

5214.04 HIV POSITIVE INMATES WHO POSE DANGER TO OTHER, PROCEDURES FOR HANDLING OF



# Program Statement

OPI: OGC  
NUMBER: 5214.04  
DATE: 2/4/98  
SUBJECT: HIV Positive Inmates  
Who Pose Danger to  
Other, Procedures for  
Handling of

1. [PURPOSE AND SCOPE §541.60. In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons may place in controlled housing status an inmate who tests HIV positive when there is reliable evidence that the inmate may engage in conduct posing a health risk to another person.]

This Program Statement establishes procedures to follow when an inmate who has tested positive for the Human Immunodeficiency Virus (HIV) indicates by actions or words that he or she is likely to engage in, or continue to engage in, conduct that poses a significant threat to transmit the virus to another person. Specifically, individuals who pose such a concern are to be considered for placement in a controlled housing status.

If selected for this placement, the inmate is afforded, to the extent practicable, the privileges afforded to the general population, except that the opportunity to socialize with others is limited and closely supervised. The inmate's status is reviewed regularly, and he or she may be returned to a general population when the perceived danger is alleviated.

The HIV is transmitted primarily through two very specific routes:

- P blood-to-blood contact (e.g., shared needles) and
- P sexual fluids to blood contact (sexual practices involving passage of fluids).

[**Bold Type - Rules**]

Regular Type - Implementing Information



b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-3C-11, 3-ALDF-3C-16, 3-ALDF-3C-17, 3-ALDF-3C-19, 3-ALDF-3C-21, and 3-ALDF-3C-22

c. American Correctional Association Standards for Adult Boot Camps: 1-ABC-3C-06, 1-ABC-3C-09, 1-ABC-3C-11, 1-ABC-3C-13, and 1-ABC-3C-14

d. American Correctional Association 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-4E-01

5. [STANDARD FOR PLACEMENT IN CONTROLLED HOUSING STATUS §541.61.  
An inmate may be placed in a controlled housing status when there is reliable evidence causing staff to believe that the inmate engages in conduct posing a health risk to others. This evidence may be the inmate's behavior, or statements of the inmate, or other reliable evidence.]

6. [REFERRAL FOR PLACEMENT §541.62

a. The Warden shall consider an inmate for controlled housing status when the inmate has been confirmed as testing HIV positive and when there is reliable evidence indicating that the inmate may engage in conduct posing a health risk to others. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to another, or the sharing of needles.

b. The Warden shall submit a recommendation for referral of an inmate for placement in a controlled housing status to the Regional Director in the region where the inmate is located.]

The written request is to include the basis for the referral and be accompanied by:

- # a current progress report,
- # a comprehensive medical report (including a confirmation that the inmate is HIV-positive), and
- # a copy of an up-to-date psychological or psychiatric report.

[c. Based on the perceived health risk to others posed by the inmate's threatened or actual actions, the Warden may, with the telephonic approval of the Regional Director, temporarily (not to exceed 20 work days) place an inmate in a special housing status (e.g., administrative detention, or a secure health service unit

room) pending the inmate's appearance before the Hearing Administrator. Reasons for this placement, and the approval of the Regional Director, shall be documented in the inmate central file. The inmate should be seen daily by case management and medical staff while in this temporary status, and a psychological or psychiatric assessment report should be prepared during this temporary placement period.]

When an Incident Report prompts the referral, staff shall place the inmate in Administrative Detention, in accord with procedures in the Program Statement on Inmate Discipline and Special Housing Units, while the controlled status placement referral and decision are made. Under that Program Statement, an inmate placed in Disciplinary Segregation for committing a Prohibited Act may be placed in post-disciplinary detention for a period ordinarily not to exceed 90 days.

