

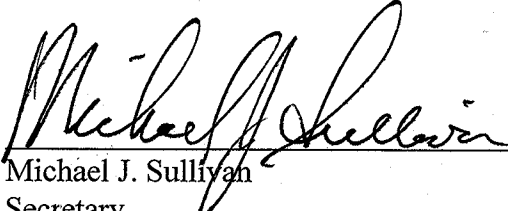
STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

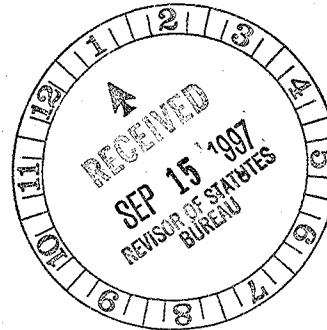
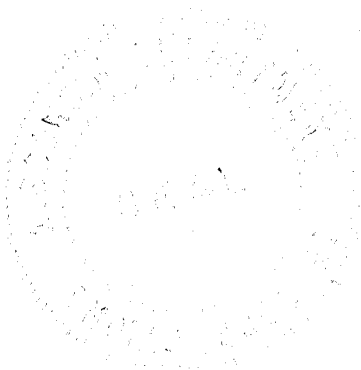
I, Michael J. Sullivan, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rules, relating to administrative confinement of inmates, were duly approved and adopted by the Department on September 15, 1997.

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 15th day of September, 1997.

SEAL


Michael J. Sullivan
Secretary



PROPOSED ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING,
REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin department of corrections proposes an order to repeal DOC 308.04 (11); to renumber DOC 308.03 (1) and 308.03 (4); to renumber and amend DOC 308.03 (2), 308.03 (3), 308.03 (6), 308.04 (5), 308.04 (6), 308.04 (7), 308.04 (8), 308.04 (9), and 308.04 (10); to amend DOC 308.01, 308.03 (2), 308.04 (1), 308.04 (2) (a), 308.04 (3), 308.04 (4) (intro.), 308.04 (4) (a), 308.04 (4) (b), 308.04 (4) (c), 308.04 (4) (d), 308.04 (e) (intro.), 308.04 (4) (e) 1., 308.04 (4) (e) 2., 308.04 (e) 3., 308.04 (4) (e) 5., 308.04 (4) (e) 6., 308.04 (e) 7., and 308.04 (12); to repeal and recreate DOC 308.03 (5), 308.04 (2) (b), 308.04 (2) (c), 308.04 (4) (e) 4. and 308.04 (8); to create DOC 308.03 (4), 308.03 (6), 308.03 (8), 308.03 (9), 308.04 (2) (d), and 308.04 (5), relating to the administrative confinement of inmates.

Statutory authority: ss. 301.02, 301.03, and 227.11 (2), Stats.
Statutes interpreted: ss. 302.07 and 302.08, Stats.

Analysis Prepared by the Department of Corrections

These rules modify the department's rules for administratively confining an inmate. The rules are modified in order to update them.

The current rules provide for the administrative confinement of an inmate solely because the inmate is dangerous and to ensure personal safety and security within the institution. These proposed rules permit the administrative confinement of an inmate whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security or orderly functioning of the institution. These rules maintain the concept that administrative confinement is an involuntary nonpunitive status.

These rules modify the reasons an inmate may be placed in administrative confinement. These rules state that the reasons an inmate may be placed in administrative confinement are: (1) the inmate presents a substantial risk to another person, self, or institution security as evidenced by behavior or history of homicidal, assaultive, or other violent behavior or by an attempt or threat to cause harm; (2) the inmate's continued presence in general population poses a substantial risk to others, self, or institution security; (3) the inmate's activity gives a staff member reason to believe that the inmate's continued presence in general population will result in a riot; and (4) the inmate has been identified as having an active affiliation with an inmate gang or a street gang or there are reasonable grounds to believe that the inmate has an active affiliation with an inmate gang or street gang.

These rules require the designated staff member to prepare a summary, of a signed, corroborated statement of a confidential informant instead of requiring the staff member to edit the statement. These rules provide that the summary may be considered as evidence for placing the inmate in administrative confinement.

These rules require the time limits of the review to be tolled during the time the inmate is unavailable.

These rules extend the time an inmate may be placed in administrative confinement from 6 months to 12 months or more. These rules provide for a review by the program review committee once every 6 months instead of once every 3 months.

