading material, consistent with safety and security;
- (c) Shall be allowed to have any property in his or her room which is permitted to the general population. If a youth resides in a security cottage, he or she shall be allowed to have any property in his or her room which every youth is permitted to have in the cottage if feasible and consistent with security;
- (d) Shall be permitted visitation in accordance with ch. HSS 339, Wis. Adm. Code;
- (e) May receive and send mail in accordance with ch. HSS 339, Wis. Adm. Code;
- (f) Shall be permitted to shower at least once every 7 days;

- (g) Shall be provided religious, social and treatment services to the extent possible, but all services shall be provided at the youth's room unless otherwise authorized by the superintendent;
 - (h) May be awarded canteen privileges in accordance with ch. HSS 339, Wis. Adm. Code;
 - (i) May not go to the canteen in person but may have approved items from the canteen brought to him or her; and
 - (j) May have any other properties and privileges consistent with his or her status and the departmental rules, at the discretion of the superintendent.
- (2) No more than 5 youth may be in administrative confinement and the secured program under s. HSS 333.81, Wis. Adm. Code, at any given time at an institution unless the placement is approved by the director, bureau of juvenile services. The juvenile offender review program director may appeal such an approval to the division administrator. Authorization may not be granted unless the reasonable needs of safety and security within the institution require close confinement of more than 5 youth.