7. HEARING PROCEDURE §541.63

a. The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for controlled housing status. If the Regional Director concurs with the recommendation, the Regional Director shall designate person in the Regional Office or a person at department head level or above in the institution to conduct a hearing on the appropriateness of an inmate's placement in controlled housing status. This Hearing Administrator shall have correctional experience, no former personal involvement in the instant situation, and a knowledge of the type of behavior that poses a health risk to others, and of the options available for dealing with an inmate who poses such a health risk to others.

b. The Hearing Administrator shall provide a hearing to an inmate recommended for controlled housing status. The hearing ordinarily shall take place at the institution housing the inmate.

c. The hearing shall proceed as follows:

(1) Staff shall provide an inmate with an advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis for a recommendation that the inmate be placed in a controlled housing status, unless such evidence would likely endanger staff or

others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.]

The Hearing Administrator prepares the Notice of Controlled Housing Status Hearing (Attachment A) and sends it and a copy of this Program Statement or current rule to the institution for staff delivery to the inmate. The date and time the inmate receives this material are to be recorded on the staff copy of the notice.

[(2) The Hearing Administrator shall upon request of the inmate provide an inmate the service of a full-time staff member to represent the inmate. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines for good reason or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period (determined by the Hearing Administrator) for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(3) The inmate has the right to be present throughout the hearing, except where institutional security or good order is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for nonappearance, in the record of the hearing.]

An inmate who refuses to appear at the hearing may still elect to have a staff representative and witness(es) appear on his or her behalf.

[(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would pose a health risk to others, if allowed to remain in general prison population. This evidence may come from the statements of the individual, repeated misconduct (including disciplinary actions), or other behavior suggesting that the inmate may engage in predatory or promiscuous sexual behavior, assaultive behavior where body fluids may be transmitted to others, or the sharing of needles.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in a controlled housing status are not required to appear, provided their recommendation is fully explained in the record.]

A staff witness who the Hearing Administrator determines can present material and relevant evidence or testimony may not decline to appear.

[(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to hear a witness or to receive documentary evidence.]

8. [DECISION OF THE HEARING ADMINISTRATOR §541.64

a. At the conclusion of the hearing and following review of all material related to the recommendation for placement of an inmate in a controlled housing status, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or other reliable evidence on which the decision is based, along with evidence of the inmate's HIV positive status.]

This description must be sufficiently detailed to give the reader the information upon which the decision is based.

[b. The Hearing Administrator shall advise the inmate in writing of the decision. The inmate shall receive the information described in paragraph a. of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which case that limited information may be withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Regional Director in the region where the inmate is located. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Regional Director. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.]

The employee who delivers the Notice of Controlled Housing Status Hearing (Attachment B) decision to the inmate shall record on both the inmate's copy and on the central file copy:

- # the date and time the inmate received the decision, and
- # the employee's name and signature.

[c. The Hearing Administrator may order the continuation of the inmate in special housing pending review by the Regional Director. The Hearing Administrator should state the reasons for this order in the record of the Hearing.

d. The Hearing Administrator shall send the decision, whether for or against placement in a controlled housing status, and supporting documentation to the Regional Director. Ordinarily, this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.]

. [REGIONAL DIRECTOR REVIEW AND APPEAL §541.65

a. The Regional Director shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Regional Director shall accept or reject the Hearing Administrator's decision within 30 working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record. The authority of the Regional Director may not be delegated below the level of acting Regional Director.

**b. The Regional Director shall provide a copy of his decision to the Warden at the institution housing the inmate, to the inmate, and to the Hearing Administrator.]**

The Regional Director shall send the inmate's copy in care of the Warden, who shall ensure it is delivered to the inmate.

The employee who delivers the Regional Director's decision to the inmate shall record on both the inmate's copy and on the central file copy:

- # the date and time the inmate received the decision, and
- # the employee's name and signature.

If an inmate is approved for controlled housing status, the Warden may place him or her in a controlled housing status, which may consist of placement in Administrative Detention, under close supervision, in a secure hospital room, or in an equivalent setting.

If the inmate is to be transferred to another institution, he or she may be placed in Administrative Detention in holdover status.

Any inmate placed in controlled housing under this Program Statement shall be assigned to a single cell, or if one is not available, in a cell with another inmate in controlled housing under this procedure.

