

## Chapter DOC 394

### TYPE 2 CHILD CARING INSTITUTIONS

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**Note:** This chapter applies to the Department of Corrections and the Department of Children and Families according to their respective responsibilities as designated in ch. 938, Stats., until such time as each of the departments can adopt separate rules.

**DOC 394.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 227.11 (2), 301.08 (1) and 938.539 (6), Stats., to provide rules for treatment of youth in a type 2 CCI.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00.

**DOC 394.02 Applicability.** This chapter applies to the department, county departments, CCIs and to youth placed under the county supervision by a court under s. 938.34 (4d), Stats.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00.

**DOC 394.03 Definitions.** In this chapter:

(1) “Administrator” means the administrator of the division of juvenile corrections or that person’s designee.

(2) “Bodily injury” means physical pain or injury, illness or any impairment of physical condition.

(3) “Corporal punishment” means the intentional infliction of physical pain as a means of discipline.

(4) “County agent” means a person, or that person’s designee, employed by the county, who provides community supervision for a youth and who is authorized to make decisions regarding community supervision matters.

(5) “Day” means a calendar day.

(6) “Department” means the department of corrections.

(7) “Force” means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way. It includes the use of mechanical restraints or physical force.

(8) “Mechanical restraint” means a commercially manufactured device approved by the department and applied to a youth’s wrist, arm, legs or torso to restrain or impede free movement.

(9) “Reasonably believe” means that the actor believes that a certain fact exists and such belief under the circumstances is reasonable even though the belief may be erroneous.

(10) “Staff” means the employees of a child caring institution that is designated by the department as a type 2 CCI.

(11) “Supervisor” means a CCI staff person responsible for the supervision of type 2 CCI staff and program services in a type 2 CCI.

(12) “Type 1 secured correctional facility” has the meaning given in s. 938.02 (19), Stats.

(13) “Type 2 CCI” means a type 2 child caring institution which has the meaning given in s. 938.02 (19r), Stats.

(14) “Type 2 status” means the status of a youth who is placed by a court in a type 2 CCI, or who, having been so placed, is placed in a less restrictive placement under s. 938.357 (4) (c) 2., Stats., is under the supervision and control of the county department, is subject to the rules and discipline of the county department and is considered to be in custody, as defined in s. 946.42 (1) (a), Stats.

(15) “Youth” means a person under the supervision of a county department under s. 938.34 (4d), Stats.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00.

**DOC 394.04 Designation as a type 2 CCI.** To be designated by the department as a type 2 CCI, a CCI shall apply to the department for designation as a type 2 CCI by meeting the following requirements:

(1) Agree to abide by the provisions of this chapter and type 2 CCI policies and procedures that the facility agrees to by contract with the department or a county department.

(2) Obtain approval of the department of health and family services to operate a CCI and a type 2 CCI and abide by the rules, policies and procedures of the department of health and family services.

(3) Require staff who are authorized to use physical force and mechanical restraints on a type 2 status youth to complete a training program and periodic retraining approved by the department. Training shall include incident prevention and de-escalation and the safe and correct use of physical and mechanical restraints. Evidence of successful completion of training shall be retained in staff personnel files.

(4) Develop and maintain policies and procedures specific to type 2 status youth as required by the department and the department of health and family services, including policies and procedures for notifying type 2 status youth under s. DOC 394.07.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00.

**DOC 394.05 Maintaining designation.** To maintain designation by the department as a type 2 CCI, a CCI shall continue to meet the requirements of s. DOC 394.04.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00.

**DOC 394.06 Violation of designation requirements.**

(1) If the department of health and family services cites a type 2 CCI for a violation of standards, the type 2 CCI shall notify the designated department contact person within 48 hours of receiving the citation, excluding weekends and legal holidays, and send a copy of the written citation to the department within 3 days of receiving the citation.

(2) If the department of health and family services withdraws its approval for the operation of a CCI or its approval to operate a type 2 CCI, the department shall withdraw the CCIs type 2 CCI designation.

(3) If a type 2 CCI violates a provision of this chapter or a contract provision under s. DOC 394.04 (1), the department may take one or more of the following actions:

(a) Send the type 2 CCI a written notice of the violation and require the type 2 CCI to correct the violation within a specified period of time.