These rules provide that an inmate may earn compensation consistent with pay for an involuntarily unassigned inmate instead of at the rate of pay the inmate was receiving before placement in administrative confinement.

These rules allow an inmate in administrative confinement to have any property in the inmate's cell that is consistent with property limits for the assigned area.

SECTION 1. DOC 308.01 is amended to read:

DOC 308.01 The purpose of this chapter is to provide for an involuntary nonpunitive status for the segregated confinement of an inmate ~~solely because the inmate is dangerous, to ensure personal safety and security within the institution~~ whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security of the institution.

SECTION 2. DOC 308.03 (1) is renumbered DOC 308.03 (3).

SECTION 3. DOC 308.03 (1) is created to read:

DOC 308.03 (1) "Administrative confinement review committee" or "ACRC" means the administrative confinement review committee appointed by the warden, consisting of 3 members, one of which shall be from security, one from treatment, and at least one member shall be a supervisor who will serve as the hearing officer.

SECTION 4. DOC 308.03 (2) is amended to read:

DOC 308.03 (2) "~~Administrator of the division of adult institutions~~" means the administrator of the division of adult institutions ~~of the~~ department of corrections, or designee.

SECTION 5. DOC 308.03 (3) is renumbered DOC 308.03 (5) and amended to read:

DOC 308.03 (5) "Division" means the ~~department of corrections,~~ division of adult institutions, department of corrections.

SECTION 6. DOC 308.03 (4) is renumbered DOC 308.03 (7).

SECTION 7. DOC 308.03 (5) is repealed, renumbered 308.03 (4) (a) to (d) and recreated to read:

DOC 308.03 (4) "Disturbance" means any of the following:

(a) An assault on any person by 2 or more inmates.

(b) The taking of a hostage by an inmate.

(c) The destruction of state property or the property of another by 2 or more inmates.

(d) The refusal by 2 or more inmates, acting in concert, to comply with an order, to return to cells or rooms.

SECTION 8. DOC 308.03 (6) is renumbered 308.03 (10) and amended to read:

DOC 308.03 (10) "~~Superintendent~~ Warden" means the ~~superintendent~~ warden at an institution, or designee.

SECTION 9. DOC 308.03 (6) is created to read:

DOC 308.03 (6) "Inmate gang" has the meaning given in s. DOC 303.02 (9).

SECTION 10. DOC 308.03 (8) is created to read:

DOC 308.03 (8) "Riot" has the meaning given in s. DOC 303.18.

SECTION 11. DOC 308.03 (9) is created to read:

DOC 308.03 (9) "Street gang" means a group of people, outside the institution, which threatens, intimidates, coerces, or harasses other people or engages in activities that intentionally violate or encourage the intentional violation of federal statutes, state statutes or administrative rules, county or municipal ordinances or resolutions, or institutional policies or procedures.

SECTION 12. DOC 308.04 (1) is amended to read:

DOC 308.04 (1) Administrative confinement is an involuntary

nonpunitive status for the segregated confinement of an inmate ~~solely because the inmate is dangerous, to ensure personal safety and security within the institution whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security or orderly running of the institution.~~ Inmate misconduct shall be handled through the disciplinary procedures.

SECTION 13. DOC 308.04 (2) (a) is amended to read:

DOC 308.04 (2) (a) The inmate presents a substantial risk of ~~serious physical harm to another person, self, or institution security~~ as evidenced by recent a behavior or a history of homicidal, assaultive or other violent behavior or by an attempt or threat to cause that harm.

SECTION 14. DOC 308.04 (2) (b) is repealed and recreated to read:

DOC 308.04 (2) (b) The inmate's presence in the general population poses a substantial risk to another person, self or institution security.

SECTION 15. DOC 308.04 (2) (c) is repealed and recreated to read:

DOC 308.04 (2) (c) The inmate's activity gives a staff member reason to believe that the inmate's continued presence in general population will result in a riot or a disturbance.

SECTION 16. DOC 308.04 (2) (d) is created to read:

DOC 308.04 (2) (d) The inmate has been identified as having an active affiliation with an inmate gang or street gang or there are reasonable grounds to believe that the inmate has an active affiliation with an inmate gang or street gang; and there is reason to believe that the inmate's continued presence in the general population will result in a riot or a disturbance.