**[c. An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Program, directly to the National Inmate Appeals Administrator, Office of General Counsel, within 30 calendar days of the Regional Director's decision. (See 28 CFR 542.15).]**

See the Program Statement on the Administrative Remedy Program.

In the notification sent to the inmate, the Regional Director shall advise that inmate of the right to appeal.

10. **[PROGRAMS AND SERVICES §541.66. To the extent consistent with available resources and the security needs of the institution, an inmate in controlled housing status is to be considered for activities and privileges afforded to the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, counseling, and religious guidance, as well as access to case management, medical and mental health assistance, and legal services, including access to the**

institution's law libraries. An inmate in controlled housing status should be afforded at least five hours weekly recreation and exercise out of the cell. The recreation shall be by himself or under close supervision. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in controlled housing status. An inmate shall be permitted to have a radio, provided it is equipped with ear plugs. Visits shall be carefully monitored.]

Because of the health threat posed by the individual's behavior or threatened behavior, the inmate's involvement in these areas and the opportunity to socialize may be more limited than that provided to the general population. For example, an inmate in a controlled housing status may be enrolled in correspondence courses, rather than attend the academic school. This also means that the inmate's recreation time must be under close supervision to help protect the health and safety of others.

Any limitation on food services and personal hygiene care must, at a minimum, be no greater than those specified for inmates in special housing status. Disposable utensils or other special articles may be appropriate for those who are assaultive. Legal matters, visitors, correspondence, and telephone privileges are to be handled in accord with Bureau policy on those areas.

11. RECORDS. Detailed records are to be maintained. All admissions to controlled housing status shall be recorded, including date, time, the specific reason for admission, and the authorizing official on form BP 292. All releases, of any type, from this status will be similarly recorded.

Staff shall maintain records regarding:

- # meals,
- # showers,
- # recreation,
- # medication,
- # medical and mental health visits and treatment, and
- # unusual activity or behavior of the inmate (positive and negative).

These shall ultimately become part of the inmate central file.

Officials visiting the inmate in controlled housing status shall sign a log giving:

- # time,
- # date, and
- # reason for the visit.

12. [REVIEW OF CONTROLLED HOUSING STATUS §541.67

a. Staff designated by the Warden shall evaluate regularly an inmate's adjustment while in controlled housing status. A medical staff member shall see the inmate daily, and regularly record medical and behavioral impressions. Once every 90 days, staff, comprised of a correctional and case management supervisor, and a member of the medical staff, shall meet with the inmate. The inmate is required to attend this meeting in order to be considered for release to the general population. Any refusal by the inmate to attend this meeting will be documented. Staff, at this meeting, shall make an assessment of the inmate's adjustment while in controlled housing and the likely health threat the inmate poses to others by his actions.]

At the in-person review, staff are to have available the collected information on daily activity and a current psychiatric or psychological assessment report.

Appropriate staff shall prepare written psychiatric or psychological assessments at least every 90 days as long as the inmate is in controlled housing status. Those reports shall address:

- # the inmate's adjustment to surroundings;
- # the threat the inmate poses to self, staff, and other inmates if released; and
- # any recommendations as to release from controlled housing status.

[b. The Warden shall serve as the review authority at the institutional level, and shall make a recommendation to the Regional Director when he believes the inmate should be considered for release from controlled housing.

c. An inmate may appeal a Warden's decision not to recommend release from controlled housing to the Regional Director within five working days of receipt of that decision.

d. Upon recommendation of the Warden, or upon appeal from the inmate, the Regional Director may decide whether or not to release the inmate to general population from controlled housing status.

e. An inmate may appeal a decision of the Regional Director, through the Administrative Remedy Program, directly to the National Inmate Appeals Administrator, Office of General Counsel, within 30 calendar days from the date of the Regional Director's decision.]

