

Clearinghouse Rule 97-158

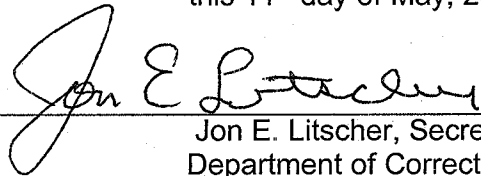
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

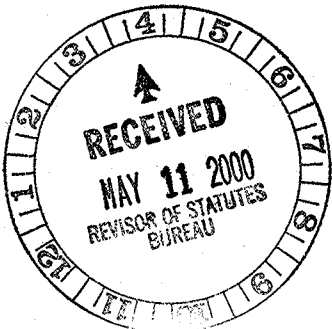
I, Jon E. Litscher, Secretary of the Department of Corrections and custodian of the official records, certify that the annexed rules, relating to juvenile corrections, were duly approved and adopted by this department on May 11, 2000.

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 at 149 E. Wilson Street in the city of Madison, this 11th day of May, 2000.



Jon E. Litscher, Secretary
Department of Corrections



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Tommy G. Thompson
Governor

Jon E. Litscher
Secretary

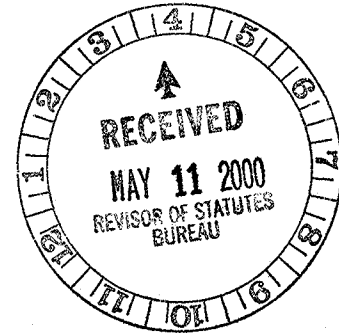


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State of Wisconsin Department of Corrections

May 11, 2000

Gary L. Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street, Room 800
Madison, WI 53703-3233



Dear Mr. Poulson:

The Department of Corrections is filing with you certified copies of sixteen chapters of administrative rules applying to juvenile corrections. As of May 10, 2000, we learned that the Assembly and Senate standing committees to which the rules were assigned have no objections to their promulgation.

Sincerely,

Handwritten signature of Jon E. Litscher in cursive.
Jon E. Litscher, Secretary

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal ch. HSS 331 and create ch. DOC 371, relating to youth under its supervision that will assist department staff to: identify a youth's program needs; develop an individual case plan; and make appropriate decisions regarding extension, release, transfer and discharge of a youth.

Statutory authority: ss. 227.11 (2) (a) and 938.48 (16), Stats., and s. 9126(23)(e) of 1995 Act 27.
Statutes interpreted: ss. 301.03 (10), 938.01 (2) and 938.505 (1), Stats.

Analysis by the Department of Corrections

The proposed ch. DOC 371 sets standards for the division's youth assessment and case management functions. The chapter applies to the department of corrections and all youth who have been placed in a type 1 or type 2 secured correctional facility under the supervision of the department under s. 938.505, Stats., including waived youth, those under the original jurisdiction of adult criminal court and youth on extended jurisdiction, and to county agencies providing community supervision under ss. 938.34 (4n) and 938.357 (4g), Stats.

Chapter DOC 371 attempts to provide a "balanced approach" to case planning that incorporates the equally important purposes of s. 938.01, Stats., including public protection, youth accountability, and youth assessment and skill-building, within a safe and humane environment for each youth. The rule also integrates the institution and community supervision phases of a youth's correctional placement so that planning for a youth's treatment, programming and security needs is consistent between placement settings, leading to better and more effective services overall.

Rules for youth assessment and case management were in ch. HSS 331, Planning, under the former administrative code of the then-department of health and social services. The analysis below includes identification and explanation of major differences between ch. HSS 331 and the proposed youth assessment and case management rule. Point-by-point comparisons are generally not made because the new rule was not specifically drafted with reference to the former rule.

Under this proposed rule:

1. This rule incorporates references to the department of corrections and ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, so this rule is consistent with current law.
2. The purpose statement in s. DOC 371.01 differs from s. HSS 331.01 in its emphasis on the "balanced approach" to juvenile justice which stems from the Wisconsin juvenile justice code, ch. 938, Stats., effective July 1, 1996. Section DOC 371.01 retains most of the goals from s. HSS 331.01, but does not include the list of opportunities provided to youth because they are addressed by the proposed ch. DOC 379. Section HSS 331.01 (1) required the "least possible restriction on a youth's liberty", but s. DOC 371.01 does not because ch. 938 replaced "least restrictive" with "most effective" as the goal of dispositional orders.



3. The rules of the chapter apply to the department, all youth under the department's supervision under ch. 48 or ch. 938, Stats., and to counties providing aftercare supervision.
4. Under DOC 371.03, some definitions included in ch. HSS 331 are re-written to clear up past confusion or to reflect changes in policy, procedures and statutes.
5. Both s. HSS 331.04 and s. DOC 371.04 list the purposes of the assessment and evaluation process which shall be completed within 35 days.
6. The provisions for youth orientation to the institution in proposed s. DOC 371.05 are similar to those in s. HSS 331.05. Section HSS 331.05 provided guidance regarding social work practice now covered in division policies and procedures, including an extensive case management manual.
7. Evaluation of youth, formerly covered within s. HSS 331.07, has been expanded to provide more detail regarding the assessment and evaluation period. Section DOC 371.06 requires the completion of reports by the agent, social worker, education staff and healthservices all of which are explained in detail in subsequent sections of the rule.
8. The agent, under s. DOC 371.07, completes the family and home assessment which supplements the court report (under s. 938.33, Stats.), a delinquency family assessment and a juvenile parole risk assessment at least 3 days prior to the initial JPRC.
9. Under s. DOC 371.08, the institution social worker completes the assessment and evaluation report based on information from a delinquency youth assessment and other available records.
10. Under s. DOC 371.09, the institution education staff completes the education evaluation report. Section HSS 331.07 (2) did not contain detailed criteria for the education evaluation.
11. Section DOC 371.10 describes in great detail the initial JPRC conference including the purposes, required notice procedures, OJOR and facility decision-making authority, and review procedures.
12. Section DOC 371.11 governs administrative transfer of youth between certain facilities.
13. OJOR may use formal conferences, informal reviews and written progress summaries to regularly assess a youth's progress and the appropriateness of release, transfer or discharge, under s. DOC 371.12. Similar to s. HSS 331.13 (3), s. DOC 371.12 (3) permits the superintendent, committing county, agent or OJOR to propose action relating to a youth at any time.
14. This new section, s. DOC 371.13, implements the requirements of the law on extended juvenile court jurisdiction relating to the committing court's authority to review and approve discharge from a type 1 institution to aftercare and to revoke an aftercare placement.
15. This new section, s. DOC 371.14, clarifies the responsibilities of the adult correctional system and the division with respect to youth convicted of a criminal offense and placed in a type 1 facility.

16. Section 371.15 describes OJOR's administrative transfer authority and release to aftercare procedures.
17. Section DOC 371.16, unlike s. HSS 331.16, explains in detail the time limits for and contents of an aftercare case plan developed by an agent.
18. A new section, s. DOC 371.17, promotes consistency in permanency planning for youth subject to chs. 48 and 938, Stats., when youth live in alternate care placements
19. Section DOC 371.18 requires the agent to prepare and implement a final case plan. Section DOC 371.19 requires review of the aftercare case plan every 90 days.
20. Section DOC 371.20, describes the process for various youth to be discharged from department supervision, including youth in a type 1 institution, serious juvenile offenders and youth on aftercare.
21. Section DOC 371.21, addresses the case planning requirements for youth placed in the serious juvenile offender program, corrective sanctions program and a type 2 secured correctional facility.

SECTION 1. Chapter HSS 331 is repealed.

SECTION 2. Chapter DOC 371 is created to read:

CHAPTER DOC 371

JUVENILE ASSESSMENT AND CASE MANAGEMENT

DOC 371.01	Authority and purpose	DOC 371.12	Periodic progress reviews
DOC 371.02	Applicability	DOC 371.13	Youth under extended court jurisdiction
DOC 371.03	Definitions	DOC 371.14	Waived youth and original adult court jurisdiction youth
DOC 371.04	Purposes and duration of A&E	DOC 371.15	Aftercare and administrative transfer of a youth
DOC 371.05	Orientation during A&E	DOC 371.16	Aftercare case plan
DOC 371.06	Evaluation during A&E	DOC 371.17	Permanency planning
DOC 371.07	Family and home assessment	DOC 371.18	Aftercare orientation and final aftercare case plan
DOC 371.08	Institution A&E report	DOC 371.19	Periodic aftercare progress reviews
DOC 371.09	Education evaluation report	DOC 371.20	Discharge of a youth
DOC 371.10	Initial JPRC conference	DOC 371.21	Type 2 secured correctional facility
DOC 371.11	Administrative transfer		

DOC 371.01 Authority and purpose. (1) This chapter is promulgated under the authority of ss. 227.11 (2) (a) and 938.48 (16), Stats., to establish standards and procedures to be followed by department staff in identifying a youth's program needs, establishing a case management plan to address those program needs while in a type 1 or type 2 secured

correctional facility or on aftercare and for making decisions regarding the extension, release, transfer or discharge of youth.

(2) Through this chapter, the department seeks to achieve all of the following goals:

(a) To provide the care and control of each youth required for the protection of the public.

(b) To identify specific, objective short-term and long-term program needs for each youth and to outline a case plan that will assist in meeting the program needs.

(c) To provide a safe, humane and caring environment.

(d) To provide opportunities for youth to learn skills that will assist them in avoiding a return to criminal behavior.

(e) To assist youth in their reintegration to the community.

DOC 371.02 Applicability. This chapter applies to the department and county departments and all youth who have been placed by a court in a type 1 or type 2 secured correctional facility under the supervision of the department or on aftercare under the supervision of the department or a county department consistent with the requirements of law.

DOC 371.03 Definitions. In this chapter:

(1) "Assessment and evaluation" or "A&E" means the orientation of youth to an institution and the process for evaluating a youth's history and needs in a type 1 secured correctional facility.

(2) "Administrator" means the administrator of the division of juvenile corrections or that person's designee.

(3) "Aftercare" means the aftercare supervision status of a youth, as used in ss. 938.34 (4n) and 938.532 (3), Stats., who is released from a Type 1 or Type 2 secured correctional facility by the office of juvenile offender review or by action of a court under s. 48.366 (5) (b) or 938.357, Stats., and is supervised outside of a type 1 secured correctional facility by the department or a county department until the expiration or termination of the youth's court ordered supervision.

(3) "Aftercare case plan" means "aftercare plan" as defined in s. 938.357(4g), Stats.

(4) "Aftercare provider" means the department or the county department designated to provide aftercare supervision under s. 938.34(4n), Stats.

(5) "Agent" means a person, or that person's designee, employed by the department or a county department who provides aftercare supervision or community supervision for a youth who has a type 2 status under s. 938.533(3)(b), 938.538(4) or 938.539, Stats., and who is authorized to make decisions regarding aftercare or community supervision matters.

(6) "Alternate care placement" means the placement of a youth in an alternate placement, including placement in a child caring institution, group home, foster home or treatment foster home.

(7) "Assessment and evaluation report" means the written comprehensive assessment of a youth's background and needs prepared during the youth's assessment and evaluation.

(8) "Corrective sanctions program" means the program under s. 938.533, Stats.

(9) "County department" means a county department under s. 938.02(2g), Stats.

(10) "Day" means a calendar day.

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

(12) "Discharge" means discharge from supervision.

(13) "Division" means the department's division of juvenile corrections.

(14) "Educational evaluation report" means a written report completed during assessment and evaluation that describes a youth's school history, identifies present performance levels and educational deficits and recommends an individual educational plan.

(15) "Extended jurisdiction" means the continued jurisdiction of a court over a youth until the age of 21 or 25 as ordered by the court under s. 48.366, Stats.

(16) "Extension" means the extension of a youth's dispositional order, as provided under s. 938.365, Stats.

(17) "Guardian" means the person named by the court having the duty and authority of guardianship.

(18) "Institution" means a type 1 secured correctional facility.

(19) "JPRC" means the joint planning and review committee which makes short-term and long-term planning recommendations for youth with membership consisting of a representative of the type 1 secured correctional facility in which the youth resides, the assigned OJOR reviewer, a representative of the committing county and a representative of the aftercare provider.

(20) "Juvenile classification system" means a structured and consistent method of case decision-making based upon an assessment of a youth's criminal history, program needs and risk of continued criminal activity.

(21) "Needs assessment instrument" has the meaning given in s. 938.549(1)(b), Stats.

(22) "OJOR" means the division's office of juvenile offender review.

(23) "Parent" has the meaning given in s. 938.02(13), Stats.

(24) "Regional chief" means a division regional manager or that person's designee who is responsible for oversight of community correctional services.

(25) "Release status" means the status of a youth who has been released from a type 1 or type 2 secured correctional facility to a release placement, including the youth's home, a relative's home, foster home, group home, child caring institution or independent living.

(26) "Risk assessment instrument" means an instrument used to evaluate the likelihood that a youth may continue delinquent or criminal activity.

(27) "Serious juvenile offender" means a person to whom the court has given the disposition specified in s. 938.34(4h), Stats.

(28) "Staff" means an employee of the department.

(29) "Superintendent" means the superintendent of a type 1 secured correctional facility or that person's designee.

(30) "Supervision" means the rights and duties of the department or a county department under ss. 48.366, Stats., and s. 938.505, Stats., with respect to a youth placed in a type 1 or type 2 secured correctional facility or on aftercare by a court or by the department.

(31) "Supervisor" means a department or a county department employee responsible for the supervision or administration of aftercare supervision or that person's designee.

(32) "Type 1 secured correctional facility" has the meaning given in s. 938.02(19), Stats.

(33) "Type 2 secured correctional facility" has the meaning given in s. 938.02(20), Stats.

(34) "Waived offender" means a youth who is convicted of a crime after the juvenile court waived jurisdiction under s. 938.18, Stats., and is placed in a type 1 secured correctional facility pursuant to s. 973.013 (3m), Stats.

(35) "Youth" means a person or persons under the supervision of the department or a county department consistent with the requirements of law regardless of age.

DOC 371.04 Purpose and duration of A&E. (1) A&E begins with a youth's placement with the department. The purposes of A&E are all of the following:

(a) To verify the legal authority to detain or accept placement of a youth.

(b) To promptly notify the agent and the parent or guardian of a youth that the youth has been admitted to a type 1 secured correctional facility.

(c) To formally identify a youth as an active case in the juvenile corrections system and to notify other agencies as appropriate.

(d) To assist a youth in notifying family members of the procedures for mail and visiting.

(e) To conduct a comprehensive evaluation of a youth's background and program needs including the writing of the assessment and evaluation report, the family and home assessment and the education evaluation report and to complete a needs and risk assessment using the juvenile classification system instruments.

(f) To evaluate and make recommendations for the academic, vocational, health, social, psychological and security needs of a youth.

(g) To provide a youth with an orientation to the rules and programs of the department.

(h) To answer a youth's questions.

(i) To recommend an appropriate placement for a youth.

(2) A&E shall be completed within 35 days from the date a youth arrives at the institution.

DOC 371.05 Orientation during A&E. (1) Staff shall provide youth with an orientation to the department. The orientation shall provide youth with appropriate information about all of the following:

(a) Division programs that are available to a youth while in type 1 or type 2 secured correctional facilities or on aftercare.

(b) Criteria used in the development of a youth's case plan and for assignment to specific programs.

(c) The procedure and criteria for a youth to earn transfer or release from an institution.

(d) The conduct rules under s. DOC 373.05 and institution policies and procedures which a youth must observe.

(e) The youth complaint procedure under ch. DOC 380.

(2) Staff shall make information under sub. (1) accessible to youth in all of the following ways:

(a) Staff shall provide youth with a copy of the rules of conduct that youth are required to follow and the programs available at the institution in which a youth is placed.

(b) During the A&E process and thereafter, staff shall provide youth with access to written materials describing the expectations for youth and the programs available to youth, including the administrative rules of the department and any available institution handbooks.

(c) If a youth has special language or developmental needs, staff shall provide the youth with an orientation program that communicates the information required by this section.

DOC 371.06 Evaluation during A&E. (1) Staff shall determine each youth's program needs during A&E.

(2) Determination of a youth's program needs requires all of the following reports:

(a) The youth's agent completes a family and home assessment report that includes the delinquency family assessment and juvenile parole risk assessment as described in s. DOC 371.07.

(b) The institution social worker completes an assessment and evaluation report that incorporates the delinquency youth assessment as described in s. DOC 371.08.

(c) The institution education staff complete the education evaluation report as described in s. DOC 371.09.

DOC 371.07 Family and home assessment. (1) PURPOSE. The purpose of the family and home assessment report is to provide the department with accurate, complete and relevant information upon which to base correctional, transfer, release, extension and discharge decisions for a youth.

(2) **WHEN PREPARED.** The agent shall prepare the family and home assessment report and forward copies to the JPRC at least 3 days prior to the initial JPRC conference under s. DOC 371.10.

(3) **CONTENT.** The family and home assessment report shall include all of the following:

(a) Information relevant to sub. (1), which is not included in the court report, correctional placement report or serious juvenile offender report. It shall include information relating to family attitude toward commitment, family perception of the program needs, family perception of community, the youth's potential for reintegration into the family, potential and family attitude regarding alternate care placement as a transition to home placement.

(b) Information obtained on the delinquency family assessment instrument which is used to determine treatment needs of a youth in the context of the family and juvenile parole risk assessment which is used to predict the potential of a youth to engage in future criminal activity.

(c) The agent's assessment and impressions of the youth's potential for reintegration into the family and individual needs.

(d) Recommendations for programs that a type 1 or type 2 secured correctional facility or aftercare provider may provide to meet a youth's program and security needs, consistent with available resources.

DOC 371.08 Institution A&E report. (1) During the A&E period, staff shall assess a youth's background and individual program and security needs. The institution shall prepare an A&E report that includes broad program goals designed to meet the youth's needs.

(2) Staff shall complete a comprehensive assessment of a youth's background and individual program and security needs. The assessment includes completing the delinquency youth assessment instrument which determines treatment needs of the youth, and a review of

available law enforcement, court and social service records, and other information regarding all of the following:

- (a) Behavior which led to the commitment.
- (b) Physically or sexually aggressive behavior.
- (c) Runaway patterns.
- (d) History of physical and sexual victimization.
- (e) History of drug and alcohol abuse.
- (f) Social history, prior placements and family, educational, vocational, medical, dental and mental health assessments.
- (g) Attitude and adjustment since admission.
- (h) Parental and community attitudes toward the youth.

(3) The assessment shall also be based upon discussions with the youth and the court report prepared by the agency designated under s. 938.33, Stats.

(4) The A&E report shall be in writing and shall include all of the following:

(a) A description of a youth's social, psychological, vocational, health and security needs. If a recent report provides accurate information and is available in the file, the content of the report may be incorporated by reference.

(b) A recommendation regarding the broad program goals a youth is expected to achieve.

(c) A recommendation to place a youth in a type 1 or type 2 institution or other program that will best meet the youth's needs, consistent with available resources.

(d) A description of issues relating to the protection of the public and the release of a youth, including recommendations relating to the extension or discharge of a youth's commitment to the department.

(5) Staff shall complete the A&E report at least 3 days prior to the initial JPRC conference conducted under s. DOC 371.10.

DOC 371.09 Education evaluation report. (1) Staff shall assess each youth's educational needs during A&E.

(2) Staff shall prepare a written education evaluation report that shall do all of the following:

(a) Describe and assess a youth's prior school history, including special programs that were provided or recommended.

(b) Report the names and results of the assessment instruments used to determine a youth's present level of educational achievement.

(c) Identify the primary learning styles and the most critical educational achievements and deficits of a youth.

(d) Identify specific areas in which a youth needs transition services while in an institution or on aftercare.

(e) Recommend an individual educational plan in compliance with federal and state statutes and regulations governing the education of youth.

(3) Staff shall complete the education evaluation report at least 3 days prior to the initial JPRC conference conducted under s. DOC 371.10.

DOC 371.10 Initial JPRC conference. (1) PURPOSE. Within 35 days after a youth's admission to an institution, OJOR shall conduct the initial JPRC conference to report and discuss the findings and recommendations of the A&E staff and to identify the priority program needs of the youth. OJOR shall invite all members of the JPRC, the parent of a youth under the age of 18 years or a guardian to offer additional information and to make recommendations concerning program needs.

(2) NOTICE. OJOR shall give timely notification of the conference to the members of the JPRC, the youth, the parent of a youth under the age of 18 years or a guardian. Notice shall be written and include the criteria for review, issues to be considered, notice of the opportunity to make recommendations at the conference and notice that the youth has a right to appear, unless the youth's conduct is disruptive or the youth presents a danger to self or others.

(3) PROCEDURE. The procedure for the initial JPRC conference shall include all of the following:

(a) The OJOR representative shall act as chairperson of the conference. The JPRC shall review the assessment and evaluation report, the education evaluation report, the family and home assessment, the needs assessment prepared by the both the institution and the agent and the risk assessment prepared by the agent.

(b) The OJOR representative shall request that the parents or guardian, if present, offer ideas and make suggestions regarding the youth's program needs and the direction of the case plan.

(c) The OJOR representative shall provide the youth an opportunity to appear or make a written statement, to offer ideas and suggestions concerning programming and to answer questions. If the youth is unable to participate, the institution social worker shall represent his or her interests.

(d) The JPRC shall develop recommendations that are consistent with the goals of s. DOC 371.01 and the facts of the case relating to the delinquency adjudication, the court ordered disposition and the needs of the youth. The OJOR representative shall provide the youth and

parents of a youth under the age of 18 years or guardian with a copy of the recommendations. The recommendations may relate to all of the following:

1. Placement of the youth in a type 1 or type 2 secured correctional facility or on aftercare in the youth's home, an independent living arrangement or an alternate care facility.
2. Discharge from supervision.
3. Whether a recommendation shall be made to the court concerning extension of the dispositional order.
4. Broad program goals that address needs identified during the A&E process.

(4) INDIVIDUAL CASE PLANS. (a) The receiving institution shall prepare a case plan consistent with par. (b) for each youth within 21 days after the initial JPRC conference and distribute copies to all members of the JPRC. When a youth is transferred to another institution as a result of the initial JPRC conference, the receiving institution shall complete an individual case plan for the JPRC as soon as possible, but no later than 21 days after receipt of the youth. For youth transferred to type 2 secured correctional facilities after the initial JPRC conference, case-planning procedures shall be accomplished under s. DOC 371.21.

(b) Institution program staff shall develop a case plan for each youth based on the youth's needs and shall review the plan regularly with the youth. Program staff may change the case plan at any time depending on the youth's needs and progress. The case plan shall take into account the goals set by the JPRC and shall include all of the following:

1. Short-term and long-term objectives.
2. Interventions and strategies to be implemented to achieve the objectives.
3. The staff who are assigned responsibility for implementing and documenting progress on each objective.
4. A tentative community placement plan and a projected placement date.

(5) DECISIONS. (a) *OJOR decisions.* OJOR shall make decisions regarding a youth's release from a type 1 secured correctional facility, administrative transfer, any special conditions of release, a placement category for youth on community supervision, and requests to the court for an extension of supervision.

(b) *Type 1 or type 2 secured correctional facility decisions.* The type 1 or type 2 secured correctional facility shall determine the youth's treatment, educational, vocational or other daily activities, taking into consideration the JPRC recommendations under sub. (3) (d). All programs at each facility shall include privileges (positive reinforcers) that youth may earn by exhibiting positive behaviors. The linking of a privilege with positive behavior creates a reward system in which staff acknowledges a youth's positive behavior.

(c) *Notice of Decisions.* The decisions of OJOR under par. (a) shall be in writing and shall be forwarded by OJOR to the youth, the parents of a youth under the age of 18 or guardian and the members of the JPRC within 7 days following the initial JPRC conference.

(d) *Implementation of decisions.* If the program assignment under (b) cannot be implemented, staff shall document that fact and notify OJOR and the administrator. The administrator, in consultation with OJOR, shall determine the program assignment.

(6) **REQUEST FOR REVIEW.** JPRC members may request review by the administrator of decisions made under sub. (5). The person requesting a review shall submit the request in writing to the OJOR director within 7 days of the day the decision is issued. The administrator shall issue a final decision within 7 days of receipt of the request for review. Failure of the administrator to issue a decision within 7 days affirms the decisions made under sub. (5).

DOC 371.11 Administrative transfer. The department may transfer youth between institutions, between type 1 and type 2 secured correctional facilities or to adult institutions as follows:

(1) OJOR may transfer youth from A&E to a type 1 or type 2 secured correctional facility and between type 1 and type 2 secured correctional facilities at any time during DJC supervision of a youth. The decision to transfer a youth may be based on, but is not limited to, any of the following considerations:

- (a). Public safety.
- (b). The youth's committing offense.
- (c). Assessment of the youth's needs.
- (d). Assessment of the potential for future delinquent or criminal activity.
- (e). Physical aggressiveness.

(2) Under this provision, "assistant administrator" means the division assistant administrator directly responsible for supervising type 1 secured correctional facilities.

(a) A superintendent or the Assistant Administrator for Juvenile Institutions may transfer youth between type 1 institutions.

(b) If any member of the JPRC disagrees with a superintendent's decision to transfer a youth, the member may appeal to the Assistant Administrator who will make a decision within 10 days.

(3) The department may transfer a youth with an adult conviction only and a youth with both an adult conviction and a juvenile commitment from an institution to an adult institution consistent with the requirements of law. OJOR may recommend to administrator the transfer of a youth with an extended court jurisdiction disposition under s. 48.366, Stats., from an institution to an adult institution. The factors to be considered include the following:

(a) The extent to which the youth's conduct in an institution is violent and disruptive.

(b) The security needs of the institution.

(c) The extent to which the youth is refusing to participate in the treatment programs provided for the youth in the institution.

(d) The maturity of the youth, the extent to which the program needs of the youth can be met in an adult institution and the extent to which the youth may be vulnerable in an older population in an adult institution.

DOC 371.12 Periodic progress reviews. (1) PURPOSE. OJOR shall review a youth's progress and the appropriateness of release, transfer or discharge, for each youth in a type 1 secured correctional facility.

(a) OJOR shall hold a formal conference at least once every 6 months for each youth in an institution, except for youth who have only an adult conviction. OJOR shall also schedule a formal conference if requested by a member of JPRC. All JPRC members attend a formal conference. The youth shall be permitted to attend the formal conference, unless health or security needs of the youth preclude attendance, in which case OJOR staff shall interview the youth. OJOR invites parents to attend.

(b) OJOR may conduct informal reviews of youth in an institution at any time. An informal review may be conducted with or without the attendance of the youth. OJOR reviews the youth's progress at an informal review. Members of the JPRC, other than OJOR, do not participate in an informal review.

(2) NOTICE. (a) OJOR shall send timely notice of a formal conference to the youth, the parents of a youth under the age of 18 or legal guardian and JPRC members. The notice shall state the date, time, place and purpose of the conference.

(b) When OJOR schedules an informal review, OJOR shall give the youth prior notice regarding the week in which the review will take place.

(3) REQUEST FOR REVIEW. A superintendent, committing county, agent or OJOR may at any time propose action relating to a youth by submitting a request for review to each JPRC member.

(a) A formal conference does not need to be scheduled by OJOR if all JPRC members agree in writing with the proposed action.

(b) If all members do not agree with the proposed action, OJOR shall conduct a formal conference under sub. (1) to determine if the proposed action is appropriate.

(c) A youth or a youth's parent or guardian may ask the institution social worker or agent to propose action relating to the youth, if a significant change in circumstances has occurred that would justify the action.

(4) PROGRESS SUMMARY. Prior to formal conferences or scheduled informal reviews, and at least every 90 days, the institution shall conduct a review of a youth's individual case plan to determine whether the goals and case plan continue to be appropriate.

(a) The review under this subsection shall consist of a file review and interviews of staff responsible for implementing the case plan and educational services.

(b) The institution shall send a written progress summary under this subsection to each JPRC member prior to the OJOR review under sub. (1). The summary shall describe the youth's progress toward meeting individual goals, programs and interventions, any relevant change in available resources, any proposed modifications to the case plan, including recommendations for extension, release or discharge and the reasons for any proposed change in the plan.

(c) A progress summary under par. (b) is not required if a progress summary was completed within the previous 45 days.

(5) PROCEDURE. (a) OJOR shall encourage all persons in attendance at a formal conference to review and discuss the youth's progress.

(b) OJOR shall review the progress summary under sub. (4)(b) as part of an informal review.

(c) OJOR shall consider the contents of the progress summary under sub. (b) and consult with all members of the JPRC prior to making a youth eligible for release or administrative transfer or ordering a petition to the court for extension.

(6) AFTERCARE. OJOR may release a youth on aftercare from either a type 1 or type 2 secured correctional facility.

(7) DECISION AND REQUEST FOR REVIEW. The procedures under s. DOC 371.10 (5) and (6) apply to decisions made pursuant to this section.

DOC 371.13 Youth under extended court jurisdiction. (1) This section applies to youth under extended court jurisdiction under s. 48.366, Stats.

(2) Institution program staff shall conduct case management for youth under extended court jurisdiction in accordance with this chapter, except that the requirements of this section shall prevail over the requirements of any section in this chapter which are in conflict with this section.

(3) Formal conferences shall be conducted and informal reviews may be conducted by OJOR as provided in s. DOC 371.12.

(4) The administrator may place a youth in an adult correctional institution when authorized by statute as provided in s. DOC 371.11 (3).

(5) The department shall obtain court approval under s. 48.366, Stats., before a youth is released or discharged from an institution.

(a) Any JPRC member may submit a written recommendation for aftercare to OJOR.

(b) OJOR may recommend to the administrator that a youth be released to aftercare or to a type 2 placement or discharged, after consulting with the other members of JPRC. The administrator may direct that a petition be filed by the department with the court under s. 48.366, Stats., stating the recommendation and the proposed plan for the youth.

(c) When a youth in a type 1 secured correctional facility appears appropriate for discharge, the superintendent shall submit a written recommendation for discharge to OJOR. The administrator may then direct that a petition be filed by the department with the court under s. 48.366 Stats., stating the recommendation and the proposed plan for the youth.

(6) Consistent with s. 48.366 (5) (c), Stats., a youth has a right to file a petition once a year with the court on his or her own behalf, requesting release to aftercare.

DOC 371.14 Waived youth and original adult court jurisdiction youth. (1) This section applies to youth who are convicted of a criminal offense in adult court under s. 938.18 or 938.183, Stats., and sentenced to the Wisconsin state prisons.

(2) The sentence structure for a youth subject to original adult court jurisdiction shall be computed in accordance with ch. DOC 302. Youth are subject to the provisions of chs. PAC 1, DOC 328 and DOC 331 regarding aftercare.

(3) Staff shall conduct case planning for a youth sentenced by the adult court in accordance with this chapter with the following exceptions:

(a) A family and home assessment shall not be prepared and an agent shall not be assigned.

(b) The parole commission under ch. 304, Stats., has the responsibility for parole decisions.

(4) The department may transfer a youth to an adult correctional institution consistent with the requirements of law and s. DOC 371.11 (2).

DOC 371.15 Aftercare and administrative transfer of a youth. (1) **PLACEMENT AUTHORITY.** OJOR shall determine when to place a youth on aftercare from a type 1 or type 2 secured correctional facility or to administratively transfer a youth from a type 1 secured correctional facility to a type 2 secured correctional facility.

(2) **TERMINATION AUTHORITY.** The administrator or his or her designee shall determine whether a youth should be terminated from a type 2 secured correctional facility, consistent with s. DOC 396.12. A department order shall be signed to administratively transfer a youth from a type 2 secured correctional facility to reception at a type 1 secured correctional facility.

(3) **RECOMMENDATION.** The committing county, superintendent or agent may recommend to OJOR, consistent with s. DOC 371.12 (3) that a youth be placed on aftercare or transferred at any time. The aftercare case plan under s. DOC 371.16 is not required to make an aftercare decision, but shall be considered if available.

(4) PROCEDURES. OJOR shall use the review procedures in s. DOC 371.12 to review recommendations under sub. (3). When OJOR considers a recommendation for aftercare or transfer at an informal review or any unscheduled time, OJOR shall consult with members of JPRC regarding the appropriateness of aftercare, transfer, placement category or conditions of aftercare or transfer.

(5) DECISION. (a) OJOR shall determine whether a youth is eligible for aftercare or transfer and designate a placement category. OJOR may impose conditions on aftercare or transfer.

(b) OJOR shall make decisions regarding aftercare, transfer, placement category and conditions in writing and shall forward a copy of the decision to the youth, parents of a youth under the age of 18 years or legal guardian and all members of the JPRC within 7 days after completion of the procedure under sub. (4).

(6) REQUEST FOR REVIEW. JPRC members may submit a written request for review by the administrator to the OJOR director regarding a decision under sub. (4) within 7 days of the day the decision is issued. The administrator shall consult with the OJOR director and issue a final decision in writing within 7 days of receipt of the request by the OJOR director. OJOR shall forward copies of the decision to the party requesting review. Failure of the administrator to issue a decision within 7 days confirms the decision made by OJOR.

(7) IMPLEMENTATION. When OJOR determines that a youth is eligible for aftercare or transfer and designates a placement category or imposes other conditions on the action, OJOR shall notify the institution social worker and the agent who are responsible for implementing the order.

DOC 371.16 Aftercare case plan. (1) TIME LIMITS. (a) The agent shall write an aftercare case plan and submit the plan to members of the JPRC 120 days after the date on which the youth is placed in an institution or a secured child caring institution or within 30 days after the date on which the department requests the aftercare plan, whichever is earlier.

(b) The department may waive the time limits of par. (a) if one of the following conditions exist:

1. The department anticipates that the youth will remain in an institution or secured child caring institution for a period exceeding 8 months.

2. The youth is subject to extended jurisdiction under s. 48.366, Stats.

3. The youth is subject to an adult court criminal sentence.

(c) If the department waives time limits under paragraph (b), the agent shall prepare the aftercare case plan within 30 days after the date on which the department requests the aftercare case plan.

(2) CONTENTS OF THE AFTERCARE INDIVIDUAL CASE PLAN. The agent shall base a aftercare case plan upon the institution program goals, the youth's progress, a current assessment of the youth's needs and an assessment of the potential for future delinquent or criminal activity. The agent shall consider the completed juvenile classification instruments when writing the aftercare case plan. The aftercare case plan shall include all of the following:

- (a) The minimum number of contacts with the youth's agent upon initial release.
- (b) The conditions under which a youth's aftercare status may be revoked.
- (c) The services or programming to be provided to the youth while on aftercare.
- (d) The estimated length of time a youth will need aftercare supervision and services.
- (e) A recommendation for placement upon release and the rationale for that placement.
- (f) An assessment of the youth's home.
- (g) An educational or vocational plan and employment goals.
- (h) If appropriate, a proposal to seek an extension of a youth's dispositional order to provide for the care and programming needs of the youth and the protection of the public.

DOC 371.17 Permanency planning. Staff shall accomplish permanency planning under s. 938.38, Stats., consistent with the requirements of ch. HFS 44.

DOC 371.18 Aftercare orientation and final aftercare individual case plan. (1) A youth's agent may update or modify the aftercare case plan within 21 days after a youth's release to the community. The agent shall distribute copies of the aftercare case plan to OJOR, the institution social worker, county worker, youth, parent of a youth under the age of 18 years, or legal guardian.

(2) The institution social worker shall coordinate a youth's release to aftercare.

(3) If a youth is placed in an alternate care placement, the youth's agent shall notify the parent, if the youth is under 18 years of age, or the legal guardian of the placement name and address and the date of the youth's arrival as soon as the information is known.

(4) Youth shall sign the rules of supervision prior to release from an institution and a youth's agent shall provide a copy to the alternate care placement, and to the parent of a youth under the age of 18 years or legal guardian.

(5) Youth with special language or developmental needs shall have rules of supervision communicated to them in accordance with their particular needs.

DOC 371.19 Periodic aftercare progress review. (1) PURPOSE. The agent shall meet with a youth and review the youth's progress toward meeting aftercare case plan goals at least once every 90 days following the youth's release to aftercare.

(2) PROGRESS SUMMARY. After the review, the agent shall write a summary describing the youth's progress meeting specific goals, any relevant change in available resources, any proposed modifications of or additions to the plans, including recommendations for extension or discharge and the reasons for any proposed change in the plan. The agent shall include the summary in the youth's supervision file as part of the chronological notes and copies shall be

distributed to all JPRC members as well as the parent, if the youth is under 18 years of age, or guardian.

DOC 371.20 Discharge of a youth. (1) YOUTH IN AN INSTITUTION. (a) Any JPRC member may recommend a discharge of a youth from supervision under s. 938.53, Stats., by using a request for review form under s. DOC 371.12(3).

(b) OJOR shall consult with the JPRC members prior to recommending discharge to the administrator.

(c) OJOR shall follow the procedures under s. DOC 371.13(5) for youth committed under extended jurisdiction.

(d) A JPRC member may request a review by the administrator of an OJOR recommendation to discharge a youth. The administrator shall make the final decision.

(2) EXTENDED JURISDICTION. The administrator lacks legal authority to discharge a youth under extended jurisdiction from supervision.

(3) SERIOUS JUVENILE OFFENDERS. The administrator may discharge a youth from the serious juvenile offender program and from departmental supervision and control at any time after the youth has completed 3 years of participation in the program in accordance with s. 938.538(5)(b), Stats.

(4) YOUTH ON AFTERCARE. A youth's agent may recommend to a supervisor that a youth be discharged from supervision. The supervisor may recommend discharge to the administrator.

DOC 371.21 Type 2 secured correctional facility. (1) This section applies to youth placed with the department for participation in the serious juvenile offender program by the court under s. 938.34 (4h), Stats., youth in the corrective sanctions program and youth transferred by the department to a type 2 secured correctional facility operated by a child welfare agency.

(2) The division shall provide an individual case plan for each youth transferred to a type 2 secured correctional facility.

(3) At least once every 90 days following a youth's placement in a type 2 secured correctional facility, the youth's agent shall write a report summarizing the youth's progress in the program. The report shall address any changes in the case plan and may include recommendations regarding continuation in the program, aftercare or discharge. The agent shall forward copies of the progress summary to the members of the JPRC, the youth and the youth's parent, if the youth is under the age of 18 years, or guardian.

(4) (a) When a youth in the serious juvenile offender program is placed in a type 2 secured correctional facility, the administrator makes recommendations to OJOR regarding release to aftercare under s. 938.538 (5) (a), Stats.

(b) When a youth is in a type 2 secured correctional facility placement, OJOR may decide to place a youth, except for youth under par. (a), on aftercare.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS

Jon E. Litscher 5/10/2000
Jon E. Litscher, Secretary Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING A RULE

The Wisconsin department of corrections proposes an order to repeal HSS 333 and create ch. DOC 373, relating to conduct of youth placed under the supervision of the department of corrections in a type 1 secured correctional facility.

Statutory authority: ss. 227.11 (2), 301.025 and 938.48(16), Stats. and s. 9126(23)(e) of 1995 Act 27.

Statutes interpreted: ss. 938.01 (2) and 938.505 (1), Stats.

Analysis by the Department of Corrections

The proposed rule provides guidance on conduct and a process for addressing misconduct by youth under the supervision of the department in a type 1 secured correctional facility. When the juvenile corrections division was part of the then-department of health and social services, ch. HSS 333 governed youth conduct. The analysis below includes identification and explanation of major differences between ch. HSS 333 and the proposed rule.

Youth placed in type 1 secured correctional facilities may become involved in misconduct in a variety of ways and to varying degrees of seriousness. The process for responding to such misconduct is crucial to maintaining order, safety, and security. Additionally, an appropriate response to misconduct promotes appropriate conduct, an objective of correctional placement.

Under this proposed rule:

1. References to the department of corrections and to ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, are included to make rules consistent with current law.
2. The proposed rule, like s. HSS 333.01, promotes institution safety and order by providing for the degree of confinement and programming required for each youth; holds youth accountable for misconduct and deters youth from further delinquent acts; provides for a uniform disciplinary process; and structures the exercise of discretion by staff. A new part of the purpose statement, s. DOC 373.01 (4) (f), provides for routine review of the restrictions placed on youth to assure the ongoing appropriateness of the restrictions.
3. Section DOC 373.02 states that the rule applies to the department and all youth placed under its supervision in a type 1 secured correctional facility.
4. The terms used in s. HSS 333.03 that are included in s. DOC 373.03, are defined similarly with some refinements based on experience. A number of terms defined in s. HSS 333.03 are not repeated in proposed s. DOC 373.03, because the terms are defined in the relevant subsection of the proposed rule.
5. Section DOC 373.04 sets forth a listing of youth responsibilities in type 1 institutions. Section HSS 333.05, had 4 sections: youth rights, baseline privileges, baseline responsibilities and positive rewards. Chapter DOC 379 regarding resources now contains information on youth rights and privileges. Chapter DOC 371 regarding planning,



assessment and case management now addresses positive reinforcement for appropriate youth conduct.

6. Section DOC 373.05 to .08 lists the different ways in which a conduct rule violation can be committed; committing, attempting, and aiding or abetting. Defenses to alleged violations of rules are defined in s. DOC 373.09 which reflect the "special conditions" of s. HSS 333.56 to .59.
7. The institution shall provide the youth with an orientation to the conduct rules, in s. DOC 373.10, as was required in s. HSS 333.04.
8. Section HSS 333.06 (4) classified violations into 3 categories of seriousness with penalties based upon the classification. Section DOC 373.11 (4), lists rule violations classified as major conduct violations and under s. 373.11 (5) states factors staff may consider to treat other rule violations as major conduct violations. Minor conduct rule violations have lesser penalties and are resolved with summary dispositions. Chapter DOC 373 provides greater flexibility to charge and punish less severe violations than chapter HSS 333.
9. In s. DOC 373.12, a youth charged with a major conduct rule violation can be charged with both the major conduct rule violation and a lesser included violation, but not convicted of both for a single incident, as in s. HSS 333.06 (5).
10. In s. DOC 373.13, youth may be placed in prehearing security by a supervisor for a variety of reasons. Specified due process procedures must be followed.
11. Under s. 373.14 through s. 373.64 conduct rule violations fall into categories such as bodily security, institutional security and contraband, as they did under ch. HSS 333. Each of the provisions describes a discrete conduct rule. The changes in conduct rule categories in the ch. DOC rule fill in gaps and provide greater specificity than under ch. HSS.
12. As in s. HSS 333.55, section DOC 373.65 grants each institution the authority to make specific policies and procedures related to matters such as talking, clothing, movement and personal property.
13. Under s. DOC 373.66 staff may handle youth misconduct by counseling and warning, using summary discipline procedures, writing a conduct report or referring for prosecution.
14. Section DOC 373.67 and former s. HSS 333.61 guide staff regarding the handling of violations with counseling and warning.
15. Section DOC 373.68, in a manner similar to HSS 333.63, explains the procedures for handling minor conduct rule violations with a summary disciplinary disposition. Provisions describe responsibilities of staff initiating the discipline, supervisor review, imposition of discipline, youth appeals and the required record.
16. Section 373.69 delineates the requirements for writing a conduct report as did s. HSS 333.62. As in s. HSS 333.65, s. DOC 373.70 provides for prompt review by the superintendent of each conduct report.

17. The provisions of ch. DOC 373.71 and .72 are similar to those in s. HSS 333.67 and .68 which provide for notice to the youth of an alleged major conduct rule violation and procedures when the youth waives the right to a hearing.
18. According to s. DOC 373.71, prior to a finding of guilt and the imposition of a major penalty, staff shall follow numerous due process requirements related to the disciplinary hearing before a hearing officer or a committee of hearing officers. Decisions regarding major violations are based on a preponderance of the evidence.
19. While substantially the same as ss. HSS 333.69 to .75, the provisions of ss. DOC 373.73 to .79 regarding formal disciplinary hearings differ in some areas in order to streamline and standardize the proceedings.
20. The provisions under s. DOC 373.79 explain record keeping requirements.
21. Chapter HSS 333 contained several "major penalty" programs, with punishments and privileges that varied by program. Section DOC 373.80 simplifies the major penalty provisions by allowing a progressive range of penalties based on the number of violations within a 60 day period.
22. In s. DOC 373.81, the youth may appeal the staff's or hearing officer's decision to the superintendent, who can reverse the finding of guilt or reduce the penalty.
23. Section DOC 373.82, like s. HSS 333.82, describes the minimum services and privileges that shall be provided to a youth serving a major penalty. The provisions at subs. (2), (3) and (4) address the special treatment of a youth whose behavior is out of control.
24. As under s. HSS 333.83, s. DOC 373.83 requires institutions to develop policies for referring cases for prosecution.
25. In new s. DOC 373.84, a procedural error can be found harmless if it does not substantially affect the rights of the youth. This prevents the dismissal or vacating of a disciplinary procedure on purely technical grounds.

SECTION 3. Chapter HSS 333 is repealed.

SECTION 4. Chapter DOC 373 is created to read:

CHAPTER DOC 373

**YOUTH CONDUCT IN
TYPE 1 SECURED CORRECTIONAL FACILITIES**

**SUBCHAPTER I
GENERAL PROVISIONS**

DOC 373.01 Authority and purpose	DOC 373.08 Aiding, abetting or knowing of conduct rule violations
DOC 373.02 Applicability	DOC 373.09 Defenses

- | | | | |
|------------|--------------------------------------|------------|---|
| DOC 373.03 | Definitions | DOC 373.10 | Youth access to conduct rules |
| DOC 373.04 | Responsibilities of youth | DOC 373.11 | Major and minor penalties and conduct rule violations |
| DOC 373.05 | Conduct rules | DOC 373.12 | Lesser-included conduct rule violations |
| DOC 373.06 | Conduct rule violations | DOC 373.13 | Prehearing security |
| DOC 373.07 | Attempted violation of conduct rules | | |

SUBCHAPTER II
CONDUCT RULES RELATING TO BODILY SECURITY

- | | | | |
|------------|------------------------------|------------|----------|
| DOC 373.14 | Causing the death of another | DOC 373.18 | Fighting |
| DOC 373.15 | Sexual intercourse | DOC 373.19 | Battery |
| DOC 373.16 | Sexual contact | DOC 373.20 | Threats |
| DOC 373.17 | Restraint of another | | |

SUBCHAPTER III
CONDUCT RULES RELATING TO INSTITUTIONAL SECURITY

- | | | | |
|------------|--------------------------------|------------|---------------------|
| DOC 373.21 | Inciting a disturbance | DOC 373.24 | Group resistance |
| DOC 373.22 | Participating in a disturbance | DOC 373.25 | Disguising identity |
| DOC 373.23 | Unauthorized group activity | DOC 373.26 | Escape |

SUBCHAPTER IV
CONDUCT RULES RELATING TO ORDER

- | | | | |
|------------|------------------------------|------------|-------------------------------------|
| DOC 373.27 | Inappropriate sexual conduct | DOC 373.32 | Lying |
| DOC 373.28 | Obstruction | DOC 373.33 | Disruptive conduct |
| DOC 373.29 | Disobeying orders | DOC 373.34 | Talking when prohibited |
| DOC 373.30 | Disrespect | DOC 373.35 | Unauthorized forms of communication |
| DOC 373.31 | Soliciting staff | DOC 373.36 | Enterprise and fraud |

SUBCHAPTER V
CONDUCT RULES RELATING TO PROPERTY

- | | | | |
|------------|--|------------|----------------------------------|
| DOC 373.37 | Counterfeiting and forgery | DOC 373.41 | Arson |
| DOC 373.38 | Unauthorized use of or access to records | DOC 373.42 | Causing an explosion |
| DOC 373.39 | Theft | DOC 373.43 | Creating a safety hazard |
| DOC 373.40 | Property damage or alteration | DOC 373.44 | Transfer of property or services |

SUBCHAPTER VI
CONDUCT RULES RELATING TO CONTRABAND

- | | | | |
|------------|----------------------------------|------------|--|
| DOC 373.45 | Unauthorized possession of money | DOC 373.48 | Unauthorized possession or use of tobacco or smoking materials |
| DOC 373.46 | Intoxicants and paraphernalia | DOC 373.49 | Unauthorized property |
| DOC 373.47 | Weapons | DOC 373.50 | Unauthorized use of the mail |

SUBCHAPTER VII
CONDUCT RULES RELATING TO MOVEMENT

- | | | | |
|------------|--------------------------|------------|---------------------------------------|
| DOC 373.51 | Leaving an assigned area | DOC 373.53 | Entry of an unauthorized room or area |
| DOC 373.52 | Loitering | DOC 373.54 | Tardiness and absence |

SUBCHAPTER VIII
CONDUCT RULES RELATING TO SAFETY AND HEALTH

DOC 373.55	Creating an unsanitary condition	DOC 373.58	Room disorder
DOC 373.56	Misuse of medication	DOC 373.59	Poor self-maintenance
DOC 373.57	Self-harm and disfigurement		

SUBCHAPTER IX
MISCELLANEOUS CONDUCT RULES

DOC 373.60	Violation of clothing policy	DOC 373.63	Failure to perform assignments
DOC 373.61	Gambling	DOC 373.64	Failure to cooperate with program
DOC 373.62	Violation of conditions of leave	DOC 373.65	Institution policies and procedures

SUBCHAPTER X
DISPOSITION OF CONDUCT RULE VIOLATIONS

DOC 373.66	Conduct rule violations: possible dispositions	DOC 373.76	Disciplinary hearing: witnesses and notice
DOC 373.67	Conditions under which youth who violate conduct rules are not disciplined	DOC 373.77	Disciplinary hearing: hearing officers
DOC 373.68	Summary disciplinary dispositions	DOC 373.78	Disciplinary hearing: evidence
DOC 373.69	Conduct reports	DOC 373.79	Recordkeeping
DOC 373.70	Review of conduct reports by the superintendent	DOC 373.80	Dispositional alternatives for major conduct rule violations
DOC 373.71	Notice of alleged major conduct rule violations	DOC 373.81	Discipline: review by superintendent
DOC 373.72	Procedure when the right to a disciplinary hearing is waived	DOC 373.82	Basic services and privileges for youth serving a major penalty
DOC 373.73	Procedure for disciplinary hearings	DOC 373.83	Referral for prosecution
DOC 373.74	Disciplinary hearing: advocates	DOC 373.84	Harmless error
DOC 373.75	Disciplinary hearing: location		

SUBCHAPTER I
GENERAL PROVISIONS

DOC 373.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11 (2), 301.025 and 938.48 (16), Stats., and s. 9126(23)(e) of 1995 Act 27 to provide for rules governing the conduct of youth in type 1 secured correctional facilities operated by the department, and for the discipline of youth who violate those conduct rules. In this chapter, the department seeks to achieve all of the following:

- (1) To provide for the degree of confinement and programming for each youth required for the protection of the public, staff and youth.
- (2) To operate orderly institutions.
- (3) To deter each youth from committing further delinquent acts.