SECTION 17. DOC 308.04 (3) is amended to read:

DOC 308.04 (3) An inmate may be placed in administrative confinement only after a review by the ~~program review committee~~ (PRC) administrative confinement review committee in accordance with this section. An inmate may be placed in administrative confinement from the general population or any form of segregation and may be confined in temporary lockup ~~(TLU)~~ or TLU in accordance with the departmental rules, pending a review according to this section.

SECTION 18. DOC 308.04 (4) (intro.) is amended to read:

DOC 304.04 (4) (intro.) An inmate shall be given written notice of the review which shall include all of the following:

SECTION 19. DOC 308.04 (4) (a) is amended to read:

DOC 308.04 (4) (a) The reason under sub. (2) that administrative confinement is considered necessary~~7.~~

SECTION 20. DOC 308.04 (4) (b) is amended to read:

DOC 308.04 (4) (b) The evidence to be considered at the review~~7.~~

SECTION 21. DOC 308.04 (4) (c) is amended to read:

DOC 308.04 (4) (c) The sources of information relied upon unless the disclosure would threaten personal safety or institution security~~7.~~

SECTION 22. DOC 308.04 (4) (d) is amended to read:

DOC 308.04 (4) (d) An explanation of the possible consequences of any decision~~7.~~

SECTION 23. DOC 308.04 (4) (e) (intro.) is amended to read:

DOC 308.04 (4) (e) (intro.) An explanation of the inmate's rights at a review which ~~are~~ include all of the following:

SECTION 24. DOC 308.04 (4) (e) 1. is amended to read:

DOC 308.04 (4) (e) 1. The right to be present at the review~~7.~~

SECTION 25. DOC 308.04 (4) (e) 2. is amended to read:

DOC 308.04 (4) (e) 2. The right to deny the allegation~~7.~~

SECTION 26. DOC 308.04 (4) (e) 3. is amended to read:

DOC 308.04 (4) (e) 3. The right to present documentary evidence~~7.~~

SECTION 27. DOC 308.04 (4) (e) 4. is repealed and recreated to read:

DOC 304.04 (4) (e) 4. The right to present and question witnesses in accordance with sub. (7) and the hearing procedures for major disciplinary offenses. In the case that the witness is a confidential informant, then sub. (5) shall apply.

SECTION 28. DOC 308.04 (4) (e) 5. is amended to read:

DOC 308.04 (4) (e) 5. The right to assistance of an advocate in accordance with DOC 303.787.

SECTION 29. DOC 308.04 (4) (e) 6. is amended to read:

DOC 308.04 (4) (e) 6. The right to receive a written decision, stating the reasons for it based upon the evidence,~~and.~~

SECTION 30. DOC 308.04 (4) (e) 7. is amended to read:

DOC 308.04 (4) (e) 7. The right to appeal the finding,~~and.~~

SECTION 31. DOC 308.04 (5) is renumbered DOC 308.04 (6) and amended to read:

DOC 308.04 (6) The review shall take place not sooner than 2 days and not later than ~~10~~ 21 days after service of notice to the inmate. The inmate may waive these time limits in writing. ~~Prior to the waiver, the inmate shall be informed what type of review~~

the inmate will receive if the inmate waives the time limits. The administrative confinement hearing officer may extend the time limit upon written request from the inmate for good cause. The time limits will be tolled during any time the inmate is unavailable.

SECTION 32. DOC 308.04 (5) is created to read:

DOC 308.04 (5) (a) If a witness is a confidential informant, a designated security staff member shall do all of the following:

1. Investigate to determine whether testifying would pose a significant risk of bodily injury to the witness.

2. Attempt to obtain a signed statement under oath from the witness and determine that the statement is corroborated in accordance with s. DOC 303.86 (4) if the designated staff member finds a significant risk of bodily injury.

3. Prepare a summary of the signed, corroborated statement to avoid revealing the identity of the witness.

4. Deliver a copy of the summary to the inmate and the ACRC hearing officer.

(b) The summary of the statement of the confidential informant may be considered as evidence.

(c) The ACRC hearing officer shall have access to the original signed statement and may question the confidential informant if the confidential informant is available.

(d) The original signed statement shall be available to the warden or administrator for review.

(e) The original signed statement shall be kept in a restricted department file.

SECTION 33. DOC 308.04 (6) is renumbered DOC 308.04 (7) and amended to read:

DOC 308.04 (7) At the review, all of the following shall occur:

(a) The ~~the~~ The reason for placing the inmate in administrative confinement shall be read aloud.

(b) and all ~~and all~~ All witnesses for or against the inmate, including the inmate and the staff member who recommended the placement, shall have a chance to speak.