13. [RELEASE FROM CONTROLLED HOUSING STATUS §541.68

a. Only the Regional Director may release an inmate from controlled housing status. The following factors are considered in the evaluation of an inmate's readiness for return to the general population:

(1) Relationship with other inmates and staff members, which demonstrate that the inmate is able to function in a less restrictive environment without posing a health threat to others or to the orderly operation of the institution;

(2) Involvement in work and recreational activities and assignments or other programs; and

(3) Adherence to institution guidelines and Bureau of Prisons rules and policy.

b. An inmate released from a controlled housing status may be returned to the general population of that institution, or to another federal or non-federal institution.]

/s/

Kathleen M. Hawk  
Director

NOTICE OF CONTROLLED HOUSING STATUS HEARING - Page 1 of 3

The original of this Notice was delivered to the inmate  
(date/time)\_\_\_\_\_by (staff member's signature/printed name)\_\_\_\_  
\_\_\_\_\_

DATE:

To: Inmate's Name - _____ Register Number: _____  Institution - _____	
From: Hearing Administrator - _____	
You have been referred for a hearing before a Controlled Housing Status Hearing Administrator. This hearing determine if you should be confined in a controlled housing status. Information concerning this referral, and your rights at this hearing are set forth in this Notice.	
1.	Scheduled Date and Location for Hearing: _____
2.	Brief summary of the act(s) resulting in the recommendation for this placement:
3.	You are entitled to have a full-time staff member represent you at this hearing. Please indicate whether you desire to have a staff representative and, if so, the person's name. ) ) I wish to have the following staff representative: _____ ) ) I do not want a staff representative.
4.	You have the right to call available witnesses at the hearing and to present documentary evidence. It is the purpose of this hearing, however, to "re-hear" any prior disciplinary proceedings. The testimony of witnesses and the documentary evidence presented must be relevant to the issue of whether you can function in a general prison population without your actions posing a threat to others. Witnesses providing repetitive testimony, witnesses not available at the institution, and witnesses whose appearance at the hearing would jeopardize institutional safety, will not be called. You may, however, submit such testimony in the form of written and signed statement(s).  Please indicate on the next page if you wish to call available witnesses. If you do wish to call witnesses, give their names, along with a brief description of their expected testimony.

NOTICE OF CONTROLLED HOUSING STATUS HEARING - Page 2 of 3

INMATE'S NAME: REGISTER #: DATE:

5. a. )  
 ) Initial this box if you do not want to call any witnesses.

b. If you do want to call available witnesses, give their names and a brief description of their expected testimony.

Name: \_\_\_\_\_ Can testify to: \_\_\_\_\_

c. List the names of those witnesses from whom you intend to obtain written statements.

Name: \_\_\_\_\_ Can make a statement to: \_\_\_\_\_

If additional space is needed, use the reverse side of this form. Failure to complete the form will be considered as your waiver to witnesses and staff representation.

Signature of Inmate: \_\_\_\_\_ Date: \_\_\_\_\_

NOTICE OF CONTROLLED HOUSING STATUS HEARING - Page 3 of 3

INMATE'S NAME: REGISTER #: DATE:

6. Inmate Rights at Hearing - As an inmate referred for placement in a controlled housing status, you have the following rights:
- a. The right to have a written summary of the specific act(s) or other evidence which forms the basis for recommendation, unless such information would likely endanger staff or others. You have the right to receive this summary at least 24 hours prior to the hearing.
  - b. The right to have a full-time member of the staff who is reasonably available to represent you before the Hearing Administrator.
  - c. The right to be present throughout the hearing except where institutional security or good order would be jeopardized. If you elect not to appear before the Hearing Administrator, you may still elect to have a representative and witnesses appear in your behalf.
  - d. The right to call available witnesses and to present documentary evidence in your behalf which is relevant to the issue, provided institutional security or individual safety would not be jeopardized.
  - e. The right to be advised, in writing, of the Hearing Administrator's decision and a summary of the reasons supporting this decision, to the extent institutional security or individual safety would not be jeopardized.
  - f. The right to appeal the recommendation of the Hearing Administrator by a written appeal to:

Regional Director  
Bureau of Prisons  
)

This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

7. I have been advised of the above rights afforded me at a Controlled Housing Status hearing. I have also received a copy of the current Program Statement or rule on controlled housing status.