(4) To provide a uniform disciplinary process for all institutions which enhances the constructive, individualized programming for youth by doing all of the following:

(a) Giving each youth prior notice of all conduct rules that apply to the youth.

(b) Describing all conduct rules in clear, unambiguous language.

(c) Describing all forms of discipline allowable for violations of the conduct rules.

(d) Structuring the exercise of discretion by staff in responding to youth misconduct while retaining flexibility in decision-making and preserving fairness.

(e) Ensuring that each youth is in the appropriate setting necessary to achieve the objectives of ch. 938, Stats., and that discipline which imposes significant restriction on a youth's liberty be imposed only by staff designated by the superintendent to ensure fair, appropriate and consistent decision-making.

(f) Provide for routine review of the restrictions placed on a youth to assure that the restrictions are appropriately based on the seriousness of violations by the youth; the youth's subsequent behavior; and the risk posed by the youth to self, others or institution security.

DOC 373.02 Applicability. This chapter applies to the department and all youth who are under its supervision in a type 1 secured correctional facility consistent with the requirements of law.

DOC 373.03 Definitions. In this chapter:

(1) "Administrator" means the administrator of the division or that person's designee.

(2) "Authorized" means any of the following:

(a) Permitted under department rules.

(b) Permitted under posted policies and procedures.

(c) Permitted by staff.

(3) "Close confinement" means restriction of a youth to the youth's assigned room with a minimum of one hour out-of-room time per day.

(4) "Conduct report" means a written report prepared by staff which describes facts relating to an alleged violation of a conduct rule by a youth.

(5) "Consent" means words or overt actions by a competent person indicating a freely given agreement.

(6) "Contraband" means any of the following:

(a) Any item which subch. VI prohibits a youth from possessing.

(b) Any item which is not state property and is on the institution grounds, but not in the possession of any person or in an approved location.

(c) Stolen property.

(d) Any item that is not on a youth's property list and is required to be.

(e) Any item of a type that is not allowed according to posted policies and procedures.

(f) Allowable items in excess of the quantity allowed according to posted policies and procedures.

(g) Items in the possession of a youth that do not belong to the youth, except for state property issued to the youth for personal use.

(h) Anything used as evidence in a disciplinary hearing that is deemed to be contraband by the hearing officer.

(7) "Day" means a calendar day.

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

(9) "Disturbance" means a serious disruption to institution order or security by 2 or more youth.

(10) "Division" means the department's division of juvenile corrections.

(11) "Harass" means to annoy or irritate repeatedly.

(12) "Hearing officer" means a staff member designated by the superintendent to conduct disciplinary hearings and perform other functions under this chapter.

(13) "Institution" means a type 1 secured correctional facility operated by the department.

(14) "Intentionally" means that a youth had a purpose to carry out an act or cause the result specified, or believed that the act, if successful, would cause the result specified.

(15) "Intimate part" means anus, groin, penis, testicles, buttocks, pubic or vaginal area or breast.

(16) "Knowingly" means only that it is reasonable to conclude that a youth believes that a specified fact exists.

(17) "Major conduct rule violation" means a violation of conduct rules for which a major penalty may be imposed.

(18) "Major penalty" means a disposition under s. DOC 373.80(3).

(19) "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.

(20) "Minor conduct rule violation" means any violation of a conduct rule which is not a major conduct rule violation and for which a minor penalty may be imposed.

(21) "Minor penalty" means a disposition under s. DOC 373.68.

(22) "Modified confinement" means restriction of a youth to the youth's assigned room with a minimum of 4 hours of out-of-room time per day.

(23) "Negligently" means that a youth did an act or failed to do an act and thereby failed to exercise that degree of care appropriate for the circumstances.

(24) "Recklessly" means that a youth did an act or failed to do an act and thereby created an unreasonable risk that another might be injured. The act or failure to act shall demonstrate both a conscious disregard for the safety of another and a willingness to take known chances of perpetrating an injury.

(25) "Staff" means a state employee of the institution where a youth is housed.

(26) "Superintendent" means the superintendent of an institution or designee.

(27) "Supervisor" means staff designated by the superintendent to perform supervisory functions under this chapter.

(28) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19), Stats.

(29) "Youth" means a person or persons supervised by the department in an institution consistent with the requirements of law and regardless of age.

DOC 373.04 Responsibilities of youth. Youth placed under department supervision have the opportunity to learn and to demonstrate constructive values and behaviors. By conducting themselves according to the rules and policies of the institution, youth will not only avoid the consequences of misconduct as outlined in this chapter, but will also earn a progressively greater degree of independence during the time of institutional placement. Youth shall do all of the following:

(1) Allow others to have privacy.

(2) Respect the property of others.

(3) Refrain from physically or verbally abusing, exploiting or otherwise harming other youth, staff, or any other person.

(4) Accept adult guidance, support and supervision.

(5) Know the rules of the institution and ask questions of staff if unsure of the meaning of a rule.

(6) Be supportive of efforts by other youth to involve themselves in individual programs and assist others in their efforts to obey institution rules.

(7) Respect the race, gender, age, handicaps, religious background and culture of other persons.

(8) Participate in major decision-making affecting the youth's life.

(9) Carry out the youth's part of the individual case plan.

(10) Use the complaint procedures to address problems that cannot be handled on an informal basis.

(11) Maintain good personal hygiene and strive to maintain good health.

(12) Participate in an active, positive manner in the assigned program.

DOC 373.05 Conduct rules. Conduct rules define prohibited youth conduct and are described under ss. DOC 373.14 to 373.65. The conduct rules apply to each youth at all times while assigned to the supervision of an institution, regardless of where the violation was committed or attempted.

DOC 373.06 Conduct rule violations. (1) A youth may not violate conduct rules.

(2) Violations of the conduct rules shall be resolved in accordance with this chapter.

DOC 373.07 Attempted violation of conduct rules. (1) A youth is guilty of an attempt to violate a conduct rule if all of the following are true:

(a) The youth intended to do something that would have been a conduct rule violation.

(b) The youth committed an act that demonstrated intent to violate a conduct rule.

(2) The penalty for an attempt to violate a conduct rule is the same as the penalty for violating that conduct rule.

(3) A youth may be charged with both a substantive conduct rule violation and with an attempt to commit that conduct rule violation, based on the same incident, but may be found guilty of only one.

DOC 373.08 Aiding, abetting or knowing of conduct rule violations. (1) A youth is guilty of aiding and abetting a conduct rule violation if the youth intentionally does any of the following:

(a) Encourages, directs, commands, hires, coerces, requests or signals another youth to commit a conduct rule violation.

(b) Assists another person, prior to a conduct rule violation, in planning or preparing for committing a conduct rule violation, with intent that the conduct rule violation be committed.

(c) Assists another person during commission of a conduct rule violation, whether or not this assistance was planned in advance.

(d) Destroys evidence of a conduct rule violation committed by another person or otherwise helps to prevent discovery of a conduct rule violation or of the person who committed the violation.

(2) If a youth knows of a plan to commit a conduct rule violation or knows of the commission of a conduct rule violation, failure of the youth to report the plan or commission is a conduct rule violation.

(3) A youth may be charged with both a substantive conduct rule violation and aiding and abetting or knowing of that conduct rule violation, based on the same incident, but may be found guilty of only one.

(4) A youth may be charged and found guilty of aiding and abetting or knowing of a conduct rule violation even if no one is charged or found guilty of committing the conduct rule violation.

(5) The penalty for aiding and abetting or knowing of a conduct rule violation shall normally be the same as for the substantive conduct rule violation.

(6) The penalty for a youth who aids and abets or knows of a conduct rule violation need not be based in any way on the penalty, if any, for the youth who actually committed the conduct rule violation.

DOC 373.09 Defenses. The following, if established by a youth by a preponderance of the evidence are complete defenses to alleged violations of the conduct rules under this chapter:

(1) **MENTAL INCAPACITY.** At the time of the conduct, the youth, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform to the conduct rules.

(2) **INVOLUNTARY INTOXICATION.** At the time of the conduct, the youth, as a result of involuntary intoxication, lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform to the conduct rules. This subsection does not afford a defense if the intoxicant was taken voluntarily, unless the intoxicant was taken consistent with a proper prescription.

(3) **MISTAKE.** The youth honestly erred and the error negates the existence of a state of mind essential to the conduct rule violation.

(4) **SELF-DEFENSE.** A youth may use the minimum amount of force necessary to prevent death or bodily injury to self or in defending a third person. A youth may not continue to exercise self-defense after an order by staff to stop. In determining whether the minimum force was used in exercising self-defense, staff shall consider:

- (a) Whether the aggressor used a weapon.
- (b) The size of the youth invoking a self-defense claim in relation to the size of the aggressor.
- (c) The opportunity of the youth who claims self-defense to flee or to obtain assistance from staff.
- (d) Whether staff were nearby.
- (5) **ORDERS.** A youth may disobey a conduct rule when expressly authorized to disobey it by staff.

DOC 373.10 Youth access to conduct rules. (1) The superintendent shall provide youth with an orientation to department conduct rules as part of the assessment and evaluation of youth under s. DOC 371.04(1)(g).

- (2) The superintendent shall provide a youth with a written copy of the conduct rules.

DOC 373.11 Major and minor penalties and conduct rule violations. (1) Any minor penalty may be imposed for a conduct rule violation for which a major penalty may be imposed.

- (2) Restitution may be imposed in addition to or in lieu of any major penalty.

(3) Except for a conduct rule violation listed under sub. (4) or covered by sub. (6), a conduct rule violation is neither a major nor a minor conduct rule violation until a supervisor classifies it as major or minor using the criteria under sub. (5).

- (4) All of the following are classified as major conduct rule violations:

- (a) DOC 373.14 Causing the death of another
- (b) DOC 373.15 Sexual intercourse
- (c) DOC 373.16 Sexual contact
- (d) DOC 373.17 Restraint of another
- (e) DOC 373.18 Fighting
- (f) DOC 373.19 Battery
- (g) DOC 373.21 Inciting a disturbance
- (h) DOC 373.22 Participating in a disturbance
- (i) DOC 373.26 Escape
- (j) DOC 373.28 Obstruction

- (k) DOC 373.41 Arson
- (l) DOC 373.42 Causing an explosion
- (m) DOC 373.46 Intoxicants and paraphernalia
- (n) DOC 373.47 Weapons
- (o) DOC 373.56 Misuse of medication
- (p) DOC 373.57 Self-harm and disfigurement
- (q) DOC 373.62 Violation of conditions of leave
- (r) An attempted violation of a conduct rule listed in this subsection

(5) An alleged violation of any section of this chapter other than those listed in sub. (4) or covered by sub. (6) may be treated as a major conduct rule violation. If the conduct rule violation has not been disposed of summarily in accordance with s. DOC 373.68, a supervisor shall decide whether the alleged violation shall be treated as a major conduct rule violation. In deciding whether an alleged violation should be treated as a major conduct rule violation, the supervisor shall consider all of the following criteria and shall indicate in the record of disciplinary action the reason for the decision based on these criteria:

(a) Whether the youth has previously been found guilty of the same or a similar conduct rule violation, how often a finding of guilt has been established, and how recently.

(b) Whether the youth has recently been warned about the same or similar conduct.

(c) Whether the alleged violation created a risk of serious disruption at the institution or in the community.

(d) Whether the alleged violation created a risk of serious injury to another person.

(e) The value of the property involved, if the alleged violation was actual or attempted damage to property, misuse of property, possession of money, gambling, unauthorized transfer of property, soliciting staff or theft.

(6) Any conduct report containing at least one charge of a major conduct rule violation shall be processed as a major conduct rule violation, which may result in a major penalty, even if the conduct report also includes minor conduct rule violations.

(7) If a youth commits a conduct rule violation during the course of a visit, the hearing officer may suspend visiting privileges as a disposition, under ch. DOC 379.07(9)(b).

(8) If a conduct rule violation occurred as a result of misuse of the mail, the hearing officer may suspend mail privileges as a disposition, under ch. DOC 379.04(6).

DOC 373.12 Lesser-included conduct rule violations. Certain prohibited acts have lesser-included acts associated with them. A youth alleged to have violated a conduct rule is also considered to have allegedly violated a lesser-included conduct rule. No youth may be found to have committed both an act and its lesser-included act based upon the same incident. Table 373-A lists the lesser-included conduct rule violations of each conduct rule violation.

Table 373-A: Lesser-Included Conduct Rule Violations

CONDUCT RULE VIOLATION	LESSER-INCLUDED CONDUCT RULE VIOLATION
DOC 373.14 Causing the Death of Another	DOC 373.19 Battery
DOC 373.15 Sexual Intercourse	DOC 373.16 Sexual Contact
DOC 373.16 Sexual Contact	DOC 373.27 Inappropriate Sexual Conduct
DOC 373.18 Fighting	DOC 373.28 Obstruction
	DOC 373.33 Disruptive Conduct
DOC 373.19 Battery	DOC 373.18 Fighting
	DOC 373.28 Obstruction
	DOC 373.33 Disruptive Conduct
DOC 373.21 Inciting a Disturbance	DOC 373.23 Unauthorized Group Activity
DOC 373.22 Participating in a Disturbance	DOC 373.24 Group Resistance
	DOC 373.33 Disruptive Conduct
DOC 373.23 Unauthorized Group Activity	DOC 373.24 Group Resistance
	DOC 373.33 Disruptive Conduct
DOC 373.24 Group Resistance	DOC 373.33 Disruptive Conduct
DOC 373.26 Escape	DOC 373.51 Leaving An Assigned Area
	DOC 373.62 Violations of Conditions of Leave
DOC 373.28 Obstruction	DOC 373.29 Disobeying Orders
	DOC 373.33 Disruptive Conduct
DOC 373.33 Disruptive Conduct	DOC 373.30 Disrespect
DOC 373.39 Theft	DOC 373.44 Transfer of Property or Services
DOC 373.41 Arson	DOC 373.42 Causing an Explosion
	DOC 373.43 Creating a Safety Hazard
DOC 373.42 Causing an Explosion	DOC 373.43 Creating a Safety Hazard

DOC 373.13 Prehearing security. (1) A youth may be placed in prehearing security if a supervisor has a reasonable belief that one or more of the following is true:

(a) If the youth remains in the general population, there will be a significant physical or psychological danger to the youth or another person.

(b) If the youth remains in the general population, the youth will seek to intimidate a witness in any pending investigation.

(c) If the youth remains in the general population, the youth will encourage other youths by example, expressly, or by the youth's presence, to defy staff authority and thereby erode staff's ability to control a particular situation.

(d) If the youth remains in the general population, the youth will create a significant danger to property.

(e) If the youth remains in the general population there is a significant risk of escape.

(f) If the youth remains in the general population, an investigation will thereby be inhibited.

(g) If the youth remains in the general population, a significant risk to institution security will be created.

(2) When a youth is placed in prehearing security under sub. (1), a supervisor shall inform the youth in writing within 48 hours of the placement of the reason for the placement and the person who has authorized the placement.

(3) The superintendent shall review the placement decision under sub. (1) within 48 hours of the placement, excluding weekends and legal holidays, to determine whether a youth still needs to be in prehearing security consistent with this section.

(4) No youth may remain in prehearing security pending investigation longer than 7 days without being served an approved conduct report and without receiving the notice in s. DOC 373.71.

(5) No youth may remain in prehearing security pending a hearing longer than 21 days. The superintendent shall review the status of each youth in prehearing security at least every 7 days to determine whether confinement continues to be appropriate. If upon review it is determined that confinement is not appropriate, the youth shall be released from prehearing security immediately.

(6) A youth shall be placed in an appropriate setting to achieve the objectives of this section. A youth's own room may be used for prehearing security.

(7) A youth may be required to wear mechanical restraints while outside of the living quarters if the superintendent determines that the use of mechanical restraints is necessary to protect staff, other youth or other persons, or to maintain the security of the institution.

SUBCHAPTER II

CONDUCT RULES RELATING TO BODILY SECURITY

DOC 373.14 Causing the death of another. A youth may not intentionally, negligently or recklessly cause the death of another person.

DOC 373.15 Sexual intercourse. (1) In this section, "sexual intercourse" means any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration, however slight, by any part of the body or an object into the anus or vagina of another person.

(2) A youth may not engage in sexual intercourse.

DOC 373.16 Sexual contact. A youth may not intentionally touch with a body part or an object any intimate part of another person, either directly or through clothing, or cause it to be touched by another with or without the consent of that person.

DOC 373.17 Restraint of another. Unless authorized, a youth may not seize, restrain or confine another person.

DOC 373.18 Fighting. (1) In this section, "fight" means any situation where 2 or more persons are trying to injure each other by any physical means including, but not limited to, hitting, biting, kicking, scratching, throwing or swinging objects or using weapons.

(2) A youth may not participate in a fight.

DOC 373.19 Battery. A youth may not intentionally cause injury, physical pain, illness or any impairment of physical condition to another person.

DOC 373.20 Threats. A youth may not communicate to another person verbally, in writing or by gesture, symbol or action to do any of the following:

(1) Harm or harass that person or someone else.

(2) Cause damage to or loss of that person's or another person's property.

SUBCHAPTER III

CONDUCT RULES RELATING TO INSTITUTIONAL SECURITY

DOC 373.21 Inciting a disturbance. A youth may not encourage, direct, command, hire, coerce, request or signal one or more persons to participate in a disturbance.

DOC 373.22 Participating in a disturbance. A youth may not do any of the following:

(1) Intentionally or recklessly participate in a disturbance.

(2) Remain in a group that has been ordered to disperse if some members of the group are participating in a disturbance.

DOC 373.23 Unauthorized group activity. (1) In this section, "group" means a gang, cult or faction or other formal or informal association of youth.

(2) A youth may not do any of the following:

(a) Encourage, direct, command, hire, coerce, recruit or signal another person to participate in a group not authorized by the superintendent.

(b) Communicate verbally, in writing or by gesture, symbol or action about an unauthorized group matter or to demonstrate affiliation with an unauthorized group.

(c) Wear, display or have in the youth's possession the clothing, jewelry, colors or other symbols of an unauthorized group to demonstrate affiliation with the group. This includes the cutting, styling or wearing of the youth's hair or the wearing of clothes in a manner which demonstrates affiliation with an unauthorized group, or the depiction of the symbols of the group affiliation on a person's body or on things including arts and crafts projects.

DOC 373.24 Group resistance. A youth may not do any of the following:

(1) Participate in any group action with other youth, contrary to this chapter, institution policies and procedures or a verbal directive from staff, whether or not the group action creates a serious danger of harm to persons or property.

(2) Join in or solicit another to join in any group petition, gathering, or statement, except that the following actions are not prohibited:

(a) Group complaints authorized by s. DOC 380.04(5).

(b) Group petitions to courts.

(c) Authorized actions by authorized groups.

DOC 373.25 Disguising identity. A youth may not do any of the following:

(1) Conceal, alter or disguise personal appearance in an attempt to prevent identification.

(2) Use any items or materials to make a representation of himself or herself without authorization of staff.

DOC 373.26 Escape. Unless authorized, a youth may not do any of the following:

(1) Leave the institution.

(2) Violate the directives of staff as to where the youth may be and for what time period the youth may be at the designated place.

(3) Fail to return to the institution or other designated facility from any approved leave.

SUBCHAPTER IV

CONDUCT RULES RELATING TO ORDER

DOC 373.27 Inappropriate sexual conduct. (1) A youth may not engage in any of the following inappropriate sexual conduct:

(a) Requesting, soliciting, hiring or communicating with another person in any manner, including orally or in writing, to have sexual intercourse, as defined in s. DOC 373.15 or sexual contact, as described in s. DOC 373.16.

(b) Exposing, touching or gesturing to the youth's own intimate parts to attract the attention of another person or using sexually explicit communication.

(c) Touching an animal for the purpose of causing sexual arousal or gratification to the youth or another person.

(2) Any contact with another person is prohibited, except when the contact is appropriate and permissible under institution policy.

DOC 373.28 Obstruction. (1) In this subsection, "obstruct or resist" means to try to prevent or impede a change in placement location by passive or aggressive use of one's body or another object. A youth may not physically obstruct or resist staff's attempt to change the physical location of the youth or another youth.

(2) In this subsection, "obstruct or impede" means to try to diminish staff's ability to visually monitor or supervise a youth by use of one's body, another person or an object. A youth may not obstruct or impede staff's ability to visually monitor the youth or another youth.

DOC 373.29 Disobeying orders. Except for those instances covered under s. DOC 373.09(5), a youth may not disobey any verbal or written directive to the youth from staff.

DOC 373.30 Disrespect. A youth may not show disrespect for another person by behavior directed at that person, whether or not the person is present, which is audible or observable and includes, but is not limited to, derogatory or profane writing, oral remarks, gestures, name-calling or yelling.

DOC 373.31 Soliciting staff. Unless authorized, a youth may not do any of the following:

- (1) Give or offer to give anything having more than nominal value to staff or family of staff.
- (2) Request or accept anything having more than nominal value from staff or family of staff.
- (3) Buy, rent, lease or borrow anything from, or sell, rent, lease or lend anything to staff or family of staff.
- (4) Request that staff or family of staff buy, rent, lease or borrow anything for the youth.

DOC 373.32 Lying. A youth may not make an oral or written statement that the youth knows is false or misleading.

DOC 373.33 Disruptive conduct. A youth may not engage in or cause conduct within the sight or hearing of others which is unusually loud, offensive or vulgar, including arguments, yelling, loud noises, horseplay, loud talking and other behavior which may disrupt the normal functioning of the institution, any area within the institution or any other area to which the youth is assigned.

DOC 373.34 Talking when prohibited. Each institution shall post specific policies and procedures stating the times and places talking is forbidden or limited. A youth may not talk during those times, in those places or in a manner contrary to the institution policies and procedures, unless at least one of the following applies:

- (1) The youth is replying to a question addressed to the youth by staff.
- (2) Talking at that time and place is necessary for the physical health and safety of the youth or another person.

DOC 373.35 Unauthorized forms of communication. Unless authorized, a youth may not communicate by passing notes, using sign language, if sign language is not the youth's primary

method of communication, using a language other than English, unless a youth's primary language is not English, using signals, or by unauthorized use of a telephone or mail or any other communication device, method or code. Any document or property, that is passed to or made available to another, is considered a means of communication under this section.

DOC 373.36 Enterprise and fraud. (1) A youth may not engage in any unauthorized activity involving the exchange of money, property, or service. Any youth who was engaged in any lawful business or enterprise prior to admission shall disengage from the operation of it in a manner determined by the superintendent.

(2) A youth may not offer to buy or order any item intending not to pay for it.

SUBCHAPTER V CONDUCT RULES RELATING TO PROPERTY

DOC 373.37 Counterfeiting and forgery. (1) A youth may not make or alter any of the following:

(a) Any document so that it appears to have been made, signed, initialed or stamped either by someone else, or at a different time or with different provisions.

(b) Any postage stamp or postal cancellation mark.

(2) A youth may not knowingly use a forged, counterfeit, or altered document, postage stamp or postal cancellation mark.

DOC 373.38 Unauthorized use of or access to records. Unless authorized, a youth may not read, gather or disclose information in institution records about another youth.

DOC 373.39 Theft. In this section, "steal" means obtain or retain the possession of or title to the property of another with intent to deprive the owner of it without the consent of the owner. A youth may not steal the property of another person or the state.

DOC 373.40 Property damage or alteration. (1) A youth may not intentionally, negligently or recklessly damage, destroy or alter the property of another person or state property.

(2) Unless authorized, a youth may not damage or destroy his or her personal property.

DOC 373.41 Arson. A youth may not start a fire unless authorized by staff.

DOC 373.42 Causing an explosion. A youth may not cause an explosion.

DOC 373.43 Creating a safety hazard. A youth may not create a safety hazard. This includes, but is not limited to, the misuse of electrical outlets, electrical equipment and machinery or activities such as tampering with doors or locks or rendering floors slippery with water or another agent.

DOC 373.44 Transfer of property or services. Unless authorized, a youth may not do any of the following:

- (1) Give, sell or lend property or services to another person.
- (2) Receive, accept, buy or borrow property or services from another person.
- (3) Barter or exchange property or services with another person.

SUBCHAPTER VI
CONDUCT RULES RELATING TO CONTRABAND

DOC 373.45 Unauthorized possession of money. (1) In this section:

(a) "Negotiable instrument" means a check or other written statement, signed by the maker or drawer, which contains an unconditional promise to pay which is payable on demand or at a specified time and which is payable to the order of the bearer.

(b) "Possess" means have on a youth's person, in the youth's quarters, in the youth's locker or otherwise under the youth's control in the institution.

(2) Unless authorized, a youth may not possess coins or paper money, a check, money order, savings bond or any other negotiable instrument.

DOC 373.46 Intoxicants and paraphernalia. (1) In this section, "intoxicating substance" means anything which, if taken into the body, may alter or impair normal mental or physical functions or is represented to do so, including, but not limited to, alcoholic drinks, lysergic acid diethylamide, also known as LSD, heroin, cocaine, marijuana, alcohol, paint thinner and unauthorized glues. Medications taken consistent with a proper prescription in accordance with law are not intoxicating substances.

(2) A youth may not knowingly possess, distribute or use an intoxicating substance, or have knowledge of, but fail to report another person's possession, distribution or use of an intoxicating substance.

(3) A youth may not knowingly possess any chemical laboratory equipment or homemade device used in the manufacture of an intoxicating substance or any device used to take an intoxicating substance into the body, including, but not limited to, a still, hollow needle, small spoon, roach clip or marijuana or hashish pipe.

DOC 373.47 Weapons. (1) A youth may not possess any item that can be used as a weapon with intent to use it as a weapon against another person or to damage property.

(2) A youth may not make or alter any item with intent to make it suitable for use as a weapon.

(3) A youth may not knowingly possess an item that is designed to be used as a weapon or to be used in the manufacture of a weapon.

(4) Any item found which apparently violates this section may be confiscated. If a youth is found not guilty of violating this section and the item is not contraband, the item shall be returned to the youth.

DOC 373.48 Unauthorized possession or use of tobacco or smoking materials. A youth may not smoke tobacco or any other substance or possess tobacco or any other smoking materials.

DOC 373.49 Unauthorized property. (1) A youth may not possess stolen property or property a youth may not knowingly possess under the laws of Wisconsin, the United States or the rules of the department.

(2) Each institution shall post a list of all types of personal property which youth are allowed to possess in accordance with s. DOC 379.10(2). All property that is not on the posted list is unauthorized.

(3) All property which is not on a youth's property inventory, consistent with s. DOC 379.10(4), is unauthorized.

(4) A youth may not knowingly violate this section or institution policies and procedures relating to personal property.

DOC 373.50 Unauthorized use of the mail. (1) A youth may not use the U.S. postal service to communicate with a person the youth may not correspond with under s. DOC 379.04.

(2) A youth may not send through the mail any item that the youth is not allowed to possess, except that items in safekeeping and items which have been seized may be sent out through the mail or by other means at the youth's expense.

SUBCHAPTER VII

CONDUCT RULES RELATING TO MOVEMENT

DOC 373.51 Leaving an assigned area. A youth may not leave a room or area where the youth is attending any scheduled activity such as, but not limited to, a class, meal, religious service, group meeting or the immediate area of work or school assignment without authorization or a valid pass.

DOC 373.52 Loitering. A youth may not fail to move promptly when going to or from any event, work, class, meeting, meal, appointment or the youth's living quarters.

DOC 373.53 Entry of an unauthorized room or area. (1) In this section, "enter" means reach into, lean into or put any object or part of the body into a room or area.

(2) Unless authorized, a youth may not enter another youth's room or permit another youth to enter the youth's own room.

(3) Unless authorized, a youth may not enter any area other than an area to which the youth has been assigned.

DOC 373.54 Tardiness and absence. Unless authorized, a youth may not be tardy or absent from any event, work, class, meeting, meal, appointment or other program related activity.

SUBCHAPTER VIII
CONDUCT RULES RELATING TO SAFETY AND HEALTH

DOC 373.55 Creating an unsanitary condition. (1) In this section, bodily fluids or secretions include saliva, blood, feces, semen, urine and vomit.

(2) A youth may not intentionally throw, expel, or otherwise cause the youth's own bodily secretions or fluids, or the secretions or fluids of another youth to come into contact with another person.

(3) A youth may not recklessly or negligently dispose of the youth's own bodily secretions or fluids, or the secretions or fluids of another youth.

DOC 373.56 Misuse of medication. (1) A youth may not possess or take medication except as properly prescribed for the youth, and in the amount and manner authorized.

(2) A youth may not distribute any medications, including over-the-counter medications, to another youth.

DOC 373.57 Self-harm and disfigurement. (1) A youth may not cause injury, physical pain, illness or any impairment of physical condition to self.

(2) A youth may not cut, pierce, remove, mutilate, discolor or tattoo any part of the youth's own body or the body of another person.

DOC 373.58 Room disorder. (1) Each institution or residential area of an institution shall adopt and post specific policies and procedures regulating the organization, neatness and cleanliness of youth living quarters.

(2) A youth may not violate institution policies and procedures regarding organization, neatness and cleanliness of a youth's living quarters.

DOC 373.59 Poor self-maintenance. (1) A youth may not fail to follow institution standards or directives regarding personal cleanliness or grooming when the youth has been informed by staff that he or she does not meet the standards or directives.

(2) A youth may not fail to shower at least every 7 days or more frequently if required by the institution.

(3) A youth performing a work assignment may be required to maintain suitably cut hair or to wear protective headgear or a net.

SUBCHAPTER IX
MISCELLANEOUS CONDUCT RULES

DOC 373.60 Violation of clothing policy. Each institution shall post specific policies and procedures describing the clothing to be issued to youths, how clothing shall be worn, and when it shall be worn. A youth may not violate the institution policies and procedures regarding clothing.

DOC 373.61 Gambling. A youth may not wager money, services or anything else of value on the outcome of all or any part of a game of skill or chance, an athletic contest, the outcome of any event, or anything else.

DOC 373.62 Violation of conditions of leave. (1) Each institution shall post specific policies and procedures regarding conditions imposed on an authorized leave. Institutions may solicit the views of appropriate community representatives prior to adoption of the specific policies and procedures.

(2) A youth may not violate the institution's policies and procedures relating to authorized leave.

DOC 373.63 Failure to perform assignments. A youth may not refuse to perform assignments.

DOC 373.64 Failure to cooperate with program. In this section, "fail to cooperate" includes, but is not limited to, failure of a youth to work appropriately toward completion of case plan objectives or program goals or to respond appropriately to any discipline imposed. A youth may not intentionally fail to cooperate with an assigned program.

DOC 373.65 Institution policies and procedures. (1) Each institution shall make specific policies and procedures relating to talking, clothing, movement within the institution, conditions of leave from the institution, personal property, personal hygiene and conditions of living quarters. These policies and procedures shall be consistent with the purposes stated in s. 938.01 Stats., and the goals of youth corrections in s. DOC 371.01(2). No institution policy or procedure may conflict with any provision of this chapter or be stricter than any provision of this chapter.

(2) The institution may solicit the views of youth prior to the adoption of an institution policy or procedure.

(3) Discipline may be imposed for violation of an institution policy or procedure only if at least one of the following apply:

(a) The policy or procedure was posted on an institution bulletin board or in an institution handbook and a youth had actual knowledge of the institution policy or procedure at the time of the violation.

(b) There is a violation of an institution policy or procedure in an institution handbook or other document that was received by a youth, in which case the youth is presumed to have knowledge of the policy or procedure in the absence of a preponderance of evidence to the contrary.

(4) Each institution shall maintain at least one bulletin board for bulletins of general applicability. Bulletin boards shall be located so that every youth has an opportunity to read all

bulletins that apply to youth. Bulletins that are no longer in effect shall be removed from the bulletin board.

(5) A handbook of all current policy and procedure bulletins under sub. (1) shall be maintained at the institution and be readily accessible to youth.

SUBCHAPTER X
DISPOSITION OF CONDUCT RULE VIOLATIONS

DOC 373.66 Conduct rule violations: possible dispositions. The conduct rule violations described in ss. DOC 373.14 to 373.65 may be dealt with by staff only in the following ways:

(1) If a conduct rule violation is a minor conduct rule violation, a conduct report may not be written, but a youth may be counseled and warned, consistent with s. DOC 373.67 or disciplined summarily, consistent with s. DOC 373.68.

(2) A major conduct rule violation shall be referred to the superintendent in writing by a conduct report under s. DOC 373.69. Violations referred to the superintendent may be dealt with as follows:

(a) The superintendent may dismiss, alter or correct the conduct report consistent with s. DOC 373.70.

(b) If the superintendent determines that a violation should be treated as a minor conduct rule violation, the superintendent shall refer the matter to appropriate staff to be disposed of in accordance with s. DOC 373.68.

(c) If the violation is a major conduct rule violation, the superintendent shall refer the matter to a hearing officer to be disposed of in accordance with this subchapter.

(3) Violations of the criminal law may be referred under s. DOC 373.83 to law enforcement authorities for prosecution.

DOC 373.67 Conditions under which youth who violate conduct rules are not disciplined. (1) Staff may write conduct reports only for major conduct rule violations under s. DOC 373.11 (4) or violations of conduct rules which they believe are major conduct rule violations under s. DOC 373.11 (5). Under any of the following conditions, staff may inform a youth about conduct that violates a conduct rule, discuss that conduct and give a warning:

(a) The youth is unfamiliar with the conduct rule.

(b) The youth has not violated the same or a closely related rule recently, whether or not discipline was imposed.

(c) The youth is unlikely to repeat the conduct rule violation if warned and counseled.

(d) Although the youth technically violated a conduct rule, the purpose of this chapter would not be served by disciplining a youth in the particular situation.

(2) No record or official report of a disposition under sub. (1) is required.

(3) The superintendent may overrule a determination that a violation has occurred. The decision by the superintendent to overrule or not overrule is not reviewable by a hearing officer.

(4) A major conduct rule violation listed under s. DOC 373.11 (4) may not be disposed of in accordance with this section. Staff shall write a conduct report when a major conduct rule violation under s. DOC 373.11 (4) occurs.

DOC 373.68 Summary disciplinary dispositions. (1) A youth may be disciplined summarily for a minor conduct rule violation in accordance with this chapter. When a youth is disciplined summarily under this section, staff shall make an appropriate record.

(2) When staff who have the responsibility for supervising a youth believe that a penalty listed in sub. (3) is appropriate, staff shall do all of the following:

(a) Inform the youth of the nature of the alleged infraction and the potential disposition.

(b) Obtain the youth's version of the underlying facts.

(c) Make a finding as to whether the youth violated a conduct rule, communicate this finding to the youth and impose discipline consisting of one or more of the disciplinary actions under sub. (3).

(3) Discipline imposed by staff under this section shall be limited to one or more of the following disciplinary actions:

(a) An oral or written reprimand.

(b) Room confinement for a maximum of 5 hours. Room confinement may not be served during mandatory program periods.

(c) Exclusion from the youth's room for a maximum of 5 hours.

(d) Loss of a specific privilege for up to one week or loss of participation in a special event.

(e) A disposition, which may include:

1. Counseling and a warning.

2. Extra duty related to the misconduct.

3. Apology for the misconduct.

4. Monetary restitution.

5. A period of positive behavior.

(4) A supervisor shall review the findings of fact and discipline within one day, excluding weekends and holidays, of imposition of the discipline. The supervisor may affirm, modify or reverse the findings of staff, reduce the discipline or write a conduct report if it is determined that the violation was a major conduct rule violation. The supervisor may make any adjustment, consistent with this chapter, in the discipline imposed or in the imposition of future consequences, but may not increase the level of discipline imposed by staff unless the requirements of sub. (10) are met.

(5) A youth has no right to be present at the supervisor's review.

(6) Imposition of discipline is not suspended while the matter is under review. A youth shall be credited for any confinement served during the review.

(7) A youth may appeal the decision of the supervisor to the superintendent consistent with s. DOC 373.81.

(8) The record of a conduct rule violation which is dealt with by a summary disposition shall be approved by the supervisor before being entered in a youth's official records.

(9) Within a reasonable time following disposition, staff shall counsel the youth about the incident that occurred.

(10) More restrictive forms of discipline than those authorized in sub. (3), for a conduct rule violation not designated as a major conduct rule violation under this chapter, may be imposed by a supervisor under this subsection as follows:

(a) Discipline imposed under this subsection is limited to the discipline authorized in sub. (3), modified as follows:

1. Room confinement for not more than 10 hours.
2. Loss of a specific privilege for not more than 2 weeks or the loss of 2 occurrences of a special event.
3. Loss of an off grounds activity for no longer than 30 days.

(b) Before a youth is disciplined under this subsection, the supervisor shall do all of the following:

1. Obtain a statement of facts with a recommendation from staff.
2. Inform the youth of the nature of the alleged infraction and the range of discipline.
3. Request that the youth relate the facts concerning the matter at issue.

(c) A disposition under this section shall be imposed consecutive to other dispositions under this section and may be imposed consecutive to a disposition under s. DOC 373.80.

(d) The supervisor may impose discipline under this subsection, may dismiss the charge, or may write a conduct report if the conduct rule violation is a major conduct rule violation.

(e) Within a reasonable time following a disposition under this subsection, staff shall talk to the youth and offer counseling about the incident that occurred.

(f) A youth may appeal the supervisor's decision under this section consistent with s. DOC 373.81.

(11) Any contraband related to the incident shall be disposed of in accordance with s. DOC 376.17.

DOC 373.69 Conduct reports. (1) Staff who observe or discover a conduct rule violation shall investigate the matter to determine if a conduct rule violation occurred. If staff conclude that a major conduct rule violation has occurred, a conduct report shall be written. If more than one staff knows of the same violation, the superintendent shall designate the staff who shall write the conduct report.

(2) A conduct report may only be written for a major conduct rule violation.

(3) The conduct report shall describe the facts in detail, including information obtained from other staff. The report shall list all conduct rules that were allegedly violated, even if they overlap. All physical evidence and witnesses shall be mentioned in the report.

(4) There shall be at least one conduct report or record for each act that is alleged to be a major conduct rule violation under this chapter.

DOC 373.70 Review of conduct reports by the superintendent. (1) The superintendent shall promptly review all conduct reports for technical adequacy and the appropriateness of the charges.

(2) The superintendent:

(a) Shall dismiss a conduct report if the superintendent believes that it should not have been written.

(b) Shall eliminate any conduct rule violation cited in the conduct report if the statement of facts does not establish that a violation was committed.

(c) May add any conduct rule violation to the conduct report if the statement of facts establishes that a violation was committed.

(d) Shall destroy the conduct report if no conduct rule violation was committed.

(e) May refer a conduct report for further investigation.

(3) Following a review, the superintendent shall determine whether a conduct report shall be approved.

DOC 373.71 Notice of alleged major conduct rule violation. When a youth is alleged to have committed a major conduct rule violation and the superintendent has reviewed and approved the conduct report pursuant to s. DOC 373.70, the following procedure shall be followed:

(1) The superintendent shall give a copy of the approved conduct report to the youth within 7 days of placement in prehearing security.

(2) The superintendent shall inform the youth orally and in writing of the conduct rule which the youth is alleged to have violated.

(3) The superintendent shall inform the youth orally and in writing of the potential penalties which may be imposed.

(4) The superintendent shall also inform the youth orally and in writing of all of the following:

(a) That the youth has a right to a disciplinary hearing at which the youth may present oral, written, documentary and physical evidence, and evidence from voluntary eye witnesses.

(b) That the youth has a right to the assistance of a staff advocate, the right to ask questions of the witnesses, that repetitive, disrespectful and irrelevant questions may be forbidden and that the youth may appeal the finding and disposition of the hearing officer to the superintendent.

(c) That the youth may waive the right to a disciplinary hearing and to the other rights specified in this subsection and that a waiver is not an admission of guilt.

(5) The youth may elect to waive the right to a disciplinary hearing at anytime. The waiver shall be in writing and shall be submitted to the superintendent. The superintendent may not accept a written waiver by a youth if the superintendent believes that the youth lacks the mental capacity to waive the disciplinary hearing.

DOC 373.72 Procedure when the right to a disciplinary hearing is waived. When a youth is alleged to have committed a major conduct rule violation, the superintendent has reviewed and approved the conduct report under s. DOC 373.70 and the youth has waived the right to a disciplinary hearing under s. DOC 373.71(5), the following procedure shall be followed:

(1) The youth shall appear before a hearing officer not less than 24 hours nor more than 7 days after the date the approved conduct report is given to the youth.

(a) The youth may request more time for preparation or a waiver of time limits. Unless there are good reasons for not granting more time or a waiver of time limits, a reasonable amount of additional time or a waiver of time limits shall be granted.

(b) Time limits may be exceeded due to the absence or unavailability of the youth.

(2) (a) The hearing officer shall review the conduct report and discuss it with the youth.

(b) The youth shall be provided with an opportunity to respond to the report and present the youth's version of the facts relating to the alleged violation.

(c) The hearing officer may question the youth.

(d) The youth has no right to a staff advocate, to confront witnesses or to have witnesses testify on the youth's behalf. Staff who wrote the conduct report need not be present.

(3) The hearing officer shall decide the guilt or innocence of the youth on each charge, decide the discipline and announce these decisions to the youth. Penalties may be imposed under s. DOC 373.80.

(4) A finding of guilt shall be based on a preponderance of the evidence.

(5) The hearing officer shall document the findings for each charge, the reasons for the findings, the disposition and the reasons for the disposition. The hearing officer shall submit the documentation to the superintendent.

(6) A person directly involved in preparing the conduct report may not conduct a disciplinary hearing on that conduct report.

(7) Any contraband related to the incident shall be disposed of in accordance with s. DOC 376.17.

DOC 373.73 Procedure for disciplinary hearings. (1) The disciplinary hearing for a youth alleged to have committed a major conduct rule violation shall be held in accordance with this chapter.

(a) At the disciplinary hearing, the conduct report shall be read aloud and all witnesses for or against the accused, including the accused and the staff who wrote the conduct report, shall have a chance to speak.

(b) The hearing officer shall permit the youth or the youth's advocate to question each of the witnesses. The hearing officer may permit or require the youth or the youth's advocate to submit questions to the hearing officer to be asked of a witness. The hearing officer may forbid repetitive, disrespectful or irrelevant questions.

(c) The hearing officer may require that physical evidence, if any exists, be offered.

(2) After the disciplinary hearing, the hearing officer shall deliberate, considering only the evidence which was presented. The institution has the burden of establishing guilt by a preponderance of the evidence. The hearing officer shall inform the accused and the youth's advocate, if any, of the decision. The accused shall receive a written copy of the decision, the finding on each charge, the reasons and the disposition.

(3) The disciplinary hearing shall be held no sooner than one day and no later than 14 days after service of an approved conduct report alleging the violation. This period may be enlarged or diminished if the superintendent approves and the youth agrees.

(4) A youth may waive in writing the time limits set by this section.

(5) Any contraband related to the incident shall be disposed of in accordance with s. DOC 376.17.

DOC 373.74 Disciplinary hearing: advocates. (1) A superintendent shall designate staff to serve as advocates for youth at disciplinary hearings. Preference shall be given to staff who volunteer. Staff may be selected by an accused youth, subject to staff's consent and availability. Staff involved in the incident or in writing the report used in the disciplinary hearing process may not act as the youth's advocate.

(2) Before the disciplinary hearing, the advocate shall help the youth understand the charges and help in the preparation and presentation of any defense, including gathering evidence and witness testimony and preparing the youth's own statement. The advocate may speak on behalf of the youth at the disciplinary hearing or may help the youth state a defense. After the disciplinary hearing, the advocate shall discuss the case with the youth, ensure that the youth understands what happened at the disciplinary hearing and answer any questions.

DOC 373.75 Disciplinary hearing: location. The disciplinary hearing shall take place at the institution where the alleged conduct occurred or at the institution to which the youth has been transferred.

DOC 373.76 Disciplinary hearing: witnesses and notice. (1) A youth may request that witnesses be called. The youth shall make the request to the youth's advocate who shall deliver it to the hearing officer. Except for good cause, a youth may present no more than 2 witnesses. If a youth has chosen not to have an advocate, the request shall be sent to the superintendent. Except for good cause, a request shall be made within 2 days after the youth is served notice as provided in s. DOC 373.71.

(2) After a request for witnesses has been received, the hearing officer shall review the request and determine witness availability as provided in sub. (3).

(3) A witness requested by the accused shall attend the disciplinary hearing unless one or more of the following apply:

(a) There is a significant risk of bodily or psychological harm to the witness if he or she testifies as determined by the hearing officer.

(b) The witness is a youth who does not want to testify.

(c) The witness is not a youth or staff.

(d) The witness is a youth who is unavailable due to hospitalization, illness, transfer, release or is otherwise unable to attend, or staff who is unavailable due to injury, illness, vacation or because he or she is no longer employed at that location, or is on extended leave.

(e) The testimony is irrelevant to the question of guilt or innocence of the youth or to the disposition.

(f) The testimony merely duplicates other evidence and would unduly prolong the hearing.

(g) The witness is a member of the staff who is on a shift other than the shift on which the hearing is held.