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

(d) The PRC ACRC hearing officer may permit direct questions or require the inmate or the inmate's advocate, if any, to submit questions to the PRC ACRC hearing officer to be asked of the witnesses.

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

SECTION 34. DOC 308.04 (7) is renumbered DOC 308.04 (8) and amended to read:

DOC 308.04 (8) After All of the following shall occur after the review:

(a) The PRC ACRC shall deliberate in private considering only the evidence presented to it that supports or refutes the need for administrative confinement and the inmate's records.

(b) The PRC ACRC shall decide whether the evidence and the records support the need for administrative confinement and, if so, shall order the placement.

(c) If the vote is not unanimous, the record, with the views of each PRC ACRC member, shall be forwarded to the superintendent warden for a decision.

(d) ~~This information~~ The 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, shall be shared with the inmate who may make known any additional relevant information in writing to the superintendent warden.

(e) The reasons for the decisions of the PRC ACRC and superintendent warden shall be based upon the evidence and given to the inmate in writing.

SECTION 35. DOC 308.04 (8) is repealed.

SECTION 36. DOC 308.04 (9) is renumbered DOC 308.04 (10) and amended to read:

DOC 308.04 (10) An inmate's progress in administrative confinement shall be reviewed by the PRC ACRC at least ~~once~~ every 3 6 months following the procedures for review under this section. Monthly progress will be reviewed consistent with the segregation review process as outlined in s. DOC 303.70 (12).

SECTION 37. DOC 308.04 (9) is created to read:

DOC 308.04 (9) An inmate may appeal the ACRC's decision to the warden within 10 days of the date of the decision and again to the administrator within 10 days of the date of the warden's decision.

SECTION 38. DOC 308.04 (10) is renumbered DOC 308.04 (11) and amended to read:

DOC 308.04 (11) If an inmate has been in administrative confinement for 6 12 months or longer, the superintendent warden and administrator ~~of the division of adult institutions~~ shall do all of the following:

(a) ~~automatically~~ Automatically review a decision by the PRC ACRC to continue the inmate's confinement in this status.

~~(b) and affirm~~ Affirm, reverse, or remand the decision within 10 working days of the earlier decision. A decision to affirm, reverse, or remand the earlier decision ~~must~~ shall state the reasons for it based on the evidence. A failure to issue a decision within the time allotted shall constitute an affirmance of the earlier decision.

~~(c) and shall be sent~~ Send a copy of the warden's and administrator's decision to the PRC ACRC and inmate. ~~A failure to issue a decision within the time allotted shall constitute an affirmance of the earlier decision.~~ The decision of the warden and administrator is final except that the inmate may challenge any procedural through the inmate complaint review system under ch. DOC 310.

SECTION 39. DOC 308.04 (11) is repealed.

SECTION 40. DOC 308.04 (12) is amended to read:

DOC 308.04 (12) While in administrative confinement, an inmate:

(a) ~~Shall reside alone and have a classification of maximum security~~ ~~else~~; supervision, movement, and program shall be in accordance with ss. ~~DOC 302.12 (1) (a)~~ 302.05 (1) and ~~306.09~~ 306.10.

(b) ~~Shall be allowed to have any property in his or her the inmate's cell that is allowed to inmates in the general population consistent with property limits for the assigned area. An inmate who resides in the segregation building shall be allowed to have any property in his or her cell that is allowed to any inmate in program segregation.~~

(c) ~~Shall be permitted visitation in accordance with ch. DOC 309.~~

(d) ~~May receive and send mail in accordance with ch. DOC 309.~~

(e) ~~Shall be permitted to shower at least once every 4 days.~~

(f) Shall be provided religious, social, and clinical services as possible~~;~~ however, they must be provided at the inmate's cell unless otherwise authorized by the ~~superintendent,~~ warden.

(g) ~~Who is eligible may~~ May earn extra good time credit in accordance with ch. DOC 302, and all inmates ~~may~~ shall earn compensation ~~in accordance with ch. DOC 309,~~ consistent with pay for involuntarily unassigned inmates.

(h) May not go to the canteen in person but may have approved items from the canteen delivered to ~~him or her,~~ and the inmate.

(i) May have any other properties and privileges consistent with ~~his or her status and the~~ departmental rules, at the discretion of the ~~superintendent~~ warden.