Signature of Inmate: \_\_\_\_\_ Date: \_\_\_\_\_

8. When an inmate has been advised of the above rights and provided a copy of the current Program Statement on controlled housing status, but refuses to sign the acknowledgment, the following is to be completed:

I have personally advised \_\_\_\_\_ of the above rights, and provided the inmate a copy of the current Program Statement or rule on controlled housing status; however, the inmate refused to sign the acknowledgment.

Signature of Employee: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Employee: \_\_\_\_\_

CONTROLLED HOUSING STATUS HEARING ADMINISTRATOR'S REPORT - Page 1 of 2

INMATE'S NAME:

REGISTER #:

DATE:

<p>1. Notice of Hearing:</p> <p>a. The "Notice of Controlled Housing Status Hearing" was given to the above named inmate on (date) _____ (time) _____. A copy of this Notice is attached.</p> <p>b. The hearing was held by (Hearing Administrator) _____, from (location) _____, on (date) _____ at _____. The inmate was <u>present</u>; <u>not present</u> for the following reason(s): _____. A summary of the inmate's statement is attached.</p>
<p>2. Staff Representation: The inmate was advised, in the "Notice of Controlled Housing Status Hearing", of right to select a staff representative.</p> <p>a. The inmate elected to proceed without a staff representative.</p> <p>b. The inmate selected a staff representative, who appeared at the hearing. The staff representative selected _____ . A summary of the representative's statement given at the hearing is attached.</p>
<p>3. Appearance of Witnesses: The inmate was advised, in the "Notice of Controlled Housing Status Hearing" right to have witnesses appear at the hearing.</p> <p>a. <u>  </u> The inmate elected to proceed without the benefit of _____ witnesses.</p> <p>b. <u>  </u> The inmate selected the following witnesses to appear. Reason requested witnesses were not called:  A summary of witness(es) statements given at the hearing is _____ attached.</p>
<p>4. Presentation of Documented Statements: The inmate was advised, in the "Notice of Controlled Housing Status Hearing", of the right to submit documentary evidence.</p> <p>a. The inmate declined to present any documentary evidence to the Hearing Administrator.</p> <p>b. The inmate presented the following documentary evidence. A copy of the documentation evidence is attached.</p>
<p>5. Inmate's Physical and Mental Health:</p> <p>_____</p> <p>Signature of Medical Staff Member</p>

CONTROLLED HOUSING STATUS HEARING ADMINISTRATOR'S REPORT - Page 2 of 2

INMATE'S NAME: REGISTER #: DATE:

<p>6. Finding:</p>
<p>7. Decision:</p>
<p>8. Inmate to be continued in special housing pending Regional Director review? ___No; ___Yes (If yes, state</p>
<p>9. Appeal Rights: You have the right to appeal this decision by forwarding a written appeal to:</p> <p style="text-align: center;">Regional Director Bureau of Prisons</p> <p style="text-align: center;">_____ _____</p> <p>Your appeal must be filed within five (5) work days following receipt of the Hearing Administrator's d The final decision is made by the Regional Director.</p> <p>Signature of Hearing Administrator: _____ Date: _____</p> <p>Printed Name of Hearing Administrator: _____</p>
<p>10. I hereby acknowledged that I have received a copy of the Hearing Administrator's decision on (date) ___ (time) ____.</p> <p>Signature of Inmate: _____</p> <p>Signature/Printed Name of Employee: _____</p>
<p>11. When an inmate refuses to sign for a copy of the decision, the following is completed.</p> <p>I have personally delivered a copy of the Hearing Administrator's decision to the above-named inmate; the inmate refused to sign the acknowledgment.</p> <p>Date/Time of Delivery: _____</p> <p>Signature/Printed Name of Employee: _____</p>