(4) If a witness, approved to testify at the disciplinary hearing, is unavailable to testify for one of the reasons under sub. (3), the hearing officer may accept a signed, written statement, a transcript of a statement, an oral statement by telephone, a tape recorded statement or may require the advocate or other staff person to interview the witness and report the interview in writing.

(5) If the hearing officer determines under sub. (3)(a) that a witness is unavailable and the hearing officer considers a signed, written statement from that witness, the identity of the witness may not be revealed to the accused. The statement shall be disclosed to the accused only if it can be edited so that it will not disclose the identity of the witness.

(6) After determining which witnesses will be called for the accused, the hearing officer shall schedule a time for a hearing when all of the following persons can be present:

- (a) The hearing officer.
- (b) The youth's advocate, if any.
- (c) The witnesses.
- (d) The accused.

(7) In the case of youth witnesses and the accused, the hearing officer, when scheduling the disciplinary hearing, shall attempt to avoid conflict with off grounds activities, but these persons may be required to attend the disciplinary hearing even if it conflicts with those activities.

(8) The hearing officer or other designated staff shall notify the accused, the advocate, if any, and all witnesses of the time and location of the disciplinary hearing.

DOC 373.77 Disciplinary hearing: hearing officers. (1) The superintendent shall designate staff to serve as hearing officers who make decisions in disciplinary hearings.

(2) The superintendent may designate 2 or 3 hearing officers to function as a hearing committee assigned to fulfill the role of a single hearing officer in a disciplinary hearing. If a hearing committee is designated to conduct the disciplinary hearing, a decision shall be rendered as follows:

(a) A decision by a committee of 3 requires the concurrence of a majority of members of the committee.

(b) A decision by a committee of 2 must be unanimous. If a unanimous decision cannot be reached, the matter shall be referred to the superintendent for decision.

(3) No person who was directly involved in an incident which is the subject of a disciplinary hearing may serve as hearing officer or be on the committee for that disciplinary hearing.

(4) The hearing officer or committee shall base its findings, conclusions and decisions on discipline solely on this chapter and the evidence which was presented at the disciplinary hearing.

DOC 373.78 Disciplinary hearing: evidence. (1) During a disciplinary hearing, the hearing officer shall consider any relevant evidence, whether or not it would be admissible in a court of law and whether or not any violation of this chapter occurred in the process of gathering the evidence, unless any of the following applies:

(a) The evidence is not reliable.

(b) The evidence duplicates evidence already received at the disciplinary hearing.

(2) Evidence is relevant if that evidence makes it appear more likely or less likely that the youth committed the violation of which the youth is accused.

(3) A finding of guilt shall be based on a preponderance of the evidence.

(4) After a finding of guilt by the hearing officer, confidential informant material shall be forwarded to the superintendent for retention in restricted security records.

DOC 373.79 Recordkeeping. (1) A record of a conduct rule violation may be included in a youth's permanent record only if the youth was found guilty by summary disciplinary procedure, as provided in s. DOC 373.68 or by a hearing officer under this chapter.

(2) Following an appeal in which the finding of guilty is reversed, all records of the conduct rule violation shall be removed from the youth's records.

(3) No record of an alleged violation of the conduct rules which has been dismissed or for which the youth was found not guilty, may be maintained in any official record or considered in making program or release decisions. Information concerning the alleged violation may be retained for statistical or administrative purposes only, but without personal identifiers.

DOC 373.80 Dispositional alternatives for major conduct rule violations. (1) If a youth's guilt is not established by a preponderance of the evidence, the hearing officer shall dismiss the case.

(2) If a youth's conduct, as proven, is not sufficient to warrant a major penalty, the hearing officer may order a disposition under s. DOC 373.68.

(3) If the hearing officer finds that a youth committed a major conduct rule violation, the hearing officer shall consider any extenuating or mitigating circumstances in determining the appropriate major penalty disposition, which may include any of the following:

(a) First major conduct rule violation within 60 days: not to exceed close confinement for 3 days and modified confinement for an additional 40 days.

(b) Second major conduct rule violation within 60 days: not to exceed close confinement for 4 days and modified confinement for an additional 50 days.

(c) Third and each subsequent major conduct rule violation within 60 days: not to exceed close confinement for 6 days and modified confinement for an additional 60 days.

(4) A major penalty disposition may only be imposed concurrent with other major dispositions under this section.

(5) The minimum requirement of one-hour out-of-room time per day for close confinement may be suspended for a 24-hour period upon the recommendation of a physician or psychologist. The superintendent shall send a written report of the suspension to the administrator.

(6) If the hearing officer finds that a youth committed a conduct rule violation which resulted in damages or monetary loss, the hearing officer may direct that the youth pay restitution in addition to any disposition imposed under sub. (3).

DOC 373.81 Discipline: review by superintendent. (1) A youth who has received summary discipline or a major penalty may appeal the decision to the superintendent within 7 days of the day the youth was notified of the decision. A youth who has difficulty preparing a written appeal shall be assisted by staff when requested to do so by the youth.

(2) The superintendent shall issue a final decision on the appeal within 7 days of receipt of the appeal. Failure to issue a final decision upholds the decision to discipline.

(3) The superintendent may do any of the following:

(a) Affirm both the finding of guilt and the discipline imposed.

(b) Affirm the finding of guilt, but reduce the discipline.

(c) Reverse the finding of guilt.

(d) Remand for reconsideration or rehearing, if there was a finding of guilt.

(4) Whether or not there is an appeal, the superintendent shall review all findings of guilt and the discipline imposed within 2 days, excluding weekends and holidays, of the time that the decision is imposed and may review the findings and discipline at any time thereafter. In either case, the superintendent may reverse the finding of guilt or reduce the discipline or remand for reconsideration or rehearing, if there was a finding of guilt.

(5) An institution may not require a youth to serve 90 or more continuous days of confinement without the approval of the administrator.

DOC 373.82 Basic services and privileges for youth serving a major penalty. (1) All of the following are the minimum services and privileges for a youth serving a major penalty, unless suspended under sub. (2), because the youth is out of control:

(a) Underwear, socks, outer clothing or, when warranted, clothing which will assist in the prevention of self-harm.

- (b) Appropriate bedding supplies.
- (c) Toothbrush, toothpaste and comb or pick.
- (d) Washcloth, towel, soap and shower.
- (e) Full meals at regularly scheduled times.
- (f) Reading and writing materials.
- (g) Daily exercise or recreation, to take place outside of room or cell.
- (h) Reasonable social worker contact and discussion, if requested by the youth.
- (i) Daily counselor contact.
- (j) Daily opportunity to clean room or cell.
- (k) Crisis intervention worker or other appropriate staff contacts and discussion.

(l) Daily, except Saturday, Sunday and legal holidays, teacher contact. The youth shall be offered at least 3 hours of educational work a day. Youth with exceptional educational needs shall be offered instruction in accordance with law.

(m) Health care.

(n) Pastoral care services, if requested by the youth.

(2) A youth may be placed in control status and one or more of the items of personal property in sub. (1) may be removed temporarily if the youth is any of the following:

(a) Physically out of control and abusing or misusing any item of personal property under sub. (1) in a manner that creates a dangerous situation or serious disruption.

(b) Escalating toward the loss of physical control and, based on the youth's behavior and history, it is reasonably believed that a dangerous situation or serious disruption will occur if the youth is not placed in control status and one or more items of personal property in sub. (1) are not removed temporarily.

(c) In observation status under ch. DOC 375.

(3) The maximum period of time a youth may remain in control status without approval of the superintendent is 72 hours.

(4) When a youth is retained in control status more than 72 hours, a clinical evaluation to consider appropriateness for transfer to a mental health facility shall be conducted as soon as is reasonably possible.

DOC 373.83 Referral for prosecution. (1) The superintendent of each institution shall develop, in conjunction with local law enforcement authorities, a policy regarding conduct rule violations to be considered for referral for prosecution.

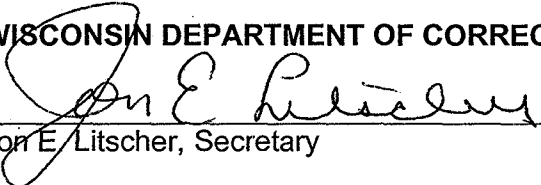
(2) When a conduct rule violation which is also a crime is alleged, the superintendent shall review the incident in light of the policy to determine if the case should be referred for prosecution and if necessary, shall order an investigation to determine if sufficient evidence exists for referral.

(3) Whether or not the review described in sub. (2) results in prosecution, the incident may be handled as a conduct rule violation.

DOC 373.84 Harmless error. If a procedural requirement under this chapter is not adhered to by staff, the error may be deemed harmless and disregarded if it does not prejudice a fair proceeding involving a youth.

The rule 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. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary

5/10/2000

Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal HSS 334 and create ch. DOC 374, relating to administrative confinement for youth in type 1 secured correctional facilities.

Statutory authority: ss. 227.11 (2), 301.03 and 938.48 (16), Stats., and s. 9126(23)(e) of 1995 Act 27.

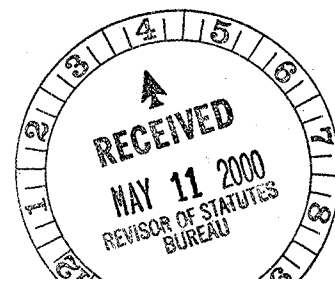
Statutes interpreted: ss. 301.025 and 938.505 (1), Stats.

Analysis by the Department of Corrections

The proposed rule permits the administrative confinement of a youth in a type 1 secured correctional facility when the youth's continued presence in the general population poses a serious threat to life, property, self, staff or other youth, or to the security or orderly functioning of the institution. Administrative confinement is an involuntary nonpunitive status. This rule is based in part on ch. HSS 334, administrative confinement, which had previously governed the then-division of youth services when the division was a part of the then-department of health and social services.

Under this proposed rule:

1. References to the department of corrections and to ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, are incorporated to make rules consistent with current law.
2. Section DOC 374.03 contains definitions of terms used in the rule. Chapter HSS 334 did not include a section with definitions.
3. Section HSS 334.01 allowed placement of a youth in administrative confinement for presenting a danger to self or others, or for pre-hearing security following an alleged conduct violation. Pre-hearing security is now covered in proposed ch. DOC 373. New s. DOC 374.04 adds 2 reasons for placement; risk of escape and creation of a disturbance.
4. Under ch. HSS 334 and ch. DOC 374, the superintendent may place a youth in administrative confinement. Under the proposed DOC rules, the Administrative Confinement Review Committee (ACRC), which consists of 3 members, reviews that placement decision.
5. Section HSS 334.03 and s. DOC 374.05 describe the notice and hearing procedures. Section DOC 374.05 (2) and s. HSS 334.03 (3) list the contents of the written and oral hearing notice that shall be provided to the youth. Under s. DOC 374.05 (3), the hearing shall be held within 1 to 7 days compared to 2 to 10 days under s. HSS 334.03 (4) to provide more timely due process to a youth. The ACRC chair may extend the time limit upon written request from the youth only for good cause. Section HSS 334.03 also permitted a youth to waive the time limits.
6. The rules grant a youth the right to be represented by an advocate at the ACRC hearings under s. DOC 374.06.



7. The ACRC committee deliberations and decision-making procedures after the hearing are described very similarly in s. DOC 374.07 as they were under s. HSS 334.03 (6).
8. Under s. DOC 374.08 (1), the ACRC, as did the superintendent in s. HSS 334.03 (7), reviews the need for administrative confinement every 7 days. The proposed rules at s. DOC 374.09 grant a youth the right to appeal a continued placement, not included in ch. HSS 334. Section HSS 334.03 (8) limited a youth's placement in administrative confinement to no more than 30 days, but ch. DOC 374 does not contain that limit to provide an institution with more latitude to deal with youth who pose a significant ongoing threat to institution safety and security.
9. The rule in s. DOC 374.10 describes the living conditions for a youth in administrative confinement similarly to s. HSS 334.04. To provide enhanced security, s. DOC 374.10 (3) places somewhat more stringent limits on property permitted in a youth's room than under s. HSS 334.04 (1)(c). Section HSS 334.04 (1) (f) allowed a youth to shower once every 7 days, but s. DOC 374.09 (6) permits a shower at least 3 times every 7 days.
10. Section HSS 334.04 (2) placed specific limits on the number of youth in administrative confinement at any one time per institution without the approval of the bureau director. Chapter DOC 374 does not contain a similar restriction, because it unnecessarily limits the ability of the superintendent to use administrative confinement as needed to assure institution safety and security.

SECTION 5. Chapter HSS 334 is repealed.

SECTION 6. Chapter DOC 374 is created to read:

Chapter DOC 374

**ADMINISTRATIVE CONFINEMENT IN TYPE 1 SECURED
CORRECTIONAL INSTITUTIONS**

DOC 374.01	Authority and purpose	DOC 374.06	ACRC hearing: advocates
DOC 374.02	Applicability	DOC 374.07	ACRC hearing decision and youth appeal
DOC 374.03	Definitions	DOC 374.08	Reviews by ACRC and superintendent
DOC 374.04	Criteria	DOC 374.09	Appeals by youth of review decisions
DOC 374.05	ACRC hearing	DOC 374.10	Living conditions

DOC 374.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11(2), 301.03 and 938.48 (16), Stats., to provide for the administrative confinement in a secure setting of a youth in a type 1 secured correctional facility when the youth's presence in the general population poses a serious threat to life, property, self, staff, or other youth, or to the security or orderly operation of the institution. Youth misconduct shall be handled under ch. DOC 373.

DOC 374.02 Applicability. This chapter applies to the department of corrections and all youth in type 1 secured correctional facilities.

DOC 374.03 Definitions. In this chapter:

(1) "ACRC" means the administrative confinement review committee appointed by the superintendent, consisting of 3 members, one of whom shall be from security, one from the youth's treatment team and one of whom shall be a supervisor who will serve as the committee chair.

(2) "Administrative confinement" means an involuntary nonpunitive status for the confinement of a youth because the youth's behavior presents a danger to self or others, or poses a serious risk to institution security, including but not limited to, escape risk or disturbance.

(3) "Administrator" means the administrator of the department's division of juvenile corrections or that person's designee.

(4) "Close confinement" means restriction of a youth to the youth's assigned room with a minimum of one hour of out-of-room time per day.

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

(6) "Disturbance" means a serious disruption to institution order or security by 2 or more youth.

(7) "Hearing record" means the exhibits presented at hearing, a summary of witness statements and the views of each ACRC member.

(8) "Institution" means a type 1 secured correctional facility.

(9) "Modified confinement" means restriction of a youth to the youth's assigned room with a minimum of 4 hours of out-of-room time per day.

(10) "Staff" means an employee of the institution where the youth is housed.

(11) "Superintendent" means the superintendent of a type 1 secured correctional facility or the superintendent's designee.

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

(13) "Youth" means a person or persons under the supervision of the department in an institution consistent with the requirements of law and regardless of age.

DOC 374.04 Criteria. A superintendent may place a youth in administrative confinement if the superintendent reasonably believes that any of the following is true:

(1) The youth presents a significant risk of harm to self, another person 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 harm, including prior to and after institution placement.

(2) The youth's presence in the general population poses a significant risk of escape.

(3) The youth's continued presence in general population poses a significant risk of a disturbance.

DOC 374.05 ACRC hearing. (1) When a superintendent places a youth in administrative confinement, the ACRC shall conduct a hearing within the time limits in sub. (3) to determine if a youth has been properly placed in administrative confinement under s. DOC 374.04.

(2) The superintendent shall give a youth written notice of the hearing to be conducted by the ACRC within 24 hours of placement in administrative confinement. The notice shall include:

(a) The reason that administrative confinement is considered necessary.

(b) The evidence to be considered at the hearing, which may include documents which have been amended to conceal the identity of persons whose disclosure would threaten personal safety or institution security.

(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 youth's rights at the hearing under sub. (4), including the right to an advocate, the procedure for requesting an advocate and the role of the advocate at the hearing.

(f) The date, time and place of the hearing and an order directing the youth to appear at the hearing.

(3) The ACRC shall conduct a hearing after the youth is placed in confinement, to be held no sooner than one day and no later than 7 days after service of the notice in sub. (2). A youth may request that the ACRC delay the hearing for additional preparation time. Unless there are good reasons for not granting additional time, the ACRC shall grant a reasonable amount of additional time.

(4) At a hearing conducted by the ACRC, a youth shall have all of the following rights:

(a) The right to be present at the hearing.

(b) The right to deny the allegations.

(c) The right to present documentary evidence.

(d) The right to call and question witnesses.

(e) The right to be assisted by an advocate.

(f) The right to receive a written decision, stating the reasons for the decision based upon the evidence.

(g) The right to appeal the finding under s. DOC 374.07(2).

(5) At the hearing, all of the following shall occur:

(a) The ACRC committee chair shall read aloud the reason for placing the youth in administrative confinement.

(b) All witnesses for or against the youth shall have an opportunity to speak, including staff who recommended placement and the youth.

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

(d) The ACRC may permit the youth or the youth's advocate, if any, to ask direct questions of the witnesses or require the youth or the youth's advocate, if any, to submit questions to the ACRC to be asked of the witnesses. If the ACRC requires the youth or the youth's advocate to submit questions, the ACRC shall provide a reasonable amount of time to the youth or the youth's advocate to create the questions.

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

(f) Whenever the ACRC 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 the written record because personal safety or institution security is implicated, the ACRC shall indicate the fact of the omission in the hearing record which may consist of a written summary of the proceedings.

DOC 374.06 ACRC hearing: advocates. (1) A superintendent shall designate staff to serve as advocates for youth at ACRC hearings. Preference shall be given to staff who volunteer. A youth may select an advocate, subject to the individual's consent and availability. Staff involved in the decision to place a youth in administrative confinement may not act as the youth's advocate.

(2) Before the ACRC hearing, the advocate shall help the youth understand the issues and help in the preparation and presentation of any defense, including gathering evidence and witness testimony and preparing the youth's own statement. The advocate may speak on behalf of the youth at the ACRC hearing or may help the youth state a defense. After the ACRC hearing, the advocate shall discuss the issues with the youth, ensure that the youth understands what happened at the ACRC hearing and answer any questions.

DOC 374.07 ACRC hearing decision and youth appeal. (1) The ACRC shall do all of the following after the hearing under s. DOC 374.05 is completed:

(a) Deliberate in private considering only the youth's institution records and the evidence presented at the hearing that supports or refutes the need for administrative confinement.

(b) Issue a written decision by majority vote within 3 days after the hearing that does one of the following.

1. States that the evidence and the youth's institution records support the need for administrative confinement. The decision shall state the period of time the youth shall remain in confinement and may provide the conditions that must be met before the youth can be released from administrative confinement.

2. States that the evidence and the youth's institution records do not support the need for administrative confinement, in which case the ACRC shall issue a written order that requires the immediate release of the youth from administrative confinement.

(c) Provide the youth with a copy of the decision and a copy of the summary of the hearing 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.

(2) A youth may appeal an ACRC hearing decision to the superintendent within 5 days of the date of the decision and may appeal a superintendent's decision to the administrator within 5 days of the date of the superintendent's decision. The superintendent or administrator shall issue a written decision within 7 days of receipt of the appeal. Failure to issue a decision affirms the prior decision.

DOC 374.08 Reviews by the ACRC and superintendent. (1) The ACRC shall review the need for administrative confinement at least every 7 days after the issuance of the hearing decision under s. DOC 374.07. The ACRC may release a youth from administrative confinement or continue administrative confinement consistent with the decision under s. DOC 374.07. An ACRC decision to continue confinement under this subsection shall be submitted in writing to the superintendent and the youth.

(2) A superintendent may review a decision of the ACRC at any time, whether or not there has been an appeal by a youth, and may remand the decision to the ACRC for reconsideration or terminate the administrative confinement.

DOC 374.09 Appeals by youth of ACRC review decisions. (1) The youth may submit a written appeal of an ACRC review decision, under s. DOC 374.08 (2), to the superintendent within 5 days of receipt of the ACRC decision under this section. If the youth has difficulty writing the appeal, the advocate or other staff not involved in the decision to place the youth in administrative confinement shall assist the youth to write the appeal.

(2) The superintendent shall review the appeal and affirm, reverse, or remand the decision within 7 days of receipt of the appeal. The superintendent shall issue a decision in writing, including the reasons for the decision, and send it to the ACRC and the youth. Failure to issue a decision affirms the ACRC decision.

DOC 374.10 Living conditions. While in administrative confinement, a youth:

(1) Shall reside alone in a locked room. The locked room may be in a segregated building or area. A youth may be placed in close confinement or modified confinement. While outside of the assigned room, the youth shall be directly supervised by one or more staff.

(2) Shall be given the opportunity to participate in any program that is consistent with the services offered in the area in which the youth is confined, may participate in limited exercise and therapy and may keep in the assigned room any legal, educational, religious or other reading material, consistent with safety and security.

(3) Shall be allowed to have any property in the assigned room that is consistent with s. DOC 373.82.

(4) Shall be permitted visitation in accordance with s. DOC 379.07.

(5) Shall be permitted to receive and send mail in accordance with s. DOC 379.04.


(6) Shall be permitted to shower at least 3 times every 7 days. When possible, the institution shall permit daily showers.

(7) Shall be provided religious, social, and other services that are consistent with the services offered in the area in which the youth is confined.

(8) May be awarded canteen privileges in accordance with s. DOC 379.20(9).

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary
SEAL

Date 5/10/2000

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal ch. HSS 335 and create ch. DOC 375, relating to observation status for youth in type 1 secured correctional facilities.

Statutory authority: ss. 227.11 (2), 938.48 (16) and 938.505 (1), Stats., and s. 9126(23)(e) of 1995 Act 27.

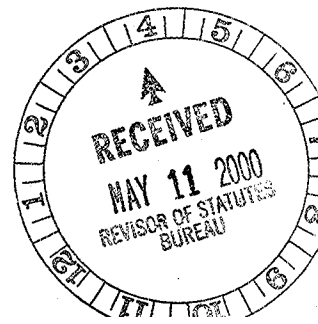
Statutes interpreted: ss. 301.025 and 938.505 (1), Stats.

Analysis by the Department of Corrections

The proposed rule governs the process of placing a youth in observation status when staff of a type 1 secured correctional facility believes a youth may be mentally ill and a danger to himself, herself or others; appears to be in acute mental distress; or may have a communicable disease that requires separation from the general population. Observation is an involuntary nonpunitive status. This rule is based in part on ch. HSS 334, observation status, which was promulgated by the then-division of youth services when the division was a part of the then-department of health and social services.

Under this proposed rule:

1. References to the department of corrections and to ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, are incorporated to make rules consistent with current law.
2. Definitions are similar to those in s. HSS 335.03, with some new terms added.
3. Section DOC 375.04 (1) lists 3 criteria, one more than s. HSS 335.04, for placing a youth in observation with the new criterion covering youth in acute mental distress. Section DOC 375.04 (2) authorizes categories of staff to place a youth into observation status eliminating the authority of a hearing officer contained in s. HSS 335.04 (4). Section DOC 375.04 (3) describes examination procedures and the process for voluntarily and involuntarily transferring a youth to a mental health facility. The transfer provisions of the DOC rule provide more guidance than those under s. HSS 335.04(5)(b).
4. Section DOC 375.05, as did s. HSS 335.04 (7), establishes time limits for placement in observation depending on the mental health or medical reason for the placement. The new DOC rule permits a longer stay to provide the physician or psychologist with an expanded period of time in which to observe and evaluate the youth.
5. If a psychologist or physician determines, under s. DOC 375.06, that observation should continue more than 14 days, he or she must adhere to specific procedural requirements for reviewing the placement every 3 days. The HSS rule at s. HSS 335.04 (5) required review every 3 working days.
6. The provisions of s. DOC 375.07 are similar to s. HSS 335.04 (12) and (14) in specifying the living conditions for youth in observation.



7. In both s. HSS 335.04 (13) and s. DOC 375.08 (1), provisions require staff to have unimpeded access to youth in observation (except for medical condition observation), observe the youth at least every 15 minutes, and accompany the youth at all times while the youth is out of his or her room.
8. Upon release from observation, a youth may return to a prior status and program or may be reassigned to a different program, under s. DOC 375.09.
9. Section DOC 375.10, as did s. HSS 335.04 (17), provides youth with an appeal process.
10. The superintendent shall submit a written report every 3 months to the administrator regarding youth placed in observation under new s. DOC 375.11.

SECTION 7. Chapter HSS 335 is repealed.

SECTION 8. Chapter DOC 375 is created to read:

CHAPTER DOC 375

OBSERVATION STATUS IN TYPE 1 SECURED CORRECTIONAL FACILITIES

DOC 375.01	Authority and purpose	DOC 375.07	Conditions of observation
DOC 375.02	Applicability	DOC 375.08	Supervision
DOC 375.03	Definitions	DOC 375.09	Removal from observation
DOC 375.04	Observation	DOC 375.10	Appeal
DOC 375.05	Limits on time in status	DOC 375.11	Report to administrator
DOC 375.06	Review of need for continued observation		

DOC 375.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11(2), 938.48(16) and 938.505(1), Stats., to establish standards and procedures for the involuntary non-punitive, temporary confinement of a youth to ensure the youth's safety and the safety of others if the youth is mentally ill and dangerous, is experiencing acute mental distress or has a medical problem that requires separation for treatment.

DOC 375.02 Applicability. This chapter applies to the department and all youth under its supervision in a type 1 secured correctional facility.

DOC 375.03 Definitions. In this chapter:

(1) "Acute mental distress" means a condition in which a youth's emotional, social or behavioral functioning is significantly impaired and the impairment may result in physical harm to the youth or others.

(2) "Administrator" means the administrator of the division or that person's designee.

(3) "Advanced practice nurse prescriber" means an advanced practice nurse as defined in ch. 441, Stats., and ch. N8 who has been certified to prescribe medication.

(4) "Dangerous" means a youth presents a substantial probability of physical harm to self or to other persons as manifested by any of the following:

(a) Recent homicidal or other violent behavior.

(b) The reasonable fear of others of violent behavior and serious physical harm, because of a recent overt act or an attempt or threat to cause serious physical harm.

(c) Serious self-destructive behavior or a threat of that behavior.

(d) The inability to cope with life in the institution to the degree that the youth or others are endangered.

(5) "Day" means a calendar day.

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

(7) "Division" means the department's division of juvenile corrections.

(8) "Guardian" has the meaning given in s. 938.02(8), Stats.

(9) "Health services professional" means a nurse, an advanced practice nurse prescriber, a physician's assistant or a physician who are licensed or certified to practice in Wisconsin.

(10) "Institution" means a type 1 secured correctional facility operated by the department.

(11) "Mental health facility" means any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including, but not limited to, inpatient and outpatient programs, community support programs and rehabilitation programs.

(12) "Mentally ill" means that a youth has a substantial disorder of thought, mood, perception, orientation or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life in an institution.

(13) "Nurse" means a registered or licensed practical nurse as defined by ch. 441, Stats.

(14) "Parent" has the meaning given in s. 938.02(13), Stats.

(15) "Physician" means a person licensed as a physician under ch. 448, Stats.

(16) "Physician's assistant" means a person licensed to practice as a physician's assistant under ch. 448, Stats.

(17) "Psychologist" means a person licensed to practice psychology under ch. 455, Stats.

(18) "Shift supervisor" means a staff member designated by the superintendent to perform supervisory functions under this chapter on a particular shift.

(19) "Staff" means a person employed by the institution or under contract by the Department.

(20) "Superintendent" means the superintendent of a type 1 secured juvenile correctional facility or that person's designee.

(21) "Type 1 secured correctional facility" has the meaning given in s. 938.02(19), Stats.

(22) "Youth" means a person or persons under the supervision of the department in an institution consistent with the requirements of law and regardless of age.

DOC 375.04 Observation. (1) **CRITERIA.** Observation is an involuntary non-punitive status used for the temporary confinement of a youth to ensure the individual's safety and the safety of others. A youth may be placed in observation if any of the persons listed in sub. (2)(b) have reasonable cause to believe that one or more of the following are true:

(a) The youth is mentally ill and dangerous to self or others.

(b) The youth is exhibiting symptoms of acute mental distress.

(c) The youth has a communicable disease, infection or other medical problem that requires separation from the institution population for treatment by a physician.

(2) **PLACEMENT AUTHORITY.** (a) Any staff member may recommend to a supervisor that a youth be placed in observation. The staff member shall state in writing the reasons for the recommendation and describe the conduct or condition that forms the basis for the recommendation.

(b) If there is reasonable cause to believe that the criteria under sub. (1) are met, a youth may be placed in observation only by one or more of the following:

1. A psychologist or physician.

2. Any health services professional, if a psychologist or physician is not available for consultation, either in person or by telephone.

3. The superintendent.

4. The shift supervisor with the approval of the superintendent.

(3) **EXAMINATION.** (a) *Review of placement.* 1. If a youth is placed in observation under sub. (2) (b) 2, 3 or 4, a psychologist or physician shall examine the youth and evaluate the placement to verify a condition under sub. (1) as soon as practical, but in no case may the examination take place later than 3 days after placement.

2. A psychologist or physician shall examine a youth placed in observation under sub. (1)(a) or (b) as needed, but at least every 3 days, to determine if the placement is consistent with the requirements of this chapter.

3. A health services professional shall examine a youth placed in observation under sub. (1)(c) as needed, but at least every 3 days, to determine if the placement is consistent with the requirements of this chapter.

4. If a physician, psychologist or health services professional's examination under this paragraph determines that a youth does not meet the requirements for observation under sub. (1), the youth shall be promptly released from observation.

(b) *Voluntary transfer.* If a psychologist or physician determines that a youth needs treatment in a mental health facility, staff shall ask for written consent to transfer to a mental health facility from: the parent or guardian, if the youth is under 14 years of age; the parent or guardian and the youth if the youth is 14 through 17 years of age; and the youth only if the youth is 18 years of age or older. If individual required to consent does so in writing and the superintendent approves, the psychologist or physician shall initiate the voluntary transfer procedure by contacting the mental health facility to obtain information regarding bed availability. All legal requirements under ch. 51, Stats., for voluntary transfer shall be followed.

(c) *Involuntary transfer.* If an institution cannot obtain consent under par. (b), a physician or psychologist may recommend involuntary transfer of the youth to the superintendent. If the superintendent approves, the psychologist or physician shall initiate the involuntary transfer procedure by contacting the mental health facility to obtain information regarding bed availability. All legal requirements under ch. 51, Stats., for involuntary transfer shall be followed.

(d) *Medical need.* If a youth is placed in observation under sub. (1)(c), a health services professional shall document the youth's medical treatment needs and review the youth's status as needed. If a youth's medical needs cannot be met at the institution, the superintendent shall promptly transfer the youth to an appropriate medical facility.

DOC 375.05 Limits on time in observation. (1) A youth placed in observation under s. DOC 375.04 (1)(a) may not remain in observation longer than 14 days unless notice of review of the youth's status under s. DOC 375.06(2) has been served, the superintendent has approved a voluntary or involuntary transfer under s. DOC 375.04(3)(b) or (c) and legal proceedings under ch. 51, Stats., have been initiated. The superintendent shall promptly inform the administrator if a youth is kept in observation beyond 14 days and the administrator shall review the need for observation at least every 7 days after the youth has been in observation for 14 days.

(2) A youth placed in observation under s. DOC 375.04 (1)(b) may not remain in observation for longer than 14 days.

(3) A youth placed in observation under s. DOC 375.04(1)(c) may remain in observation for a reasonable period of time for diagnosis and, if necessary, treatment until the disease or condition is in remission or the youth has passed the communicable stage of the disease or infection.

(4) When a youth is placed in observation, the superintendent shall give the youth written notice of this section and s. DOC 375.10.

DOC 375.06 Review of need for continued observation. (1) If a physician or psychologist determines that observation of a youth under s. DOC 375.04(1)(a) must continue beyond 14

days and the superintendent has initiated transfer proceedings under s. DOC 375.04 (3)(b) or (c), a psychologist or physician, other than the person who made the original placement, shall review the need for continued confinement of the youth following notice under sub. (2).

(2) The psychologist or physician who conducts the review under sub. (1) shall serve written notice of the review on the youth within 14 days after the youth is first placed in observation. Notice shall include:

(a) The allegation of the youth's mental illness and dangerousness.

(b) The standards used to determine mental illness and 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. If information is not disclosed, the notice shall state that information is not being disclosed and the reason it has not being disclosed.

(e) An explanation of the possible consequences of the review.

(f) An explanation of the youth's rights at the review which include all of the following:

1. The right to be present.

2. The right to deny the allegation.

3. The right to an advocate in accordance with s. DOC 373.74 and the right to present or have the advocate present information obtained from witnesses.

4. The right to present documentary evidence.

5. The right to question witnesses.

6. The right to receive a written decision, stating the reasons based upon the evidence.

7. The right to appeal the finding in accordance with s. DOC 375.10.

8. The date, time and place of the review and an order that the youth appear at the review.

(3) The review under sub. (1) shall take place not sooner than 2 days and not later than 5 days after service of notice to the youth. The youth may not waive the review or the time limits under this subsection.

(4) All of the following procedures apply at the review under sub. (1):

(a) The person conducting the review shall read aloud the allegations of the youth's dangerousness and mental illness.

(b) All witnesses present including the youth and the staff member who recommended the placement into observation shall have an opportunity to speak.

(c) The person conducting the review may require that available evidence be offered.

(d) The youth may ask questions or submit written questions to be asked of a witness. Repetitive, disrespectful, or irrelevant questions may be forbidden.

(e) The person conducting the review shall maintain a written record consisting of exhibits presented at hearing and a summary of witness statements.

(f) If the person conducting the review determines that a witness shall not be called or that the identities or sources of information relied upon or any statements or evidence should not be included in the record, because personal safety or institution security is implicated, the omission shall be noted in the record. Witness availability shall be determined consistent with s. DOC 373.76 (3).

(5) After the review under sub. (1), the person conducting the review shall deliberate in private considering only the evidence presented, the youth's records and the definitions of dangerousness and mental illness in this chapter. The superintendent shall immediately release the youth from observation if the person conducting the review determines that the youth is not both mentally ill and dangerous. If the person conducting the review determines that the youth is both mentally ill and dangerous, the youth shall remain in observation. The reasons for the decision shall be given to the youth orally and in writing within 5 days after the decision is issued.

(6) The superintendent shall require a review under sub. (1) at least once every 21 days after issuance of the decision under sub. (5). A youth may not be confined in observation for more than 60 days from the day the youth is placed in observation, unless the administrator grants an extension of that time period. The reviews under sub. (1) must be conducted at least every 21 days during a period of extension.

DOC 375.07 Conditions of observation. (1) Staff shall confine a youth in observation status in a room appropriate to meet the purposes of this chapter. The youth may have access to common areas if behavior permits such access. The youth shall be entitled to the same privileges and property as youth in the general population, unless any of the following apply:

(a) The person who placed the youth in observation under s. DOC 375.04(2) or the supervisor on the observation unit where the youth is placed reasonably believe that the privileges or property may be used by the youth or another youth in observation to harm self or another person.

(b) The property is not permitted, because of the security needs of the observation unit.

(2) Staff shall promptly remove any privilege or property used by a youth in observation to harm self or another person. The superintendent shall promptly review the decision and may restore the privilege or property if it is safe to do so.

DOC 375.08 Supervision. (1) Staff shall have unimpeded access to youth placed in observation under s. DOC 375.04 (1) (a) or (b), shall observe the youth at least once every 15 minutes and shall accompany the youth at all times while the youth is out of his or her room.

(2) Staff shall use the most appropriate setting to achieve the objectives of this chapter and to treat youth in observation. Staff shall make a reasonable effort to interact with youth throughout each day.

(3) The shift supervisor shall promptly inform a health services professional, psychologist or crisis intervention worker of any suicide attempt or other self-harm that occurred prior to or during placement in observation. Staff shall promptly report all placements into and transfers from observation and any suicide attempts prior to or during placement in observation to the superintendent.

(4) A psychologist or health services professional shall provide appropriate treatment and document the youth's progress in treatment while the youth is in observation. The psychologist or health services professional shall document in the youth's file specific descriptions of incidents that may relate to the youth's mental illness, dangerousness, mental distress or physical condition.

DOC 375.09 Removal from observation. A youth shall be returned to previous status and assignment or shall be reassigned by the institution programming authority after removal from observation, with particular attention given, as appropriate, to the special needs which required placement in observation status. A youth may be returned to observation consistent with this chapter.

DOC 375.10 Appeal. (1) A youth placed in observation under s. DOC 375.04(1)(a) who does not receive timely reviews in accordance with this chapter or who has had an adverse decision under s. DOC 375.06(5) may appeal to the administrator.

(2) A youth placed in observation under s. DOC 375.04(1)(b) who does not receive timely reviews in accordance with this chapter or who has had an adverse decision under s. DOC 375.04(3)(a) 2 may appeal to the administrator.

(3) A youth placed in observation under s. DOC 375.04(1)(c) for more than 5 days may appeal to the administrator.

(4) The administrator may request an additional clinical or medical assessment of a youth's condition prior to completing a written decision, which the administrator shall issue to the youth and appropriate staff within 5 days of receipt of the appeal.

DOC 375.11 Report to administrator. A superintendent shall provide the administrator with a written report every 3 months which identifies by name each youth placed in observation, the reasons for the placement, the date the youth was placed in observation and the date the youth was released from observation.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary

5/10/2000

Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal ch. HSS 336 and create ch. DOC 376, relating to security issues for youth placed under the supervision of the department of corrections in a Type 1 secured correctional facility.

Statutory authority: ss. 227.11 (2), 301.025 and 938.48 (16), Stats., and s. 9126(23)(e) of 1995 Act 27.

Statutes interpreted: ss. 938.01 (2) and 938.505 (1), Stats.

Analysis by the Department of Corrections

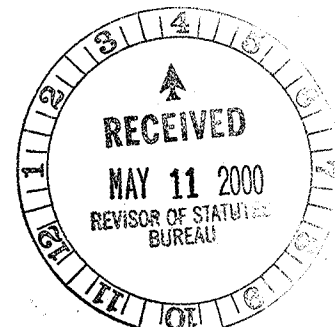
The proposed administrative code ch. DOC 376 consists of rules that staff of a type 1 secured correctional facility shall follow in maintaining the security of the institution. The chapter is intended to facilitate a security and treatment continuum for youth.

The rules define a range of actions that staff are permitted or required to take in response to specific circumstances that threaten the security of the institution and the safety of staff and youth. The rules strongly encourage the use of the minimum amount or type of intervention needed to enhance institution security. Reporting and due process provisions are integrated into the rule in order to provide oversight and balance for staff decisions.

Under the former administrative code of the then-department of health and social services, institution security rules were in ch. HSS 336. The analysis below includes identification and explanation of major differences between ch. HSS 336 and the proposed security rule.

Under this proposed rule:

1. The rules incorporate references to the department of corrections and ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, so that the rules are consistent with current law.
2. Chapter HSS 336 contained a limited number of definitions, but referred to the definitions in ch. HSS 333 for the majority of the definitions. Section DOC 376.03 contains relevant definitions, thereby not requiring reference to other chapters.
3. Unlike ch. HSS 336, a youth may request to be voluntarily confined for health and safety reasons under s. DOC 376.04 with the superintendent determining the necessity of the placement.
4. Limited surveillance activities, permitted by the s. DOC 376.05, must relate to legitimate security needs of the institution. Chapter HSS 336 did not specifically address the issue of surveillance.
5. Both s. HSS 336.03 and s. DOC 376.06 require that each institution have a system for accounting for the whereabouts of youth at all times.



6. Most provisions of s. HSS 336.04 regarding use of non-deadly and deadly physical force are repeated in s. DOC 376.07. Unlike s. 336.04 (4), s. DOC 376.07 (3), does not include protection of property as a justification for the use of force. Specific procedures for apprehending an escaped youth are described in s. DOC 376.10, rather than in the section dealing with use of force as in s. HSS 336.04 (5).
7. Under s. DOC 376.08 rules delineate proper and improper uses of chemical agents and incapacitating devices. Chapter HSS contained fewer reasons for using chemical agents. Section DOC 376.08 (4) and s. HSS 336.05 (5) describe procedures for post-incident medical attention and clean-up with ch. DOC containing updated language to describe clean-up procedures for newer chemical agents. Both s. HSS 336.05 (6) and s. DOC 376.08 (5) require an incident report to be filed.
8. Section DOC 376.09 outlines the circumstances when mechanical restraints, including full body restraints, may be used. Both HSS 336.07 (3) and s. DOC 376.08 (6)(d) set standards for the examination of a youth in restraints with the ch. HSS rules referring to "evaluators" and ch. DOC rules requiring a licensed psychologist or psychiatrist.
9. As was the case in s. HSS 336.07, ss. DOC 376.09 (7) to (9) establish standards for review of an ongoing placement in full body restraints. Section DOC 376.09 (12) sets requirements for the maintenance of commercially-manufactured mechanical restraints.
10. Section 938.51 (4), Stats., defines a youth's unauthorized absence from a secured correctional facility as an escape, rather than a runaway as described in ch. HSS 336, and lists 2 categories of escapes. Section DOC 376.10 details the requirements for the institution escape plan. Section 938.78 (3), Stats., authorizes limited release of information to the public in the event of an escape by a youth which is codified in s. DOC 376.10.
11. New s. DOC 376.11, as s. HSS 336.10, provides that staff may conduct a search of the institution grounds at any time.
12. In contrast to s. HSS 336.11, s. DOC 376.12 allows rather than requires advance notice of the search.
13. Section DOC 376.12 is similar to s. HSS 336.12 in governing searches of a youth's living quarters at any time, with written record being made of how the search was done, what was found, and any damage caused.
14. Personal, strip, body cavity and body contents searches are governed by s. DOC 376.13 in a similar manner as in s. HSS 336.13. However, ch. HSS 336 did not address a body contents search.
15. The requirements for searches of visitors are essentially the same in s. DOC 376.14 as in s. HSS 336.14. Section DOC 376.14 (4) adds a requirement that the administrator, in addition to the superintendent, approve a personal search of a visitor suspected of concealing an unauthorized object.
16. Both s. HSS 336.15 and s. DOC 376.11, govern searches of staff that may be required when a reason exists to believe the person is concealing contraband.

17. Both s. DOC 376.16 and s. HSS 336.16 require the consideration of specific factors when evaluating the suspicion that staff may possess contraband.
18. Similar to s. HSS 336.175, s. DOC 376.17 explains procedures for disposal of contraband.
19. A new section, s. DOC 376.18 requires that the superintendent submit to the administrator a monthly report regarding contraband seized.
20. New s. DOC 376.19, but not Chapter HSS 336, describes the circumstances under which the superintendent has authority to lockdown the institution as an immediate response to a perceived security threat.
21. Section DOC 376.20 and s. HSS 336.18 define "disturbance" and require each institution to develop a disturbance plan. The superintendent may suspend the division's administrative rules, with certain limitations, during a serious disturbance. Section DOC 376.20 (5) adds the requirement that the institution must provide medical care under these circumstances.
22. When a person is injured or when rules are suspended, the secretary may convene a 5-person disturbance review panel to investigate and make written findings, under s. DOC 376.20 (7) and s. HSS 336.18 (8).
23. Provisions for emergencies in s. DOC 376.21 are similar to those for disturbances, above. Institution emergency response procedures are not outlined in this rule and instead are being covered in internal administrative procedures. A panel may be convened to investigate the causes of an emergency, selected in accordance with s. DOC 376.20.
24. Section HSS 336.20 required annual reports on use of chemical agents and mechanical restraints. Monthly or immediate reports are required: s. DOC 376.08 (5), chemical agent; s. DOC 376.13 (1)(c), body cavity search; and s. DOC 376.09 (11), full body restraints.

SECTION 9. Chapter HSS 336 is repealed.

SECTION 10. Chapter DOC 376 is created to read:

CHAPTER DOC 376

SECURITY IN TYPE 1 SECURED CORRECTIONAL FACILITIES

DOC 376.01 Authority and objectives	DOC 376.12 Search of youth living quarters
DOC 376.02 Applicability	DOC 376.13 Search of youth
DOC 376.03 Definitions	DOC 376.14 Search of visitors
DOC 376.04 Voluntary confinement	DOC 376.15 Search of staff
DOC 376.05 Surveillance of youth activities	DOC 376.16 Factors to consider to determine if a search is necessary
DOC 376.06 Youth count	DOC 376.17 Seizure and disposal of contraband
DOC 376.07 Use of force	DOC 376.18 Report of contraband seized
DOC 376.08 Use of incapacitating devices and chemical agents	DOC 376.19 Lockdown
DOC 376.09 Mechanical restraints	DOC 376.20 Disturbance plan
DOC 376.10 Escapes	DOC 376.21 Emergencies
DOC 376.11 Search of institution grounds	

DOC 376.01 Authority and objectives. This chapter is promulgated under the authority of ss. 227.11(2)(a), 301.025 and 938.48(16) Stats. The department's primary security objectives are to protect the public, staff and youth and to afford youth a safe setting to participate in activities that prepare them to be successfully reintegrated into the community.

DOC 376.02 Applicability. This chapter applies to the department and all youth under its supervision in a type 1 secured correctional facility consistent with the requirements of law.

DOC 376.03 Definitions. In this chapter:

(1) "Administrator" means the administrator of the division of juvenile corrections or that person's designee.

(2) "Bodily harm" means physical injury, illness or any impairment of physical condition.

(3) "Body cavity search" means a search conducted by a health services professional in which body cavities are inspected by the entry of an object or fingers into body cavities.

(4) "Body contents search" means a search in which a youth is required to provide a sample which includes, but is not limited to, deoxyribonucleic acid (DNA), urine, breath, blood or stool for testing for the presence of intoxicating substances, as defined in s. DOC 373.46 (1), in accordance with division procedures and methods approved by the state laboratory of hygiene, or to submit to a nonsurgical physical examination by medical staff which may include, but is not limited to, x-rays for detecting contraband. Body contents searches do not include examinations and tests requested by medical staff for medical reasons.

(5) "Chemical agent" means chloroacetophenone or "CN", o-chlorobenzyl malononitrile or "CS", oleoresin of capsicum or "OC" or other commercially manufactured chemical agents approved by the department for use as a non-deadly force.

(6) "Close confinement" means restriction of a youth to the youth's assigned room or cell with a minimum of one hour per day of out-of-room time.

(7) "Contraband" has the meaning given in s. DOC 373.03 (6).

(8) "Deadly force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily harm to another.

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

(10) "Formal disciplinary hearing" means a hearing for a youth as provided in s. DOC 373.73.

(11) "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 physical force and mechanical restraints.

(12) "Full body restraint" means a mechanical restraint used to simultaneously immobilize legs, arms and torso.

(13) "Great bodily harm" is bodily harm which creates a high probability of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(14) "Health services professional" means a nurse, an advanced practice nurse prescriber, a physician's assistant or a physician who are licensed or certified to practice in Wisconsin.

(15) "Incapacitating device" means a commercially manufactured device designed to incapacitate a person which is approved by the department for use as a non-deadly force.

(16) "Institution" means a type 1 secured correctional facility operated by the department.

(17) "Lockdown" means restriction of movement and programs in the entire institution to control a situation regarding safety or security of an institution.

(18) "Medical staff" means physician, physician's assistant or nurse practitioner.

(19) "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.

(20) "Non-deadly force" means force which a user reasonably believes will not create a substantial risk of causing death or great bodily harm to another.

(21) "Personal search" includes a search of a person's pockets, frisking the body, an examination of shoes, coat and hat and an inspection of the mouth.

(22) "Reasonably believes" means that the actor believes that certain facts exist and the belief, under the circumstances, is reasonable even though the belief is erroneous.

(23) "Secretary" means the secretary of the department of corrections or that person's designee.

(24) "Staff" means a state employee of the institution where a youth is housed.

(25) "Strip search" means a search in which a person is required to remove clothes. Permissible inspection includes examination of the person's body and clothing and visual inspection of body cavities.