(b) Remove the CCIs type 2 CCI designation and send notice of the removal to the juvenile courts, county departments, and department of health and family services.

(4) A type 2 CCI may appeal a department decision under sub. (2) or (3) by filing an appeal with the division of hearings and

appeals in the department of administration under ch. 227, Stats., in the manner specified by the division of hearings and appeals.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00; correction in (3) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2000, No. 534.

**DOC 394.07 Notification to youth. (1) REQUIRED NOTIFICATION.** A county agent shall notify a type 2 status youth at or prior to intake, and a supervisor or designee of the type 2 CCI shall notify type 2 status youth at intake of all of the following:

(a) The rules of the type 2 CCI that the youth is to follow, and the possible consequences if the youth violates a rule, including placement in a type 1 secured correctional facility for up to 10 days without a hearing.

(b) The definition of escape and the possible consequences of escape, including placement in a type 1 secured correctional facility for up to 10 days without a hearing.

(c) The procedure that the type 2 CCI and the county department will follow in the event of an alleged rules violation or escape, including the youth's rights to request review of an allegation or a decision by the type 2 CCI or the county department.

**(2) ACKNOWLEDGMENT.** A type 2 CCI shall have a youth acknowledge in writing that he or she has been notified of the items in sub. (1) and understands the notification. A copy of the acknowledgment, or if the youth refuses to acknowledge, a report of the notification, shall be placed in the youth's file.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00.

**DOC 394.08 Escape. (1) DEFINITION.** A youth placed in a type 2 CCI who has physically left the grounds of the facility, or a youth in that placement who is subsequently placed in a less restrictive placement under s. 938.357 (4) (c) 2., Stats., shall be considered to have escaped if the youth is absent without permission from or leaves one or more of the following placements or scheduled activities without permission:

(a) The youth's residence or other assigned placement.

(b) A scheduled school classroom or training site.

(c) A scheduled work site.

(d) An assigned report center or other department office.

(e) Any other scheduled program or activity, including an authorized treatment program, community service assignment or any other activity established in the youth's daily schedule.

(f) Any other place to which the youth has been assigned, including an approved home visit.

**(2) SUPERVISOR.** Staff shall promptly notify a supervisor whenever a type 2 status youth escapes.

**(3) LAW ENFORCEMENT.** When staff reasonably believe that a type 2 status youth placed in a type 2 CCI has escaped, staff shall immediately contact law enforcement authorities to request apprehension.

**(4) APPREHENSION.** Staff approved by the department under s. 938.08 (3) (a), Stats., may take a youth who has escaped into physical custody.

**(5) COUNTY.** A type 2 CCI shall promptly notify a county agent from the supervising county whenever a type 2 status youth under the supervision of the county escapes.

**(6) REFERRAL FOR ESCAPE.** A youth who escapes under this section is subject to the penalties under s. 946.42 (3) (c), Stats., and may be referred by a county department to a district attorney for consideration of charges regarding the escape.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00.

**DOC 394.09 Use of physical force. (1) ESCAPE.** Whenever practical, staff shall rely on law enforcement authorities when it is necessary to use force to apprehend a type 2 status youth who has escaped. When it is not practical to use law enforcement, trained staff may use physical force in accordance with this section only if it is immediately necessary to stop a youth

in the act of escaping or to take a youth who has escaped into physical custody.

**(2) CORPORAL PUNISHMENT.** Staff may not impose corporal punishment on any youth.

**(3) AMOUNT OF PHYSICAL FORCE.** Only reasonable and the minimum necessary force may be used stop a youth in the act of escaping or to apprehend a youth under s. 938.08 (3), Stats. Staff may not use excessive force. All of the following procedures apply to the use of force to unless use of the procedures would facilitate an escape:

(a) Staff shall not attempt to physically handle a youth until sufficient trained staff are present for a show of physical force.

(b) Staff shall ask a youth to voluntarily comply.

(c) If a youth refuses to voluntarily comply, one or more trained staff may firmly grasp the youth.

(d) Trained staff shall restrain a youth as necessary for the protection of the youth or others or to transport the youth.