Note DOC 308: Administrative confinement under DOC 308.04 is a nonpunitive measure taken to ensure personal safety and security within the institution. This measure may be infrequently needed and of short duration but, as to a particular inmate, the reasonable needs of safety and security ~~of others~~ within the institution may require ~~continuing close~~ continued confinement for long periods of time.

Sub. (2) establishes the conditions under which administrative confinement may be used. Administrative confinement is a vehicle for removing ~~dangerous persons~~ inmates from the general population to protect and ensure the safety, security and orderly running of the institution. ~~Proper use of administrative confinement includes dealing with dangerous gang activity, particularly the ringleaders of such activity. It should be clear to inmates that participating in dangerous gang activity or identification as a leader of a gang that participates in dangerous activities will inevitably result in long periods of administrative confinement. It is better for the inmates and the credibility of the system to deal with the problem of inmate gangs directly. Without the ability to confine gang leaders, institution staff will have to exercise discretion in dealing with a dangerous situation which threatens the security and order of the~~

institution. Without the ability to confine this type of inmate, the primary security objectives of the department, namely protecting the public, staff, inmates, and property, cannot be met.

Inmate misconduct is handled through the disciplinary process. Segregation in administrative confinement cannot be a penalty for misconduct, but may result either prior to or subsequent to a disciplinary proceeding or independent of any such proceeding.

Sub. (3) requires special review by the PRC ACRC. This review ~~combines~~ incorporates components of the standard PRC review under ~~ch. DOC 302 and of~~ the major disciplinary hearing procedure. This review is provided despite the fact that the U.S. Supreme Court has indicated that due process does not require this review for these transfers. *Meachum v. Fano*, 427 U.S. 215 (1976); *Montanye v. Haymes*, 427 U.S. 236 (1976). In *Caldwell v. Miller*, 790 F2d 589 (7th Cir 1986), the court found no liberty interest in a transfer from one cell block in an institution to another. Due process protections are important and are afforded to few inmates affected by this provision because of the seriousness of the prolonged social isolation of administrative confinement. Nonetheless, by providing the review, the Department does not intend to create any protected liberty interest by using mandatory language. Administrative confinement is a typical approach used in prison to respond to situations listed in this chapter. See *Sandin v. Conner*, 115 S.Ct. 2293 (1995).

At this special review, in this status, there must be proof, from evidence presented at the hearing and from the inmate's records, that he or she meets one of the criteria for administrative confinement under sub. (2). The responsibility for placement rests solely with the PRC, ~~and the decision therefore is a classification decision~~ ACRC. An appeal is provided first to the ~~superintendent~~ warden and then to the administrator of the division of adult institution, one of the highest levels in the department, in recognition of the potential serious consequences of prolonged segregation in administrative confinement.

Sub. (4) gives the inmate certain rights. It requires that adequate written notice of the review be given the inmate. If necessary, a verbal explanation of the notice should be made in accordance with the inmate's needs. The rights also include the right to present and question witnesses in the same manner as for due process hearings, s. DOC 303.81.

Sub. (9) provides for a review of the inmate's status at least once every 3 6 months. A review may occur earlier at the discretion of the PRC warden. This time period balances fairness to the inmate with the practicalities of providing for a meaningful review by the PRC ACRC. Compliance with departmental rules alone may not be sufficient and an inmate may continue to be confined if there is still reasonable fear of violent behavior, harm to the inmate by others, harm to others or riots.

Sub. (10) reflects the view that administrative confinement may have serious consequences and that extreme care should be exercised at the highest level in assessing the need for continued confinement.

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 ~~(1977)~~ 1993, standards ~~4201, 4203-4206, 4208, 4210, 4212-4221, 4381, and 4383~~ 3-4237, 3-4249, 3-4254, 3-4255, and 3-4261.

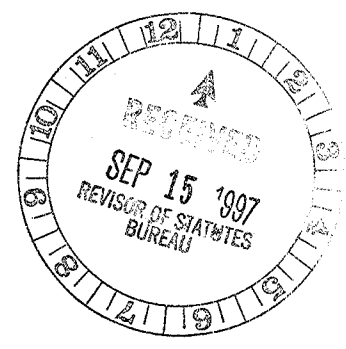
This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

by: Michael J. Sullivan
Michael J. Sullivan

Date: 9/13/97

Seal:



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



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State of Wisconsin Department of Corrections

September 15, 1997

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 308, relating to administrative confinement for inmates.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan".

Michael J. Sullivan

Attachment