(26) "Superintendent" means the superintendent of a type 1 secured correctional facility or that person's designee.

(27) "Supervisor" means staff designated by the superintendent to perform supervisory functions under this chapter.

(28) "Type 1 secured correctional facility" has the meaning given in s. 938.02(19), Stats.

(29) "Youth" means a person or persons supervised by the department in an institution consistent with the requirements of law and regardless of age.

DOC 376.04 Voluntary confinement. (1) A superintendent may place a youth in voluntary confinement if all of the following are true:

(a) The youth requests the placement in writing.

(b) The superintendent is satisfied that the placement is necessary for the safety and welfare of the youth.

(2) A youth shall remain in voluntary confinement for at least 72 hours from the time of placement unless the superintendent approves prior release.

(3) If a superintendent does not approve a youth's release from voluntary confinement before 72 hours elapse, the youth shall be released after 72 hours, if one of the following occurs:

(a) The youth requests release orally or in writing.

(b) The superintendent is satisfied that the placement is no longer necessary.

(4) Youth in voluntary confinement shall be in close confinement. The minimum requirement of one-hour out-of-room time per day for close confinement may be suspended for a 24-hour period upon the recommendation of a physician or psychologist. The superintendent shall send a written report of the suspension to the administrator.

(5) Youth in voluntary confinement shall have all of the following privileges and property:

(a) Privileges and property that are at least the equivalent of privileges and property permitted youth under s. DOC 374.10.

(b) Additional privileges and property consistent with what is permitted in the unit in which the youth is voluntarily confined.

(6) The superintendent shall review placements in voluntary confinement at least every 7 days.

DOC 376.05 Surveillance of youth activities. (1) Electronic surveillance of youth activities may occur without youth awareness as approved by the superintendent. Only those individuals designated by the superintendent may become aware of the contents of surveillance.

(2) The superintendent shall create policies and procedures to protect privacy rights of youth.

(3) Surveillance may include staff observation, cameras, intercoms, microphones, telephone monitoring and recording devices or other electronic or surveillance devices.

(4) Surveillance shall be limited to legitimate security needs of the institution.

(5) Information obtained by surveillance may be used by the department or law enforcement for purposes that include, but are not limited to, administrative actions, discipline, program direction and criminal prosecutions.

(6) The institution shall notify all youth, staff and visitors of the potential for their activities to be monitored and recorded throughout the institution.

(7) Surveillance may not be used to interfere with or compromise privileged communications between attorney and client.

DOC 376.06 Youth count. A superintendent shall establish and maintain a system for accurately accounting for the whereabouts of all youth under the superintendent's supervision at all times. The system shall interfere as little as practical with school, work, program and recreational activities. The system shall be described in writing. All institution staff shall be familiar with the system.

DOC 376.07 Use of physical force. (1) Corporal punishment of youth is not permitted. This prohibition allows no exceptions.

(2) Only the minimum force that is reasonably necessary to achieve a proper objective may be used. Excessive force shall not be used.

(3) Staff may use non-deadly force against youth only if the user of force reasonably believes that it is immediately necessary to accomplish one of the following purposes:

(a) To subdue a youth who poses an immediate threat of bodily harm or death to oneself or another.

(b) To regain control of all or part of an institution during a disturbance as defined in s. DOC 376.20 or an emergency as defined in s. DOC 376.21.

(c) To prevent the escape of a youth.

(d) To control a disruptive or dangerous youth who threatens the security of an institution.

(e) To apprehend a youth who has escaped from an institution.

(f) To change the location of a youth who refuses to cooperate and the refusal threatens the security of the institution.

(4) Staff may use the minimum physical force reasonably necessary to apprehend or gain control of a youth. Minimum force shall be exercised in the following way, if reasonably possible:

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

(b) Staff shall ask a youth to voluntarily return or to voluntarily cease the threatening or disruptive behavior.

(c) If a youth refuses to voluntarily comply, one or more staff may physically restrain the youth.

(d) Staff shall restrain a youth as necessary for the protection of the youth or others.

(5) After the use of non-deadly force, the youth and staff who were involved shall be checked for injury, medical services provided as appropriate and a written report submitted to the superintendent regarding any medical services provided.

(6) If force is used, each staff member involved shall submit a separate written report regarding the apprehension to the superintendent.

(7) Staff may use deadly force only if staff reasonably believe that its use is immediately necessary to prevent death or great bodily harm to oneself or another. If deadly force is used, each staff member involved shall submit a separate written report to the superintendent regarding the use of deadly force. The superintendent shall promptly report the use of deadly force to the administrator.

(8) Staff may not use deadly force to control a youth if its use creates a substantial danger of harm to an innocent third party, unless the danger created by not using deadly force is greater than the danger created by its use.

(9) Youth may not use force at any time.

DOC 376.08 Use of incapacitating devices and chemical agents. (1) REGULATION. (a) Incapacitating devices or chemical agents may be used under the circumstances listed in s. DOC 376.07 (3).

(b) In order to ensure that incapacitating devices and chemical agents are used appropriately, staff shall utilize the following use of force continuum, if feasible, before actually employing an incapacitating device or a chemical agent:

1. Make a video and sound recording of the events as authorized by the superintendent.
2. Communicate with the youth to calm the youth.
3. Wait a reasonable period of time, unless there is a risk of harm to the youth or another person, the situation would further escalate or waiting would threaten the security or safety of the institution.
4. Make a show of force to the youth.
5. Use the minimum non-deadly force that is reasonably necessary.

(c) When s. DOC 376.07 (3) permits the use of force and staff know of a youth's history of violent behavior in similar situations and reasonably believe that the youth is about to become violent, an incapacitating device or chemical agent may be used after the procedure in par. (b) has been followed, but before the youth makes a credible threat to use physical force.

(d) Incapacitating devices or chemical agents may not be used by staff if any of the following apply:

1. It is clear that the incapacitating devices or chemical agents would have no physical effect on a youth.

2. It is medically contra-indicated for the youth or another person who would be affected.

(2) **SELECTION.** The incapacitating device or chemical agent most appropriate to the situation shall be used by staff, based on the manufacturer's recommendations and the training provided to the staff using the incapacitating device or chemical agent.

(3) **APPLICATION.** Only trained staff under the immediate supervision of a supervisor may employ incapacitating devices or chemical agents. Each institution shall ensure that staff authorized to use incapacitating devices or chemical agents are properly trained in their use.

(4) **MEDICAL ATTENTION AND CLEAN-UP.** (a) As soon as possible after an incapacitating device or chemical agent has been used, staff shall apply corrective remedies as prescribed by the manufacturer to all youth and staff exposed to the incapacitating device or chemical agent and shall obtain medical assistance as needed for persons exposed. Staff shall provide individuals exposed to a chemical agent with an opportunity to shower and change clothes. If living quarters have been exposed to a chemical agent, staff shall require the area to be properly cleaned and bedding and mattresses to be changed and thoroughly cleaned before being reuse.

(b) Staff shall promptly notify medical personnel of a youth's exposure to a chemical agent. Medical personnel shall determine if medical assistance is required.

(c) When area clean up is necessary, staff shall follow directions as prescribed by the manufacturer.

(5) **INCIDENT REPORT.** (a) As soon as possible after an incapacitating device or chemical agent has been used, all staff who were involved shall submit an incident report to the superintendent and the administrator. A monthly report of the use of incapacitating devices and chemical agents shall be submitted by each institution to the administrator.

(b) Each incident report shall include all of the following:

1. The youth's name, the date and time of the incident, names of staff present when the incapacitating device or chemical agent was used, reasons for using the incapacitating device or chemical agent and treatment given.

2. A description of the incident which caused the use of the incapacitating device or chemical agent.

3. The steps taken prior to the use of the incapacitating device or chemical agent and why those steps did not control the incident.

4. The type of incapacitating device or chemical agent used and method of application.
5. The youth's response to the incapacitating device or chemical agent.
6. Any actions taken following the use of the incapacitating device or chemical agent.

DOC 376.09 Mechanical Restraints. (1) TYPES OF MECHANICAL RESTRAINTS. Mechanical restraints include, but are not limited to, handcuffs with restraining belt or chain, restraining chains, leg restraints and leather and plastic restraints.

(2) USE OF MECHANICAL RESTRAINTS. Mechanical restraints may be used in any of the following situations if the superintendent determines that the use of mechanical restraints is necessary to protect staff, youth or the public or to maintain the security of the institution:

- (a) To transport a youth within or outside an institution.
- (b) For a youth who is in security status while the youth is outside the place of confinement or for a youth who is out of control.
- (c) To protect staff, youth or other persons from a youth who poses an immediate risk of physical injury to others unless restrained.
- (d) To protect a youth who poses an immediate threat of physical injury to self unless restrained.

(3) APPROVAL FOR USE OF MECHANICAL RESTRAINTS. A youth may be placed in mechanical restraints only with the authorization of the superintendent.

(4) PROHIBITED USE OF MECHANICAL RESTRAINTS. Mechanical restraints may not be used in any of the following ways:

- (a) When the use of mechanical restraints is medically contra-indicted.
- (b) About the head or neck of a youth in a manner not prescribed by the manufacturer.
- (c) In a way that causes undue physical discomfort or inflicts physical pain to a youth.
- (d) As a method of punishment.
- (e) To secure a youth to a motor vehicle.

(5) USE OF FULL BODY RESTRAINTS. Full body restraints may be used only for the following reasons with authorization from the superintendent:

- (a) To protect a youth who poses an immediate threat of physical injury to self unless placed in full body restraints.
- (b) To protect a youth in a health emergency that requires full body restraints.

(c) To protect staff, youth or other persons from a youth who poses an immediate risk of physical injury to others unless placed in full body restraints.

(d) To immobilize a youth in full body restraints, because the youth's conduct significantly disrupts the security or function of the institution and less restrictive ways to control the behavior have failed.

(6) PROCEDURE FOR PLACING A YOUTH IN FULL BODY RESTRAINTS. When staff place a youth in full body restraints sub. (5)(a) through (d) all of the following apply:

(a) The shift supervisor shall be present and shall notify the superintendent, a health services professional and the psychologist on call.

(b) A minimum of 3 staff shall be present when the youth is placed in full body restraints.

(c) A video and audio recording shall be made as directed by the superintendent.

(d) A staff psychologist or psychiatrist shall arrange for an on-site evaluation within 3 hours after the application of full body restraints unless the superintendent authorizes an extension, which may not exceed 8 hours.

(e) The psychologist or psychiatrist shall recommend to the superintendent whether the youth should remain in full body restraints and what actions should be taken to protect the youth.

(f) A health services professional shall conduct a physical examination as soon as possible, but not later than one hour after application of full body restraints. A physical examination shall be conducted every 4 hours thereafter by a health services professional.

(g) Staff shall directly observe a youth immobilized in full body restraints at least every 15 minutes.

(h) Youth may be partially released from full body restraints if it is safe to do so to perform bodily functions and for meals. Three staff members, one of whom shall be a supervisor, shall be present before and during the release.

(i) The youth shall be released immediately if it becomes apparent that full body restraints present a medical risk to the youth.

(7) RECORD OF USE OF FULL BODY RESTRAINTS. A record must be kept of youth placed in full body restraints under sub. (5)(a) through (d) which shall include the following:

(a) The youth's full name and identifying number.

(b) The date and time of immobilization.

(c) Names of the staff members and supervisor present when the youth was placed in full body restraints.

(d) The reasons for placing the youth in full body restraints.

(e) The dates and times that the youth was observed by staff as required by sub. (6)(g), the name of the staff making the observation and comments on the youth's condition and behavior while in full body restraints.

(f) The dates and times full body restraints were removed.

(g) Medication given and the time it was given.

(h) The dates and times that the youth was observed by clinical staff, a health services professional or a licensed psychologist or psychiatrist, the recommendations made by those persons and whether staff implemented the recommendations.

(8) RELEASE FROM FULL BODY RESTRAINTS. The superintendent may authorize partial or complete release from full body restraints at any time.

(9) TIME IN FULL BODY RESTRAINTS. No youth may be immobilized in full body restraints for longer than 12 hours, unless the youth is examined by a psychologist, psychiatrist or the crisis intervention worker, who shall make a written recommendation to the superintendent as to whether the youth should continue to remain in full body restraints. An examination by a psychologist, psychiatrist or crisis intervention leader shall occur thereafter at least every 12 hours that a youth is in full body restraints. The superintendent may authorize the use of restraints for more than 12 hours. The superintendent shall notify the administrator of the decision to continue the use of full body restraints beyond 12 hours and every 12 hours thereafter.

(10) TRANSFER TO A MENTAL HEALTH FACILITY. Staff shall initiate a transfer to a mental health facility under s. 51.35 (3), Stats., if appropriate. Staff shall not retain a youth in full body restraints under sub. (5)(a) through (d) for more than 24 hours, unless a transfer to a mental health facility has been initiated by the institution.

(11) MONTHLY REPORT ON FULL BODY RESTRAINTS. A monthly report concerning each incident involving the use of full body restraints under sub. (5)(a) through (d) shall be submitted by the superintendent to the administrator.

(12) SUPPLY OF MECHANICAL RESTRAINTS. Institutions shall maintain a supply of commercially manufactured mechanical restraints approved by the department. The mechanical restraints shall be periodically examined and any excessively worn or defective mechanical restraints shall be removed from the supply and destroyed.

DOC 376.10 Escapes. (1) PLAN. Each institution shall have a written plan approved by the superintendent to be implemented in the event an escape occurs or is attempted. The plan shall be updated annually and shall be filed with the administrator. The plan shall provide for all of the following:

(a) Reporting the escape to the superintendent and the administrator.

(b) Staff communication.

- (c) Notification to local and committing county law enforcement authorities.
- (d) Notification to the community, consistent with s. 938.51 (1r), Stats.
- (e) Pursuit of the escapee.
- (f) An immediate count of all youth.
- (g) A search of the institution and grounds.
- (h) An investigation into the background, mail and visitors list of the escaped youth.
- (i) An accessible list of the names, addresses and phone numbers of off-duty staff members.
- (j) The operation of essential posts.
- (k) Securing tools and any implement that may be fashioned into a weapon.
- (L) Victim notification, if requested under s. 938.51(1), Stats.
- (m) The preservation of any evidence relevant to the escape and the chain of evidence.
- (n) The repair of any facilities damaged in the escape.
- (o) The responsibility of staff after an escape.
- (p) Notification of the administrator and law enforcement agencies of the apprehension of an escapee.

(2) REPORTS. Reports of escapes required under sub. (1) (a) shall include:

- (a) Date, time and location when the youth was last seen.
- (b) The method of escape.
- (c) Who was involved in the escape.
- (d) A description of the escapee, including clothing worn.
- (e) Action taken by the institution, including procedures initiated.
- (f) A brief evaluation of the factors which may have contributed to the escape.
- (g) The identification of persons who may have information about the escape.

(3) HOSTAGES. When a youth takes the superintendent or any staff hostage, the hostage shall have no authority to order any action or inaction by staff.

(4) PURSUIT. Any pursuit of an escaped youth by staff shall be done in cooperation with local law enforcement authorities. Until local law enforcement authorities are able to supervise pursuit, staff shall conduct the pursuit under supervision of the superintendent.

(5) OFF-DUTY STAFF. In the event of an escape, the superintendent may order any off-duty staff to work.

(6) VEHICLES. The superintendent may authorize staff to use their own vehicles to pursue an escaped youth if state-owned vehicles are unavailable.

(7) CRIMINAL CONVICTIONS. A youth who is in an institution because of an adult criminal court conviction who escapes from an institution shall be treated as an adult in regard to confidentiality of information.

(8) PUBLIC INFORMATION RELEASE. After twelve hours, the department may release information to the public if permitted under s. 938.78 (3), Stats., for youth adjudicated for certain criminal offenses. The information may include the youth's name, age, physical description, including clothing, the date and time of the escape and the institution where the escape occurred.

DOC 376.11 Search of institution grounds. Staff may conduct a search of any area within the buildings or grounds of an institution at any time. There is no requirement that evidence exists that contraband is concealed on institution grounds before such a search is conducted. Upon completion of the search, staff shall complete an institution incident report describing the search including any discovery of contraband.

DOC 376.12 Search of youth living quarters. (1) Whenever staff conduct a search of a youth's living quarters, staff in charge of the living unit at the time of the search or the staff who conducted the search shall write a report that includes all of the following:

- (a) The identity of the staff who conducted the search and the supervisor who approved it.
- (b) The date and time of the search.
- (c) The identity of the youth whose living quarters were searched.
- (d) The reason for conducting the search. If the search was a random search, the report shall state that it was a random search.
- (e) Any objects that were seized pursuant to the search.
- (f) Whether any damage was done to the premises during the search.

(2) If property was seized or damaged pursuant to the search of a youth's living quarters, staff shall inform the youth in writing. The institution shall pay for the cost of repair of personal property that is not contraband. In the alternative, and at the discretion of the superintendent, damaged personal property that is not contraband shall be replaced or the youth shall receive the fair market value of the property at the time it was damaged.

(3) In conducting searches, staff shall disturb the effects of youth as little as possible, consistent with thoroughness.

(4) Staff shall not read materials that they know are legal materials.

DOC 376.13 Search of youth. (1) Searches of youth may be conducted as follows:

(a) *Personal search.* Staff may conduct a personal search of a youth under any of the following circumstances:

1. If staff have reasonable grounds to believe that the youth possesses contraband.
2. At the direction of the shift supervisor, either orally or in written job instructions or post orders.
3. Before a youth enters or leaves the security enclosure of an institution.
4. Before a youth enters or leaves the security unit or changes status within the security unit of an institution.
5. Before and after a youth has been with a visitor.
6. As part of a lockdown or a search of a housing unit or institution under s. DOC 376.11 or 376.12.
7. When a youth is apprehended after an escape or an attempted escape.

(b) *Strip search.* A strip search may only be conducted in a clean place and a place that is as private as is reasonably possible. Except in emergencies, a person of the same sex as the youth being searched shall conduct the strip search. A strip search of a youth may be conducted under any of the following circumstances:

1. Before a youth leaves or enters the security enclosure of an institution.
2. Before a youth leaves or enters the segregation unit of an institution.
3. Before or after a youth has been with a visitor.
4. When a youth is apprehended after an escape, an attempted escape or an attempt to hide from staff.
5. At the direction of the superintendent who may delegate to a supervisor.
6. When a youth changes status within the confines of a segregation building.

(c) *Body cavity search.* A body cavity search may only be conducted if the superintendent approves, upon probable cause to believe that contraband is hidden in a body cavity. Medical or nursing staff shall conduct body cavity searches. The superintendent shall promptly notify the administrator of all body cavity searches.

(d) *Body contents search.* A body contents search may only be conducted by persons who are appropriately licensed or certified by law to take blood samples and x-rays and perform other appropriate procedures requiring a license or certification. Staff of the same sex as the youth being searched shall collect urine specimens. Trained staff may conduct breath specimen tests. Staff may direct that a body contents search be conducted under any of the following conditions with the approval of the superintendent:

1. If one or more staff, from direct observation or reliable sources, have reasonable grounds to believe that a youth has used, possesses or is under the influence of intoxicating substances, as defined in s. DOC 373.46 (1) or possesses other contraband that may be detected by a body contents search.

2. Upon intake in the assessment and evaluation process.

3. After a youth returns to the institution from any absence from the institution.

4. After a youth has been with a visitor.

5. As part of a random testing program in which staff do not select youth by name or for a specific reason.

6. Pursuant to a court order requiring the youth to submit to drug testing.

(2) Results of searches and any contraband, test results or other evidence obtained under sub. (1) may be used as evidence at a disciplinary hearing conducted pursuant to s. DOC 373.73.

(3) Contraband shall be disposed of in accordance with s. DOC 376.17.

(4) A written report or written log entry of all searches under sub. (1) shall be filed with the superintendent. The report shall state all of the following:

(a) The identity of the staff member who conducted the search and the shift supervisor who approved it.

(b) The date and time of the search.

(c) The identity of the youth searched.

(d) The reason for the search. If the search was a random search the report shall state that it was random.

(e) Any objects seized pursuant to the search.

(f) The identity of all staff present when the search was conducted.

(5) Staff shall preserve the dignity of youth to the extent reasonably possible in all searches conducted under this section.

(6) Before a search is conducted pursuant to this section, a youth shall be informed that a search is about to occur, the nature of the search and the location where the search is to occur.

(7) In deciding whether there are reasonable grounds to believe a youth possesses contraband or whether there is probable cause that contraband is hidden in a body cavity, staff shall consider:

- (a) Observations of staff.
- (b) Information provided by a reliable informant.
- (c) The experience of a staff member.
- (d) Prior seizures or detection of contraband from the youth or living quarters of the youth.

DOC 376.14 Search of visitors. (1) Before a visitor is permitted in an institution, staff responsible for the admission of visitors shall be satisfied that the visitor is not carrying an unauthorized object into the institution.

(2) Each institution shall have information readily available to visitors informing them of the objects they may carry into the institution. Each institution shall have a place for the safekeeping of objects that may not be carried into the institution and shall permit visitors to store objects in these places.

(3) Before admitting a visitor, staff responsible for admission of visitors may request visitors to empty pockets and containers, permit the inspection of containers or submit themselves and objects they carry into the institution to inspection by a device designed to detect metal or unauthorized objects.

(4) (a) Before admitting a visitor, staff responsible for admission of visitors may request a visitor to submit to a personal search, which the superintendent and the administrator must authorize, if there are reasonable grounds to believe the visitor is concealing an unauthorized object.

(b) If following a personal search, staff has reasonable grounds to believe a strip search is necessary, staff shall request the sheriff or local law enforcement to conduct the search. If the sheriff or local law enforcement cannot or will not conduct the strip search, staff shall ask the visitor to leave.

(5) Before an inspection or search is conducted pursuant to subs. (3) or (4), the visitor shall be informed orally and in writing, either by a sign posted in a prominent place or on a notice, that the visitor need not permit the inspection or search and that if the visitor does not give permission, the visitor shall not be admitted to the institution.

(6) If staff find an unauthorized object under subs. (3) or (4), the visitor may be denied entry to the institution and visiting privileges may be suspended.

(7) If a visitor is denied entry to an institution for refusal to permit a search or if a search is conducted of a visitor under sub. (4), the staff involved shall submit a written report to the superintendent that states all of the following:

(a) The identity of all staff involved and the person who approved the search.

(b) The identity of the visitor and the youth being visited.

(c) The date and time of the search or proposed search.

(d) The reason for the request to permit a search, including the basis for the belief that unauthorized objects were concealed by the visitor.

(e) Whether unauthorized objects were seized pursuant to the search and a description of the objects.

(f) Any involvement of the sheriff or local law enforcement.

(8) If an unauthorized object is found pursuant to a search of a visitor, the superintendent shall dispose of the object consistent with s. DOC 376.17.

(9) Staff shall conduct all inspections and searches in a courteous manner and shall strive to protect the dignity of visitors who are inspected or searched.

DOC 376.15 Search of staff. (1) A superintendent may require that staff submit to a personal search before they enter or leave an institution. As part of the personal search, the superintendent may require staff to submit themselves and objects they carry into or out of the institution to inspection by a device designed to detect metal or unauthorized objects. A superintendent may require that staff vehicles and personal possessions be searched while on institution grounds. A superintendent, with approval of the administrator, may require that staff submit to a strip search. Approval for any search shall be given only if there are reasonable grounds to believe the individual being searched is concealing an unauthorized object.

(2) Staff who refuse to submit to a search shall not be admitted to the institution and may be subject to disciplinary action.

(3) If an unauthorized object is found pursuant to a search conducted under this section, the superintendent shall dispose of the object consistent with s. DOC 376.17.

(4) All searches shall be conducted in a courteous manner. Staff shall strive to protect the dignity of staff who are searched.

(5) Each institution shall give staff written notice of the objects they may not carry into or out of the institution.

(6) If a search is conducted under this section, the staff who conducted the search shall submit a written report to the superintendent that includes the information required by s. DOC 376.13(4).

DOC 376.16 Factors to consider to determine if a search is necessary. Prior to searching a visitor, a youth or other staff, staff shall determine that reasonable grounds or probable cause exists to believe the person being searched possesses contraband. Staff shall consider all of the following factors.

(1) The reliability of information provided by an informant indicating the existence of contraband by assessing whether the information is detailed, consistent and corroborated.

(2) The reliability of an informant by considering whether the informant has supplied reliable information in the past and whether the informant has reason to supply inaccurate information.

(3) The activity of a visitor, youth or staff that relates to whether the person to be searched might carry contraband.

(4) The information provided by the person who may be searched which is relevant to whether the person possesses contraband.

DOC 376.17 Seizure and disposal of contraband.

(1) Staff who reasonably believe that an item is contraband may seize the item. Items seized shall be sent to the superintendent accompanied by the written report required under ss. DOC 376.13(4) and 376.14(7). Items that are not contraband shall be returned to the owner consistent with institution policy and procedure. Contraband shall be returned to the owner, given to the sheriff or local law enforcement agency or disposed of in accordance with this section.

(2) If staff writes a conduct report, as defined in s. DOC 373.03(4), the superintendent shall determine the manner of disposal of contraband under sub. (3) after completion of a disciplinary hearing under s. DOC 373.73.

(3) Disposal of contraband shall be accomplished in one of the following ways:

(a) Except as otherwise provided in this subsection, if the owner can be determined, the superintendent may direct that the contraband be returned to the owner. Contraband may not be returned to a youth unless its return is consistent with this section and the institution's policies and procedures.

(b) Property that is unlawful to possess under state or federal law shall be given to the sheriff or a local law enforcement agency.

(c) Intoxicating substances shall be given to the sheriff or a local law enforcement agency or destroyed at the direction of the superintendent.

(d) Weapons shall be given to the sheriff or a local law enforcement agency or destroyed at the direction of the superintendent.

(e) Currency shall be returned to the owner if the owner is known, except that if a youth is the owner of currency, it shall be deposited in the youth's account. Currency shall be placed in the state's general fund if the owner cannot be determined.

(f) Checks and other negotiable instruments shall be returned to the maker. If it is not possible to locate the maker, the checks or negotiable instruments shall be given to the sheriff or a local law enforcement agency.

(g) Other property, whose ownership is unknown, shall be sold through the department's purchasing office and proceeds of the sale shall be placed in the state's general fund. Items having an apparent value of \$5.00 or less shall be destroyed in accordance with the policies and procedures of the institution.

(h) If it is determined that a youth is the owner of contraband that is lawful to possess, other than currency, but return of the contraband is inconsistent with the department's rules or the institution's policies and procedures, the superintendent shall do one of the following:

1. Give the contraband to the sheriff or a local law enforcement agency.
2. Store the contraband in the institution until the youth is discharged or otherwise released from the institution.
3. Deliver the contraband by mail or commercial carrier to a person on the youth's visiting list at the expense of the youth.
4. Deliver the contraband to a person on the youth's visiting list when the person visits the institution.
5. Destroy the contraband, consistent with institution policy and procedure.

(4) A youth who is the owner of property under sub. (3) shall receive notice of the proposed disposition of the property at least 3 days prior to the disposition. The youth may appeal the decision by filing a complaint under ch. DOC 380. The property shall not be disposed of until the complaint is resolved.

DOC 376.18 Report of contraband seized. Each month the superintendent of each institution shall submit to the administrator a report of all contraband seized, the place and time it was seized, and the identity of the person possessing the contraband. If the contraband was not found in the possession of a person, the report shall state that fact.

DOC 376.19 Lockdown. In the event of a safety or security need, the superintendent may at any time lockdown an institution to investigate and control the situation. The superintendent shall give the secretary and the administrator advance notice, when possible, of any lockdown. If advance notice cannot be given, the superintendent shall notify the secretary and the administrator of a lockdown as soon as possible.

DOC 376.20 Disturbance plan. (1) In this section, a disturbance means any of the following have occurred:

- (a) Two or more youth assault any person.
- (b) A youth has taken a hostage.

(c) Two or more youth destroy state property or the property of another person.

(d) Two or more youth, acting in concert, refuse to comply with an order to return to living quarters or to go to a place.

(e) One or more youth incite or encourage one or more youth by words or acts to do any of the acts referred to in par. (a) to (d).

(2) Each institution shall have a written plan, a copy of which shall be filed with the administrator, to control and stop a disturbance. The plan shall be prepared by the superintendent and shall be reviewed at least once a year.

(3) The purposes of the disturbance plan are:

(a) To ensure, as the highest priority, the safety and welfare of the general public, staff and youth.

(b) To protect property.

(c) To maintain and restore order to the institution.

(d) To identify any person who participated in the disturbance, to provide for disciplinary action to be taken according to ch. DOC 373 and to provide relevant information to the sheriff or local law enforcement agency so that participants can be prosecuted.

(4) Staff who are taken hostage have no authority to order any action or inaction by staff.

(5) If a major disturbance occurs that prevents the normal functioning of the institution, the superintendent may suspend the administrative rules of the department that relate to the division, except ss. DOC 376.05 through DOC 376.09, until the disturbance is ended and order is restored to the institution.

(6) A superintendent shall immediately notify the administrator of a disturbance.

(7) If a disturbance occurs and a person is injured or if it results in a suspension of the rules under sub. (5), the secretary may convene a disturbance review panel to investigate the disturbance. The panel shall be made up of persons selected in accordance with sub. (8). The panel shall have adequate staff to conduct a thorough investigation of the disturbance.

(8) A disturbance review panel shall consist of 5 persons selected as follows:

(a) Two members designated by the secretary, one of whom shall be a member of the public and one of whom shall be a member of the department staff who shall serve as chairperson.

(b) Two members designated by the administrator, one of whom shall be a member of the administrator's central office staff and one of whom shall be a member of the public.

(c) One member to be designated by the superintendent of the institution where the incident occurred from the institution staff.

(9) A disturbance review panel shall submit a written report to the secretary that includes the facts relevant to the incident and states a conclusion as to whether the department's rules were complied with.

DOC 376.21 Emergencies. (1) In this section, "emergency" means an immediate threat to the safety of the staff or youth of an institution, as determined by a superintendent, other than a disturbance as defined in s. DOC 376.19 (1). An emergency may include, but is not limited to:

(a) An epidemic.

(b) A malfunctioning of institution systems including the water, electrical or telephone system.

(c) A fire.

(d) A bomb threat or explosion.

(e) An employee strike.

(f) A natural disaster.

(g) A civil disturbance.

(2) Each institution shall have a written plan, a copy of which shall be filed with the administrator, to be implemented in the event of an emergency.

(3) The purposes of the emergency plan shall be:

(a) To ensure as the highest priority, the safety and welfare of the general public, staff and youth.

(b) To protect property.

(c) To maintain or restore order to the institution.

(d) To identify any person who contributed to the creation of an emergency and to provide this information to the sheriff or local law enforcement agency for prosecution.

(4) If an emergency occurs that prevents the normal functioning of the institution, the superintendent may suspend the administrative rules of the department that relate to the division, except ss. DOC 376.05 through DOC 376.09, until the emergency is ended and order is restored to the institution.

(5) The superintendent shall provide immediate notification of an emergency to the administrator.

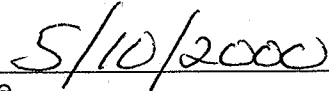
(6) If an emergency occurs, the secretary may convene a review panel to investigate the emergency. The panel shall be made up of persons selected in accordance with s. DOC 376.19 (8). The panel shall be provided with staff adequate to conduct a thorough investigation of the emergency.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 226.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary



Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal ch. HSS 339 and create ch. DOC 379, relating to resources for youth placed under the supervision of the department of corrections in a Type 1 secured correctional facility.

Statutory authority: ss. 227.11 (2) and 938.48 (16), Stats., and s. 9126(23)(e) of 1995 Act 27.
Statutes interpreted: ss. 938.01 (2) and 938.505 (1), Stats.

Analysis by the Department of Corrections

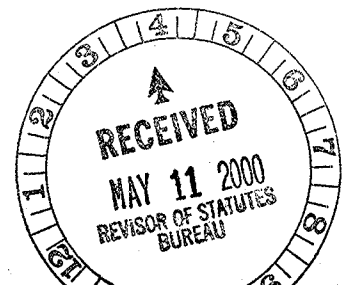
The proposed rule identifies resources available to youth under the supervision of the department in a type 1 secured correctional facility. Resources are designed to provide the optimum opportunities for treatment and programming within the institution, to assist youth in living responsible productive lives, and to manage the institution safely.

Specifically, the purpose of this chapter is to structure the resources available to youth in order to balance the needs for public protection, youth accountability, youth skill-building, and provision of services in a safe, humane and caring environment.

When the juvenile corrections division was part of the then-department of health and social services, ch. HSS 339 governed "living conditions". The analysis below includes identification and explanation of major differences between ch. HSS 339 and the proposed rule.

Under this proposed rule:

1. The rules incorporate references to the department of corrections and ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, so the rules are consistent with current law.
2. Terms used in ch. HSS 339 were defined by reference to other HSS chapters. Many of the definitions in ch. DOC 379 are new, interpreting terms that experience has shown need clarification. Readers are no longer required to refer to other chapters to find relevant definitions.
3. Section DOC 379.04 permits youth to correspond with family, friends and government offices, in order to foster community reintegration and assure legal rights. Compared to s. HSS 339.02, the DOC rules place additional limits on correspondence to address problems of institution security and public safety that have been experienced when youth abused their mail privileges, while still allowing appropriate correspondence.
4. As in s. HSS 339.03, youth may receive publications, approved by the superintendent, such as books and magazines under s. DOC 379.05. Youth have similar due process rights under s. DOC 379.05 (4) and in s. HSS 339.03.
5. Both s. HSS 339.04 and s. DOC 379.06 facilitate appropriate news media access to youth in type 1 institutions, as a means of fostering greater public understanding of youth corrections.



6. Section DOC 379.07 and s. HSS 339.05 govern visitation policies and procedures. The DOC general policy statement s. DOC 379.07 (1) emphasizes the treatment needs of youth as well as the secure and orderly operation of the institution, while s. HSS 339.05 (1) did not mention institution operation considerations. The DOC provision at s. DOC 379.07 (3)(e) permits at least 6 hours of visitation per week which is a reduction from the 9 hour minimum in s. HSS 339.05, in recognition of institution security and offender management resource limitations. The no-contact visit at s. DOC 379.07 (6) is a new provision that permits a visit with enhanced security.
7. Section DOC 379.08 explains the requirements for holding special events at an institution, in a similar manner to s. HSS 339.06.
8. The general policy that youth shall have access to the legal system and that institution policies shall not adversely affect youth's access appears in both s. HSS 339.07 and s. DOC 379.07. Section HSS 339.07 (3) contained a provision requiring the division to make reasonable efforts to assure the availability adequate legal services. Since the division lacks financial resources to provide legal services for youth, s. DOC 379.09 (2) (d) states that the rules do not require the department to use its resources to provide legal services.
9. Under s. DOC 379.10 and s. HSS 339.08, provisions describe property youth may possess, methods for obtaining property, the required written inventory and institution liability for property. New s. DOC 379.10 (7) covers disposal of property upon release, escape or death of a youth.
10. New section DOC 379.11 regarding youth religious practices states that the department may not discriminate on the basis of a youth's or group's religion, but may modify a youth's religious practices based on certain considerations, including safety, security, rehabilitation and fiscal limitations.
11. Section DOC 379.12 requires the institution to provide leisure time activities for youth in the general population.
12. The department, under s. DOC 379.13, shall provide an education program to every youth under age 18 years who has not earned a high school diploma or equivalent, and offer a program to every youth age 18 years or over. The rule does not include all of the verbiage of s. HSS 339.16 regarding education programs, since much of that rule was a restatement of existing state and federal laws.
13. New section DOC 379.15, not addressed in ch. HSS 339, provides for health care services for youth, administered by qualified health care providers.
14. Under s. DOC 379.16 (1) and similarly in s. HSS 339.10, the division shall provide nutritious food for all youth in type 1 institutions. As in s. HSS 339.10 (4), s. DOC 379.16 (4) requires provision of a medically-prescribed special diet, but adds a qualification that the diet shall be consistent with the department diet manual and available resources. In new sub.(5), the rule requires the provision of liquids to sustain health.

15. Under s. DOC 379.17, each institution shall create specific clothing policies that provide youth with adequate clothing, and repair or replace clothing damaged by normal wear, as in s. HSS 339.11.
16. As in s. HSS 339.12, the proposed rule, s. DOC 379.18 (2) specifies the minimum number of bathing periods and clothing changes to be afforded youth each week and further specifies that these minimum numbers apply only to youth in the general population (i.e., not in security or other special status). One additional provision, s. DOC 379.18 (3)(b), prohibits a youth's hairstyle from disguising identity or concealing contraband, for reasons of institution security.
17. Similarly to s. HSS 339.13, s. DOC 379.19 provides that housing of youth shall be made in a non-discriminatory manner and in accordance with the original design capacity of the institution, except when the superintendent declares a housing emergency under sub. (2). In s. DOC 379.19 (4), allowable criteria for room assignment are articulated more extensively than in s. HSS 339.13 (5).
18. Provisions under s. DOC 379.20 regulate youth funds and accounts in very similar ways as under s. HSS 339.14.
19. The policy section regarding telephone calls, s. DOC 379.21 (1), is expanded from s. HSS 339.15 (1) to include more provisions for maintaining institution security and orderly management. For example, the superintendent may monitor and record a youth's telephone call and disclose the contents to other persons under the proposed security rule (ch. DOC 376), or use the contents of a recording for investigatory, disciplinary or evidentiary purposes. Telephone calls to attorneys are governed by s. DOC 379.21 (6) which does not include the provisions in s. HSS 339.15 that listed reasons for staff to approve a youth's request to call the youth's attorney. The new DOC subsection permits a youth enhanced access to his or her attorney.

SECTION 11. Chapter HSS 339 is repealed.

SECTION 12. Chapter DOC 379 is created to read:

CHAPTER DOC 379

**LIVING CONDITIONS FOR YOUTH IN TYPE 1
SECURED CORRECTIONAL FACILITIES**

DOC 379.01 Authority and purpose	DOC 379.12 Leisure time activities
DOC 379.02 Applicability	DOC 379.13 Education programs
DOC 379.03 Definitions	DOC 379.14 Social services
DOC 379.04 Mail	DOC 379.15 Health services
DOC 379.05 Publications	DOC 379.16 Food and liquids
DOC 379.06 News media access to youth	DOC 379.17 Clothing
DOC 379.07 Visitation	DOC 379.18 Personal hygiene
DOC 379.08 Special events	DOC 379.19 Living quarters
DOC 379.09 Access to courts, legal services and materials	DOC 379.20 Youth funds and accounts
DOC 379.10 Property	DOC 379.21 Telephone calls
DOC 379.11 Religion	

DOC 379.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11(2) and 938.48(16), Stats., to structure the resources available to youth to balance the need for public protection, youth accountability, youth skill-building and the provision of services to youth in a safe, humane and caring environment.

DOC 379.02 Applicability. This chapter applies to the department and all youth who are under its supervision in a type 1 secured correctional facility consistent with the requirements of law.

DOC 379.03 Definitions. In this chapter:

(1) "Activity group" means youth who participate in a group organized to promote educational, social, cultural or other lawful activities approved by the department.

(2) "Administrator" means the administrator of the division of juvenile corrections or that person's designee.

(3) "Agent" means a person employed by the department or a county department to provide community supervision of a youth and authorized to make decisions regarding community supervision matters.

(4) "Close confinement" means restriction of a youth to the youth's assigned room with a minimum of one hour of out-of-room time per day.

(5) "Close family member" means a youth's natural, adoptive, step and foster parents, spouse, children, grandparents or siblings. A parent surrogate is within the definition of parent if investigation substantiates that a claimed surrogate did in fact act as a parent to the youth although the parent surrogate was not an adoptive, foster or stepparent.

(6) "Community supervision" means the corrective sanctions program under s. 938.533, Stats., aftercare under s. 938.34(4n), Stats., the serious juvenile offender program under s. 938.538, Stats., and type 2 secured correctional facility supervision under s. 938.539(2), Stats.

(7) "Contraband" means any of the following:

(a) Any item which subch. VI of ch. DOC 373 prohibits a youth from possessing.

(b) Any item which is not state property and is on the institution grounds, but not in the possession of any person or in an approved location.

(c) Stolen property.

(d) Any item that is not on a youth's property list and is required to be.

(e) Any item of a type that is not allowed according to posted policies and procedures.

(f) Allowable items in excess of the quantity allowed according to policies and procedures.

(g) Items in the possession of a youth that do not belong to the youth, except for state property issued to the youth for personal use.

(h) Anything used as evidence in a disciplinary hearing that is deemed to be contraband by the hearing officer.

(8) "County department" means a county department under s. 938.02(2g), Stats.

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

(10) "Gang" means a group of people that threatens, intimidates, coerces, or harasses other people or engages in activities that intentionally violate, or encourage the intentional violation of state or federal laws or regulations, municipal ordinances or institutional policies or procedures.

(11) "General account" means an account established to receive youth pay or allowances under s. 938.48(13), Stats., pensions, disability payments, monetary gifts from family or any other payments to the youth from which disbursements may be made while the youth is under the supervision of the department.

(12) "Guardian" means the person named by the court having the duty and authority of guardianship.

(13) "Institution" means a type 1 secured correctional facility operated by the department.

(14) "Institution housing emergency" means any of the following:

(a) The number of youth exceeds the original design bed capacity of a specific institution.

(b) A portion of any institution's original design bed capacity becomes unavailable for use as living quarters because of fire, storm or other damage, health-threatening contamination, staff unavailability beyond the control of the institution or a disturbance, with the result that the number of youth at a specific institution exceeds the available beds.

(15) "Mail" includes materials such as letters, other items of correspondence and packages processed through the United States postal service or courier including but not limited to United Parcel Service, Federal Express and Dunham Express, and letters and other items of correspondence processed within an institution.

(16) "Major penalty" means removal from general population under s. DOC 373.80 (3).

(17) "Modified confinement" means restriction of a youth to the youth's assigned room with a minimum of 4 hours of out-of-room time per day.

(18) "No-contact visiting" means visitation during which no physical contact is permitted between a youth and a visitor.

(19) "Obscene material" means a writing, picture, sound recording or film, about which all of the following are true:

(a) The average person, applying contemporary community standards, would find it appeals to the prurient interest if taken as a whole.

(b) Under contemporary community standards, describes or shows sexual conduct in a patently offensive way.

(c) Lacks serious literary, artistic, political, educational or scientific value, if taken as a whole.

(20) "Parent" has the meaning given in s. 938.02(13), Stats.

(21) "Representative of the news media" means any person 18 years old or older who is a credentialed member of the press, including broadcast or print journalism, who visits an institution for the purpose of investigation and reporting.

(22) "Restitution" means payment owed by a youth to a victim, the court or the department pursuant to s. 938.34 (5)(a) or (8d), Stats.

(23) "Secretary" means the secretary of the department of corrections or that person's designee.

(24) "Special events" means activities beyond regularly scheduled program events, including but not limited to, sporting events, guest speakers, concerts or recognition events.

(25) "Staff" means an employee of the institution, where a youth is housed.

(26) "Superintendent" means the superintendent of a type 1 secured correctional facility or that person's designee.

(27) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19), Stats.

(28) "Type 2 secured correctional facility" has the meaning given in s. 938.02 (20), Stats.

(29) "Youth" means a person or persons supervised by the department in an institution consistent with the requirements of law, regardless of age.

DOC 379.04 Mail. (1) POLICY. Communication fosters reintegration into the community and the maintenance of family ties. A youth may communicate with government offices, courts, approved family members and other persons concerned with the youth's welfare as approved by the superintendent and consistent with program needs and the need to protect the public.

(2) CORRESPONDENCE LIST. There shall be an approved correspondence list for each youth. The list shall include the name, date of birth, address, and relationship to the youth for all approved correspondents.

(b) Except as otherwise provided in this chapter, only individuals on a youth's approved list will be permitted to correspond with the youth. To the extent compatible with program goals and institution needs, a youth shall be permitted to correspond with close family members. If the superintendent grants prior approval, other relatives, friends, or interested persons may also correspond with the youth.

(3) INCOMING MAIL. (a) Mail addressed to youth shall be promptly delivered, except as provided in this section.

(b) Incoming mail to a youth, except as provided in sub (5), may be opened, read and inspected for contraband, if the youth consents in writing to receive mail through institution mail services. Contraband shall not be delivered and shall be returned to the sender, unless it is a violation of the laws of Wisconsin or the United States to possess the contraband, in which case, the contraband shall be disposed of as provided in s. DOC 376.17.

(c) If a youth does not consent under par. (b), the institution shall return incoming mail addressed to the youth to the post office unopened and marked "refused."

(d) If a letter has no return address, it shall be opened, inspected and read to identify the sender and determine if the sender is on the approved correspondence list. If the sender cannot be identified, the mail will be disposed of consistent with institution procedures.

(e) If incoming mail is not given to the youth, the mail and a written notice stating why the mail was not delivered shall be promptly sent by the superintendent to the sender. The mail and written notice will not be sent if the sender is a youth or an adult under the supervision of or in the custody of the department. The youth to whom the letter was sent shall be given a written notice within 3 working days that the mail was not delivered, the reason for non-delivery and the identity of the sender.

(4) OUTGOING MAIL. (a) At least one letter per week may be sent at department expense. Additional mail may be sent at department expense as authorized by the superintendent. If a youth pays for the postage, additional letters may be sent by the youth.

(b) Outgoing mail from a youth, except as provided in sub (3), may be opened, read and inspected for contraband, if the youth consents in writing to send mail through institution mail services. The contraband shall be disposed of as provided in s. DOC 376.17.

(c) If outgoing mail is not sent, the superintendent shall promptly send a notice to the youth stating why the letter was not sent. The letter will be disposed of consistent with institution procedures.

(5) SPECIAL CORRESPONDENCE. Staff may open and inspect, but not read mail received by youth from or sent by a youth to any of the persons listed below only in the presence of the youth. Staff shall inspect the document to determine if the mail contains contraband. Mail containing contraband shall be confiscated. This subsection applies to mail clearly identifiable as being from or to one or more of the following parties:

(a) The governor of Wisconsin.

(b) Members of the legislature.

(c) Members of the United States congress or the president of the United States.

- (d) The secretary.
- (e) Department staff acting within their official capacity.
- (f) The attorney general of Wisconsin or an assistant attorney general of Wisconsin.
- (g) The clerk or judge of any state or federal court.
- (h) An investigative agency of the federal government.
- (i) An attorney.

(6) RESTRICTIONS. Except as provided in sub. (3), the following restrictions apply to all youth correspondence:

(a) Incoming and outgoing mail may not be delivered if it does any of the following:

1. Threatens criminal activity.
 2. Threatens or attempts blackmail or extortion.
 3. Relates to sending contraband in or out of an institution or contains contraband.
 4. Relates to plans to escape.
 5. Relates to any gang activity.
 6. Relates to activity that, if completed, would violate the laws of Wisconsin or of the United States or the administrative rules of the department.
 7. Is in code.
 8. Solicits gifts from a person other than a family member or a person on the visiting list.
 9. Is obscene material.
 10. Contains information that, if communicated, would create a danger of physical or mental harm to any person.
 11. Relates to a contract that the youth is asked to enter into or seeks to enter into.
- (b) Mail shall not be delivered to a youth or sent by a youth if the sender or recipient is not on the approved correspondence list for the youth. Mail to or from a person not on the approved correspondence list shall be returned to the sender or disposed of consistent with institution procedures.

(c) The department shall obtain written approval from the parents or guardian of a person under 18 years of age with whom a youth requests permission to correspond. If the parents or guardian approve, correspondence may be permitted. If the parents or guardian do not

approve, permission to correspond shall be denied. A youth may not correspond with another youth in an institution.

(7) RECORD. (a) The superintendent shall keep a record of any mail that is not delivered to the youth or mailed from the institution. It shall include the name of the youth, and the sender or recipient, the date, and the reason for non-delivery or failure to mail.

