

## Chapter DOC 308

### ADMINISTRATIVE CONFINEMENT

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**Note:** Chapter HSS 308 was renumbered Chapter DOC 308 and revised under s. 13.93 (2m) (b) 1., 2., 6. and 7., Stats., Register, April, 1990, No. 412.

**DOC 308.01 Purpose.** The purpose of this chapter is to provide for an involuntary nonpunitive status for the segregated 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 of the institution.

**History:** Cr. Register, April, 1981, No. 304, eff. 5-1-81; am. Register, June, 1998, No. 510, eff. 7-1-98.

**DOC 308.02 Applicability.** Pursuant to authority vested in the department under ss. 227.11 (2), 301.02 and 301.03, Stats., the department adopts this chapter which applies to the department and all adult inmates in its legal custody. It interprets ss. 302.07 and 302.08, Stats.

**History:** Cr. Register, April, 1981, No. 304, eff. 5-1-81; correction made under s. 13.93 (2m) (b) 7., Stats; Register, June, 1987, No. 378.

**DOC 308.03 Definitions.** In this chapter:

(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.

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

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

(4) "Disturbance" means a riot or other disturbance to institutional order caused by a group of 2 or more inmates that may include one of the following:

- (a) An assault on any person by 2 or more inmates.
- (b) The taking of one or more hostages.
- (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.

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

(7) "Misconduct" means behavior in violation of state or federal statutes or the administrative rules of the department.

(8m) "Security threat group" means a group of individuals which threatens, intimidates, coerces, or harasses others or which engages in any activity which violates or encourages the violation of statutes, administrative rules, or departmental policy.

(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.

(10) "Warden" means the warden at an institution, or designee.

**History:** Cr. Register, April, 1981, No. 304, eff. 5-1-81; renum. (1), (3), (4), (6) to be (3), (5), (7), (10), and am. (5) and (10), cr., (1), (4), (6), (8) and (9), am. (2), Register, June, 1998, No. 510, eff. 7-1-98; **CR 11-022: am. (4) (intro.), (b), (d), r. (6), (8) cr. (8m) Register September 2014 No. 705, eff. 1-1-15.**

**DOC 308.04 Administrative confinement. (1)** Administrative confinement is an involuntary nonpunitive status for the segregated 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 running of the institution. Inmate misconduct shall be handled through the disciplinary procedures.

(2) An inmate may be placed in administrative confinement for any of the following reasons:

(a) The inmate presents a substantial risk to another person, self, 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 that harm.

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

(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.

(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.

(3) An inmate may be placed in administrative confinement only after a review by the 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 or TLU in accordance with the departmental rules, pending a review according to this section.

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

- (a) The reason under sub. (2) that administrative confinement is considered necessary.
- (b) The evidence to be considered at the review.
- (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 inmate's rights at a review which include all of the following:

1. The right to be present at the review.
2. The right to deny the allegation.
3. The right to present documentary evidence.
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.
5. The right to assistance of a staff representative in accordance with s. DOC 303.83.
6. The right to receive a written decision, stating the reasons for it based upon the evidence.
7. The right to appeal the finding.

(f) The date, time, and place of the review and an order that the inmate appear at the review.

**(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 303.84 (5) 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.

**(6)** The review shall take place not sooner than 2 days and not later than 21 days after service of notice to the inmate. The inmate may waive these time limits in writing. 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.

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

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

(b) 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 ACRC hearing officer may require medical or physical evidence to be offered.

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

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

**(8)** All of the following shall occur after the review:

(a) The 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 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 ACRC member, shall be forwarded to the warden for a decision.

(d) 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 warden.

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

**(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.

**(10)** An inmate's progress in administrative confinement shall be reviewed by the ACRC at least every 6 months following the procedures for review under this section. Monthly progress

shall be reviewed consistent with the review of disciplinary separation as outlined in s. DOC 303.73 (13).

**(11)** If an inmate has been in administrative confinement for 12 months or longer, the warden and administrator shall do all of the following:

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

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

(c) Send a copy of the warden's and administrator's decision to the ACRC and inmate. The decision of the warden and administrator is final except that the inmate may challenge any procedural [errors] through the inmate complaint review system under ch. DOC 310.

**(12)** While in administrative confinement, an inmate:

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

(b) Shall be allowed to have any property in the inmate's cell that is consistent with property limits for the assigned area.

(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 warden.

(g) May earn extra good time credit in accordance with ch. DOC 302, and all inmates shall earn compensation 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 the inmate.

(i) May have any other properties and privileges consistent with departmental rules, at the discretion of the warden.

**Note:** Administrative confinement under s. 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 within the institution may require 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 inmates from the general population to protect and ensure the safety, security and orderly running 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 ACRC. This review incorporates components of the standard 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. Corner*, 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 ACRC. An appeal is provided first to the warden and then to the administrator of the division of adult institutions, 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 inmates 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 a witness in the same manner as for due process hearings, s. DOC 303.84.

Sub. (9) provides for a review of the inmate's status at least once every 6 months. A review may occur earlier at the discretion of the warden. This time period balances fairness to the inmate with the practicalities of providing for a meaningful review by the 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* (1993), standards 3-4237, 3-4249, 3-4254, 3-4255, and 3-4261.

**History:** Cr. Register, April, 1981, No. 304, eff. 5-1-81; r. and recr. (2) and (4), am. (5), (6), (7) and (11), Register, April, 1985, No. 352, eff. 5-1-85; emerg. am. (12) (a), eff. 11-18-85; am. (12) (a) Register, May, 1986, No. 365, eff. 6-1-86; emerg. am. (2) (b), eff. 12-5-86; r. and recr. (12) (g), Register, February, 1987, No. 374, eff. 3-1-87; am. (2) and (4) (e) 4., Register, June, 1987, No. 378, eff. 7-1-87; am. (1), (2) (a), (3), (4) (intro.) to (e) 3., 5. to 7. and (12), r. and recr. (2) (b), (c), (4) (e) 4., r. (8) and (11), cr. (2) (d), (5), and (9), renum. (5), (6),(7), (9), (10) to be (6), (7), (8), (10), (11), and am., Register, June, 1998, No. 510, eff. 7-1-98; **CR 11-022: am. (4) (e) 5., (5) (a) 2., (10) Register September 2014 No. 705, eff. 1-1-15.**