**(4) FOLLOW-UP AFTER THE USE OF FORCE.** (a) After staff use force on a type 2 status youth under sub. (1), the youth and involved staff shall immediately be checked by staff for injury. If the youth or staff have been injured, staff shall immediately seek appropriate medical treatment of the injury. A supervisor shall be notified immediately of the use of force and any injury to youth or staff.

(b) The type 2 CCI shall promptly notify the department and the county department having supervision over the youth of the use of force, but not later than 24 hours after the use of force. A written report describing the incident shall be submitted by staff involved in the use of force to a supervisor within 24 hours of the incident. The report shall be included in the youth's file. The type 2 CCI shall send a copy of the written report to the department, the appropriate county department and the appropriate regional licensing office of the department of health and family services within 3 days of the incident. The report shall include all of the following:

1. The youth's full name and the date, time and place force was used against the youth.

2. The name of all staff who used force against the youth.

3. All of the relevant facts related to the incident, including all facts related to the procedures required by sub. (3).

4. The reason for using force.

5. The names of all persons who observed the use of force and their written accounts of the occurrence or a report of their accounts.

**History:** Cr. Register, June, 2000, No. 534, eff. 7–1–00.

**DOC 394.10 Mechanical restraints. (1) GENERAL.** Trained staff may use mechanical restraints only in accordance with this section.

**(2) REASONS FOR USING MECHANICAL RESTRAINTS.** Mechanical restraints may be used for any of the following purposes:

(a) To stop a type 2 status youth in the act of escaping.

(b) To transport a type 2 status youth who has escaped and been apprehended.

(c) To temporarily restrain a type 2 status youth in the type 2 CCI until the youth can be transported to a secure detention facility, a mental health or medical facility or a type 1 secured correctional facility.

**(3) LIMITATIONS ON USE.** Mechanical restraints may not be used in any of the following ways:

(a) As a method of punishment.

(b) About the head or neck of a youth.

(c) In a way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of a youth.

(d) To secure a youth to a motor vehicle.

**(4) MECHANICAL RESTRAINT PROCEDURES.** (a) *Custody and transportation.* When trained staff place a type 2 status youth in mechanical restraints to take the youth into custody and transport the youth after an escape or an attempted escape, staff shall promptly transport the youth to a detention facility, a mental health or medical facility or a type 1 secured correctional facility.

(b) *Observation.* Staff shall remain with a type 2 status youth placed in mechanical restraints at all times until the restraints are removed or until the youth is admitted to a place of secure confinement or is taken into custody by law enforcement authorities.

(c) *Services and privileges.* A type 2 status youth shall be released from mechanical restraints to perform bodily functions and for meals, unless it is unsafe to do so. When it is unsafe to release a youth from restraints, a person shall feed the youth and a person of the same gender shall assist the youth to perform necessary bodily functions.

(d) *Check for injury.* When staff use mechanical restraints, the type 2 status youth shall be checked for injury as soon as the restraints are removed. If the youth has been injured, staff shall immediately seek appropriate medical treatment for the youth. A supervisor shall be notified immediately of any injury to a youth.

(e) *Record.* When staff use mechanical restraints to take a type 2 status youth into physical custody, staff shall promptly notify a supervisor. The type 2 CCI shall promptly notify the department

and the county department having supervision over the youth, but no later than 24 hours after the occurrence. A written report describing the incident shall be submitted by staff to a supervisor within 24 hours and included in the youth's file. The type 2 CCI shall send a copy of the written report to the department or county department and to the appropriate regional licensing office of the department of health and family services within 3 days of the incident. The report shall include all of the following:

1. The youth's full name, date, time and place the youth was placed in mechanical restraints.

2. The name of staff who placed the youth in restraints.

3. All relevant facts related to the incident that required the use of restraints.

4. The reason for placing the youth in restraints and a description of the restraints used.

5. A statement indicating when and under what circumstances the restraints were removed.

**(5) EQUIPMENT.** Staff shall only use mechanical restraints approved by the department. Staff shall examine the supply of mechanical restraints at least every 6 months. Any mechanical restraints which are excessively worn or which become defective through use shall be delivered to a supervisor to be destroyed.

**History:** Cr. Register, June, 2000, No. 534, eff. 7-1-00.