(b) A record of cash, incoming checks, money orders and any negotiable instruments shall be kept by the institution. The record shall include the name of the sender, name and identifying number of the receiving youth, the amount and date received.

(c) The institution shall maintain a record of items of person property received through the mail as under s. DOC 379.10.

(8) APPEAL. A youth may appeal a decision under this section within 10 days of receipt of the written notice to not deliver incoming or mail outgoing mail. The appeal shall be in writing to the superintendent.

(9) VIOLATION. If a youth or a member of the public is alleged to have committed a violation under this section or institution policies and procedures, the superintendent may take disciplinary action under ch. DOC 373. If a violation occurred, the superintendent may suspend the youth's mail privileges with the person involved in the violation for a specified period of time based upon the severity of the violation and the record of prior violations, if any. A youth may file a complaint under ch. DOC 380 regarding suspension of mail privileges under this subsection.

DOC 379.05 Publications. (1) Youth are permitted and encouraged to read. Reading fosters correctional objectives by educating youth and keeping them informed of events and issues in the community. The department shall facilitate youth reading of publications, including books, magazines, newspapers and pamphlets consistent with correctional objectives and youth program objectives.

(2) The superintendent may create an approved list for youth subscriptions that shall be made available to all youth. A youth may request that the superintendent add publications to the approved list. Youth shall not receive publications that are not on the approved list. Youth must receive publications directly from the publisher and the youth must have sufficient resources to pay for the publications.

(3) Youth may not possess, receive or read publications that do any of the following:

(a) Teach or advocate violence or hatred.

(b) Present a danger to institution security and order.

(c) Teach or advocate behavior that violates the law of Wisconsin or the United States or the rules of the department.

(d) Teach or describe the manufacture or use of weapons, explosives, drugs or intoxicating substances.

(e) Meet the definition of obscene material.

(f) Teach or describe the manufacture or use of a device that creates a substantial danger of physical harm to self or others.

(4) If a publication is not delivered under subs. (2) or (3), the superintendent shall notify the youth within 3 working days that the publication will not be delivered and the reason it will not be delivered. The youth may file a complaint under ch. DOC 380 regarding the failure to deliver a publication under this section.

DOC 379.06 News media access to youth. (1) It is the policy of the department to permit visits to correctional institutions by representatives of the news media. Visits and interviews by representatives of the news media with staff and youth can foster the public's understanding of the qualities, problems and needs of youth and institutions. That understanding helps to develop community acceptance and support of correctional objectives which enhances the achievement of those objectives, including reintegration into the community.

(2) If a representative of the news media requests an opportunity to interview a youth, the superintendent may permit the interview consistent with institution needs and program needs of the youth. The superintendent shall obtain parental or guardian approval for a youth under the age of 18 before the interview. An interview may be refused if any of the following occur:

(a) The superintendent determines that an interview will jeopardize or be detrimental to the safety or order of the institution or the welfare or program of a youth.

(b) The clinical services supervisor believes that the youth has emotional problems which are likely to be exacerbated by an interview or believes the youth is mentally ill.

(c) The youth is in close confinement.

(d) The youth refuses to be interviewed.

(e) The parents of a youth under the age of 18 years object to the interview.

(f) The welfare of the victim, the victim's family or the community would be jeopardized.

(3) Representatives of the news media may not photograph any youth in a manner that would reveal the identity of the youth.

(4) All visits and interviews conducted under this section are subject to specific policies and procedures of the superintendent as to time, location, length, staff presence and the equipment used. The superintendent may terminate an interview consistent with this chapter at any time.

(5) All representatives of the news media who are granted interviews under this section shall sign a prior written agreement not to reveal the identity of any youth or to disclose information that would lead to the youth's identity.

(6) A superintendent may permit anonymous interviews of a youth.

DOC 379.07 Visitation. (1) POLICY. The department shall administer a visiting program that regulates visitation of youth by family members and other persons consistent with program goals and resources available, the department's responsibility for the secure and orderly operation of institutions, public safety and the protection of visitors, staff and youth.

(2) VISITING LIST. (a) There shall be an approved visitor list for each youth. A youth's approved visitors list shall show the name, date of birth, address and relationship to the youth of all approved visitors.

(b) Except as otherwise provided in this chapter, only visitors on a youth's approved list will be permitted to visit the youth. To the extent compatible with program goals and institution needs, a youth shall be permitted to receive visits from close family members. If the superintendent grants prior approval, other relatives, friends, or interested persons may also visit.

(c) Children of the youth and children of approved visitors who have not attained their 18th birthday may visit. Children of the youth and approved visitors may not visit unless they have the written approval of a non-incarcerated custodial parent or guardian or a court order directing the visit. The names of children must appear on the approved visitors' list. Approved children may visit if accompanied by an approved adult, subject to exceptions that may be granted by the superintendent.

(d) All of the following procedures apply to proposed visitors:

1. A youth or proposed visitor may submit a written request to the superintendent asking that the proposed visitor be added to the list.

2. If additional information is required from a proposed visitor, staff shall send a questionnaire to a proposed visitor for completion and return to the institution. If the questionnaire is not returned, the request may not be approved.

3. If additional information is required from a youth, staff shall request the information from the youth. If the youth fails to provide the needed information, the request may not be approved.

4. A copy of the visiting rules shall be sent to each person on the approved visitors' list.

5. The superintendent may request a field investigation if further information is necessary.

(e) The superintendent may deny the addition of a person to the approved visitor's list or remove a person from the approved visitors' list based on any of the following:

1. The requesting youth provided false or incorrect information or knowingly provided incomplete information.

2. The proposed visitor provided false or incorrect information or knowingly provided incomplete information.

3. There is no signed and dated approval of a non-incarcerated custodial parent or guardian for a proposed visitor less than 18 years of age.

4. There are reasonable grounds to believe that the visitor has attempted to bring contraband into any correctional institution.

5. There are reasonable grounds to believe the visitor poses a threat to the safety and security of visitors, staff, youth or the institution.

6. There are reasonable grounds to believe that the youth's reintegration into the community or rehabilitation would be hindered.

7. There is a court order prohibiting a visit.

8. There are reasonable grounds to believe that the youth may victimize the proposed visitor or the proposed visitor may victimize the youth.

9. The proposed visitor has been arrested, incarcerated or under correctional supervision within the previous 12 months. Exceptions may be made for close family members under sub. (7).

10. A visitor was approved by mistake or based on inadequate or incorrect information.

11. The proposed visitor is a current or former employee of the department or a person who provided services to the department within the past 12 months and the proposed visitor has violated the department's policy regarding fraternization.

(f) The superintendent shall also determine, every 60 days, whether visits shall be no-contact visits, based on institution security or any of the following:

1. The visitor has violated department rules or institution policies and procedures relating to visiting at any institution operated by the department.

2. The visitor introduced contraband into any correctional institution, engaged in behavior that threatened the security of any correctional institution or interfered with the rights of others at any correctional institution.

3. The youth has been found guilty of a violation of department rules or institution policies and procedures relating to visiting.

4. The youth has violated s. DOC 373.46 relating to intoxicants and drug paraphernalia.

5. The youth is in close or modified confinement because of a major penalty.

(g) Consistent with available resources and program goals, an institution may place a reasonable limit on the number of persons on a youth's visitors' list. Youth shall retain visitors on the visitors' list for a minimum of 90 days from the date of approval, unless the superintendent waives this provision for cause.

(h) If a person is disapproved by the superintendent for visiting or approved for no contact visiting only, the youth and the person shall be informed of the reasons for the action in writing. A youth may appeal the decision using the complaint procedure in ch. DOC 380. The disapproved person may appeal the decision in writing to the superintendent who shall issue a decision within 15 days of receipt of the appeal and send a copy of the decision to the youth and the disapproved person.

(i) A youth may submit a written request to the superintendent for visits by family members not on the approved visitors list. The superintendent may permit occasional visits by family members not on the approved visiting list and may require notification from the family members in advance of the visits.

(3) REGULATION OF VISITS. (a) Each institution shall develop written policies and procedures relating to youth in the general population concerning all of the following:

1. The time for visits.
2. Weekday, weekend and night visits.
3. The duration of visits.
4. The number or frequency of visits.
5. The number of visitors permitted on each visit.
6. Immediate termination of a visit for a violation of laws of the United States or of the state of Wisconsin, department rules or institution policies and procedures.
7. Items which may be brought into the institution during a visit.
8. The place of visits.
9. No-contact visiting.

(b) Institutions may require visitors of any age to provide picture identification or other identification before permitting the visit.

(c) Each institution shall develop written policies and procedures which may limit visitation for youth in major penalty status by issuing restrictions concerning specific visitors, visitors under the age of 18 years, number of visitors, and the hours for and the location of visits. Each institution shall permit a youth in a major penalty status to visit at least 1 hour per week.

(d) Each institution shall provide visiting access on weekends and some weekdays and evenings consistent with scheduled activities and available resources.

(e) Each institution shall permit a youth in the general institution population to have visits at least six hours per week in visits of such duration as the institution specifies under par. (a).

(f) Specific policies adopted under this section may include requirements necessary to manage the visiting population within the physical space and staff limitations of each institution.

(4) VISITS TO YOUTH ON CONTROL STATUS OR OBSERVATION STATUS. Visits to youth on control status under s. DOC 373.82 (2) or observation status under ch. DOC 375 require the approval of the superintendent.

(5) SPECIAL VISITS. (a) Public officials and members of private or public organizations who provide services to youth may visit with the approval of the superintendent. Prior arrangements for the visits shall be made with the superintendent to minimize interference with normal operations and activities. The superintendent may limit the number of visitors, visits and the duration of visits and restrict visitors to certain areas of the institution for security reasons.

(b) Attorneys, attorney assistants, approved law students and legal interns shall be permitted to visit their clients to provide professional services with the approval of the superintendent, consistent with institution security. The visits shall not count against the allowable number or hours of visits for a youth.

(6) NO CONTACT VISITING. The superintendent may impose no-contact visiting in response to an initial application to visit or upon subsequent review of the visiting status of a youth or visitor, consistent with sub. (2) (f).

(7) INTER-INSTITUTION VISITS BY FAMILY MEMBERS. The superintendent may approve visits between a youth and the youth's spouse, and between parents and children who are confined in a prison or another type 1 secured correctional facility within the state of Wisconsin. The criteria for approval are the same as for other visitors under this section.

(8) CONTACT DURING VISITS. (a) Visitors are required to obey the laws of the United States and the state of Wisconsin, the department's rules and policies and procedures of the institution relating to visiting.

(b) Only physical contact approved by the superintendent is permitted.

(c) Youth and visitors may not pass or exchange items during a visit, unless the superintendent gives prior approval.

(9) SUSPENSION OR TERMINATION OF VISITING PRIVILEGES. (a) The superintendent may suspend or terminate visiting privileges for a violation of the laws of the United States or the state of Wisconsin, the department's rules or those institution policies and procedures of which a youth or visitor had actual or constructive notice, consistent with s. DOC 373.65 (3) (a) and (b), subject to the following:

1. The visitor and youth shall be informed in writing of the suspension or termination and the reasons for the action within 5 days of the violation.

2. The youth may appeal a decision of the superintendent by filing a complaint under ch. DOC 380 within 5 days of receipt of the decision. The visitor may appeal the decision by filing an appeal with the administrator, whose decision shall be final. The administrator shall issue a decision within 15 days of receipt of the appeal and send copies of the decision to the

superintendent, the youth and the visitor. Failure of the administrator to issue a decision upholds the decision of the superintendent.

3. Termination or suspension of visiting privileges under this paragraph may be ordered by the superintendent to protect the security of the institution.

(b) If a youth is alleged to have violated any conduct rule under ch. DOC 373 during a visit, the youth's discipline under ch. DOC 373 may include suspension of visiting privileges with the visitor.

DOC 379.08 Special events. (1) Special events may be held in institutions subject to the approval and regulation of the superintendent.

(2) In regulating special events, the superintendent shall consider all of the following:

(a) Any threat to security posed by the activity.

(b) The benefit to the public and youth.

(c) Staff and other resources available to regulate the activity.

DOC 379.09 Access to courts, legal services and materials. (1) GENERAL POLICY. Youth shall have access to the courts, legal services, and legal materials.

(2) ACCESS. (a) Institutions may establish policies and procedures which relate to access to courts, but such regulations may not unduly delay or adversely affect the outcome of a youth's claim or defense or discourage a youth from seeking judicial consideration of his or her claims.

(b) Appropriately identified legal documents may not be read, censored or altered by correctional staff, nor may delivery be delayed.

(c) A youth shall not be disciplined for seeking judicial or administrative relief.

(d) This section does not require the department to use its resources to provide legal services.

DOC 379.10 Property. (1) POSSESSION OF PROPERTY. Youth are permitted to have a limited and specified amount of property in their possession in an institution in accordance with this section. The institution shall establish policies and procedures under this section relating to the acquisition, possession, use and disposal of property.

(2) PROPERTY LIST. Each institution shall develop and maintain a list of the personal property items permitted at the institution. The list may establish limitations as to the value, type of property and number of particular items. The superintendent may approve additions to the property list if the additions further program goals. Youth shall be provided with a copy of the list when they arrive at the institution and any changes made subsequent to their arrival.

(3) ACQUIRING PROPERTY. Methods approved by a superintendent to acquire personal property may include any of the following:

- (a) Purchase from the institution canteen.
- (b) Purchase from an approved retail outlet.
- (c) Delivery by approved visitors or mail.
- (d) Other methods approved by the superintendent.

(4) INVENTORY. Each institution shall monitor property in a youth's possession. A written inventory shall be maintained of all authorized property in a youth's possession. A youth is responsible for notifying the institution immediately if a discrepancy exists between the inventory and the property in the youth's possession.

(5) COST OF PROPERTY. The cost of personal property items, except those that are medically prescribed, may not exceed an amount approved by the superintendent for each item, excluding taxes and shipping cost. Personal property shall be inventoried for its value and an institution property receipt shall be provided.

(6) INSTITUTION LIABILITY FOR PROPERTY. The institution is not financially liable for the personal property of youth, unless staff negligence is the proximate cause of loss or damage. If staff have negligently caused loss or damage to a youth's personal property, the institution's liability is limited to the value of the property or the cost of repair, whichever is less, at the time of loss or damage, not to exceed the purchase price.

(7) DISPOSAL OF PROPERTY. (a) Each superintendent shall develop policies and procedures, subject to approval of the administrator and consistent with s. DOC 376.17, relating to the disposal of personal property of youth within the institution. Youth may choose the method of disposal, subject to security concerns.

(b) Upon the escape of a youth, the institution shall collect all personal property of the youth as soon as possible, prepare an inventory of the property and place the property in a secure area for safekeeping, subject to disposal under par. (a).

(c) The institution shall not be responsible for damage due to storage or disposal after release or escape.

(d) Upon the death of a youth and satisfactory identification of the parents, the superintendent shall:

1. Prepare an affidavit for transfer of property under s. 867.03, Stats., if the property and funds of the deceased youth have a value of more than \$150.00 and less than \$10,000.00. The affidavit shall be signed by the person claiming the property and shall be filed with the institution prior to transfer of property to the parent in accordance with s. 867.03, Stats.

2. Property with a value of \$10,000 or more is to be managed in accordance with s. 867.01, Stats.

(e) Items received at an institution but not approved shall be disposed of consistent with s. DOC 376.17.

DOC 379.11 Religion. (1) RELIGIOUS BELIEFS AND PRACTICE. (a) The department may not discriminate against a youth on the basis of the youth's religious beliefs. The superintendent may modify a youth's religious practices based on health and safety considerations, the security and order of the institution, the rehabilitation goals of the youth and fiscal and operational limitations.

(b) The department may not require a youth to participate in religious activities but may maintain information concerning a youth's religious activities for administrative purposes.

(c) To the extent reasonable, institutions shall make facilities and other resources available to youth for religious practices permitted under sub. (2).

(2) YOUTH PARTICIPATING IN RELIGIOUS PRACTICES. (a) A youth who wants to participate in religious practices or request a change in religious programming, diet, special foods or authorized property that involves others or that affects the youth's appearance or institution routines shall submit a written request to the superintendent for permission to participate in the religious practice. The request shall include a statement that the youth professes or adheres to a particular religion and shall specify the practices and tenets of the religion in which the youth requests permission to participate.

(b) Upon receipt of the request the superintendent shall, with the assistance of a chaplain or staff with appropriate religious training, determine if the request is supported by tenets of the religion.

(c) In determining whether the request is supported by tenets of the religion the superintendent may consider any of the following:

1. Whether there is literature stating religious principles that support the belief.
2. Whether the beliefs are recognized by a group of persons who share common ethical, moral or intellectual views.

(d) The superintendent shall deny the request if the tenets of the religion or a reasonable variation of those tenets do not support the request.

(e) If the superintendent determines that the request is supported by tenets of the religion, the superintendent shall grant permission to participate in practices that are consistent with orderly confinement, security of the institution and fiscal, staff and space limitations.

(f) The superintendent shall establish written guidelines consistent with this section and institution security needs to govern youth participation in religious practices. The guidelines shall be made available to all youth.

(g) The superintendent shall require a youth to identify a religious preference, if any, to participate in religious activities. A youth may change this religious preference once every six months.

(3) RELIGIOUS SERVICES AND PRAYERS. (a) Each superintendent shall, upon the recommendation of a chaplain or staff with appropriate religious training, coordinate religious programming to the extent possible at the times prescribed or encouraged by the youth's religion.

(b) The superintendent may, upon the recommendation of a chaplain or staff with appropriate religious training, permit representatives of approved religious groups from outside the institution to visit youth, hold services and provide counseling and services commonly provided by chaplains.

(4) RELIGIOUS PROPERTY. A superintendent may permit youth to possess approved religious property required by the youth's religion in accordance with sub. (2).

(5) DIETARY LAWS. (a) To the extent possible, the institution shall plan meals so that youth may maintain a nutritious diet while complying with dietary restrictions prescribed by the youth's approved religion.

(b) An institution may accommodate youth requests for special foods for religious observances.

DOC 379.12 Leisure time activities. Each institution shall provide the youth in the general population with structured and approved leisure time activity, including outdoor recreation, on a regular basis consistent with security, available resources and the priorities of school attendance, scheduled programs and work. Outdoor leisure time activities shall be provided when weather conditions do not pose a risk to health and safety.

DOC 379.13 Education programs. (1) Institutions shall make the following educational programs and services available to youth:

(a) Elementary education, as appropriate.

(b) Junior high school/middle school classes.

(c) Special education for students with exceptional educational needs.

(d) High school credit-generating classes.

(e) High school equivalency programs.

(f) Training in independent living skills.

(g) Pre-vocational and vocational/technical education including work experience.

(h) Reintegration services at the time the youth is released from the institution, including transfer of records and consultation with education staff at the school the youth will attend in the community.

(2) Teachers and staff shall meet state licensing or training requirements from the department of public instruction or the technical college system board. Teachers are required to obtain and maintain their required license or certification.

(3) A youth under the age of 18 years who has not earned a high school diploma or high school equivalency diploma will participate in an education program as required by law.

(4) A youth 18 years or older who has not earned a high school diploma or high school equivalency diploma may participate in educational or vocational programming, but is not legally required to participate.

DOC 379.14 Social services. Each institution shall provide social services for youth. The superintendent shall insure sufficient licensed social worker time to deliver the services necessary to meet the identified goals and objectives in each youth's individual case plan consistent with s. DOC 371.10 (4).

DOC 379.15 Health services. (1) Youth shall have access to health care services.

(2) Ordinary medical and dental care shall be provided to youth consistent with s. 938.505 (1), Stats.

(3) Qualified health care providers shall provide health care based on professionally recognized standards in accordance with state and federal requirements.

DOC 379.16 Food and liquids. (1) The department shall provide nutritious food for all youth. Meals shall satisfy standards of nutrition which meet or exceed the recommended dietary allowances of the food and nutrition board of the national academy of sciences of the national research council and the department of public instruction.

(2) Each institution shall have specific written policies and procedures that regulate eating outside the designated dining area. Institutions may forbid taking foods into living quarters and out of the designated dining area.

(3) The menu for each institution shall be posted weekly in advance of the meals for that week.

(4) If medical staff prescribe a special diet for health reasons, a youth shall be provided the diet, consistent with the department diet manual, related policies and procedures and available resources.

(5) A youth shall be provided sufficient liquids to sustain basic nutrition and health needs.

DOC 379.17 Clothing. (1) Each institution shall provide youth with adequate clothing. All of the following apply to repair or replacement of clothing by an institution.

(a) The institution shall replace or repair clothing damaged by normal wear.

(b) The institution may require a youth to pay the institution for the cost of replacing or repairing clothing that was willfully lost, destroyed or damaged by the youth.

(b) The institution may require a youth to pay the institution for the cost of replacing or repairing clothing that was willfully lost, destroyed or damaged by the youth.

(2) Each institution shall create policies and procedures relating to clothing.

(3) Youth shall dress in a clean, neat and appropriate manner as prescribed by institution policy.

DOC 379.18 Personal hygiene. (1) Each institution shall create minimum personal hygiene standards for its youth. Personal cleanliness shall be the responsibility of each youth.

(2) Institutions shall provide a minimum of 3 showering periods every 7 days for each youth in the general population. When possible, an institution shall permit youth to shower daily. Institutions shall provide clean undergarments, shirts and stockings at least 3 times every 7 days. Youth whose work or other activity makes it desirable shall be allowed more frequent bathing and changes of clothing.

(3) All of the following apply to grooming:

(a) Each institution shall make policies and procedures governing personal hygiene, hair and use of cosmetics.

(b) A youth's hair shall not cover his or her eyes, disguise identity or conceal contraband.

(c) Youth assigned to food preparation and serving areas shall be required to wear hairnets or other suitable hair covering.

(d) Youth performing work assignments that may reasonably be considered to be hazardous shall be required to maintain suitably cropped hair or wear protective headgear for safety purposes.

(4) New identification photographs may be required of any youth whose appearance changes or is altered significantly during confinement as a result of change in hair style, hair length, facial hair growth or removal, maturation or other changes.

DOC 379.19 Living quarters. (1) An institution may not exceed the original design capacity of a room and the institution when assigning youth to rooms, except in an institution housing emergency under sub. (2), or to meet youth program needs. The original design capacity of a room and an institution is the occupancy, number of youth, for which a room and the institution was originally designed.

(2) If the secretary declares an institution housing emergency, the number of youth assigned to living quarters may exceed original design capacity. Conditions for youth assigned to a room in excess of the original design capacity shall be as humane as reasonably possible, consistent with available resources.

(3) There shall be no discrimination on the basis of race or religion in the assignment of youth to living quarters.

(4) The superintendent may consider the following factors before assigning a youth to a room:

- (a) The youth's medical, psychological and psychiatric condition.
- (b) The youth's record of assault or aggressive behavior.
- (c) The youth's overall institutional adjustment.
- (d) The youth's history of sexual behavior.
- (e) The youth's length of sentence.
- (f) The youth's program assignment.
- (g) The total institution population.

(5) Youth shall keep assigned living quarters clean, neat and orderly as directed by staff. Appropriate cleaning materials shall be made available for this purpose.

(a) The institution shall provide youth with clean bed sheets, pillowcases and towels at least once every 7 days. The institution shall provide each youth with a standard issue of blankets and similar items necessary for physical comfort. Youth shall be responsible for their proper care.

(b) The superintendent may establish appropriate policies and procedures to insure proper maintenance of living quarters.

DOC 379.20 Youth funds and accounts. (1) GENERAL POLICY. The institution shall manage youth funds and permit or forbid spending to achieve the following objectives:

(a) To promote the successful reintegration of youth into society through a policy designed to provide youth with funds available upon release that they can manage responsibly.

(b) To prevent the exchange of contraband and victimization within institutions by prohibiting youth from carrying money and by requiring all youth funds to be deposited in accounts for the youth.

(c) To require youth to pay financial obligations.

(d) To permit youth to obtain personal property in accordance with s. DOC 379.10.

(2) DEPOSIT OF MONEY. All money received by an institution for the benefit of a youth shall be credited to the youth's general account. The institution shall issue the youth a receipt for all money received.

(3) ALLOWANCE. Each institution shall deposit in each youth's account a weekly allowance in an amount to be determined by the department.

(4) TRANSFER OF MONEY. Each institution shall create a policy for transfer of money, at the request of a youth, from a general account to a savings account.

(5) CASH GRANT. Each institution shall evaluate a youth's need for a cash grant sufficient to meet the immediate, but unmet needs of the youth for the day of release from the institution. The institution shall consider the amount of money in the youth's account and the availability of other resources in determining the amount of the cash grant.

(6) RECEIPTS. Each youth shall be provided, upon reasonable request, information regarding the youth's accounts, including receipt numbers, disbursements and the balance of the account. Institutions shall provide a youth with monthly statements of the youth's accounts. If a youth has funds in an account in the institution's savings program, a statement from the financial institution that is used for the youth's savings account shall be provided at least quarterly.

(7) DISBURSEMENTS OF GENERAL YOUTH ACCOUNT FUNDS. (a) Each institution shall follow the division's written policies and procedures for disbursement of general account funds by the institution to pay for court-ordered surcharges and restitution, institution restitution or other financial obligations owed by the youth.

(b) Each superintendent shall create a written policy and procedure that will permit youth to request the disbursement of funds in their accounts consistent with sub. (1). The policy and procedure shall be consistent with this chapter and shall include information regarding all of the following:

1. Limit and purpose of requests.
2. How and to whom requests must be made.
3. What must be included in an information request.
4. Who investigates requests.
5. Who approves or disapproves requests.
6. A requirement that all decisions shall be in writing with reasons stating the underlying facts upon which each decision is made.
7. Time limits for decisions.

(c) Youth may not open charge accounts or possess charge cards, purchase items or services on credit or installment plan, receive any property with a balance owing or enter into any agreement incurring a future financial obligation.

(d) When a youth is transferred to another institution, the youth's accounts shall be transferred to that institution within 30 days.

(e) Upon release or transfer to community supervision, youth funds may be transferred to and managed by the youth's agent or county worker.

(8) FUNDS FOR LEGAL CORRESPONDENCE AND COPYING. A youth without sufficient funds in an assigned account to pay for paper, writing instruments, envelopes, photocopy work or postage for legitimate legal correspondence may receive a loan. The loan amount shall be charged to the youth's account for future repayment while in any institution or community placement. Loans for this purpose shall be for actual institution costs and shall not exceed \$100.00 per year.

(9) CANTEEN. (a) Each institution shall provide a canteen. The superintendent shall establish, in writing, the maximum amount of money that may be spent in a specified period of time by a youth in the canteen. A current list of approved and available merchandise, including the price of each item, shall be made available to youth. Copies shall be made available to youth who do not have direct access to the canteen. A superintendent may create a policy to permit youth to purchase specified personal property that is not supplied by the canteen.

(b) Each canteen shall maintain a bookkeeping system for withdrawal of funds from the youth's general account for purchases made through the canteen. No canteen shall use money as a means of exchange for youth.

DOC 379.21 Telephone calls. (1) Institutions shall encourage youth to communicate with their families, government officials and people concerned with the welfare of youth. This policy is intended to foster reintegration into the community, maintain family ties, motivate youth, improve morale and contribute to security. The superintendent may establish policies or procedures, subject to the approval of the administrator, relating to the use of telephones.

(2) A telephone shall only be used in a lawful manner.

(3) A superintendent may do any of the following:

(a) Monitor and record a youth's telephone call under s. DOC 376.05. A properly placed call to or from an attorney, an attorney's assistant or approved law student may not knowingly be monitored or recorded.

(b) Record the conversation and the date, time, destination, number and duration of a call.

(c) Disclose the contents of a recording of a youth's telephone conversation to any of the following:

1. The department's office of juvenile offender review.
2. The administrator.
3. The secretary.
4. An investigating officer from the department or another state or federal agency.
5. A law enforcement officer.

(d) Use the contents of a recording of his or her telephone conversation for any of the following reasons:

1. For disciplinary purposes.
2. To decide placement, transfer or release of a youth.
3. For an investigation of a youth's plans to escape.
4. For investigations of threats to the security of the institution.
5. For investigations of threats to the health, safety or welfare of staff, the public or other youth.
6. For investigations of threats against witnesses or victims.
7. For investigations of trafficking of drugs or other contraband.
8. For investigations of any illegal activity.
9. As evidence in administrative and judicial proceedings.
10. For programming and treatment.

(4) (a) Each institution shall have a written policy available to youth that contains a specific procedure for telephone calls and that sets time limits for calls. The procedure shall be consistent with this chapter.

(b) The superintendent may make exceptions to any policy regarding limits on calls consistent with the policy stated in this section.

(c) Youth may be permitted to call approved close family members or other persons approved by the superintendent. If a youth has no close family members, the youth may be permitted to call persons on the approved visitor list.

(d) Each youth shall be permitted to make a minimum of 2 telephone calls per month. Where resources permit, more than 2 telephone calls may be permitted.

1. Telephone calls not made during the month may not be accrued for use at a later date.

2. A youth may be prohibited from calling under this section if segregated from the general population.

(e) Institutions shall determine who shall pay for calls.

(f) Institutions shall permit calls to be at least 5 minutes in duration.

(g) In the case of emergencies, including critical illness or death of a family member, a special telephone call may be permitted regardless of the security status of the youth or the number of calls already made during that month.

(5) A youth may be permitted to make phone calls to a youth's spouse or parent committed to another Wisconsin correctional institution. The institution may require payment for the cost of the calls. Calls between spouses or a youth and parent are subject to the limits under sub. (4) (d). The superintendent may approve calls between siblings in Wisconsin correctional institutions.

(6) (a) Youth shall be permitted to call attorneys, attorney assistants or approved law students regarding legal matters, consistent with the program and security needs of the institution.


(b) Calls are subject to superintendent approval as to time and duration.

(c) A youth's telephone calls to an attorney, attorney assistant or approved law student are not subject to the limit in number in sub. (4) (d) or the visitor list requirement.

(d) Telephone calls to attorneys, attorney assistants or approved law students shall be made collect.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



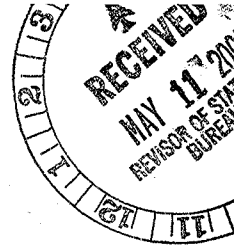
Jon E. Litscher, Secretary



Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES



The Wisconsin department of corrections proposes an order to repeal ch. HSS 340 and create ch. DOC 380, relating to a complaint procedure for youth in type 1 secured correctional facilities.

Statutory authority: ss. 227.11 (2) and 938.48 (16), Stats., and s. 9126(23)(e) of 1995 Act 27.
Statutes interpreted: ss. 301.025 and 938.505 (1), Stats.

Analysis by the Department of Corrections

The proposed rule provides a procedure whereby youth who are placed under the supervision of the department in a type 1 secured correctional facility may register a complaint and have the complaint investigated and resolved. The rule provides a complaint process that balances youth rights and youth program objectives with institution safety and management needs. The complaint processes for youth in a community placement on aftercare and in a type 2 secured correctional facility are incorporated into chs. DOC 393 and DOC 396, respectively. Chapter DOC 380 is comparable to former ch. HSS 340, which was promulgated by the then-department of health and social services when that department was the state juvenile corrections agency. The analysis below highlights the major similarities and differences between the former HSS and the proposed DOC complaint rules.

Under this proposed rule:

1. References to the department of corrections and to ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, are incorporated to make rules consistent with current law.
2. Section DOC 380.01 contains a detailed list of the purposes of the complaint process that essentially repeats the purpose statement of s. HSS 340.01.
3. As in s. HSS 340.02 (2), s. DOC 380.02 (1) lists issues which youth may and may not file complaints.
4. Definitions in s. DOC 380.03 and s. HSS 340.03 are substantially the same, with the addition or modification of terms in the DOC rule in response to changes in the law. Chapter HSS 340, used the term "grievance" to refer to youth complaints, whereas ch. DOC 380 employs the term "complaint" to distinguish the youth complaint process from the employee grievance process.
5. The provisions of s. DOC 380.04 (1) and (3) are substantially the same as s. HSS 340.08 by requiring the institution and the complaint mediator to inform youth both orally and in writing about the complaint procedure and any modification made to it.
6. Section DOC 380.04 describes the complaint procedures including steps the youth shall take prior to filing a complaint; how and when the youth shall file a complaint; a description of group complaints; policy regarding number of complaints a youth may file and an explanation of the record to be kept by the institution. Most of the procedures are similar to those under s. HSS 340.04, but the time period in which a youth shall file a complaint has been shortened from 14 to 5 days to encourage a more timely raising of complaints. The HSS rule encouraged the youth to try to resolve the complaint with staff before filing, but the DOC rule requires the youth to meet with staff prior to filing. The DOC requirement that the institution maintain a record of complaints was not included in the HSS rule.

7. Section DOC 380.05 describes the designation, training and activities of a complaint mediator. Under former s. HSS 340.04, the primary job responsibility of grievance mediators involved the processing and resolution of grievances, but under s. DOC 380.5 (1), the superintendent may designate as complaint mediators staff with other job duties as long no conflict of interest exists.
8. Section DOC 380.06 (1), explains the procedures, similar to those in s. HSS 340.04 (2) (a), the mediator shall use to attempt to resolve a complaint informally.
9. As s. HSS 340.04 (2) (c), s. DOC 380.06 (2) delineates the formal complaint resolution procedures. A new provision, s. DOC 380.06 (d), clarifies that the mediator may propose that a complaint be dismissed for specified reasons. Section HSS 340.04 (2) (c) that required the department head at the institution to review the mediator's report and recommendations is not repeated in s. DOC 380.06.
10. Section DOC 380.07 (1) describes the process the superintendent follows in reaching a decision on a complaint. Section DOC 380.07 (2) lists options available to the superintendent. Procedures are very similar to those under s. HSS 340.04 (3) with some modification in the time lines.
11. Under s. DOC 380.07 (3), a youth may appeal the superintendent's decision (or failure to issue a decision) to the administrator.
12. Persons involved in the administration of the complaint procedure shall keep the matter confidential to the extent possible under both s. DOC 380.08 and s. HSS 340.05.
13. Under s. DOC 380.09, as in s. HSS 340.06, no staff or youth may retaliate against a youth for filing a complaint. If staff or a youth retaliate, the youth may file a complaint regarding retaliation and staff may take disciplinary action against a youth who knowingly files a false complaint.
14. Section DOC 380.10 requires the institution to submit to the administrator an annual report on youth complaints that complies with the federal Civil Rights Act. Due to a very low volume of youth complaints, the quarterly reports required by s. HSS 340.07 (6) (intro.) were not repeated in s. DOC 380.10.

SECTION 13. Chapter HSS 340 is repealed.

SECTION 14. Chapter DOC 380 is created to read:

Chapter DOC 380

Complaint Procedure for Youth in Type 1 Secured Correctional Facilities

DOC 380.01 Authority and purpose	DOC 380.06 Complaint resolution procedure
DOC 380.02 Applicability	DOC 380.07 Decision and appeal procedure
DOC 380.03 Definitions	DOC 380.08 Confidentiality
DOC 380.04 Complaint procedure	DOC 380.09 Retaliation prohibited
DOC 380.05 Additional procedures	DOC 380.10 Report Required

DOC 380.01 Authority and Purpose. (1) This chapter is promulgated under the authority of ss. 227.11 (2) and 938.48 (16) Stats., to provide rules to assure that complaints from youth placed in a type 1 secured correctional facility are investigated thoroughly and decided fairly.

(2) The objectives of the complaint process are all of the following:

(a) To afford youth the opportunity to raise questions about correctional policies that directly affect them.

(b) To encourage communication between youth and staff.

(c) To develop a sense of involvement in the correctional process by youth and staff.

(d) To correct errors in correctional policy through the exchange of ideas.

(e) To allow youth who believe they have been treated unfairly to challenge staff decisions, process or policy.

(f) To reduce frustration among youth about conditions at the institution in which they reside.

DOC 380.02 Applicability. (1) This chapter applies to all youth placed in an institution, and complaints filed by those youth regarding residential programs, application of rules, division policies, conditions, procedures or other matters or incidents, except that a youth may not use the complaint procedure for complaints about any of the following:

(a) Factual disputes or decisions in the disciplinary process under ch. DOC 373, except that the complaint procedure may be used to challenge procedural errors in accordance with sub. (2).

(b) Matters over which the department has no authority.

(c) Court-imposed conditions.

(d) Decisions of OJOR.

(e) A decision to place a youth at a specific institution.

(f) A decision not to deliver mail, except under s. DOC 379.04 (7).

(g) Suspension of visiting privileges.

(h) Matters related to the revocation process.

(i) Matters that do not directly affect the complainant.

(j) An administrative rule of the department.

(k) An issue which a youth may appeal under a department rule or a decision issued by the department in response to an appeal filed by a youth under a department rule.

(2) Youth may use the complaint procedure to challenge the procedure used by hearing officers under ss. DOC 373.72, 373.73 and 373.76 to 373.78.

DOC 380.03 Definitions.

(1) "Administrator" means the administrator of the department's division of juvenile corrections or that person's designee.

(2) "Complaint" means a complaint by one or more youth using the administrative procedures in this chapter.

(3) "Complaint mediator" means a staff person not a party to the incident or situation from which the complaint arose who is designated by the superintendent to receive complaints and perform duties under this chapter.

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

(5) "Division" means the department's division of juvenile corrections.

(6) "Institution" means a type 1 secured correctional facility.

(7) "OJOR" means the division's office of juvenile offender review.

(8) "Superintendent" means the superintendent of an institution or that person's designee.

(9) "Staff" means an employee of the department.

(10) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19) Stats.

(11) "Youth" means a person under the supervision of the department within the meaning of s. 938.505 (1), Stats., or pursuant to s. 48.366, Stats., or a person subject to a criminal penalty who is placed in an institution under s. 937.013 (3m), Stats., regardless of age.

DOC 380.04 Complaint Procedure. (1) An institution shall give a copy of this chapter and an oral explanation of the complaint procedure to a youth as part of the orientation process that occurs when a youth is placed in an institution. An institution shall establish specific policies and procedures relating to the complaint procedure and shall inform a youth of those policies and procedures in simplified written language.

(2) An institution shall make complaint and appeal forms readily available to youth.

(3) An institution shall orally explain to a youth and post or distribute changes in the complaint procedure affecting a youth, prior to the time the changes take effect.

(4) INITIATION. (a) Before using the complaint procedure, a youth shall discuss problems with a social worker or youth counselor. All complaints shall be in writing and, except for complaints under par. (b), shall be filled with the complaint mediator.

(b) A youth may file a complaint directly with the superintendent in matters related to breach of confidentiality, retaliation, abuse or regarding matters under 380.02 (2).

(c) If a youth is unable to write a complaint, a social worker, youth counselor, or psychologist shall refer the youth to the complaint mediator who shall assist the youth to write a complaint when possible. If the complaint mediator is not able to assist the youth in a timely fashion, the

mediator shall request another staff member to assist the youth. If the youth requests assistance from someone other than the mediator or designee, that individual may assist the youth.

(d) A youth shall file a complaint with the complaint mediator or superintendent within 5 days from the day on which an incident occurred. The complaint mediator or superintendent under par. (b) may waive this requirement if the delay does not adversely affect the investigation.

(e) A complaint meets the time limitations in par. (d) if it is filed within 5 days of an incident, but does not include all of the information required by par. (f).

(f) A complaint shall include the following information:

1. A statement of the nature of the complaint with facts upon which the complaint is based.
2. A statement explaining how the complaint affects the youth personally.
3. A statement identifying the staff that the youth has discussed the problem with, as required by par. (a) and a statement indicating the outcome of that discussion.
4. A request for relief, stating what the youth believes would be a satisfactory resolution.

(g) If a complaint does not include all of the information required by par. (f), the youth shall be given 2 additional days to provide the information. If the youth does not provide the information after the additional time period, the complaint mediator shall process the complaint under this chapter based on the information provided.

(5) **GROUP COMPLAINTS.** (a) A youth may include only one complaint on a complaint form. Group complaints may be on one form and the complainants may sign their names on the form or a sheet of paper attached to the form. A youth who is a party to a group complaint waives the confidentiality provision in s. DOC 380.08.

(b) The complaint mediator shall determine whether all the youth signing a form are personally affected and whether a legitimate group complaint exists. The group complaint is a valid complaint only as to those youth who are personally affected. The complaint mediator shall liberally construe complaints when determining if there is a group complaint.

(6) **NUMBER OF COMPLAINTS.** There is no limit to the number of complaints that may be filed by a youth. If a youth has a complaint pending, the complaint mediator shall process subsequent complaints as time permits, except that complaints concerning health and safety shall have priority.

(7) **RECORD OF COMPLAINTS.** An institution shall maintain a record of each complaint, including the name and identifying number of each complaint, the subject of the complaint and the disposition for at least 3 years after the final decision is issued. The record of complaints shall be maintained separately from a youth's case file.

DOC 380.05 Designation, Training and Activities of Complaint Mediator. All of the following procedures apply to complaint mediators and institutions:

(1) A superintendent shall designate complaint mediators. The complaint mediators may be staff with other responsibilities, but they shall receive, investigate, mediate and process

complaints in accordance with the procedures and time limits established in this chapter. A superintendent shall provide the complaint mediator with full access to youth, staff, facilities and records of the institution.

(2) The department shall provide complaint mediators with training in complaint procedures and mediation skills.

(3) A complaint mediator, in cooperation with the superintendent, shall provide youth and staff with written information about the complaint procedure and any modifications of the procedure.

(4) An institution shall assign a complaint file number and screen all complaints within 24 hours of receipt, excluding weekends and holidays. Priority shall be given to complaints concerning health and safety. The institution shall record the date and time each complaint is received.

(5) A complaint mediator shall mediate and investigate complaints and keep a written record of information obtained in an investigation.

(6) A supervisor responsible for a living unit or program may be designated as mediator for complaints that arise within the area of supervisory responsibility, except that no complaint mediator may investigate or decide a case involving a complaint that relates to decisions or actions that involved the complaint mediator.

(7) A complaint mediator who has a conflict of interest under sub. (6) shall inform the superintendent, who shall appoint an alternate complaint mediator. If a youth believes a complaint mediator has a conflict of interest, the youth may file a complaint under this chapter with the superintendent.

(8) A complaint mediator shall promptly transmit all necessary documents to each person involved in the complaint process. A complaint mediator shall keep the complainant informed orally or in writing of all decisions or non-action by any person involved in the complaint process under this chapter.

DOC 380.06 Complaint Resolution Procedure. (1) INFORMAL RESOLUTION. The complaint mediator shall conduct all of the following procedures:

(a) Upon receipt of a complaint, the complaint mediator shall attempt to informally resolve the issues raised by the complainant.

(b) If a complaint is resolved informally, the complaint mediator shall reduce the outcome to writing, using the appropriate informal complaint resolution form, and shall provide a concise statement of the complaint and the resolution. The youth shall sign the informal complaint resolution form to acknowledge his or her agreement with the resolution of the complaint.

(c) The superintendent shall review the informal complaint resolution form signed by the youth under par. (b) and approve the informal resolution or require a formal resolution under sub. (2).

(d) Informal mediation shall be completed in 5 days from the receipt of the complaint, unless waived in writing by the complainant.

(2) FORMAL RESOLUTION. If an informal resolution cannot be obtained under sub. (1), or the superintendent requires a formal resolution, the mediator shall do all of the following:

(a) The complaint mediator shall investigate the complaint and as part of the investigation shall provide the complainant an opportunity to state his or her position and to present any information relevant to the decision.

(b) The complaint mediator shall file a written report, using the complaint mediator's report form, with the superintendent stating a proposed resolution within 14 days of receipt of the complaint. The complainant may waive the time limit in writing to permit the complaint mediator to complete a proper investigation.

(c) The complaint mediator's report shall state the youth's complaint, the facts upon which the proposed resolution is based, the proposed resolution and the reasons for the proposed resolution.

(d) The complaint mediator may propose that a complaint be dismissed if it is frivolous, if it is beyond the scope of the complaint process as provided in s. DOC 380.02 or if the complaint mediator believes, after investigation, that the complaint is without merit.

DOC 380.07 Decision and Appeal Procedure. (1) SUPERINTENDENT'S DECISION. Within 7 days of receipt of the complaint mediator's report or receipt of a direct complaint, the superintendent shall issue a written decision and provide a copy to each complainant. The decision shall state the issue, the facts upon which the decision is based, the decision, the reasons for the decision and the notice required by sub. (4). If no decision is issued within 7 days, the recommendation of the complaint mediator is affirmed. If the youth filed complaint directly with the superintendent, a written must be issued.

(2) If the superintendent affirms a complaint under s. DOC 380.02 (2) challenging the procedure used by a hearing officer under ss. DOC 373.72, 373.73 and 373.76 to 373.78, the superintendent may do one of the following:

(a) Affirm the hearing officer's decision if the error in procedure did not deny the youth a fair hearing.

(b) Affirm the hearing officer's decision, but reduce the discipline.

(c) Reverse the hearing officer's decision and remove all records of the decision from the youth's files. A record of the decision may be kept for statistical purposes only.

(d) Remand the case to the hearing officer for further consideration.

(3) APPEAL TO THE ADMINISTRATOR. (a) A youth may appeal to the administrator in writing, using the appeal of complaint form, either a decision or a failure to issue a decision under sub. (1) or sub. (2) (a) or (b) to the administrator within 5 days of receipt of the decision or the failure to issue a decision.

(b) The administrator shall issue a written decision within 7 days of receipt of the appeal, which is the final decision of the department and states the reasons and facts upon which the decision is based. If no decision is issued, the decision of the superintendent is affirmed.

(4) FAILURE TO IMPLEMENT DECISION PROMPTLY. The complaint decision under sub. (1) shall inform the youth who filed the complaint of the right to write the administrator directly if the relief requested or a resolution agreed upon has not been implemented within 14 days of the decision or agreement. The administrator shall investigate and take all necessary steps to enforce prompt implementation.

DOC 380.08 Confidentiality. (1) (a) Staff shall keep the identity of the complainant and the subject matter of the complaint confidential, except to the extent that discussion with others is necessary for investigation. Any staff with whom a complaint is discussed shall maintain confidentiality.

(b) A complainant may publicize any aspect of a complaint at any time.

(2) Staff shall not make entries in a youth's case file about use of the complaint procedure.

DOC 380.09 Retaliation Prohibited. (1) Neither staff nor a youth may retaliate against a youth for filing a complaint.

(2) A youth may send a complaint, using a complaint form, alleging retaliation directly to the superintendent, who shall issue a written decision within 7 days. A copy of the decision, stating information required in s. DOC 380.07 (1) shall be given to the complainant.

(3) A complainant may appeal the decision of the superintendent under sub. (2), or a failure of the superintendent to issue a timely decision, in writing using the appeal of complaint decision form, to the administrator within 7 days of receipt of the appeal. If the administrator does not issue a written decision within 7 days of receipt of the appeal, the decision of the superintendent is affirmed.

(4) Disciplinary action may be taken against a youth under s. DOC 373.32 for knowingly filing a false complaint.

DOC 380.10 Report Required. An institution shall submit an annual report to the administrator concerning the quantity, type and disposition of complaints. To be in compliance with Title VI of the Civil Rights Act (42 C.R.R. 2000d), the report must include the number of complaints filed per month by minority youth; and the number of complaints alleging discrimination on the basis of race, sex, religion or age initiated against individual staff persons and the dispositions.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS


Jon E. Litscher, Secretary

5/10/2000
Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal ch. HSS 341 and create ch. DOC 381, relating to furloughs, offgrounds leave and trial visits for youth in type 1 secured correctional facilities.

Statutory authority: ss. 227.11 (2), 301.03 (10) and 938.48 (16), Stats., and s. 9126(23)(e) of 1995 Act 27.

Statutes interpreted: ss. 301.025 and 938.505 (1), Stats.

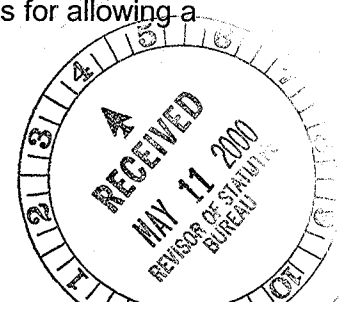
Analysis by the Department of Corrections

The proposed rule provides a procedure whereby youth who are placed under the supervision of the department in a type 1 secured correctional facility may receive authorization to be absent from the institution grounds for various purposes related to rehabilitation and community reintegration. The rule provides a process through which: a request is initiated for an authorized absence in the form of a furlough, an offgrounds leave or a trial visit; a decision is made to authorize the absence; staff or another person is designated to be responsible for the youth during the absence; and the approval is canceled if necessary.

Chapter DOC 381 is comparable to former ch. HSS 341, which governed the then-department of health and social services when that department was the state juvenile corrections agency. The analysis below highlights the major similarities and differences between the former ch. HSS 341 and the proposed ch. DOC 381.

Under this proposed rule:

1. The rules incorporate references to the department of corrections and ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, so that the rules are consistent with current law.
2. All youth placed with the department by a juvenile court under s. 938.34, Stats., are covered by these rules.
3. Most of the terms contained in s. DOC 381.03 are defined in the same way as in s. HSS 341.01 except that the time limit for a furlough has decreased from 10 to 7 days under the new DOC rule.
4. Section DOC 381.04 (1), the purpose statement, is essentially the same as s. HSS 341.02 (1) in the emphasis on rehabilitative treatment and community reintegration through permitting qualified youth to be absent from the institution for offgrounds leave, furloughs and trial visits.
5. Similar to s. HSS 341.02 (2) (f), s. DOC 381.04 (2) permits an offgrounds leave or furlough for a variety of reasons. The reason given in s. HSS 341.02 (2) (a), to reward a youth for positive adjustment at an institution, is not repeated in s. DOC 381.04 (2), due to the subjectivity of this rationale. New provisions in s. DOC 381.04 (2) add reasons for allowing a youth to be off-grounds.



6. Section DOC 381.04 (3) describes the purpose of a trial visit which is to permit the department to evaluate a placement in the community and provide a period of time for a youth to adjust to a placement.
7. New section DOC 381.05 combines material contained in ss. HSS 341.03 and .04 due to the similarity of the provisions regarding procedures for off-grounds and furloughs. Section DOC 381.05 (1) delineates the steps taken by the superintendent to enable a youth to leave an institution. A new provision, s. DOC 381.05 (1)(c), requires the institution social worker to notify victims or witnesses under certain circumstances. Sub.(2) permits the superintendent to cancel a furlough or offgrounds leave. Section DOC 381.05 (4) clarifies that a youth who does not stay within the allowed boundaries of the furlough or offgrounds leave may be treated as an escapee under s. 946.42 (3) (c), Stats.
8. The Office of Juvenile Offender Review (OJOR) authorizes a trial visit under s. DOC 381.06 (1), in contrast to s. HSS 341.05 (3) where the joint planning and review committee (JPRC) recommended a trial visit and the superintendent approved it. Under new s. DOC 381.06 (2), OJOR shall provide victim and witness notification, if necessary, prior to the beginning of a trial visit. Section DOC 381.06 (5) governs cancellation of a trial visit. Sub. (6) lists the options available to OJOR at the end of a trial visit.

SECTION 15. Chapter HSS 341 is repealed.

SECTION 16. Chapter DOC 381 is created to read:

Chapter DOC 381

**FURLOUGHS, OFFGROUNDS LEAVE AND TRIAL VISITS FOR
YOUTH IN TYPE 1 SECURED CORRECTIONAL FACILITIES**

DOC 381.01	Authority	DOC 381.04	Purpose
DOC 381.02	Applicability	DOC 381.05	Furlough and offgrounds leave
DOC 381.03	Definitions	DOC 381.06	Trial visit

DOC 381.01 Authority. This chapter is promulgated under the authority of ss. 227.11(2), 301.03(10) and 938.48(16), Stats.

DOC 381.02 Applicability. This chapter applies to the department and all youth who are under its supervision in a type 1 secured correctional facility consistent with the requirements of law.

DOC 381.03 Definitions.

(1) "Administrator" means the administrator of the division of juvenile corrections or that person's designee.

(2) "Alternate care placement" means the placement of a youth in an alternate placement, including placement in a child caring institution, group home, foster home or treatment foster home.

(3) "Close family member" means the youth's natural, adoptive, step or foster parents, spouse, children, grandparents or siblings. A parent surrogate is within the definition of parent if it can be substantiated that a claimed surrogate did in fact act as a parent to the youth although the parent surrogate was not an adoptive, foster or stepparent.

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

(5) "Escorted" means accompanied by one or more staff.

(6) "Furlough" means an approved, supervised leave for a youth from an institution, not exceeding 7 days.

(7) "Institution" means a type 1 secured correctional facility within the meaning of s. 938.02(19), Stats.

(8) "OJOR" means the department's office of juvenile offender review.

(9) "Offgrounds leave" means an approved escorted or supervised leave for a youth from an institution, not exceeding 24 hours.

(10) "Staff" means an employee of the department.

(11) "Superintendent" means the superintendent of an institution or that person's designee.

(12) "Supervision" means close and continuous oversight and physical control of a youth with the responsibility to notify Department staff if the youth does not comply with department conditions of the furlough, offgrounds leave or trial visit.

(13) "Trial visit" means an approved leave for a youth from an institution in a trial placement, not exceeding 30 days.

(14) "Youth" means a person or persons under the supervision of the department in an institution consistent with the requirements of law and regardless of age.

DOC 381.04 Purpose. (1) Furlough, offgrounds leave, and trial visit programs are intended to promote the treatment and program needs and community reintegration of youth by permitting qualified youth to experience an authorized absence from an institution.

(2) A furlough or offgrounds leave may be granted for any of the following purposes:

(a) To attend the funeral of a close family member.

(b) To visit a terminally ill close family member.

(c) To respond to a request from law enforcement officials or to make a court appearance.

(d) To attend educational, social, therapeutic, athletic or recreational events.

(e) To participate in a structured work program.

(f) To be interviewed by a prospective employer or educational official who requests the interview to determine an appropriate work release or study release placement.

(g) For medical purposes.

(h) To participate in activities deemed appropriate by the superintendent.

(i) To participate in community and family reintegration.

(3) The department uses a trial visit to evaluate a placement in the community, either at the youth's home or in an alternate care placement, and to provide a period of time for a youth to adjust to a placement.

(4) A superintendent shall make institution policies and procedures regarding furloughs, offgrounds leave and trial visits available to youth.

DOC 381.05 Furlough and offgrounds leave. (1) (a) A youth may submit a written request for a furlough or offgrounds leave to the superintendent who may authorize the absence from the institution under s. DOC 381.04(2).

(b) The superintendent shall identify the persons who will provide supervision of the youth and shall provide the aftercare agent with the information referred to in sub. (5).

(c) The institution social worker shall provide appropriate victim and witness notification.

(d) The superintendent may impose any conditions of conduct or other conditions on a furlough or offgrounds leave.

(e) The superintendent shall provide a copy of a decision to grant or deny a furlough or offgrounds leave to the youth prior to the proposed furlough or offgrounds leave. The decision shall state the reasons for a denial.

(2) A superintendent may cancel a furlough or offgrounds leave at any time. The cancellation order shall be in writing, shall state the reasons for the cancellation and a copy shall be provided to the youth.

(3) Youth on a leave from the institution under sub. (1) are under the supervision of the department. A youth who violates any condition under sub. (1)(d) or any lawful directive of institution staff, aftercare agent or other person providing supervision may be disciplined under ch. DOC 373.

(4) A youth who intentionally fails to return or who intentionally leaves the area designated as the limits of confinement in the conditions under sub. (1) (d) may be treated as an escapee under s. 946.42(3)(c) and (d), Stats.

(5) A record of a furlough or offgrounds leave shall be maintained and include all of the following:

(a) The name of the youth.

(b) The name of the institution staff, aftercare agent or other person providing supervision of the youth.

(c) The date and time of departure and return to the institution.

(d) The purpose for the furlough or offgrounds leave under s. DOC 381.04 and the facts considered by the superintendent when the furlough or offgrounds leave was authorized.

(e) The conditions imposed under sub. (1)(d).

(6) The superintendent shall advise the institution staff, aftercare agent or other person providing supervision of a youth in writing of the conditions of the furlough or offgrounds leave. The person providing supervision shall sign an agreement to abide by the conditions of the furlough or offgrounds leave.

DOC 381.06 Trial visit. (1) OJOR may authorize a trial visit and shall impose conditions for the trial visit.

(2) OJOR shall provide appropriate victim and witness notification if requested.

(3) A youth is under the supervision of the department while on a trial visit and is subject to discipline under ch. DOC 373 for violation of any conditions of conduct or other conditions which OJOR imposed on a trial visit.

(4) A youth who intentionally fails to return or who intentionally leaves the area designated as the limits of confinement under sub. (1) may be treated as an escapee under s. 946.42(3)(c) and (d), Stats.

(5) The administrator may cancel a trial visit at any time. A copy of the decision to cancel, together with the reasons for the cancellation shall be provided to the youth.

(6) At the end of the trial visit, OJOR may approve the placement, require a different placement, or release the youth to aftercare under s. DOC 371.15.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS


Jon E. Litscher, Secretary


Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to create ch. DOC 383, relating to use of psychotropic medication for youth in type 1 juvenile secured correctional facilities.

Statutory authority: ss. 227.11 (2), 301.03 and 938.48 (16), Stats.

Statutes interpreted: ss. 301.025, 938.48 (16), 938.505 (2), 51.20, 51.61 and 51.35, Stats.

Analysis by the Department of Corrections

No administrative code chapter formerly governed the administration of psychotropic medication for youth in secured correctional facilities. Section 938.505 (2), Stats., created by 1995 WI Act 77, permits the court to authorize the department to administer psychotropic medication to certain youth without obtaining parental permission. The department proposes to create an administrative rule relating to the use of psychotropic medications by youth in type 1 secured correctional facilities to:

- (1) Specify the general standards for use of psychotropic medications.
- (2) Identify specific issues related to voluntary treatment with psychotropic medications.
- (3) Identify those situations that allow for involuntary treatment of youth with psychotropic medications.

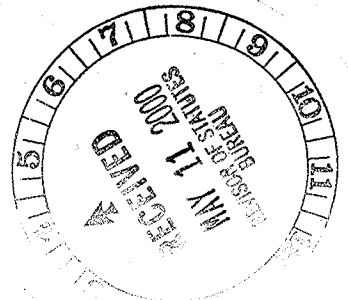
Under this proposed rule:

1. Standards are established for providing psychotropic medication to youth in a type 1 secured correctional facility under s. 938.505, and ch. 51, Stats.
2. Section DOC 383.04 (1), describes permissible and prohibited uses of psychotropic medications.
3. Section DOC 383.04 (2) and (3) contains general guidelines for the initial prescription of psychotropic medication and review of its ongoing use.
4. The youth and parental written consent requirements are described under s. DOC 383.04.
5. Section DOC 383.04 (4) (c) explains the procedures to be followed when a youth wishes to take psychotropic medications, but parental consent cannot be obtained.
6. The procedures in s. DOC 383.06, governing the involuntary treatment of youth with psychotropic medications, shall be followed only in an emergency situation.

SECTION 17. Chapter DOC 383 is created to read:

Chapter DOC 383

USE OF PSYCHOTROPIC MEDICATION



IN TYPE 1 SECURED CORRECTIONAL FACILITIES

DOC 383.01	Authority and purpose	DOC 383.04	General standards for use of psychotropic medications
DOC 383.02	Applicability	DOC 383.05	Voluntary treatment with psychotropic medication
DOC 383.03	Definitions	DOC 383.06	Involuntary treatment with psychotropic medication

DOC 383.01 Authority and purpose. This chapter interprets s. 938.505(2), Stats., and is promulgated under the authority of ss. 227.11 (2), 301.03 and 938.48(16), Stats. This chapter provides guidance to institution staff concerning the administration of psychotropic medications. Involuntary treatment, as described in this chapter, is considered by the department to be a treatment of last resort.

DOC 383.02 Applicability. This chapter applies to the department and to all youth under the supervision of the department and placed in a type 1 secured correctional facility.

DOC 383.03 Definitions. In this chapter:

(1) "Advanced practice nurse prescriber" (APNP) means an "advanced practice nurse" who has been certified to prescribe drugs in Wisconsin as defined in s. 441.16(2), Stats. and ch. N8.

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

(3) "Guardian" means the person named by the court having the duty and authority of guardianship.

(4) "Institution" means a type 1 secured correctional facility operated by the department.

(5) "Legal custody" has the meaning given in s. 938.02(12), Stats.

(6) "Nurse" means a registered or licensed practical nurse as defined by ch. 441, Stats.

(7) "Parent" has the meaning given in s. 938.02(13), Stats.

(8) "Pharmacological therapeutic classification" means the classification of a psychotropic medication as one of the following:

(a) Anti-psychotics.

(b) Anti-depressants.

(c) Agents for control of mania and depression.

(d) Anti-anxiety agents.

(e) Sedatives or hypnotics.

(f) Psychomotor stimulants.

(9) "Physician" means a person licensed as a physician in Wisconsin under ch. 448, Stats.

(10) "Physician assistant" means a person licensed as a physician assistant in Wisconsin under ch. 448, Stats.

(11) "Psychologist" means a person licensed to practice psychology in Wisconsin as defined in ch. 455, Stats.

(12) "Psychotropic medication" means medication that is used for the purpose of modifying psychological functioning or behavior.

(13) "Social worker" means a person certified to be a social worker in Wisconsin as defined in ch. 457, Stats.

(14) "Youth" means a person or persons under the supervision of the department in an institution consistent with the requirements of law and regardless of age.

DOC 383.04 General standards for use of psychotropic medications. (1) ORDER AND PURPOSE. Psychotropic medications may be administered to youth only upon the written order of a physician or APNP and only for an appropriate therapeutic purpose, including alleviating psychiatric disorders or enhancing the coping capacity of the youth. Medication may not be administered for the purpose of punishing the youth, producing docility or as a substitute for counseling and treatment.

(2) PRESCRIPTION. In prescribing psychotropic medication, the physician or APNP shall do all of the following:

(a) Review the youth's medical history and appropriate physical and laboratory examinations before prescribing medication, and document the behaviors, symptoms and diagnosis, if known, which the medication is to treat or modify.

(b) Prescribe the lowest effective dose of a clinically indicated medication.

(c) Use caution in prescribing drugs known to produce psychological or physiological dependency, or to have significant potential for abuse.

(d) Indicate in the medical record a specific stop date.

(e) Specify limited amounts and limited refills, if any, for prescriptions.

(f) Reduce or withdraw medication as soon as clinically indicated.

(3) ONGOING EVALUATION. (a) The physician or APNP shall review and evaluate the appropriateness and need for psychotropic medications, the need for continuation of treatment, and possible side effects for each youth. All reviews shall be according to established professional standards for the administration of psychotropic medications.

(b) When treatment is voluntary, a review shall be completed, as often as professional practice requires, but at least once every 180 days.

(c) When treatment is involuntary, a review shall be completed, as often as professional practice requires, but at least every 30 days.

(4) CONSENT FOR PSYCHOTROPIC MEDICATIONS. (a) A physician or APNP shall obtain written consent from the following persons before administering psychotropic medications to a youth:

1. The parent with legal custody or youth's guardian if the youth is less than 14 years of age.
2. The youth and the parent with legal custody or the youth's guardian if the youth is at least 14 years of age, but less than 18 years of age.
3. The youth, if the youth is 18 years of age or older.

(b) A consent to administer psychotropic medications is valid for one year. Renewal requires obtaining another written consent from the youth, a parent with legal custody or a guardian as under par. (4) (a) to continue administering the medication.

(c) If a parent with legal custody or guardian unreasonably refuses to give permission, cannot be located to give a consent, or no parent has legal custody, the department may petition the court for permission under s. 938.505(2), Stats., to administer psychotropic medications to a youth aged at least 14 years, but not yet 18 years of age, who wishes to take the medication.

(d) If the department believes a youth at least 14 years, but not yet 18 years of age, needs psychotropic medication and the youth consents, medication may be administered temporarily without written consent of the parent or guardian, with the court's authorization, but not for more than 10 days after the request to the court, pending the hearing on the petition under par. (c), consistent with s. 938.505(2)(b), Stats.

(e) When a prescriber changes an order to a psychotropic medication not listed on the original consent, written consent of the appropriate person (s) under par. (a) shall be obtained before administering the new medication, unless the new medication is in the same pharmacological therapeutic classification as the previous medication.

(f) For youth who are taking a prescribed psychotropic medication upon admission to the institution, approval from a physician or APNP shall be obtained in the form of a written order to continue the medication while written consent of the parent with legal custody or guardian is sought. Medication will not be continued for more than 30 days without consent of the parent or legal guardian, except as provided in par. (d) or if authorization is granted by the court under par. (c).

DOC 383.05 Voluntary treatment with psychotropic medication. Youth may be treated with psychotropic medications in an institution without being committed under ch. 51, Stats. Each institution shall ensure that treatment is voluntary by doing all of the following:

- (1) The physician or APNP shall discuss the following with the youth and the parent or guardian of a youth under 18 years of age, or a legal guardian of an incompetent individual 18 years or older:

- (a) The nature of the condition.
- (b) The purposes, nature and dose of the medication.
- (c) The desired effects of the medication.
- (d) The risks and side effects of the medication.
- (e) Appropriate alternatives as available.
- (f) Prognosis without medication.

(2) The physician or APNP shall ask the youth to consent to take medication, and may proceed with voluntary treatment only if:

- (a) The youth consents in writing.
- (b) Parent or guardian consent is obtained as specified in s. DOC 383.04(4).

(3) The physician or APNP may not prescribe medication if the physician or APNP believes that the youth is agreeing to take medications as a result of coercion, threats, or other improper means. This does not preclude the physician or APNP, or others, from discussing with the youth the desired effects of medication, such as improvements in mental, emotional, or behavioral functioning.

(4) A youth 14 years or older or a parent or guardian who consented under s. DOC 383.04 (4) may withdraw or reinstate consent at any time in writing to the physician or APNP who shall make the final determination as to whether psychotropic medication is needed. A youth may not be disciplined for refusing psychotropic medication.

DOC 383.06 Involuntary treatment with psychotropic medication. A youth may be treated involuntarily with psychotropic medications only under the following circumstances:

(1) In an emergency, after reasonable interventions have proved unsuccessful, the attending licensed psychologist, social worker or physician or APNP shall determine whether a recommendation for an emergency transfer to a state treatment facility under s. 51.35(3)(e), Stats., should be made to the superintendent. Pending that determination, the attending physician or APNP may order involuntary treatment with psychotropic medication. The youth may be treated involuntarily with psychotropic medications pending an emergency transfer, or for 72 hours, whichever is shorter. If an emergency transfer is initiated, the attending physician or APNP may order continued involuntary treatment with psychotropic medications pending completion of the transfer proceedings. In this subsection, "emergency" means a situation in which either of the following is true:

(a) The youth's perception of reality appears to be severely impaired as a result of mental illness.

(b) The youth appears to pose an immediate danger to self or others, evidenced by a recent overt act or attempt or threat to inflict serious bodily harm.

(2) If a youth is committed under s. 51.20, Stats., on an outpatient basis with an order to treat involuntarily in an institution and a court has found the youth 14 years or older incompetent to refuse psychotropic medications, a physician, physician assistant, APNP, or nurse shall distribute or administer the medications. The following steps shall be followed:

(a) A physician, physician assistant, APNP or nurse shall give the youth an opportunity to take the medication voluntarily. If it is not possible to comply with s. DOC 383.05(1) due to the youth's behavior, the physician, physician assistant, APNP, or nurse shall record the reasons in the youth's clinical or medical services record.

(b) If the youth refuses to take the medication, the physician, physician assistant, APNP, or nurse shall counsel the youth and attempt to persuade the youth to take the medication.

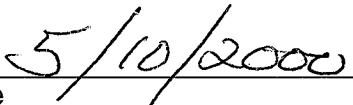
(c) If the youth continues to refuse, the attending physician, physician assistant or APNP shall decide the course of action to be taken. Possible actions include:

1. Take no action for a period of time.
2. Send the youth to a special unit within the institution for treatment of mental illness.
3. When appropriate, put the youth in observation status pursuant to ch. DOC 375.
4. Recommend transfer of the youth to an appropriate health care setting.
5. If appropriate, a licensed psychologist or physician may recommend to the superintendent transfer of the youth to a state treatment facility under s. 51.35(3)(e), Stats.
6. Direct that the youth be ordered to take the medication and that force be used to administer it, if necessary. Only the minimum amount of force required to effectively administer the medication shall be used.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS


Jon E. Litscher, Secretary


Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to create ch. DOC 392, relating to the conducting of drug testing by the department and county departments of youth adjudicated delinquent and residing in the community.

Statutory authority: ss. 227.11 (2) and 938.34 (6s), Stats.
Statutes interpreted: ss. 301.26 (1) and 938.34 (6s), Stats.

Analysis by the Department of Corrections

The proposed rule implements the requirement of s. 938.34 (6s), Stats., that the department promulgate rules for a drug testing program that could be ordered by the juvenile court as a disposition under that section. The former juvenile corrections administrative code, HSS 300-348, did not contain rules for a drug testing program.

Under this proposed rule:

1. The provisions apply to drug testing programs operated by the department or a county department that provides supervision to delinquent youth who have been determined by the court to need drug treatment and to private provider agencies conducting drug tests under contract. (ss. DOC 392.01 and 380.02).
2. Definitions of terms used in the chapter are included in s. DOC 392.03.
3. Section DOC 392.04 (1) and (2) establish the standards for conducting scheduled, random and for cause drug tests.
4. Section DOC 392.04 permits a community service provider to implement drug testing, as part of a youth's individual case plan, whether or not the youth a court order exists.
5. Section DOC 392.05 specifies the procedure for a body contents search.
6. Section DOC 392.06 covers confidentiality of drug test results and disciplinary action that staff may take as the result of a drug test.
7. The rules governing payment for drug tests are in s. DOC 392.07.

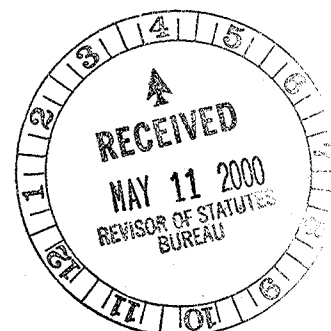
SECTION 1. Chapter DOC 392 is created to read:

Chapter DOC 392

**DRUG TESTING OF YOUTH ON COUNTY SUPERVISION,
TYPE 2 STATUS OR AFTERCARE**

DOC 392.01 Authority and purpose
DOC 392.02 Applicability

DOC 392.05 Body contents search
DOC 392.06 Test results



DOC 392.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11 (2) and 938.34 (6s) Stats., to provide rules for the regulation of drug testing programs operated by the department, or a county department which is providing supervision of delinquent youth who have been determined by the court to be in need of treatment for the use or abuse of controlled substances or controlled substance analogs.

DOC 392.02 Applicability. This chapter applies to the department, county departments and private provider agencies conducting drug tests under contract with the department or a county department and youth under their supervision.

DOC 392.03 Definitions. In this chapter:

(1) "Body contents search" means a search in which a youth is required to provide a sample of urine, breath, saliva, blood, or stool for testing for the presence of intoxicating substances, as defined in s. DOC 373.46 (1), in accordance with department or county department procedures and with methods approved by the state laboratory of hygiene, or to submit to non-surgical physical examination by medical personnel which may include, but is not limited to, x-rays for detecting the use of intoxicating substances or the possession of contraband. A body contents search does not include an examination or test required by medical personnel for medical reasons.

(2) "County department" has the meaning given in s. 938.02(2g), Stats.

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

(4) "Drug" means any controlled substance, as defined in s. 961.01 (4), Stats., or controlled substance analog, as defined in s.961.01 (4m), Stats., that is illegal to possess or use, or alcohol, as defined in s. 125.02 (1), Stats., but does not mean a drug prescribed and used in accordance with law.

(5) "Drug test" means a chemical or other analysis of a body contents specimen collected from a youth for the purpose of determining if the youth has ingested or used any drug.

(6) "For cause test" means a drug test administered because staff has a reasonable suspicion that a youth has used or ingested drugs other than a prescription drug which is lawfully possessed and used.

(7) "Aftercare" means the aftercare supervision status of a youth, as used in s. 938.34 (4n), Stats., who is released from a Type 1 or Type 2 secured correctional facility by the office of juvenile offender review, or by action of a court under s. 48.366 (5) (b), Stats., and is supervised by the department or a county department until the expiration or termination of the youth's court ordered supervision.

(8) "Physician" means a person licensed as a physician under ch. 448, Stats.

(9) "Physician's assistant" means a person certified by the medical examining board under ch. 448, Stats., to perform patient services under the supervision and direction of a licensed physician.

(10) "Provider" means the department, a county department or a private agency under contract with the department or a county department that is authorized by the contract to administer drug tests.

(11) "Random test" means the collection of a specimen in a manner that does not follow a predetermined pattern and is not predicated on any particular fact or situation which creates a reasonable suspicion that a youth has used or ingested drugs.

(12) "Registered nurse" means a person licensed as a registered nurse under, s. 441.06, Stats.

(13) "Scheduled test" means a test given to a youth on a regular, pre-planned basis and administered at a time when the youth knows the test will occur.

(14) "Staff" means provider staff with the responsibility of supervising a youth's placement and behavior.

(15) "Supervision" means the rights and duties of the department or a county department under ss. 938.34 and 938.505(1), Stats., or other requirements of law with respect to a youth placed by a court or the department in a type 2 secured correctional facility, a type 2 child caring institution, or on aftercare.

(16) "Supervisor" means a provider employee responsible for the supervision of aftercare, a type 2 secured correctional facility or a type 2 child caring institution, or that person's designee.

(17) "Type 2 child caring institution" has the meaning given in s. 938.02 (19r), Stats.

(18) "Type 2 secured correctional facility" has the meaning given in s. 938.02 (20), Stats.

(19) "Youth" means a person under the supervision of the department or a county department within the meaning of s. 938.505 (1), Stats., pursuant to s. 48.366, Stats., or other requirements of law or a person subject to a criminal penalty, regardless of age.

DOC 392.04 Drug testing. (1) DIGNITY OF YOUTH. A provider shall make a reasonable effort to preserve the dignity of a youth in all searches and tests conducted under this chapter.

(2) TESTS REQUIRED BY COURT ORDER. (a) A provider shall require a youth under its supervision, who has been ordered to submit to drug testing under s. 938.34 (6s), Stats., to receive scheduled, random and for cause drug tests when appropriate, whether that youth is in a type 1 or type 2 secured correctional facility, a type 2 child caring institution, another out of home placement in the community or in the youth's own home. Drug tests shall be administered consistent with s. DOC 392.05(1).

(b) Scheduled tests under this section may be administered to a youth at regular intervals, which may be varied from time to time, consistent with the prior pattern of drug or alcohol use by the youth and with the progress of the youth in treatment.

(3) **OTHER DRUG TESTS.** A supervisor or staff of the provider may, consistent with the policy and procedure of the provider, implement scheduled testing, random testing, or for cause testing for a youth on aftercare or other form of community supervision as a part of the youth's written case plan, whether or not the youth is subject to any court ordered testing under this chapter.

DOC 392.05 Body contents search. (1) Staff who are appropriately licensed or certified, as provided in s. DOC 376.13 (1) (d), may conduct or authorize a body contents search to collect a specimen required to conduct a court ordered, scheduled, random or for cause drug test. A search shall be conducted by qualified staff in accordance with s. DOC 376.13 (1) (d), except that cause is not required if a court has ordered a body contents search.

(2) A supervisor may require that collection of a urine specimen be observed by staff. Staff of the same gender as a youth shall observe and collect the urine specimen.

(3) Blood and stool samples may only be collected by a licensed physician, physician's assistant, registered nurse or other person authorized by law.

(4) X-rays shall only be conducted by licensed radiology personnel.

DOC 392.06 Test results. (1) A provider may, consistent with state and federal law, give drug test results to staff of the provider working with a youth to assist in and promote the youth's treatment program.

(2) Drug test results shall not be provided to staff without a need to know the drug test results to perform their duties.

(3) A provider shall require that staff administer discipline of a youth resulting from drug test results in a reasonable and equitable manner.

(4) Contracts between the department or a county department and a private agency which is authorized by the contract to administer drug tests shall include the requirements of subs. (2) and (3).

DOC 392.07 Payment for drug testing. (1) A provider shall pay for each drug test it administers or authorizes for a youth under its supervision, whether the test is court ordered, scheduled, random or administered for cause.

(2) (a) A provider may, as part of the conduct rules of aftercare or other community supervision, require a youth to reimburse the provider for the cost of any for cause drug test which results in a positive drug use finding.

(b) The department or county department may bill the youth's parent(s) for the cost of drug testing.

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. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary

Date 5/10/2000

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal HSS 343 and create ch. DOC 393, relating to the conduct of youth placed on aftercare following their release from secured correctional services, and revocation of a youth's aftercare for violation of a condition of aftercare.

Statutory authority: ss. 227.11 (2), 301.025, 938.357 (5) (g), and 938.48 (16) Stats., and s. 9126(23)(e) of Act 27.

Statutes interpreted: ss. 938.19 to 938.209, 938.34 (4n), 938.357 (1), (2), (4) and (5), 938.48 and 938.357(4g), Stats.

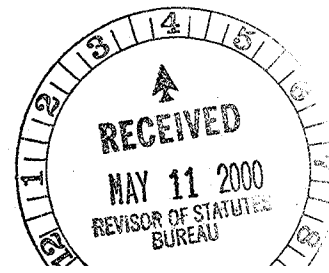
Analysis by the Department of Corrections

The proposed administrative code ch. DOC 393 governs aftercare provided by the department and by county human and social services departments in the state. This rule defines the expected conduct of youth on aftercare and describes actions an agent may take in response to a youth's alleged violation of a rule of aftercare or court imposed condition. The rule balances the goals of public protection, youth accountability, youth competency development, and providing due process for youth, in accordance with the legislative intent of ch. 938, Stats.

When juvenile corrections was a function of the then-department of health and social services, the aftercare administrative code section was ch. HSS 343. The analysis below includes identification and explanation of major differences between ch. HSS 343 and the proposed aftercare rule.

Under this proposed rule:

1. References to the department of corrections and to ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, are incorporated to make rules consistent with current law.
2. Section HSS 343.03 and s. DOC 393.03 contain the same or similar definitions with many definitions added for clarification and to respond to changes in the juvenile justice code.
3. Similarly to s. HSS 343.04, s. DOC 393.04 lists the due process and service requirements to be met by the department or the county department providing aftercare supervision to youth. DOC 393.04 (3) & (4) adds provisions requiring reasonable accommodations and interpreter services, if needed by a youth.
4. Section DOC 393.05, covering expected conduct, as did s. HSS 343.05, requires the agent to explain to the youth all the rules of supervision and consequences for violation of those rules. Section DOC 393.05 (4) through (7) add new requirements for the content of the written notice to the youth, for personal review of the conditions by the agent with the youth, and an appeal procedure for a youth who disagrees with a conduct rule.
5. Whereas ch. HSS 343 was silent regarding the use of physical force and mechanical restraints, s. DOC 393.06, describes the procedures relating to the use of force and restraints. Section DOC 393.07 describes the required written record.



6. New section DOC 393.08 describes when and how staff may utilize oleoresin of capsicum and states that staff may not carry a firearm or other weapon while on duty.
7. Under s. DOC 393.09 staff shall adhere to specific criteria prior to conducting all searches, but for a general search of a youth and his or her living quarters or property.
8. Procedures for taking a youth into custody and transporting a youth to a detention facility, a mental health or medical facility or a type 1 secured correctional facility are included in s. DOC 393.10.
9. Section DOC 393.11 defines a violation of a conduct rule or court ordered condition in the same terms as s. HSS 343.06.
10. As in s. HSS 343.07 (1), s. DOC 393.12 (1) requires the agent to take specified steps to investigate an alleged violation of aftercare rules.
11. Section DOC 393.12 (2) (a), similarly to s. HSS 343.07 (2), states that for a minor violation, the agent may simply counsel the youth by reviewing the conduct rules and directing the youth to correct his or her behavior. The HSS rule stated that counseling "is" the proper procedure while the DOC provision permits the agent to exercise professional judgment.
12. Section DOC 393.12 (2) (b) and s. HSS 343.07 (2)(b) explain the summary disposition process as a response to a rule violation. Section HSS 343.07 (2) (b) 3. required involvement of an agent and the agent's supervisor, but s. DOC 393.07 (2) (b) streamlines the process by allowing the agent alone to impose summary discipline. As in s. HSS 343.07 (2) (b) 4., under s. DOC 393.07 (2) (b) 4. a youth may appeal the agent's decision to the supervisor.
13. Section DOC 393.12 (2) (c). authorizes the agent to initiate a revocation proceeding and lists factors to be considered by the agent. The DOC rules are similar to s. HSS 343.07 (2) (c) 1., with some clarification that permits the department and county agencies to develop their own revocation initiation procedures to best serve the youth and staff. Both s. HSS 343.07 (2) (c) 4 and s. DOC 393.12 (3) state that youth on extended court jurisdiction may be revoked only by the committing court.
14. A new section, s. DOC 393.12 (4) (b) provides for temporary administrative detention of a youth in order to remove the youth from the current placement and temporarily hold him or her until a suitable alternate placement is found. As in s. HSS 343.07 (2) (c) 6. c., no custody hearing under s. 938.21, Stats., is required when a youth is released to the department or county department. Section DOC 393.12 (3) (e) requires that a written notice be given to a youth held in custody, explaining why the youth is being held pending the revocation hearing. As in s. HSS 343.07 6. d., the notice must be given to the youth within 7 days of placement in detention, and must inform the youth of his or her rights to appeal the custody decision "to the next supervisory level." This is in contrast to s. HSS 343.07 (2) (c) 6. d., which required the supervisor to give the notice, and the appeal to be to the administrator. The DOC rule attempts to streamline the disciplinary process and hold youth more accountable for rules violations.

15. Section DOC 393.13, as did s. HSS 343.08, requires the agent to write a violation report containing specified information when a violation results in a summary disposition or the initiation of revocation proceedings.
16. Section DOC 393.14 outlines the preparation for an aftercare revocation hearing in very similar terms as in s. HSS 343.09 with respect to service of notice upon a youth, the information packet prepared and provided prior to the hearing, and review of the evidence by the youth and/or attorney. A new section, s. DOC 393.14 (4)(b), provides for temporary administrative detention of a youth in order to remove the youth from the current placement and temporarily hold him or her until a suitable alternate placement is found. Section 393.14 (3)(b) permits a youth 14 years and older to waive the hearing without consulting an attorney, while s. HSS 343.09 (3) set the age at 15 years or older. New provisions of s. DOC 393.14 describe alternatives to revocation, including placement in the corrective sanctions program.
17. Section HSS 343.10 was limited to youth on state aftercare, because county-supervised youth did not go through the revocation process. Since July 1, 1995, counties have been able to use revocation to return a youth to a type 1 secured correctional facility, so a new section in the rule, s. DOC 393.16, was needed.
18. Section DOC 393.17 contains limited guidance on change of placement in lieu of an administrative hearing, whereas s. HSS 343.07 (2) (d) contained detailed instructions. The DOC rule does not set standards to provide the counties with flexibility with respect to change of placement proceedings.
19. Section DOC 393.18 identifies the procedures for an aftercare revocation hearing by reference to ch. HA 2, the correctional hearing rules of the office of administrative hearings. Chapter HA 2 is substantially similar to s. HSS 343.11 regarding revocation hearings, in terms of the procedure used, the basis for decision-making, and the notifications made. Section HSS 343.13 had specified that a hearing examiner's revocation decision could be appealed to the committing court; the right to a court appeal is in ch. HA 2, so is not repeated in ch. DOC 393.
20. Section DOC 393.19, not in ch. HSS 343, outlines the procedure and documentation required for returning a state or a county supervised youth to a type 1 secured correctional facility.
21. The complaint procedure, under s. DOC 393.20, cannot be used to challenge a revocation decision, but youth may use it to question a summary disposition or other decision of the agent. The complaint procedure allows for progressively higher levels of review, from the agent, to the supervisor, to the regional chief, whose decision is final.

SECTION 19. Chapter HSS 343 is repealed.

SECTION 20. Chapter DOC 393 is created to read:

CHAPTER DOC 393

JUVENILE AFTERCARE CONDUCT AND REVOCATION

DOC 393.01 Authority and purpose	DOC 393.11 Finding of violation
DOC 393.02 Applicability	DOC 393.12 Staff response to alleged violation
DOC 393.03 Definitions	DOC 393.13 Violation report
DOC 393.04 Responsibilities of the aftercare provider	DOC 393.14 Preparation for revocation hearing
DOC 393.05 Expected conduct	DOC 393.15 Procedure for youth on state aftercare when hearing right is waived
DOC 393.06 Use of force	DOC 393.16 Procedure for youth on county aftercare when hearing right is waived
DOC 393.07 Mechanical restraints	DOC 393.17 Petition for change in placement by the court
DOC 393.08 Incapacitating agents and weapons	DOC 393.18 Revocation hearing
DOC 393.09 Search and seizure	DOC 393.19 Return of a youth to a type 1 secured correctional facility
DOC 393.10 Custody and transporting	DOC 393.20 Youth complaint procedure

DOC 393.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11 (2), 301.025, 938.357 (5) (g) and 938.48 (16) Stats., to establish rules of conduct for youth who are on state or county supervised aftercare, including standards and procedures for dealing with violations of expected conduct and procedures to revoke a youth's aftercare status.

DOC 393.02 Applicability. This chapter applies to the department, to a county department that operates an aftercare program, to any youth on aftercare under a court order issued pursuant to s. 938.34, Stats., and to any youth on aftercare under a court order issued pursuant to s. 48.34, 1993 Stats., or s. 48.366, Stats., relating to extended jurisdiction.

DOC 393.03 Definitions. In this chapter:

(1) "Administrative detention" means secure, temporary confinement of a youth in a type 1 secured correctional facility, an approved juvenile detention center or the approved juvenile section of a county jail pending the completion of a violation investigation, the outcome of a revocation proceeding or the placement of a youth in an authorized placement as an alternative to revocation.

(2) "Administrator" means the administrator of the division of juvenile corrections or that person's designee.

(3) "Aftercare" means the aftercare supervision status of a youth, as used in ss. 938.34 (4n) and 938.532 (3), Stats., who is released from a type 1 or type 2 secured correctional facility by the office of juvenile offender review or by action of a court under s. 48.366 (5) (b) or 938.357, Stats., and is supervised outside of a type 1 or type 2 secured correctional facility by the department or a county department until the expiration or termination of the youth's court ordered supervision.

(4) "Aftercare provider" means the department or a county department designated by a juvenile court under s. 938.34 (4n), Stats., to provide aftercare supervision or the department under s. 938.532(3), Stats.

(5) "Agent" means a person employed by the department or a county department who provides aftercare supervision or type 2 status supervision for a youth and who is authorized to make decisions regarding aftercare or type 2 status supervision.

(6) "Alternate care placement" means the placement of a youth, other than a youth on type 2 status, in a residential living arrangement other than the parental home.

(7) "Corrective action" means an action taken by the department or a county department to correct a youth's behavior that may include, but is not limited to, education, development of life skills or vocational skills or community service.

(8) "Corrective sanctions program" means the program under s. 938.533, Stats.

(9) "County department" means the county department under s. 46.215, 46.22 or 46.23 Stats.

(10) "County director" means the director of the county department or that person's designee.

(11) "County intake worker" means a person designated under s. 938.06 (3) Stats., to provide intake services.

(12) "Day" means a calendar day.

(13) "Department" means the Wisconsin department of corrections.

(14) "Division" means the department's division of juvenile corrections.

(15) "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.

(16) "Hearing examiner" means an attorney employed by the Wisconsin department of administration to conduct revocation hearings under this chapter.

(17) "Incapacitating agent" means any commercially manufactured device or chemical agent used by the department to temporarily control a youth.

(18) "Investigation" means a process of fact-finding to determine whether a violation of aftercare has occurred, including the period of time needed to determine the appropriate action if a violation is substantiated.

(19) "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.

(20) "OJOR" means the division's office of juvenile offender review.

(21) "Regional chief" means a division regional manager responsible for oversight of community correctional services, or that person's designee.

(22) "Staff" means an employee of the department or a county department.

(23) "Summary disposition" means a written determination that a violation was committed and a consequence other than revocation shall be imposed.

(24) "Superintendent" means the superintendent of a Type 1 secured correctional facility or that person's designee.

(25) "Supervision" has the meaning given in s. 938.505(1), Stats.

(26) "Supervisor" means a department or a county department employee responsible for the supervision or administration of juvenile aftercare supervision, or that person's designee.

(27) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19), Stats.

(28) "Type 2 secured correctional facility" has the meaning given in s. 938.02 (20), Stats.

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

(30) "Violation report" means a written report prepared by staff which describes facts relating to an alleged violation by a youth.

(31) "Youth" means a person under the supervision of the department or a county department within the meaning of s. 938.505(1), Stats., or pursuant to s. 48.366, Stats., regardless of age.

DOC 393.04 Responsibilities of the aftercare provider. The department or county department providing aftercare shall make reasonable efforts to ensure all of the following regarding a youth on aftercare:

(1) The youth is free from discrimination based on race, national origin, color, creed, sex, age, sexual orientation, marital status, political affiliation, handicap, ethnicity, religion or ancestry.

(2) The youth is protected from abuse or neglect.

(3) The youth is provided with accessible and usable services, and any reasonable accommodations and services needed to benefit from correctional programming.

(4) The youth is provided with an interpreter if his or her ability to speak, understand, read or write English is limited.

(5) The youth is placed in the youth's parental home when this is consistent with correctional programming and the protection of the public.

(6) The youth is involved in planning his or her ongoing correctional program.

(7) The youth has appropriate access to the courts and legal counsel.

(8) The youth has access to appropriate department, county department and community programs and services consistent with the protection of the public and the youth's needs.

(9) The youth has his or her educational, vocational, drug or alcohol abuse, health, mental health and other programming needs met.

(10) The youth may visit, use the mail and communicate with family members or an attorney within reasonable guidelines established by the department or a county department.

(11) The youth may participate in authorized recreational and religious activities.

DOC 393.05 Expected conduct. (1) A youth's agent shall inform the youth orally and in writing of the conduct rules imposed by the agent and the conditions imposed by the court. All of the following conduct rules apply to a youth on aftercare:

(a) The youth may not violate any state, federal or municipal law or regulation.

(b) The youth shall report any arrest or law enforcement contact to his or her agent as soon as possible, but no later than 72 hours after the arrest or contact. If a youth is taken into custody, the youth shall inform the law enforcement officer and any intake worker of his or her aftercare status and the name and agency of his or her agent.

(c) The youth shall cooperate with his or her agent and fully participate in the youth's aftercare program.

(d) The youth shall be completely truthful with his or her agent at all times.

(e) The youth shall keep all scheduled appointments with the agent and all service providers.

(f) The youth shall report to and inform his or her agent of the youth's whereabouts and activities as directed and may not go to or be present at any place prohibited by the agent.

(g) The youth shall obtain prior permission from his or her agent to terminate employment or change employment or to drop out of or change an educational or vocational program. If an unforeseen situation occurs causing the youth to act without prior permission, the youth shall notify the agent of the change as soon as possible, but not later than 72 hours after the change.

(h) If the youth resides with his or her parents or guardian, the youth shall notify his or her agent of the family's change of residence in advance of the change, except when this is not possible, the youth shall notify his or her agent of the change as soon as possible, but not later than 72 hours after the change.

(i) If the youth is in an alternate care placement, the youth shall obtain advance permission from his or her agent before requesting or making a change of residence.

(j) The youth may not leave the state of Wisconsin unless the youth obtains prior permission and a signed travel permit from his or her agent.

(k) The youth may not purchase, own, carry or possess a firearm, knife, any other weapon, or ammunition without prior written authorization of his or her agent. An agent may not grant a youth permission to possess a firearm if the youth is prohibited from possessing a firearm under s. 941.29, Stats., any other state law, federal law, municipal ordinance or court order.

(l) The youth may not use or possess any drug, item or substance that is illegal to possess, any intoxicating substance or any prescription drug except as properly prescribed for the youth and used by the youth in accordance with law.

(m) The youth may not purchase, lease, possess, trade, sell, own or operate a motor vehicle without prior approval of the youth's agent. To obtain approval to operate a motor vehicle, the youth shall demonstrate proof of insurance, have a valid Wisconsin driver's license and, if the vehicle is owned by another person, have the written permission of the owner to operate the vehicle. Approval shall be denied if ownership, possession or use of a motor vehicle is inconsistent with the youth's rehabilitation.

(n) The youth may not borrow money or purchase on credit without prior approval of his or her agent.

(o) The youth shall submit to and cooperate with searches of the youth, living quarters and property and with tests ordered by the department, a county department, or a placement agency consistent with law including, but not limited to, urinalysis, breathalyzer and blood tests.

(p) The youth shall follow any additional rules, given orally or in writing, that may be issued by the youth's agent. These rules may include, but are not limited to, directions relating to any of the following:

1. Companions.
2. Hours and curfews.
3. Medical, mental health or dental attention.
4. Counseling or therapy.
5. Family responsibilities and child support.
6. Support of self, including the sources of earned and unearned income.
7. Educational and vocational obligations.
8. Job attendance.

9. Court obligations, including court ordered restitution and surcharges, and the collection and handling of all restitution monies.

10. Frequency and manner of reporting to the agent.

11. Conditions to be met when residing in an alternate care placement.

12. Payment of debts.

(2) A youth shall comply with conduct rules that his or her agent may require to achieve the goals and objectives of the youth's aftercare or any conditions established by the court.

(3) A youth shall sign a written copy of the conduct rules established for the youth's aftercare prior to release from a type 1 or type 2 secured correctional facility, whenever possible, or immediately upon arrival at the initial community placement.

(4) The copy of the conduct rules signed by a youth under sub. (3) shall include the following notice: "These conduct rules are in addition to any court-ordered conditions. Your aftercare may be revoked if you do not comply with any of your court-ordered conditions or if you violate any of these conduct rules."

(5) At a youth's first meeting with his or her agent following the youth's release, the agent shall personally review the conduct rules and court-ordered conditions with the youth, and the agent and the youth shall sign a copy of the conduct rules if the youth did not sign the rules prior to release from the institution. The agent may modify or supplement the youth's conduct rules at any time, either orally or in writing. If the agent modifies or supplements the conduct rules orally, the agent shall promptly give the youth a written copy of the changed or additional conduct rule.

(6) A youth who disagrees with a conduct rule established by his or her agent may appeal the agent's decision to the agent's supervisor within 5 working days of the decision. The supervisor shall review the appeal and make a written response to the youth within 5 working days of receipt of the appeal, upholding, reversing, or modifying the conduct rule. If the supervisor does not make a written response, the conduct rule is upheld.

(7) If the youth is in disagreement with the supervisor's decision, the youth may appeal that decision to the next supervisory level of the department or county department within 5 working days of the supervisor's decision or failure to issue a decision under sub. (6). The next level supervisor shall issue the final decision of the department or county department within 5 working days of receipt of the appeal. If the next level supervisor does not make a written response, the supervisor's decision is upheld.

DOC 393.06 Use of force. (1) GENERAL. Whenever practical, staff shall rely on law enforcement authorities when it is necessary to exercise force to control a youth. When it is not practical, staff may use force to control the youth in accordance with this section.

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

(3) AMOUNT OF FORCE. Only reasonable and the minimum necessary force may be used to achieve control of a youth. Staff may not use excessive force.

(4) NON-DEADLY FORCE. (a) Staff may use non-deadly force to control a youth only if the user of force reasonably believes its use is immediately necessary to accomplish one of the following purposes:

1. To prevent an escape.
2. To prevent death or bodily injury to oneself or another.
3. To prevent unlawful damage to property.
4. To change the location of a youth.
5. To take a youth into custody or transport a youth.

(b) Before non-deadly force is used to accomplish one of the purposes under par. (a), staff shall use all reasonable efforts to persuade the youth to be voluntarily taken into custody or to cease inappropriate behavior.

(5) DEADLY FORCE. (a) Staff may use deadly force to control a youth only if the user reasonably believes that its use is immediately necessary to prevent death or great bodily harm to oneself or another.

(b) Staff may not use deadly force to control a youth if its use creates a substantial danger of harm to an innocent third party, unless the danger created by not using deadly force is greater than the danger created by its use.

(6) FOLLOW UP AFTER THE USE OF FORCE. (a) After staff use force to control a youth, the youth and any involved staff shall immediately be checked for injury. If the youth or staff have been injured, the staff shall immediately seek appropriate medical treatment of any injury to the youth or staff. A supervisor shall be notified immediately of any injury to the youth or staff.

(b) When force is used against a youth, all staff who observed or were involved in the incident, shall submit a written record to a supervisor within 24 hours of the incident. The record shall describe the use of force and be placed in the youth's file. The record 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. The reason for using force.
4. The names of all persons who observed the use of force.

DOC 393.07 Mechanical restraints. (1) GENERAL. Staff may use mechanical restraints to control the behavior of a youth or transport a youth in accordance with this section.

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

- (a) To take a youth into custody
- (b) To transport a youth
- (c) To prevent death or bodily injury to oneself or another
- (d) To prevent unlawful damage to property
- (e) To change the physical location of a youth
- (f) To prevent a youth from escaping

(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 staff place a youth in mechanical restraints to take the youth into custody and transport the youth, staff shall promptly transport the youth to a detention facility, a mental health or medical facility or a type 1 secured correctional facility.

(b) *Behavior control.* When staff place a youth in mechanical restraints to control the youth's behavior under sub. (2) (c), (d), (e) or (f), staff shall remove the restraints as soon as staff believe the restraints are no longer necessary to control the youth's behavior. Restraints shall be used at all times while the youth is being transported in a secure manner under sub. (2)(b).

(c) *Observation.* Staff shall observe a youth placed in mechanical restraints at least once every 15 minutes until the restraints are removed or until the youth's admission to a place of secure confinement or into custody. Staff shall maintain a written record of the observations including the date and times staff observed the youth, name of the person making the observation, and comments on the youth's condition and behavior while in restraints.

(d) *Services and privileges.* A youth shall be released from mechanical restraints to perform bodily functions and for meals, unless it is unsafe to do so or the youth is being transported in a secure manner. 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.

(e) *Check for injury.* When staff use mechanical restraints, the 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.

(f) *Record.* When staff use mechanical restraints to control a youth's behavior under sub. (2) (c), (d), (e) or (f), a supervisor shall be notified as soon as possible. Staff shall submit to a supervisor a written report describing the incident within 24 hours and included in the youth's file. The report shall include all of the following:

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

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

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

4. 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.

(6) **ANNUAL REPORT.** Each regional chief shall submit an annual report to the administrator describing all incidents involving the use of mechanical restraints by program staff to control youth behavior under sub. (2) (c), (d), (e) or (f).

DOC 393.08 Chemical agents and weapons. (1) **OLEORESIN OF CAPSICUM.** For the purpose of this section, "oleoresin of capsicum" means oleoresin extracted from fruits of plants of the genus capsicum. Oleoresin contains the active ingredient capsaicin and related compounds classified as capsaicinoids.

(2) **USE OF OLEORESIN OF CAPSICUM.** Staff may carry or use oleoresin of capsicum, as permitted under s. 941.26 (4) (a) and (c), Stats., while on duty and only under all of the following conditions:

(a) If approved by the department.

(b) After successfully completing a department approved training program or, if applicable, after successfully updating training according to department policy and procedure.

(c) While acting in self-defense or defense of a third person, as permitted under ss. 939.48 and 941.26 (4) (c) 1, Stats.

(3) **APPROVED PRODUCTS.** Staff may carry and use only the chemical products and delivery systems approved by the department.

(4) MEDICAL CARE. Staff shall immediately provide medical attention to a person exposed to oleoresin of capsicum.

(5) DOCUMENTATION. Staff involved in the use of oleoresin of capsicum shall document its use according to department policy and procedure.

(6) FIREARMS OR OTHER WEAPONS. Staff may not carry a firearm or other weapons while on duty.

DOC 393.09 Search and seizure. (1) GENERAL. Staff may conduct a search of a youth and a youth's living quarters or property at any time, subject to this section. In this section:

(a) "Living quarters" means a private bedroom, common familial or communal living areas and areas under a youth's control or to which the youth has access, including, but not limited to, the grounds and motor vehicles.

(b) "Property" means objects under a youth's control, regardless of ownership.

(2) PERSONAL SEARCH. Staff may conduct a personal search of a youth for any of the following reasons:

(a) When staff have a reasonable belief that a youth possesses contraband.

(b) After the youth has been taken into custody and before transporting the youth.

(c) Upon release from a secure detention center or type 1 secured correctional facility or other secured confinement.

(d) Routinely when the youth enters a report center, a staff office or other placement or sanction facility.

(e) At random with the prior authorization of a supervisor.

(f) At the direction of a supervisor.

(3) STRIP SEARCH. (a) A strip search may be conducted in addition to a personal search for any reason stated in sub. (2) only when staff have a reasonable belief that the youth is concealing contraband secreted within the youth's underclothing or external body areas, and the youth refuses to voluntarily give the suspected contraband to staff.

(b) Staff shall obtain prior approval from a supervisor before conducting a strip search. The supervisor may approve the strip search if the supervisor determines that the requirements of par. (a) are met.

(c) A strip search shall be conducted in a clean and private place by a person of the same sex as the youth being searched. The search shall be conducted by two persons of the same sex as the youth when possible.

(4) BODY CONTENTS SEARCH. (a) Staff may conduct a body contents search if staff have a reasonable belief that a youth has consumed an intoxicating substance or is concealing contraband in a manner that might be discovered by such a search and prior authorization has been obtained from a supervisor.

(b) Staff may require a youth to submit to routine drug and alcohol tests for cause as part of a routine testing of all youth in a program or as part of a random testing program.

(c) When an agent or supervisor requires that collection of a urine specimen be observed, staff of the same sex as the youth shall observe and collect the urine specimen.

(d) Blood and stool samples may only be collected by a licensed physician, physician assistant, registered nurse or other person authorized by law.

(e) X-rays may be conducted only by licensed radiology personnel.

(5) REASONABLE GROUNDS TO BELIEVE. In deciding whether a reasonable belief exists under subs. (2), (3) and (4), all of the following shall be considered:

(a) Observations of staff.

(b) Information provided by a reliable informant.

(c) Prior seizures of contraband from the person or living quarters of the youth.

(6) SEARCH OF LIVING QUARTERS AND PROPERTY. (a) Staff may search a youth's property and living quarters at any time with the approval of a supervisor. Whenever practical, staff may request the assistance of law enforcement authorities to assist in a search.

(b) If a parent or other adult with whom a youth resides denies access to any part of the property or living quarters referred to in par. (a), the youth's agent may require the youth to move to another placement approved by the department.

(c) There is no requirement that there be any evidence that contraband is concealed in the property or living quarters of a youth before a search is conducted.

(d) A supervisor shall approve a search before it occurs, unless exigent circumstances, such as suspicion that the youth will destroy contraband or use a weapon, require a search without approval.

(e) Staff who conduct a search shall prepare a written report of the search which shall state all of the following:

1. The identity of staff who conducted the search and the supervisor who approved it.

2. The date and time of the search.

3. The identity of the youth whose residence or property was searched.

4. The location of the property which was searched.
5. The reason for conducting the search and whether the search was a random search.
6. Any objects that were seized pursuant to the search.
7. Whether any damage was done to the premises during the search.

(f) If any objects were seized or property was damaged during the search of a youth's property or living quarters, the youth shall be informed in writing. A youth shall be reimbursed for the repair or replacement of damaged property that is not contraband. Property which is damaged shall be valued at its fair market value, not its replacement cost.

(g) Staff shall confiscate items believed to be contraband and report those items to the appropriate law enforcement authorities. Contraband shall be disposed of consistent with s. DOC 376.18.

(h) In conducting a search, staff shall disturb the effects of a youth as little as possible, consistent with thoroughness.

(i) Staff shall not read legal materials belonging to a youth during a search.

DOC 393.10 Custody and transporting. (1) GENERAL. Staff may request that law enforcement authorities take a youth into custody and transport the youth to a detention facility, a mental health or medical facility or a type 1 secured correctional facility whenever practical. When assistance is not available, staff may take a youth into custody and transport the youth in accordance with this section.

(2) TRANSPORTING. When staff takes a youth custody, the youth shall be transported as soon as practical.

(3) PERSONNEL. Staff shall transport a youth in a secure manner to a secure facility and adequate staff shall supervise the transport consistent with department policies and procedures.

DOC 393.11 Finding of violation. A youth may be found to have violated a conduct rule or a court-ordered condition of aftercare under s. DOC 393.05 if any of the following applies:

(1) The youth committed the conduct prohibited by the conduct rule or court-ordered condition.

(2) The youth was convicted or was adjudicated delinquent for violating a criminal law or municipal ordinance.

DOC 393.12 Staff response to alleged violation. (1) INVESTIGATION. An agent who has reason to believe that a youth violated a conduct rule or court-ordered condition of aftercare shall investigate the matter. The investigation shall include an interview with the youth to discuss the alleged violation within a reasonable period of time after the agent becomes aware of the allegation.

(2) ACTION. If following the investigation under sub. (1), the agent concludes that a youth committed a violation, the agent shall take one of the following actions:

(a) *Counseling.* 1. 'Procedure.' If the violation is minor and does not present a substantial or immediate risk to the community or the youth, the agent may review the conduct rules and court-ordered conditions of aftercare with the youth, inform the youth why the conduct is a violation and direct the youth to take corrective action. Counseling may be the appropriate course of action if any of the following apply:

- a. The youth is unfamiliar with the conduct rule or court-ordered condition.
- b. The youth has not previously violated the same or a closely related conduct rule or court-ordered condition.
- c. The youth is unlikely to repeat the behavior if warned and counseled.
- d. The youth's ability to understand the conduct rules or court-ordered conditions is limited or impaired.
- e. Summary disposition or revocation is not appropriate.

1. 'Record.' The agent shall place a brief written record in the youth's supervision file that describes the youth's violation and the counseling the agent provided to the youth.

(b) *Summary disposition.* 1. 'Procedure.' The agent may inform the youth that the youth's conduct is in violation of a conduct rule or court-ordered condition of aftercare and do one or more of the following:

- a. Explain the conduct rules and court-ordered conditions and warn the youth that further violations may result in revocation of the youth's aftercare.
- b. Modify or supplement the conduct rules.
- c. Require the youth to take corrective action.
- d. Further restrict the youth's placement or supervision.

2. 'Report.' When the agent imposes a summary disposition, the agent shall prepare a written violation report consistent with s. DOC 393.13.

3. 'Appeal.' a. A youth may appeal a summary disposition to the next supervisory level within the department or the county department either orally or in writing within 5 days of its imposition. That supervisor shall review the action and issue a final written decision within 5 working days of receipt of the appeal. The agent shall record the appeal decision in the youth's file. If the supervisor does not issue a written decision within 5 working days, the disposition is upheld.

b. The filing of an appeal by a youth may not delay the imposition of the summary disposition pending outcome of the appeal.

(c) *Initiation of revocation proceedings.* The agent may recommend to the department or county department that revocation proceedings be initiated. The department or county department shall consider the following prior to initiating revocation proceedings:

1. The youth's committing offense.
2. The youth's past conduct and the positive and negative adjustments while on aftercare.
3. Previous violations that have occurred and the disposition of each.
4. The seriousness of the violation.
5. The alternatives to revocation.
6. Why alternatives to revocation are not appropriate and have been rejected.

(3) REVOCATION OF YOUTH UNDER EXTENDED JURISDICTION. (a) The aftercare revocation procedures in ss. DOC 393.14 to 393.16 and 393.18 do not apply to a youth subject to extended jurisdiction under s. 48.366, Stats.

(b) When the aftercare provider decides to initiate revocation proceedings for a youth subject to extended jurisdiction, the aftercare provider shall file a petition for revision of the court order with the committing court pursuant to s. 48.366 (5), Stats., requesting revocation of the youth's aftercare status.

(4) ADMINISTRATIVE DETENTION. (a) If an aftercare provider initiates revocation proceedings, the aftercare provider may place a youth under its supervision on administrative detention pending the outcome of the revocation proceedings. The administrative detention decision shall be based upon the alleged violation and the youth's past conduct. The aftercare provider may hold the youth on administrative detention if it is likely that any of the following will occur if the youth remains in the current placement:

1. The youth will seek to intimidate a witness in a pending investigation, disciplinary action or revocation action.
2. The youth will encourage others by example, expressly or by the youth's presence, to defy staff authority and thereby erode the staff's ability to control a particular situation.
3. The youth will present a substantial danger to the physical safety of himself or herself or another person.
4. The youth will attempt to flee.
5. Criminal, disciplinary or revocation proceedings will be inhibited.
6. The youth will commit a crime.

7. The youth will engage in an activity that violates a conduct rule or court-ordered condition of aftercare.

8. The youth will not achieve the goals and objectives of his or her aftercare.

(b) If a youth under aftercare supervision of the department is removed from an approved placement, whether from the youth's own home or from an alternate care placement and a suitable alternative placement is not readily available, the department may place the youth at a type 1 secured correctional facility on administrative detention until a suitable alternate placement is found. If a suitable alternate placement is not found within 30 days, the supervisor shall notify the regional chief of the youth's status. If a suitable alternate placement is not found within 60 days, the regional chief shall notify the administrator.

(c) When the aftercare provider decides to place a youth on administrative detention, the aftercare provider may request that the youth be taken into custody under s. 938.19(1)(d)6, Stats. and released to the aftercare provider under s. 938.20(2)(cm), Stats.

(d) The department may place a youth in a type 1 secured correctional facility or a secure detention facility within the meaning of s. 938.02(16), Stats., pending the outcome of revocation proceedings.

(e) 1. If the aftercare provider places a youth on administrative detention, the aftercare provider shall give the youth a written notice explaining why the youth is on administrative detention pending the outcome of the revocation proceeding.

2. The aftercare provider shall give the notice to the youth no later than the 7th day after the day the youth was placed on administrative detention. The notice shall state the reason why revocation of aftercare has been initiated and shall identify the basis for administrative detention under par. (a).

3. The notice shall inform the youth that he or she may appeal the administrative detention decision to the next supervisory level in writing at any time prior to the revocation hearing.

4. The supervisor reviewing the appeal shall respond in writing to the youth within 7 days after receipt of the appeal. Failure of the supervisor to respond upholds the administrative detention decision.

5. The youth may appeal the decision of the supervisor to the administrator at any time prior to the revocation hearing. The administrator shall respond in writing to the youth within 7 days after receipt of the appeal. Failure of the administrator to respond upholds the administrative detention decision.

6. The original administrative detention decision shall remain in effect pending the decision on the appeal.

DOC 393.13 Violation report. (1) When a violation results in a summary disposition, initiation of revocation proceedings or the youth is taken into custody by law enforcement for a violation of a law, the assigned agent shall prepare a written violation report. The violation report shall include all of the following:

(a) A description of the alleged misconduct, including any conflicting versions of the nature or circumstances of the alleged violation.

(b) The alleged victim's statement or a statement of the impact on the alleged victim.

(c) The youth's statement.

(d) A description of any alleged violations of the law, any statement or confession to law enforcement, guilty plea, pending charges, a prosecutor's recommended disposition or a conviction for the conduct underlying the alleged aftercare violation, if known.

(e) A list of all conduct rules and court-ordered conditions the youth allegedly violated.

(f) A description of the agent's investigation and statement of the agent's conclusions.

(g) Information about the custody status of the youth.

(h) Any recommendation for revocation of aftercare and the reasons for the recommendation, or a description of the specific summary disposition imposed under s. DOC 393.12 (2) (b).

(2) The assigned agent shall maintain the violation report in the youth's file.

DOC 393.14 Preparation for revocation hearing. (1) NOTICE. Prior to a revocation hearing, the agent shall serve the youth with written notice of the hearing. If the youth is being held on administrative detention under s. DOC 393.12 (4), the notice shall be served no later than the 7th day after the day on which the youth was taken into physical custody in Wisconsin. If the youth is not in physical custody, the notice shall be served on the youth at least 14 days prior to the scheduled revocation hearing. The agent shall also send a copy of the notice to the hearing examiner's office and to the youth's attorney. The notice shall include:

(a) A statement of the alleged violation.

(b) A statement of the conduct rule or court-ordered condition of aftercare that the youth allegedly violated.

(c) A statement that a revocation hearing has been scheduled under this section and an explanation of the youth's rights at that hearing including:

1. The right to be present.
2. The right to be represented by an attorney.
3. The right to deny the allegation and to speak on his or her own behalf.
4. The right to present evidence.

5. The right to present witnesses and the right to question witnesses.

6. The right to receive a written decision stating the reasons for the decision based upon the evidence and testimony presented.

(d) A statement of the evidence to be considered at the hearing which may include:

1. Documents.

2. Physical evidence.

3. Results of a breathalyzer test.

4. Incriminating statements by the youth.

5. All law enforcement reports regarding the allegation.

6. All warrants issued relating to the allegation.

7. Relevant photographs.

(e) A statement that the youth has the right to waive the revocation hearing in accordance with sub. (3), in which case the administrator or the director of the county department, shall decide whether to revoke the youth's aftercare.

(f) A statement that whatever relevant information or evidence is in the possession of the department or county department is available for inspection, unless the hearing examiner determines that the information or sources of information may be kept confidential.

(g) The date, time and place of the hearing.

(2) REISSUANCE OF NOTICE. When the notice of a revocation hearing is found to be improper and the impropriety results in the dismissal of the revocation proceedings, the department or county department may reinitiate revocation proceedings by issuing a proper notice.

(3) WAIVER. (a) A youth served with notice under sub. (1) or sub. (2) may waive the right to a revocation hearing, including the right to be represented by an attorney at that hearing, if the youth waives these rights knowingly, voluntarily and in writing.

(b) The aftercare provider may not accept a waiver from a youth who is less than 14 years of age at the time of the waiver, unless the youth's attorney approves the waiver. If a youth who is less than 14 years of age at the time of the waiver does not have an attorney, the aftercare provider may not accept a waiver unless the youth's parent, guardian or legal custodian approves the waiver. A youth may consult with an attorney, if requested, before the youth waives any rights.

(c) The aftercare provider may not accept a waiver from a youth of any age if the aftercare provider reasonably believes that the youth lacks the mental capacity to make a reasoned and voluntary waiver of his or her rights.

(d) A youth's waiver shall be discussed and signed in the presence of a witness who is an adult. The witness may not be an employee of the aftercare provider, unless no other witness is available.

(4) INFORMATION PACKET. At least 5 days prior to the day of a hearing, the agent shall send copies of the following documents to the youth and the youth's attorney, if any:

(a) The court order placing the youth under the supervision of the department or county department.

(b) The conduct rules and court-ordered conditions signed by the youth.

(c) The violation report.

(d) A case history review summary.

(e) A statement from any unavailable witness and an statement explaining why the witness is unavailable.

(f) The document used by the agent to recommend revocation.

(g) The department's aftercare revocation notice, rights, acknowledgment and waiver form.

(5) REVIEW OF EVIDENCE. At least 2 days prior to the day of the hearing, the youth and the youth's attorney, if any, may review all evidence to be submitted by the aftercare provider at the hearing, except evidence that the hearing examiner determines should not be disclosed, such as the identity of confidential informants.

(6) HARMLESS ERROR. When a procedural requirement under this chapter is not met by the aftercare provider, the error shall be considered harmless and disregarded if it does not substantially affect the rights of the youth. Rights are substantially affected when a variance from a requirement prejudices a fair revocation proceeding for the youth.

(7) CONCURRENT PROSECUTION. All revocation proceedings under this chapter may proceed regardless of any concurrent prosecution of a youth for the conduct underlying the alleged aftercare violation. Dismissal or acquittal in a court proceeding for a youth's conduct underlying an alleged violation does not preclude revocation of that youth's aftercare for the same conduct.

(8) DECISION TO TERMINATE REVOCATION PROCEEDINGS. At any time during the revocation proceedings, the aftercare provider may terminate the revocation proceedings in order to implement an alternative course of action. If the youth has been held on administrative detention during the proceedings, the youth shall, following the decision to terminate the proceedings, be released to an alternative placement approved by the aftercare provider at the earliest practical time. This placement may be the previous placement from which the youth was initially removed, or an alternative placement.

(9) CORRECTIVE SANCTIONS PROGRAM. An aftercare provider may place a youth in the corrective sanctions program immediately following a revocation if all of the following have occurred:

- (a) The youth has waived the revocation hearing.
- (b) The administrator or county director has signed the order revoking the youth's aftercare.
- (c) OJOR has approved the transfer to the corrective sanctions program and issued the transfer order.

DOC 393.15 Procedure for youth on state aftercare when hearing right is waived. **(1) SUPERVISOR'S RECOMMENDATION.** When a youth on state-provided aftercare waives his or her right to a revocation hearing under s. DOC 393.14 (3), a supervisor may recommend that the administrator revoke the youth's aftercare.

(2) RECORD. When a supervisor recommends revocation under sub. (1), the supervisor shall forward the youth's revocation notice and waiver, all documents required under s. DOC 393.14 (4) and the evidence referred to in s. DOC 393.14 (1) (d) 1, 3, 4 and 5 to the administrator within 14 days after acceptance of the waiver, unless the administrator grants an extension for cause.

(3) ADMINISTRATOR'S DECISION. (a) The administrator after reviewing the documents and evidence under sub. (2) may revoke the youth's aftercare. The administrator's written decision shall state the reasons why the youth's aftercare was revoked or not revoked.

(b) The administrator shall forward a copy of the decision to the youth, the youth's attorney, if any, and the youth's agent within 14 days after the administrator receives the documents and evidence under sub. (2).

(c) If the youth is in custody at a type 1 secured correctional facility, the administrator shall promptly forward a copy of the decision to the type 1 secured correctional facility.

(d) If the youth was not in custody during the revocation proceedings, the administrator shall direct the youth be taken into custody and transferred to a type 1 secured correctional facility.

(e) If the youth's aftercare is not revoked, the administrator shall remand the youth's case to the youth's agent and the agent's supervisor for alternative planning and placement.

DOC 393.16 Procedure for youth on county aftercare when hearing right is waived. **(1) SUPERVISOR'S RECOMMENDATION.** When a youth on county-provided aftercare waives the revocation hearing under s. DOC 393.14 (3), the county agent's supervisor may recommend that the director of the county department revoke the youth's aftercare.

(2) RECORD. When the recommendation under sub. (1) is to revoke the youth's aftercare status, the county agent's supervisor shall forward the notice of revocation and waiver, all documents required under s. DOC 393.14 (4) and the evidence referred to in s. DOC 393.14 (1) (d) 1, 3, 4 and 5 to the county director within 14 days after acceptance of the waiver, unless the county director grants an extension for cause.

(3) COUNTY DIRECTOR'S DECISION. (a) The county director after reviewing the documents under sub. (2) may revoke the youth's aftercare. The county director shall issue a written decision, stating the reasons why the youth's aftercare was revoked or not revoked.

(b) The county director shall forward copies of the decision to the youth, the youth's attorney, if any, and the youth's agent within 14 days after the county director receives the documents and evidence under sub. (2).

(c) The county director shall promptly forward the decision and all documents required under s. DOC 393.14 (4) to the department and to the type 1 secured correctional facility designated by the department to receive the youth following the revocation.

(d) If the youth was not in custody during the revocation proceedings, the county director shall direct that the youth be taken into custody and arrangements made for the youth to be transferred to the designated type 1 secured correctional facility.

(e) If the youth's aftercare is not revoked, the youth's case shall be remanded by the county director to the youth's agent and the agent's supervisor for alternative planning and placement.

DOC 393.17 Petition for change in placement by the court. (1) A aftercare provider may, in lieu of an administrative hearing, petition the committing court under s. 938.357 (3), Stats., for a change in placement to a type 1 secured correctional facility.

(2) If a youth who has been released to aftercare by the court under s. 48.366, Stats., violates a condition of supervision imposed by the court or the department, the administrator may direct that a petition be filed with the court requesting revocation under s. 48.366(5)(b), Stats.

DOC 393.18 Revocation hearing. (1) GENERAL. The revocation hearing process shall be governed by ch. HA 2, except for those provisions in sub. (2).

(2) EXCEPTIONS. (a) *Time limit.* A revocation hearing for a youth on aftercare shall be held within 30 days after the youth was taken into custody in Wisconsin for an alleged violation, in accordance with s. 938.357 (5) (d) Stats., unless this time limit is waived under par. (b).

(b) *Waiver of revocation hearing time limit.* The 30-day required time limit in par. (a) may be waived only upon agreement of the aftercare provider, the youth and the youth's attorney, if any.

(c) *Hearing closed.* A revocation hearing for a youth shall be closed to the public.

(d) *Parents.* The youth's parents or guardian may attend the hearing.

DOC 393.19 Return of a youth to a type 1 secured correctional facility. (1) If a youth on state aftercare is held on administrative detention at a type 1 secured correctional facility, the signed revocation order of the administrator of the division of hearings and appeals, if there has been a hearing, or the signed revocation order of the administrator, if the hearing has been waived, shall serve to revoke the youth's aftercare and authorize transfer of supervision of the

youth to a type 1 secured correctional facility.

(2) If a youth on county-provided aftercare has been held on administrative detention at a secure detention facility, the signed revocation order of the administrator of the division of hearings and appeals, if there has been a hearing, or the signed revocation order of the county director, if the hearing has been waived, shall serve to revoke the youth's aftercare and authorize return of the youth to a type 1 secured correctional facility.

(3) If a youth or the youth's attorney files an appeal of the revocation order, the appeal shall not delay transfer of the youth to supervision at a type 1 secured correctional facility pending outcome of the appeal.

DOC 393.20 Youth complaint procedure. (1) GENERAL. A youth may file a complaint to obtain administrative review of issues related to the youth's aftercare that personally affects the youth.

(2) OBJECTIVES. The objectives of this procedure include all of the following:

- (a) To allow youth to raise questions regarding a decision affecting their supervision.
- (b) To encourage communication and cooperation between youth and staff.
- (c) To resolve problems in an orderly and consistent manner.

(3) SCOPE. The youth complaint procedure may be used by any youth on aftercare to review a decision that affects the youth personally, except a decision regarding any of the following:

- (a) Revocation.
- (b) Custody and detention.
- (c) A violation of criminal law or ordinance.
- (d) Denial of use or possession of a firearm as governed by law.
- (e) Conduct rules or court-ordered conditions of supervision.
- (f) Discharge of a youth prior to the original discharge date of the youth's order for supervision.
- (g) Decisions of OJOR.
- (h) A rule of the department.
- (i) Matters over which the department has no authority.
- (j) An issue which a youth may appeal under this chapter or any department rule or a decision issued by the department in response to an appeal filed by a youth under this chapter or any department rule.

(4) FILING A COMPLAINT. (a) A youth may initiate a review of a decision by filing a complaint within 5 days of the decision with his or her agent. The agent shall promptly forward the complaint and a statement of the facts and the reasons for the decision to his or her supervisor.

(b) The agent shall attempt to informally resolve the complaint. Any resolution agreed to by the agent and the youth shall be documented in the youth's file.

(5) SUPERVISOR'S INVESTIGATION AND DECISION. (a) The supervisor shall review the complaint and the agent's statement and may interview the youth or others to investigate the complaint. The supervisor shall issue a written decision within 7 days of receipt of the request for review, stating the reasons for the decision. The youth and the agent shall be given copies of the decision.

(b) If no decision is issued within the 7 day time period, the agent's decision is affirmed and the youth may appeal under sub. (6).

(6) APPEAL OF THE SUPERVISOR'S DECISION. (a) The youth may appeal the supervisor's decision to the regional chief in writing within 5 days of receipt of the decision or the failure to issue a decision under sub. (5)(b). The appeal shall state the reasons for the appeal and request further review.

(b) The regional chief shall review the youth's complaint and the supervisor's decision, may investigate the complaint and shall issue a final decision within 7 days of receipt of the appeal, stating the reasons for the decision. Copies of the decision shall be sent to the youth, the agent and the agent's supervisor.

(7) EFFECT OF APPEAL ON A DISPUTED DECISION. During the period required under this section for investigation or review of any complaint, all affected parties shall comply with the decision currently under dispute.


(8) EXPEDITED APPEAL. If the time limits provided in this section would effectively moot the complaint, the supervisor or regional chief shall make all reasonable efforts to expedite the complaint review or appeal.

(9) PENALTIES. (a) A youth may not be penalized for filing a complaint under this section.

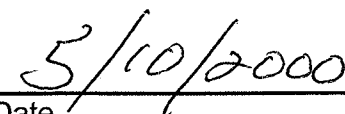
(b) Notwithstanding par. (a), a youth may be subject to discipline, including revocation of the youth's aftercare, if the youth knowingly made a false allegation or complaint.

The rule 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. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary



Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to create ch. DOC 394, relating to designation of certain child caring institutions (CCIs) as type 2 CCIs, and to treatment of youth on county supervision who are placed in type 2 CCIs by the courts.

Statutory authority: ss. 227.11 (2) and 938.539 (6), Stats.

Statutes interpreted: ss. 301.08 (1) (b) 3., 938.357 (4) and 938.539, Stats.

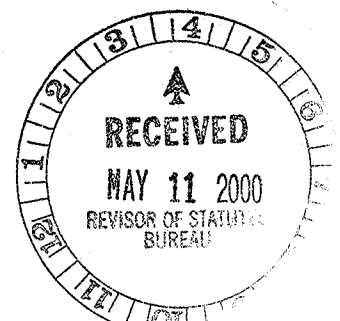
Analysis by the Department of Corrections

In creating s. 301.08 (1) (b) 3., Stats., 1995 WI Act 352 authorized the department of corrections to contract with a public, private or voluntary agency to provide type 2 secured correctional facility services. Type 2 secured correctional facility services are residential, but not within a type 1 juvenile correctional institution. A youth receiving type 2 services retains his or her secured placement status. (Note: Type 2 programs and services for department-supervised youth are the topic of ch. DOC 396.)

The department also may designate a contract agency as a type 2 child caring institution (type 2 CCI) for the purpose of placement by courts of youth under county supervision as a disposition under s. 938.34 (4d), Stats. A youth placed by the court in a type 2 CCI under this disposition takes on type 2 status, which has an effect on the treatment of the youth in terms of movement between placement types, and escape and apprehension. The agency operating the type 2 facility or program is expected to provide treatment services consistent with the youth's needs, under the licensing code of the department of health and family services. The department of corrections' designation of a CCI as a type 2 facility means that it is allowed to operate differently from a non-type 2 CCI in several areas:

- Designated, trained staff of a type 2 CCI have law enforcement powers to apprehend youth in type 2 status who attempt to run away from the facility or who have not returned from an approved absence.
- Type 2 status youth who violate a condition of their placement in a type 2 CCI may be placed in a type 1 secured correctional facility for up to 10 days without a court hearing.
- Youth in type 2 status can also be moved by the supervising county agency or the department to a less restrictive placement and back to a more restrictive placement without an administrative or court hearing.

The proposed administrative code ch. DOC 394 addresses the process by which the department designates a CCI as type 2, the maintenance of the type 2 designation by the facility, and the actions that the department may take if the type 2 CCI does not abide by the type 2 regulations and contract provisions. The code also covers the treatment of youth in type 2 CCIs in the areas where the CCI may operate differently from other CCIs due to its type 2 designation.



The previous juvenile corrections administrative code, chs. HSS 300 to 348, did not address type 2 CCIs. In the analysis below, occasional reference is made to the proposed ch. DOC 396, type 2 secured correctional facilities, where the provisions on treatment of youth are similar to this chapter. Chapter DOC 396 covers youth in type 2 facilities under state supervision. This chapter, DOC 394, governs youth in type 2 CCIs under county supervision.

Under this proposed rule:

1. The proposed provisions apply to the department, to county departments providing supervision for youth the court placed in type 2 CCIs, to CCIs in Wisconsin and to youth placed by the court in a type 2 CCI under s. 938.34 (4d), Stats., as stated in s. DOC 394.02.
2. The definitions in s. DOC 394.03 and s. DOC 396.03 are substantially the same, except that "youth" in s. DOC 396.03 refers to state-supervised youth, rather than to county-supervised youth as in s. DOC 394.03. The terms "staff" and "supervisor," in s. DOC 396.03, refer to state employees, but to CCI employees in s. DOC 394.03.
3. Section DOC 394.04 describes the criteria the department uses to designate a CCI as a type 2 facility.
4. Section DOC 394.05 delineates the requirements the CCI shall meet to maintain its type 2 designation.
5. Section DOC 394.06 lists the options the department can exercise if the CCI commits a violation of its license, contract or this chapter.
6. Section DOC 394.07 explains the requirement placed upon the CCI with respect to the rules of supervision.
7. Section DOC 394.08 describes the responsibilities of a CCI following an escape by a youth.
8. Section DOC 396.15 and s. DOC 394.09 specify the allowable and prohibited use of physical force by staff when a youth is in the act of escaping or to apprehend a youth who has escaped from a type 2 facility or program. Rules describe the follow-up procedures and the required incident report.
9. Section DOC 394.10 regulates the allowable and prohibited use of mechanical restraints by CCI staff to restrain a youth in the act of escaping, to transport an escaped youth who has been apprehended, and to restrain a youth until the youth can be transported to a secure facility. Requirements in s. DOC 396.16 (5), concerning maintenance of restraint equipment are repeated in s. DOC 394.10 (5).

SECTION 21. Chapter DOC 394 is created to read:

Chapter DOC 394

TYPE 2 CHILD CARING INSTITUTIONS

DOC 394.01	Authority and purpose	DOC 394.06	Violation of designation requirements
DOC 394.02	Applicability	DOC 394.07	Notification to youth
DOC 394.03	Definitions	DOC 394.08	Escape
DOC 394.04	Designation as a type 2 CCI	DOC 394.09	Use of force
DOC 394.05	Maintaining designation	DOC 394.10	Mechanical restraints

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.

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.

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.

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.

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

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 CCI's type 2 CCI designation.

(3) If a type 2 CCI violates a provision of this chapter or a contract provision under s. DOC 394.05 (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 subs. (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.

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.

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.

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.

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.

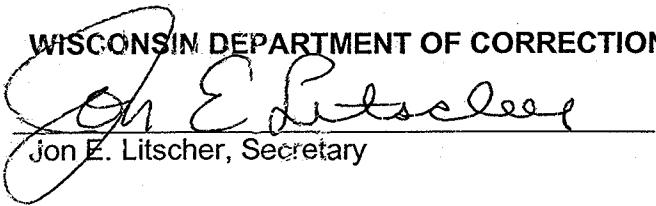
(e) *Record.* When staff use mechanical restraints to take a type 2 status youth into physical custody, staff shall promptly notify a supervisor. The type 2 CCI shall promptly notify the department and the county department having supervision over the youth, but no later than 24 hours after the occurrence. 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.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 226.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS


Jon E. Litscher, Secretary

5/10/2000
Date

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal ch. HSS 346 and create ch. DOC 396, relating to youth who are in type 2 secured correctional facility status through placement in the corrective sanctions program, the community phase of the serious juvenile offender program, or a type 2 secured correctional facility operated by a child welfare agency.

Statutory authority: ss. 227.11 (2), 938.533 (2), 938.538 (7), and 938.539 (6), Stats., and s. 9126(23)(e), 1995 Act 27.

Statutes interpreted: ss. 938.357 (4), 938.533, 938.538 and 938.539, Stats.

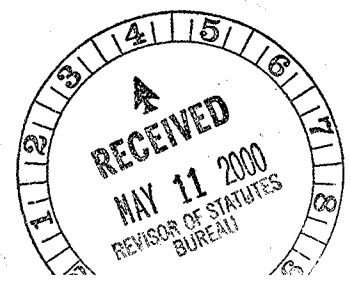
Analysis by the Department of Corrections

The proposed administrative code ch. DOC 396 addresses the special status of youth in community-based type 2 secured correctional facilities. The department considers type 2 youth to be in "institution" status for purposes of case management, movement and release, and security. The rule balances the goals of public protection, youth accountability and youth competency development while providing due process for youth, in accordance with the legislative intent of ch. 938, Stats.

Under the previous juvenile corrections administrative code, ch. HSS 346 governed the youth corrective sanctions program. Corrective sanctions participants had "institution status" under s. 48.533, laws of 1993. Corrective sanctions became a type 2 secured correctional facility, effective January 1, 1996, under 1995 WI Act 77. Administrative policies and procedures were developed pursuant to that Act. To the extent that ch. HSS 346 is relevant to the discussion of type 2 secured correctional facility programs and youth status, the analysis refers to the former rule's provisions.

Under this proposed rule:

1. The rules incorporate references to the department of corrections and ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, so that the rules are consistent with current law.
2. Under s. HSS 346.01 (2) and s. DOC 396.01 (2), the stated goals for providing type 2 placements are very similar.
3. The definitions of s. DOC 396.03 generally repeat those used in s. HSS 346, with additions as needed due to statutory changes.
4. Section DOC 396.04 describes the procedures to be followed by a child caring institution to obtain approval of the department of health and family services and apply to the department for designation as a type 2 correctional facility.
5. The 4 requirements that the child caring institution shall meet to maintain its designation as a type 2 secured correctional facility are delineated in s. DOC 396.05.



6. Provisions in s. DOC 396.06 describe the procedures relating to the withdrawal of the department's designation of a child caring institution as a type 2 secured correctional facility.
7. Section DOC 396.07, as did s. HSS 346.04, explains the criteria for youth participation, referral and screening of a youth for placement in a type 2 secured correctional facility program. Section HSS 346.04 (1) (b) prohibited youth who committed certain offenses from participating in the corrective sanctions program, but s. DOC 396.04 eliminates that prohibition for 2 reasons. Experience has shown offense category alone to be an unreliable guide to a youth's risk level in a community placement. Some of the formerly screened-out offenses are qualifying offenses for the serious juvenile offender (SJO) program under current law. If those offenses prohibited a youth from placement in a type 2 facility, a youth eligible by statute for SJO would be prevented by rule from being in a type 2 placement.
8. Chapter DOC 396 does not replicate ss. HSS 346.05 and HSS 346.06 (1)(a) through (e) regarding determination of eligibility and development of case plan because these topics are covered in the planning rule, particularly ss. DOC 371.10 through 371.15.
9. Section DOC 396.08 focuses on youth conduct rules and agent responsibilities, similarly to s. HSS 346.06. Sections HSS 346.06 (4) and HSS 346.07 dealing with transfer decisions are not replicated in ch. DOC 396, but are addressed in the planning rule, ch. DOC 371.
10. In much the same terms as s. HSS 346.08, s. DOC 396.09 requires staff to make a reasonable effort to assure that youth receive the rights listed in that section. Section DOC 396.09 (1)(c) provides for reasonable accommodations and interpreter services needed by a youth.
11. Section HSS 346.09, requiring the agent to write periodic progress reports at least every 90 days, is repeated in s. DOC 396.09 (2). However, the sections of s. HSS 346.09 covering the formal JPRC conference and OJOR review for participating youth are covered in s. DOC 371.20, rather than s. DOC 396.09.
10. New section DOC 396.10 on conduct rules for type 2 youth is based on the division's administrative policies and procedures in effect since July 1, 1996, for corrective sanctions program participants. The rules describe the procedure for determining if a youth violated a law or a conduct rule, define major and minor offenses, and list the major and minor sanctions that the department may impose upon a youth.
11. New s. DOC 396.11 deals with placement of youth in administrative detention with sub. (1) listing the reasons for placement and subs. (2) through (5) explaining the proper placement and review procedures.
12. The criteria for terminating a youth from a type 2 secured correctional institution program and returning the youth to a type 1 facility placement, or terminating a youth's less restrictive placement and returning the youth to a type 2 secured correctional facility are described in s. DOC 396.12.
12. Section 396.13 delineates the procedures to terminate a youth's aftercare placement.

14. Section DOC 396.14 specifies that a type 2 youth is in custody for the purposes of escape under s. 946.42, Stats. The provisions define escape and possible consequences for the youth. Section DOC 396.14 (4) through (8) explains the procedures regarding: notification of law enforcement, victims and witnesses, and the supervisor when a youth escapes; holding a youth in custody when apprehended; and service of a violation report upon a youth.
15. Section DOC 396.15 builds on s. HSS 346.12 in describing the allowable use of physical power or strength to control a youth in type 2 secured correctional facility status. Section DOC 396.15 (4) expands on s. HSS 346.12 (4), which listed permissible uses for non-deadly force, by adding the prevention of escape and changing the location of a youth. A new provision, s. DOC 396.15(4) (b), codifies current division procedures by stating that all reasonable efforts to persuade the youth to come voluntarily should be used before non-deadly force is used to apprehend or to control a youth. The provisions of s. HSS 346.12 (6) regarding follow-up to the use of force are repeated in s. DOC 396.15 (6), with the modification that staff, as well as youth, be checked for injury and given medical treatment if injured. Both ss. HSS 346.12 (6) (b) and DOC 396.15 (6) (b) require an incident report be written by staff with the DOC rule requiring that the report be submitted to a supervisor within 24 hours of the incident.
16. Section DOC 396.16 guides staff in the use of mechanical restraints to control the behavior of a youth or transport a youth in type 2 secured correctional facility status. The DOC rule adds a requirement, not included in s. HSS 346, that staff record in writing their observations of the youth in s. DOC 396.16 (4)(c).
17. New s. DOC 396.17 creates specific provisions on the use of oleoresin of capsicum, often referred to as pepper spray, including which staff may carry or use the substance, which products may be carried and used, the provision of medical care when the substance is used, and documentation of the use by the involved staff. As did s. HSS 346.14 (2), s. DOC 396.17 (6) prohibits staff from carrying a firearm or any weapon while on duty.
18. Three types of searches, personal, strip, and body contents, are allowed under proposed s. DOC 396.18, compared to 2 types of searches, personal and body contents, in s. HSS 346.15. In both rules, staff may conduct a personal search of a youth for the reasons defined in s. DOC 396.15, except that par. (2) (f) also allows a personal search at the direction of a supervisor. In new s. DOC 396.18 (3), staff may conduct a strip search for specified reasons and under certain conditions. A provision in s. HSS 346.15 (7) allowed a staff person to require a youth to submit to routine drug and alcohol tests, similar to proposed s. DOC 396.18 (4) (b). Section DOC 396.18 (4) expands upon the HSS rule by specifying the means of collecting body contents evidence by urine, blood and stool samples and by X-rays. Section DOC 396.18 (5) differs somewhat from s. HSS 346.15 (5) in the reasons listed to establish reasonable cause to search. The HSS rule included the factor of "the behavior of the youth that relates to whether the youth possesses contraband", while the more restrictive DOC rule refers only to "prior seizures of contraband from the person or living quarters of the youth."
16. Both the DOC and HSS rules allow for searches of a youth's living quarters and property for specified reasons, define permissible search procedures and dictate record keeping. Section DOC 396.18 (6) (a) allows a search of a youth's living quarters "at any time" with the approval of a supervisor, while s. HSS 346.15 (3)(a)1. required that there be reasonable

grounds for a non-random search. If a parent or other adult with whom a youth resides denies access to any part of the living quarters, the youth's agent may require the youth to move to another placement approved by the department, under s. DOC 396.18 (6) (b). In contrast, staff did not have this explicit authority in s. HSS 346.15 (3) (a). Public safety and youth accountability considerations necessitate the additional authority. Section DOC 396.18 (f) requires that a youth be informed if any of his or her property was seized or damaged in the search, as did s. HSS 346.15 (4) (e). The DOC rule further requires that youth be reimbursed for any damage to property that is not contraband.

17. Section DOC 396.19 (3) generally repeats the provisions of s. HSS 346.16 regarding taking a youth into custody and transporting the youth to a detention, medical, mental health or correctional facility.
18. Section DOC 396.20 specifies the procedure for recommending that a type 2 institution status youth be released to aftercare. The portions of s. HSS 346.18 that dealt with the OJOR process for making a release decision are not repeated in ch. DOC 396 because this topic is covered in the planning rule in s. DOC 371.15.
19. Section HSS 346.17 and s. DOC 396.21 grant a youth the same opportunity to file a complaint and request administrative review of certain types of decisions.

SECTION 22. Chapter HSS 346 is repealed.

SECTION 23. Chapter DOC 396 is created to read:

CHAPTER DOC 396

TYPE 2 SECURED CORRECTIONAL FACILITIES

DOC 396.01 Authority and purpose	DOC 396.12 Reasons for Termination
DOC 396.02 Applicability	DOC 396.13 Termination procedure
DOC 396.03 Definitions	DOC 396.14 Escape
DOC 396.04 Designation as a type 2 secured correctional facility	DOC 396.15 Use of force
DOC 396.05 Maintaining designation	DOC 396.16 Mechanical restraints
DOC 396.06 Violation of designation requirements	DOC 396.17 Incapacitating agents and weapons
DOC 396.07 Referral of youth for type 2 community supervision programming.	DOC 396.18 Search and seizure
DOC 396.08 Conduct rules	DOC 396.19 Custody and transporting
DOC 396.09 Responsibilities of staff	DOC 396.20 Release to aftercare
DOC 396.10 Discipline	DOC 396.21 Complaint procedure for youth in a type 2 status
DOC 396.11 Administrative detention	

DOC 396.01 Authority and purpose. (1) This chapter is promulgated under the authority of ss. 227.11 (2), 938.533 (2), 938.538 (7) and 938.539 (6) Stats., to provide rules for all of the following:

(a) The community-based corrective sanctions program for youth who have been placed under the supervision of the department under s. 938.183 or 938.34 (4h) or (4m) or 938.357(4), Stats., and placed in the program by OJOR.

(b) The SJO program for youth who have been placed under the supervision of the department under s. 938.34 (4h), Stats.

(c) Type 2 secured correctional facilities under ss. 938.357 (4) and 938.539, Stats., for youth who have been transferred to a type 2 secured correctional facility by OJOR.

(2) In this chapter, the department seeks to achieve all of the following goals:

(a) Provide a community-based option for youth who would otherwise be on aftercare, in a type 1 secured correctional facility or other placement facility.

(b) Maintain public safety and youth discipline through supervision and sanctions appropriate to the needs and requirements of youth in each program.

(c) Provide the programming, services, discipline and supervision necessary to help youth in each program make meaningful, positive changes in their lives.

(d) Encourage youth in each program to lead a crime-free life.

(e) Provide youth with education, vocational training, life skills training or employment appropriate to the youth's abilities.

(f) Involve the youth's family, as appropriate, with the program.

DOC 396.02 Applicability. This chapter applies to the department and to youth whose supervision is transferred to the department pursuant to s. 48.34 or 48.366, Stats., and s. 938.183, 938.34 (4h) or (4m) or 938.357(4), Stats., who are evaluated for and selected to participate in the corrective sanctions program under s. 938.533 Stats., the community phase of the SJO program under s. 938.538 Stats., or for transfer to a community placement in a type 2 secured correctional facility under s. 938.357 (4) (a) Stats.

DOC 396.03 Definitions. In this chapter:

(1) "Administrator" means the administrator of the division of juvenile corrections or that person's designee.

(2) "Administrative detention" means secure, temporary confinement of a youth in a Type 1 secured correctional facility, an approved juvenile detention center or the approved juvenile section of a county jail pending the outcome of the termination procedure in s. DOC 396.12 or transfer to an alternative type 2 status placement.

(3) "Aftercare" means the aftercare supervision status of a youth, as used in ss. 938.34 (4n) and 938.532 (3), Stats., who is released from a Type 1 or Type 2 secured correctional facility by OJOR or by action of a court under s. 48.366 (5) (b) or 938.357, Stats., and is supervised

outside of a type 1 secured correctional facility by the department or a county department until the expiration or termination of the youth's court ordered supervision.

(4) "Agent" means a person, or that person's designee, employed by the department, who provides aftercare supervision or type 2 community supervision for a youth and who is authorized to make decisions regarding aftercare or community supervision matters.

(5) "Bodily injury" means physical pain or injury, illness or any impairment of physical condition.

(6) "Body contents search" means a search in which a youth is required to provide a sample of urine, breath, saliva, blood, stool, hair, tissue or any body fluid for testing for the presence of intoxicating substances, as defined in s. DOC 373.46 (1), in accordance with department procedures and with methods approved by the state laboratory of hygiene, or to submit to nonsurgical physical examination by medical personnel which may include, but is not limited to, x-rays for detecting the use of intoxicating substances or the possession of contraband. Body contents searches do not include examinations and tests performed by medical personnel for medical reasons.

(7) "Case plan" means a strategy or approach to address primary treatment needs of a youth using the assessment and evaluation process identified in s. DOC 371.04 (1) (e).

(8) "Chemical agent" means oleoresin of capsicum or "OC" approved by the department for use as a non-deadly force.

(9) "Close confinement" means confinement to a youth's room with a minimum of one hour per day out of the room.

(10) "Contraband" means all of the following:

(a) Any item a youth may not possess under the conduct rules and court-ordered conditions of the youth's community placement, including, but not limited to, unauthorized money, intoxicants, drug paraphernalia, weapons or smoking materials.

(b) Any item, the possession of which violates any law of Wisconsin or the United States, a municipal ordinance or any rule of the department.

(c) Any item a youth may possess, but which comes into his or her possession in an unauthorized manner including, but not limited to, an item that is received from a person with whom the youth is not supposed to have contact under the conduct rules or court-ordered conditions of the youth's placement.

(d) Stolen property.

(11) "Corporal punishment" means the intentional infliction of physical pain as a means of discipline.

(12) "CSP" means the corrective sanctions program under s. 938.533, Stats.

(13) "Day" means a calendar day.

(14) "Deadly force" means force which is intended or is likely to cause death or great bodily harm to another.

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

(16) "Division" means the department's division of juvenile corrections.

(17) "Electronic monitoring " means monitoring a youth's location with an electronic device of a type approved by the administrator and worn by a youth to monitor the youth's location during specific periods of time each day that the youth is required to be at his or her place of residence or at another approved location.

(18) "Force" means the use 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.

(19) "Great bodily harm" means bodily harm that creates a high probability of death, serious permanent disfigurement, a permanent or protracted loss or impairment of the function of any body member or organ or other serious bodily harm.

(20) "Guardian" has the meaning given in s. 938.02 (8), Stats.

(21) "JPRC" means the joint planning and review committee which makes short-term and long-term planning recommendations for youth, with members representing the type 1 secured correctional facility in which the youth resides, OJOR, the committing county and the aftercare provider.

(22) "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.

(23) "Modified confinement" means restriction of a youth to the youth's assigned room with a minimum of 4 hours of out-of-room time per day.

(24) "Non-deadly force" means force which is not intended to and is not likely to cause death or great bodily harm to another.

(25) "OJOR" means the division's office of juvenile offender review.

(26) "Parent" has the meaning given in s. 938.02(13), Stats.

(27) "Personal search" means a search of a youth's clothed person, including, but not limited to, inspection of the person's pockets, frisking the person's body, examining the person's shoes and hat and visually inspecting the inside of a person's mouth. A personal search does not include a strip search, body cavity search or body contents search.

(28) "Reasonably believes" or "reasonable belief" 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.

(29) "Regional chief" means a division regional manager responsible for oversight of community correctional services or that person's designee.

(30) "Report center" means a place where designated youth in a type 2 secured correctional facility shall report at specified times as a condition of program participation.

(31) "Rules of conduct" means the conditions of placement in the community.

(32) "Sanction" means any of a range of actions that staff may take when a youth violates the rules of conduct or court-ordered conditions of community supervision.

(33) "Sanction placement" means an alternative placement in a designated home, foster home, group foster home, child caring institution, secured juvenile detention center, another type 2 secured correctional facility or a type 1 secured correctional facility, when that placement is used for a specific period of time as a sanction for a youth for violation of the rules of conduct or court-ordered conditions of community supervision.

(34) "SJO" means the serious juvenile offender program defined in s. 938.538, Stats.

(35) "Staff" means an employee of the department.

(36) "Strip search" means a search in which a youth is required to remove all clothing. Permissible inspection includes examination of the youth's clothing and visual inspection of body cavity orifices.

(37) "Superintendent" means the superintendent of a type 1 secured correctional facility or that person's designee.

(38) "Supervisor" means a department supervisor responsible for the supervision or administration of aftercare or community correctional program services or that person's designee.

(39) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19), Stats.

(40) "Type 2 secured correctional facility" has the meaning given in s. 938.02 (20), Stats.

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

(42) "Youth" means a person under the supervision of the department within the meaning of s. 938.505 (1), Stats., or pursuant to s. 48.34 or 48.366, Stats., regardless of age.

(43) "Youth counselor" means staff who may act as the "contact worker" under s. 938.533 (2), Stats., and are responsible for monitoring a youth's daily activities while the youth is in a community supervision program.

DOC 394.04 Designation as a type 2 secured correctional facility. To be designated by the department as a type 2 secured correctional facility, a CCI shall do all of the following:

(1) Obtain approval to operate a type 2 secured correctional facility by the department of health and family services.

(2) Apply for designation as a type 2 secured correctional facility in a manner specified by the administrator.

DOC 396.05 Maintaining designation. To maintain a designation by the department as a type 2 secured correctional facility, a CCI shall do all of the following:

(1) Abide by the provisions of this chapter and type 2 secured correctional facility policies and procedures that the facility agrees to by contract with the department.

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

(3) Require staff who are authorized to use 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.

DOC 396.06 Violation of designation requirements. (1) If the department of health and family services cites a type 2 secured correctional facility for a violation of standards, the type 2 secured correctional facility 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 secured correctional facility, the department shall withdraw the CCI's type 2 secured correctional facility designation.

(3) If a type 2 secured correctional facility violates a provision of this chapter or a contract provision, the department may take one or more of the following actions:

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

(b) Remove the CCI's type 2 secured correctional facility designation and send notice of the removal to the juvenile courts and county departments.

(4) A type 2 secured correctional facility may appeal a department decision under subs. (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.

DOC 396.07 Referral of youth for type 2 community supervision programming. (1) CRITERIA FOR PARTICIPATION. A youth may be considered for participation in CSP, the SJO community supervision phase or a type 2 secured correctional facility program if all of the following apply:

(a) The youth is not likely to present a physical danger to self or to others if living in a type 2 secured correctional facility setting.

(b) An appropriate type 2 secured correctional facility placement is available.

(c) The security, supervision and programming needs of the youth can be met in a type 2 secured correctional facility setting.

(d) If the youth is to be placed in a family setting, the youth's parent, guardian or other adult with whom the youth will reside agree that they are willing to participate in the program and comply with all rules and conditions of the program.

(2) REFERRAL. When a youth in a type 1 secured correctional facility appears to meet the criteria under sub. (1), the committing court or any member of the JPRC may recommend in writing that the youth be screened for acceptance into a particular program. Copies of the recommendation shall be sent to all members of the JPRC.

(3) SCREENING. Staff who manage the CSP, SJO and the type 2 secured correctional facility programs shall do all of the following in regard to each youth who has been recommended under sub. (2) for one of the programs:

(a) Review all relevant, available written records relating to the youth including court and education records.

(b) Interview the youth.

(c) If applicable, interview the youth's parents or other adult with whom the youth would be placed if released to one of the programs.

(d) Recommend one of the following in writing to JPRC:

1. That the youth is appropriate for transfer planning.

2. That the youth does not meet the criteria for CSP, SJO community phase or type 2 secured correctional facility transfer planning.

DOC 396.08 Conduct rules. (1) GENERAL PROVISION. When a youth is transferred by OJOR from a type 1 to a type 2 secured correctional facility, the youth's agent or other staff shall meet with the youth and review any court-ordered conditions of community placement and the conduct rules of the type 2 secured correctional facility for the specific program in which the youth will participate. The youth shall sign a copy of the court-ordered conditions and conduct rules prior to the transfer of the youth.

(2) CONDUCT RULES. The following conduct rules apply to youth transferred to any type 2 secured correctional facility program:

(a) The youth shall not violate any state or federal law, any local ordinance or the rules of the department.

(b) The youth shall report any arrest or law enforcement contact to his or her agent as soon as possible, but not later than 12 hours after the contact. If a youth is taken into custody, the youth shall inform the law enforcement officer and any intake worker of the name of his or her agent and correctional status.

(c) The youth shall cooperate with his or her agent and other staff and fully participate in his or her program and case plan.

(d) The youth shall be completely truthful with his or her agent and other staff at all times.

(e) The youth shall comply with all curfews established by staff.

(f) The youth shall attend all educational and vocational programs and all appointments with service providers as scheduled.

(g) The youth shall comply with his or her daily appointment schedule as approved by staff.

(h) The youth shall report to and inform his or her agent or the assigned youth counselor of his or her whereabouts and activities as directed and may not go to or be present at any place prohibited by the agent, the youth counselor or placement facility staff.

(i) If the youth is on an approved daily schedule, the youth shall obtain prior approval from department or placement facility staff at least 24 hours in advance before making any changes in the approved daily schedule.

(j) The youth shall obtain prior approval from his or her agent or youth counselor to leave or change employment or to drop out of or change an educational or vocational program. If an unforeseen situation occurs causing the youth to leave or change employment or an educational or vocational program without prior permission, the youth shall notify his or her agent or youth counselor of the change as soon as possible, but not later than 24 hours after the change occurs.

(k) The youth and the adult or family with whom the youth resides shall obtain advance permission from the youth's agent before moving to a different residence.

(l) The youth shall not leave the state of Wisconsin unless the youth obtains prior permission and a signed travel permit from his or her agent.

(m) If placed on electronic monitoring, the youth shall cooperate with electronic monitoring procedures and shall not alter, damage or interfere in any way with the operation of the electronic monitoring equipment.

(n) The youth may not use or possess any drug, item or substance that is illegal to possess, any intoxicating substance or any prescription drug, except as properly prescribed for the youth in accordance with law.

(o) The youth may not purchase, own, carry or possess a firearm, knife, weapon or ammunition without the prior written permission of his or her agent. An agent may not grant a youth permission to possess a firearm if the youth is prohibited from possessing a firearm under s. 941.29, Stats., any other state law, federal law, municipal ordinance or court order.

(p) The youth may not purchase, lease, possess, trade, sell, own or operate a motor vehicle without prior approval of the youth's agent. To obtain approval to operate a motor vehicle, the youth shall demonstrate proof of insurance, have a valid Wisconsin driver's license and, if the vehicle is owned by another person, have the written permission of the owner to operate the vehicle. Approval shall be denied if ownership, possession or use of a motor vehicle is inconsistent with the youth's rehabilitation.

(q) The youth may not borrow money, purchase on credit or enter into any contract without prior approval of his or her agent.

(r) The youth shall submit to and cooperate with searches of the youth's person, living quarters and property by staff and with tests ordered by staff, including but not limited to, urinalysis, breath tests and blood tests.

(s) The youth may not possess or use paging devices, cellular phones or similar communication devices without prior approval of his or her agent.

(t) The youth shall follow any additional rules, given orally or in writing that may be issued by staff. These rules may include, but are not limited to, directions concerning:

1. Companions.
2. Contacts with family members with whom the youth does not reside.
3. Sending and receiving mail.
4. Family responsibilities and child support.
5. Support of self, including earned and unearned income and its sources.
6. Court or municipal fines or obligations, including restitution and the collection and handling of all restitution funds.

7. Participation in community service.
8. Job seeking and job attendance.
9. Compliance with the policies and rules of a placement facility.

(u) The youth shall comply with any court-ordered conditions of community placement.

(3) The copy of the conduct rules signed by a youth under sub. (1) shall include the following notice: "These conduct rules are in addition to any court-ordered conditions. Your aftercare may be revoked if you do not comply with any of your court-ordered conditions or if you violate any of these conduct rules."

(4) EXPLANATION OF THE CONDITIONS AND RULES. A youth's agent shall explain the conduct rules and any court-ordered conditions to the youth, the parent or adult with whom the youth will reside. The agent shall also explain what sanctions may be imposed for violation of the conduct rules or court-ordered conditions, including removal from the program and return to a type 1 secured correctional facility or if placed in a less restrictive placement, return to a type 2 secured correctional facility or other residential placement.

(5) ACCEPTANCE OF CONDITIONS. The agent shall prepare a written statement of the conduct rules and court-ordered conditions of the youth's program that apply to the youth and to the supervising adult or adults with whom the youth resides. The youth and the adult(s) shall sign the document stating their acceptance and agreement with the rules and conditions. The document shall state that failure to comply with all rules and conditions may result in revision of the rules and conditions, changes in the case plan, return to a type 1 or type 2 secured correctional facility or application of any other sanction allowed by law.

DOC 396.09 Responsibilities of staff. (1) GENERAL RESPONSIBILITIES. All of the following apply to youth and staff shall require that each youth:

(a) Is free from discrimination based on race, national origin, color, creed, sex, age, sexual orientation, marital status, political affiliation, handicap, ethnicity, religion or ancestry.

(b) Is protected from abuse or neglect.

(c) Is provided with an interpreter if the youth's ability to speak, understand, read or write English is limited.

(d) Is placed in the youth's parental home when this is consistent with the individual's correctional programming and the protection of the public.

(e) Is involved in planning his or her ongoing correctional program.

(f) Has appropriate access to the courts and legal counsel.

(g) Has access to appropriate department, county department and community programs and services consistent with the protection of the public and the youth's individual needs.

(h) Has his or her educational, vocational, drug or alcohol abuse, mental health and other programming needs addressed.

(i) Has the opportunity to visit with and communicate orally or by mail with an attorney or persons approved by staff within reasonable guidelines established by the department or a placement agency.

(j) Has the opportunity to participate in authorized recreational and leisure-time activities and appropriate religious activities.

(k) Is monitored by CSP staff, if in the CSP program, 24 hours a day by a combination of programming, staff contacts and electronic monitoring.

(2) PERIODIC PROGRESS REPORTS. At least once every 90 days following the placement of a youth in a type 2 secured correctional facility, the assigned agent shall write a progress summary as required by s. DOC 371.21 (3).

DOC 396.10 Discipline. (1) In this section:

(a) "Major offense" means a violation of one or more of the rules of supervision for which a major sanction may be imposed if the accused youth is found guilty. A major offense is an offense listed in s. DOC 373.11(4) or any offense listed in the youth's conduct rules which is identified as a major offense.

(b) "Major sanction" means a temporary placement in a type 1 secured correctional facility or other sanction placement. An agent, with a supervisor's approval, may impose a major sanction that does not exceed 5 days. A regional chief may impose a major sanction that does not exceed 14 days. The administrator may impose a major sanction that exceeds 14 days. A major sanction does not require review and approval of OJOR under ch. 371.

(c) "Minor offense" means a violation of one or more of the rules of supervision for which a minor sanction may be imposed if the accused youth is found guilty.

(d) "Minor sanction" includes, but is not limited to, community service, restitution, loss of privileges, electronic monitoring or other programs prescribed by the department. A minor sanction does not include sanctions included in par. (b).

(2) A youth may receive a sanction under this chapter if the department determines, after completing a review under sub. (3), that the youth has committed one of the following:

(a) A violation of a state or federal statute, a local ordinance.

(b) A violation of the rules of any facility, institution, placement or program in which the youth is held or to which the youth is assigned.

(c) A violation of this chapter.

(d) A violation of the conduct rules.

(3) The review procedure to determine if a youth has committed a violation includes all of the following:

(a) An agent may impose a minor sanction for a minor offense after completing an investigation.

1. The agent shall document the offense and the sanction in the youth's file.

2. A youth may use the complaint procedure in s. DOC 396.21 to seek review of a decision to impose a minor sanction, except that filing a complaint shall not delay the imposition of a minor sanction.

(b) A major offense shall be documented on a violation report prepared by a youth's agent that shall include all of the following:

1. All of the facts obtained in the agent's investigation, the proposed sanction and a written statement from the youth or a report of an oral statement from the youth.

2. The rule allegedly violated, how the rule was violated and the date and place of violation.

3. Witness statements or summaries of witness statements.

4. The evidence and the names of witnesses reported by the youth.

5. The efforts that were made by the agent to interview witnesses and gather evidence identified by the youth.

(c) Issuance of a proper notice cures a defective notice.

(d) A copy of the violation report shall be served on the youth within 5 days after review and approval by a supervisor who was not involved in the alleged violation and did not prepare the violation report.

(e) An agent may impose a major sanction after review and approval of a violation report by a supervisor under par. (d), service of the violation report on a youth and completion of the following appeal procedure:

1. A youth may appeal a violation report to a regional chief by service of a written appeal within 5 working days of receipt of the violation report. The regional chief who conducts the review shall not be the person who has imposed a sanction under this section.

2. If an appeal is to the regional chief's designee, the designee shall not be the immediate supervisor of the agent who conducted the investigation.

3. The regional chief shall review the violation report and the appeal and issue a final decision within 7 working days of receipt of the appeal. If the sanction is reversed, the supervisor ruling on the appeal shall direct that the sanction be removed from the youth's record.

4. An appeal by a youth shall not delay the imposition of a major sanction.

(4) Chapters DOC 371 to 381, 383 and 392 and all type 1 secured correctional facility policies and procedures apply to a youth when the youth is transferred to a type 1 secured correctional facility for the period of the sanction.

(a) When a youth is transferred to a placement other than a type 1 secured correctional facility as a sanction, all rules and policies of the placement apply to the youth.

(b) Type 1 secured correctional facility staff may place the youth in a secured status or other program under close or modified confinement during the period of the sanction consistent with the youth's needs and institution needs and subject to department rules and institution policies and procedure.

(c) Close or modified confinement may not be used in a type 2 secured correctional facility operated by a child welfare agency.

DOC 396.11 Administrative detention. (1) A youth may be placed in administrative detention by the youth's agent or other staff with the approval of a supervisor and kept there if the supervisor is satisfied that there is a reasonable basis to believe that one or more of the following are true:

(a) If the youth remains in the community or in the current placement the youth will seek to intimidate a witness in a pending investigation, disciplinary action or termination action.

(b) If the youth remains in the current placement, the youth will encourage others by example, expressly, or by the youth's presence, to defy staff authority and thereby erode the ability of staff to control a particular situation.

(c) If the youth remains in the current placement, it will create a substantial danger to the physical safety of the youth or another person.

(d) If the youth remains in the current placement, there is a substantial danger that the youth will try to flee.

(e) If the youth remains in the current placement, a criminal, disciplinary or termination procedure under s. DOC 396.12 will thereby be inhibited.

(f) If the youth remains in the current placement, there is a substantial danger that the youth will commit a crime.

(g) If the youth remains in the current placement, there is a substantial risk that the youth will engage in an activity that violates a conduct rule or condition of program supervision.

(h) The youth's retention in the community placement will not accomplish the goals stated in s. DOC 396.01(2).

(2) Notwithstanding sub. (1), an agent or other staff may take a youth into custody without prior supervisory approval if the decision maker reasonably believes that an urgent situation

exists and that failure to immediately take the youth into custody may result in injury to some person, a violation of law or the youth's escape.

(3) Supervisory staff shall review the placement of a youth in detention within 3 working days after it takes place. Before this review, staff shall provide the youth with the reason for detention in writing and with an opportunity to respond, either orally or in writing. Review of the decision shall include consideration of the youth's response to the detention. If, upon review it is determined that detention is not appropriate, the youth shall be promptly returned to the youth's previous placement or alternative placement.

(4) No youth may remain in detention for more than 21 days, except that the administrator may extend this period for up to 21 additional days for cause. After the review under sub. (3), supervisory staff shall review the status of each youth in detention every 7 days to determine whether detention continues to be appropriate. If upon review it is determined that detention is not appropriate, the youth shall be promptly returned to the previous placement or alternative placement.

(5) A youth may be detained in a type 1 secured correctional facility, or other facility approved by the department.

DOC 396.12 Reasons for Termination. A youth's type 2 secured correctional placement or less restrictive placement may be terminated for any of the following reasons:

(1) There has been a change of circumstances, such as the loss, for any reason, of a residence, school or treatment program.

(2) The youth has committed one or more of the following violations:

(a) The youth has violated a state or federal statute or local ordinance.

(b) The youth has violated a department rule.

(c) The youth has violated the rules of any facility, institution or program where the youth is held or to which the youth is assigned.

(d) The youth has violated one or more of the conduct rules.

(3) In the discretionary judgment of the department, the transfer is reasonably calculated to serve the interests stated in s. DOC 396.01 (2).

DOC 396.13 Termination procedure. (1) A proposed termination of placement under s. DOC 396.12 shall be reviewed by a supervisor.

(2) The supervisor may recommend one of the following to the administrator who shall make the determination:

(a) Termination of the placement and transfer of the youth to a type 1 secured correctional facility.

(b) Termination of the placement and transfer of the youth to a type 2 secured correctional facility if the youth was previously transferred from a type 2 secured correctional facility to a less restrictive placement.

(c) Any other appropriate action.

(3) Prior to completion of the termination procedure, the department may take any action it considers necessary for protection of the public including administrative detention in a type 1 secured correctional facility or any other facility approved by the department to detain a youth.

DOC 396.14 Escape. (1) Youth in CSP, the SJO program, a type 2 secured correctional facility or having been placed in a type 2 secured correctional facility by the department are subsequently placed in a less restrictive placement, are under the supervision of the department as defined in s. 938.505 (1), Stats., and are in custody as defined in s. 946.42 (1) (a), Stats.

(2) A youth has escaped if the youth is absent without permission 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.

(3) A youth who escapes under this section is subject to the penalties under s. 946.42 (3) (c), Stats, and may be referred by staff to the district attorney for consideration of charges regarding the escape.

(4) When staff reasonably believe that a youth has escaped, staff shall immediately contact law enforcement authorities and may search for and attempt to take the youth into custody.

(5) Staff shall notify a supervisor promptly whenever a youth escapes.

(6) Staff shall make a reasonable effort to promptly notify any victims or witnesses who have requested notification under s. 938.51(2), Stats.

(7) When a youth who has escaped is taken into custody and detained under s. DOC 396.11 (1) or (2), the youth may be placed on close confinement status pending investigation of the escape and termination of the placement under s. DOC 396.12.

(8) When a youth is detained following an escape, a violation report under s. DOC 396.10 (3) (b) shall be promptly forwarded to the youth at the facility where the youth is being detained.

DOC 396.15 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, 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 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 staff may firmly grasp the youth.

(d) 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 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 staff shall promptly notify the department regarding the use of force, but not later than 24 hours after the use of force. Staff involved in the incident shall submit a written report describing the incident of use of force to a supervisor within 24 hours of the incident. The report shall be included in the youth's file. 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.

DOC 394.16 Mechanical Restraints. (1) GENERAL. 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 youth in the act of escaping.
- (b) To transport a youth who has escaped and been apprehended.
- (c) To temporarily restrain youth 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 staff place a 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 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 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, staff shall check the youth 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 youth into physical custody, staff shall promptly notify a supervisor. The staff shall promptly notify the department 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 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.

(6) **ANNUAL REPORT.** Each regional chief shall submit an annual report to the administrator describing all incidents involving the use of mechanical restraints by program staff.

DOC 396.17 Chemical agents and weapons. (1) **OLEORESIN OF CAPSICUM.** For the purpose of this section, "oleoresin of capsicum" means oleoresin extracted from fruits of plants of the genus capsicum. Oleoresin contains the active ingredient capsaicin and related compounds classified as capsaicinoids.

(2) **USE OF OLEORESIN OF CAPSICUM.** Staff may carry or use oleoresin of capsicum, as permitted under s. 941.26 (4) (a) and (c), Stats., while on duty and only under all of the following conditions:

(a) If approved by the department.

(b) After successfully completing a department approved training program or, if applicable, after successfully updating training according to department policy and procedure.

(c) While acting in self-defense or defense of a third person, as permitted under ss. 939.48 and 941.26 (4) (c) 1, Stats.

(3) **APPROVED PRODUCTS.** Staff may carry and use only the delivery systems for oleoresin capsicum which are approved by the department.

(4) **MEDICAL CARE.** Staff shall immediately provide medical attention to a person exposed to oleoresin of capsicum.

(5) **DOCUMENTATION.** Staff involved in the use of oleoresin of capsicum shall document its use according to department policy and procedure.

(6) **FIREARMS OR OTHER WEAPONS.** Staff may not carry a firearm or other weapon while on duty.

DOC 396.18 Search and seizure. (1) **GENERAL.** Staff may conduct a search of a youth and a youth's living quarters or property at any time, subject to this section. In this section:

(a) "Living quarters" means a private bedroom, common familial or communal living areas and areas under a youth's control or to which the youth has access, including, but not limited to, the grounds and motor vehicles.

(b) "Property" means objects under a youth's control, regardless of ownership.

(2) PERSONAL SEARCH. Staff may conduct a personal search of a youth for any of the following reasons:

(a) When staff have a reasonable belief that a youth possesses contraband.

(b) After the youth has been taken into custody and before transporting the youth.

(c) Upon release from a secure detention center or type 1 secured correctional facility or other secured confinement.

(d) Routinely when the youth enters a report center, a staff office or other placement or sanction facility.

(e) At random with the prior authorization of a supervisor.

(f) At the direction of a supervisor.

(3) STRIP SEARCH. (a) A strip search may be conducted in addition to a personal search for any reason stated in sub. (2) only when staff have a reasonable belief that the youth is concealing contraband secreted within the youth's underclothing or external body areas, and the youth refuses to voluntarily give the suspected contraband to staff.

(b) Staff shall obtain prior approval from a supervisor before conducting a strip search. The supervisor may approve the strip search if the supervisor determines that the requirements of par. (a) are met.

(c) A strip search shall be conducted in a clean and private place by a person of the same sex as the youth being searched. The search shall be conducted by two persons of the same sex as the youth when possible.

(4) BODY CONTENTS SEARCH. (a) Staff may conduct a body contents search if staff have a reasonable belief that a youth has consumed an intoxicating substance or is concealing contraband in a manner that might be discovered by such a search and prior authorization has been obtained from a supervisor.

(b) Staff may require a youth to submit to routine drug and alcohol tests for cause as part of a routine testing of all youth in a program or as part of a random testing program.

(c) When an agent or supervisor requires that collection of a urine specimen be observed, staff of the same sex as the youth shall observe and collect the urine specimen.

(d) Blood and stool samples may only be collected by a licensed physician, physician assistant, registered nurse or other person authorized by law.

(e) X-rays may be conducted only by licensed radiology personnel.

(5) REASONABLE GROUNDS TO BELIEVE. In deciding whether a reasonable belief exists under subs. (2), (3) and (4), all of the following shall be considered:

(a) The observations of staff.

(b) Information provided by a reliable informant.

(c) Prior seizures of contraband from the person or living quarters of the youth.

(6) SEARCH OF LIVING QUARTERS AND PROPERTY. (a) Staff may search a youth's property and living quarters at any time with the approval of a supervisor. Whenever practical, staff may request the assistance of law enforcement authorities to assist in a search.

(b) If a parent or other adult with whom a youth resides denies access to any part of the property or living quarters referred to in par. (a), the youth's agent may require the youth to move to another placement approved by the department.

(c) There is no requirement that there be any evidence that contraband is concealed in the property or living quarters of a youth before a search is conducted.

(d) A supervisor shall approve a search before it occurs, unless exigent circumstances, such as suspicion that the youth will destroy contraband or use a weapon, require a search without approval.

(e) Staff who conduct a search shall prepare a written report of the search which shall state all of the following:

1. The identity of staff who conducted the search and the supervisor who approved it.
2. The date and time of the search.
3. The identity of the youth whose residence or property was searched.
4. The location of the property which was searched.
5. The reason for conducting the search and whether the search was a random search.
6. Any objects that were seized pursuant to the search.
7. Whether any damage was done to the premises during the search.

(f) If any objects were seized or property was damaged during the search of a youth's property or living quarters, the youth shall be informed in writing. A youth shall be reimbursed for the repair or replacement of damaged property that is not contraband. Property which is damaged shall be valued at its fair market value, not its replacement cost.

(g) Staff shall confiscate items believed to be contraband and report those items to the appropriate law enforcement authorities. Contraband shall be disposed of consistent with s. DOC 376.17.

(h) In conducting a search, staff shall disturb the effects of a youth as little as possible, consistent with thoroughness.

(i) Staff shall not read legal materials belonging to a youth during a search.

DOC 396.19 Custody and transporting. (1) GENERAL. Staff shall request that law enforcement authorities take a youth into custody and transport the youth to a detention facility, a mental health or medical facility or a type 1 secured correctional facility whenever practical. When assistance is not available, staff may take a youth into custody and transport the youth in accordance with this section.

(2) TRANSPORTING. When a youth is taken into custody by staff, the youth shall be transported as soon as practical.

(3) PERSONNEL. Staff shall transport a youth in a secure manner to a secure facility and adequate staff shall supervise the transport consistent with department policies and procedures.

DOC 396.20 Release to aftercare. Consistent with ss. 938.357 (4m) and 938.538(5)(a), Stats. and s. DOC 371.15, staff may recommend to OJOR that a youth be released from corrective sanctions, the SJO program or a type 2 secured correctional facility to aftercare. The recommendation shall be in writing and copies shall be forwarded to all JPRC members.

DOC 396.21 Complaint procedure for youth in a type 2 status. (1) GENERAL. The department shall afford an opportunity for administrative review of decisions through the youth complaint procedure.

(2) OBJECTIVES. The objectives of this procedure are:

(a) To allow youth to raise questions in an orderly manner regarding a decision affecting their supervision.

(b) To encourage communication and cooperation between youth and staff.

(c) To resolve problems that arise under supervision in an orderly and consistent manner.

(3) SCOPE. This complaint procedure may be used by youth in the programs referred to in s. DOC 396.01 (1) to obtain a review of a department decision that affects the youth personally, except any decision regarding the following:

(a) Custody and detention.

(b) Termination.

(c) A violation of a criminal law or ordinance.

(d) The use or possession of a firearm or any weapon.

(e) Any conditions of supervision imposed by a court or the office of juvenile offender review.

(f) Discharge of a youth prior to the original discharge date of the youth's order for supervision.

(g) A major sanction under s. DOC 396.10.

(4) FILING A COMPLAINT. (a) A youth may initiate a review of a decision by filing a complaint with his or her agent.

(b) The agent shall attempt to informally resolve the complaint. Any resolution agreed to by the agent and the youth shall be documented in the youth's file.

(c) If the complaint is not resolved as provided under par. (b), the youth may file a written request for review with the agent's supervisor within 5 days of the decision on which the complaint is based, except that the supervisor may for good cause accept a complaint after that time.

(5) SUPERVISOR'S INVESTIGATION AND DECISION. (a) Upon receipt of a written request for review, the supervisor shall notify the agent of the complaint and obtain a statement from the agent regarding the complaint.

(b) The supervisor shall review the complaint, the request for review, the agent's statement and any other relevant information. The supervisor may interview the youth or others to investigate the complaint. The supervisor shall issue a written decision within 14 working days of receipt of the request for review, stating the reasons for the decision. The youth and the agent shall be given copies of the decision.

(c) Failure to issue a decision within the 14-day time period affirms the agent's decision.

(6) APPEAL OF THE SUPERVISOR'S DECISION. (a) A youth may appeal the supervisor's decision in writing to the regional chief within 5 working days of the receipt of the decision, or the failure to issue a decision, stating the reasons for the appeal and requesting further review.

(b) The regional chief shall review the youth's complaint and the supervisor's decision and issue a decision within 14 working days of receipt of the appeal, stating the reasons for the decision. The regional chief may interview the youth or others to investigate the complaint. Copies of the decision shall be sent to the youth, the agent and the agent's supervisor.

(7) APPEAL OF THE REGIONAL CHIEF'S DECISION. (a) If the youth disagrees with the decision of the regional chief, the youth may appeal to the administrator within 5 working days after receiving the decision.

(b) The administrator shall review all relevant materials, including the youth's complaint, the supervisor's decision, and the regional chief's decision and shall issue a written decision on the complaint within 14 working days after receiving the appeal. Copies of this decision shall be sent to the youth, the supervisor and the regional chief.

(c) If the administrator is unable to issue the decision within 14 working days, the administrator shall notify the parties involved of the reason for the delay. The administrator shall then have an additional 14 working days to issue a decision.

(d) The administrator's decision on the complaint shall be the final decision of the department.

(e) If the administrator does not issue a decision, the decision of the regional chief shall be final.

(8) AFFECT OF APPEAL ON A DISPUTED DECISION. During the period required under this section for investigation or review of any complaint, all affected parties shall comply with the decision currently under dispute.

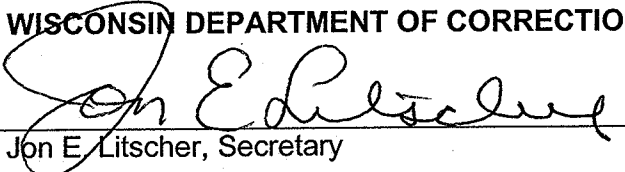
(9) EXPEDITED APPEAL. If the time periods required under this section for appeal of a complaint would effectively moot the complaint, the supervisor, regional chief or administrator shall make all reasonable efforts to expedite the appeal.

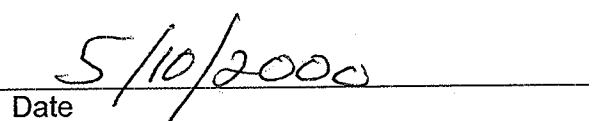
(10) PENALTIES. (a) Staff shall not penalize a youth for filing a complaint under this section.

(b) Notwithstanding par. (a), a youth may be subject to discipline, up to and including transfer of the youth to a type 1 secured correctional facility, if it is determined that the youth knowingly made a false allegation or complaint.

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. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS


Jon E. Litscher, Secretary


Date

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to create ch. DOC 397, relating to supervision programs for delinquent youth.

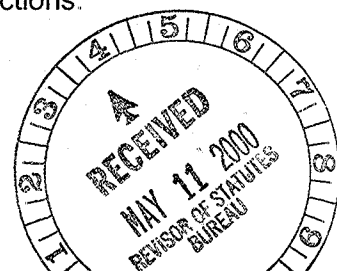
Statutory authority: ss. 227.11 (2), 301.03 (10) and 938.48 (16), Stats.
Statutes interpreted: ss. 301.032 and 938.34, Stats.

Analysis by the Department of Corrections

The proposed rule defines the basic standards for community-based supervision services to youth adjudicated delinquent and placed under the supervision of the department of corrections, a county department or private agency by the court. The rule is based on the former ch. HSS 58, services for youth who are adjudicated delinquent, which was promulgated by the then-department of health and social services prior to the July 1, 1996 transfer of juvenile corrections into the department of corrections.

Under this proposed rule:

1. References to the department of corrections and to ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, are included to make rules consistent with current law.
2. As in s. HSS 58.01, s. DOC 397.01 assigns responsibility for the provision of services, establishes standards for services, involves youth and their families in services planning and requires coordination of services.
3. Under the proposed rule s. DOC 397.02 and s. HSS 58.02, the provisions apply to the department, county departments and any other agency designated by the court to provide supervision services, to delinquent youth and their parents, and to agencies providing services.
4. Definitions generally follow the terminology in s. HSS 58.03, with minor simplifications and the addition of s. DOC 397.03 (4), county department.
5. Section 397.04 (1) and s. HSS 58.04 (1) (a), describe the requirements for the preparation and distribution of the dispositional report for the court under s. 938.33, Stats.
6. In s. DOC 397.04 (2), as in s. HSS 58.04 (2), the lead agency shall plan services to be provided to the youth and family.
7. In both s. DOC 397.04 (4) and s. HSS 58.04 (4), the services provided to youth shall build on the youth's strengths and be directed towards alleviating a youth's problems. Section DOC 397.04 (4) contains additional requirements for services, consistent with the balanced approach in the intent of the juvenile justice code, s. 938.01, Stats.
8. Under both s. DOC 397.04 (5) (a) and s. HSS 58.04 (5) (a), the lead agency designates a case manager to provide the case management services described in those sections.



9. Both ss. DOC 397.04 (6) and HSS 58.04 (6) contain similar provisions regarding the lead agency's responsibilities relating to the youth rules of supervision with ch. DOC rule adding the requirement of providing a written notice of the possible consequences of a violation.
10. The lead agency shall maintain a case file on every youth under its supervision, with certain documents included, in both s. DOC 397.04 (7) and s. HSS 58.04 (7).

SECTION 24. Chapter DOC 397 is created to read:

Chapter DOC 397

SERVICES FOR YOUTH WHO ARE ADJUDICATED DELINQUENT

DOC 397.01	Authority and purpose	DOC 397.03	Definitions
DOC 397.02	Applicability	DOC 397.04	Provision of services

DOC 397.01 Authority and purpose. (1) This chapter is promulgated under the authority of ss. 227.11 (2), 301.03 (10) and 938.48 (16), Stats., for the purpose of providing youth placed under supervision in the community following an adjudication of delinquency receive timely habilitative and rehabilitative services to facilitate their social reintegration into the community. The chapter assigns responsibility for the provision of services, establishes standards and procedures for the provision of services, provides for involvement of youth and their parents in services planning and imposes requirements for the coordination of services.

(2) Through this chapter the department seeks to achieve the following goals:

- (a) Provide a community-based option for youth who have been adjudicated delinquent.
- (b) Maintain public safety and youth accountability through supervision and sanctions appropriate to the needs and requirements of youth in the program.
- (c) Provide the necessary treatment, services, discipline and supervision to help youth and family make meaningful, positive changes in their lives.
- (d) Encourage a crime-free lifestyle for youth in the program.
- (e) Involve every youth in education or vocational training or employment.

DOC 397.02 Applicability. This chapter applies to lead agencies, youth adjudicated delinquent under s. 938.12, Stats., their parents and agencies providing services under this chapter.

DOC 397.03 Definitions. In this chapter:

(1) "Aftercare" means the provision of community services by a lead agency to a youth released from a secured juvenile correctional institution.

(2) "Case management" means the functions which ensure that an individualized case plan and a written services agreement are developed for a youth and that services are provided in accordance with the plan in a timely, effective and coordinated manner.

(3) "Case manager" means an employee of a lead agency who has case management responsibility for a youth.

(4) "County department" has the meaning given in s. 938.02 (2g), Stats.

(5) "Delinquent" has the meaning given in s. 938.02 (3m), Stats.

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

(7) "Dispositional hearing" means a hearing conducted in accordance with s. 938.335, Stats.

(8) "Individualized case plan" means a specific written plan which is based upon the court report, under s. 938.33 (1), Stats., as modified by the court order under s. 938.355, Stats., and an evaluation of the needs of a youth which details the educational, vocational, treatment and placement services to be furnished by service providers.

(9) "Lead agency" means the department, a county department or a private agency ordered by the court to have legal custody or supervision of a youth.

(10) "Legal custodian" has the meaning given in s. 938.02 (11), Stats.

(11) "Legal custody" has the meaning given in s. 938.02 (12), Stats.

(12) "Service agreement" means a written contract between the lead agency, one or more service provider agencies, the youth and, when in the youth's best interests, his or her parents, guardian or legal custodian for the provision and acceptance of services.

(13) "Worker" means a lead agency employee who is responsible for providing direct services to the youth as required by the individualized case plan.

(14) "Youth" means a person under the supervision of the department or a county department within the meaning of s. 938.505(1), Stats., or pursuant to s. 48.366, Stats., in a community placement, regardless of age.

DOC 397.04 Provision of services. (1) COURT REPORT. (a) The agency responsible under s. 938.069, Stats., for preparing a report to be submitted to the court in accordance with s. 938.33, Stats., shall set out the content in a format prescribed by the court.

(b) The agency under par. (a) shall give a copy of the report, together with any other relevant information, to the lead agency within 5 working days after the dispositional hearing.

(2) RESPONSIBILITY FOR PLANNING SERVICES. The lead agency is responsible for planning services for the youth and the youth's family.

(3) RESPONSIBILITY FOR PROVIDING SERVICES. The lead agency is responsible for the provision of services to the youth and the youth's family. The lead agency may either provide some or all of the needed services directly or contract with another agency or person to provide some or all of the services.

(4) GENERAL REQUIREMENTS FOR SERVICES. The services for a youth shall build on the youth's strengths and shall be directed to the goals under s. DOC 397.01 (2).

(5) CASE MANAGEMENT. (a) *Designation of case manager.* The lead agency shall designate a case manager to provide case management for each youth under the agency's court-ordered custody or supervision.

(b) *Individualized case plan.* 1. 'Development.' The case manager is responsible for the development of a case plan for a youth within 30 days after the dispositional hearing, with the involvement of the youth and, when in the youth's best interest, the youth's parents, guardian or legal custodian.

2. 'Review.' The case plan shall be jointly reviewed by the case manager, the worker and the worker's supervisor when it is initially developed and at 6-month intervals. The case manager is responsible for informing a youth and, when in the youth's best interest, the youth's parents, guardian or legal custodian about the frequency of plan review and review methods. The case manager shall require that a progress report be written each time the plan is revised, but at least every 6 months. The progress report shall be placed in a youth's case file.

(c) *Offer of services to the family.* The case manager shall offer a youth's family, guardian or legal custodian, as appropriate, needed and available services related to the habilitation or rehabilitation of the youth. The offer shall be made in person and confirmed in writing. In this paragraph, "in person" means either face-to-face or by telephone.

(d) *Termination of services.* When services are terminated, the case manager shall give written notice of service termination to the youth and to the youth's parents, guardian or legal custodian and shall place a copy of the notice in the youth's case file.

(6) CONDITIONS OF SUPERVISION. The lead agency shall require all of the following:

(a) The conditions of supervision and the possible consequences of a violation of the conditions of supervision are stated in writing and the copies of the statement are given to the youth and the youth's parents, guardian or legal custodian.

(b) The conditions of supervision are explained to the youth and, if possible and necessary, to the youth's parents, guardian or legal custodian.

(c) The youth signs a copy of the conditions of supervision to acknowledge receipt and comprehension of the conditions. If the youth refuses to sign, a report of the explanation and the delivery of a copy of the conditions to the youth shall be maintained in the youth's case file.

(7) CASE FILE. The lead agency shall maintain a case file on every youth who is provided services under this chapter, which shall include all of the following:

- (a) The court report.
- (b) The court order.
- (c) The individualized case plan, plan revisions, revision justifications and progress reports.
- (d) Service agreements.
- (e) The statement of the conditions of supervision.
- (f) A copy of the notice of service termination when services have been terminated.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary

Date 5/10/2000

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to repeal ch. HSS 348 and create ch. DOC 398, relating to county intensive supervision programs for delinquent youth.

Statutory authority: ss. 227.11 (2) and 938.534 (2), Stats., and s. 9126(23)(e), 1995 Act 27.
Statutes interpreted: ss. 301.032 and 938.534, Stats.

Analysis by the Department of Corrections

The proposed rule specifies the requirements for an intensive supervision program. Participation in an intensive supervision program (ISP) may be ordered by the juvenile court as a delinquency disposition under s. 938.34 (2r), Stats. The rule is based on ch. HSS 348, Youth Intensive Supervision Program, which was promulgated by the then-division of youth services in the then-department of health and social services, prior to the July 1, 1996 transfer of juvenile corrections into the department of corrections.

Under this proposed rule:

1. The provisions incorporate references to the department of corrections and ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, so that the rules are consistent with current law.
2. Section DOC 398.01 states that the rules apply to the department, county departments and delinquent youth. Section DOC 398.02 identifies the county departments affected by the rule.
3. Definitions generally follow the terminology in s. HSS 348.03, with a few exceptions.
4. Section 398.04 outlines the ISP program requirements for referral and screening, participant rights, program goals and case plan, required daily face-to-face contact between the youth and caseworker, and the client load of a caseworker.
5. Under s. DOC 398.05 and s. HSS 348.05, an ISP participant can be placed in non-secure or secure detention. The ch. DOC includes minor changes to conform to the revised provisions of s. 938.534, Stats., and to add the option of placement in non-secure detention for crisis intervention. Provisions in s. HSS 348.05 (2) on placement decision-making and record-keeping are not retained in ch. DOC 398 because the court and the county board, under s. 938.534 (1), Stats., develop those policies.
6. Section 398.07 establishes the duration of a youth's participation in an ISP, in the same terms as s. HSS 348.07.

SECTION 25. Chapter HSS 348 is repealed.

SECTION 26. Chapter DOC 398 is created to read:

Chapter DOC 398



INTENSIVE SUPERVISION PROGRAM

DOC 398.01	Authority and purpose	DOC 398.05	Placement in non-secure or secure detention
DOC 398.02	Applicability	DOC 398.06	Right to hearing in secure detention
DOC 398.03	Definitions	DOC 398.07	Duration of program
DOC 398.04	Program requirements		

DOC 398.01 Authority and purpose. (1) This chapter is promulgated under the authority of ss. 227.11 (2) and 938.534 (2), Stats., to provide rules specifying the requirements for an intensive supervision program for youth who have been ordered by a court under s. 938.34 (2r), Stats., to participate in an intensive supervision program.

(2) Through this chapter the department seeks to achieve the following goals:

(a) Provide a community-based option for youth who have been adjudicated delinquent.

(b) Maintain public safety and youth accountability through supervision and sanctions appropriate to the needs and requirements of youth in the program.

(c) Provide the necessary treatment, services, discipline and supervision to help youth and family make meaningful, positive changes in their lives.

(d) Encourage a crime-free lifestyle for youth in the program.

(e) Involve every youth in education or vocational training or employment.

DOC 398.02 Applicability. This chapter applies to the department, county departments under s. 46.215, 46.22 or 46.23, Stats., and youth who have been adjudicated delinquent and ordered under s. 938.34 (2r), Stats., to participate in an intensive supervision program.

DOC 398.03 Definitions. In this chapter:

(1) "Assigned caseworker" means a county department staff member or designee responsible for the case plan, case management and decision making.

(2) "Caretaker" means another person besides a parent who is providing care to a youth.

(3) "County department" means the county department under s. 46.215, 46.22, or 46.23, Stats.

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

(5) "Electronic monitoring device" means an electronic device used to monitor the youth's location.

(6) "Intensive supervision" means a community based comprehensive program providing a youth and the youth's family with the treatment and services necessary for holding the youth accountable and preventing institutional placement.

(7) "Intensive surveillance" means monitoring a youth's activities through frequent face-to-face contacts, electronic monitoring and collateral contacts which include contacts with school personnel, employers, therapists and relatives.

(8) "ISP" or "intensive supervision program" means the program under s. 938.534, Stats, that provides intensive surveillance and community-based treatment services for youth and their families.

(9) "Parent" has the meaning given in s. 938.02(13), Stats.

(10) "Secure detention facility" means a locked facility approved by the department under s. 301.37, Stats., for the secure, temporary confinement of a youth.

(11) "Youth" means a person who has been adjudicated delinquent and ordered by a court under s. 938.34(2r), Stats., to participate in the intensive supervision program.

DOC 398.04 Program requirements. (1) GENERAL. A county department electing to provide or purchase ISP services shall meet the requirements in this section.

(2) REFERRAL AND SCREENING PROCESS. (a) A county department shall develop a written referral and screening process for youth for whom the ISP may be recommended to the court under s. 938.33(1), Stats. Criteria for participation include:

1. The likelihood that a youth would present a physical danger to self or to others if living in the community.

2. The availability of a suitable living arrangement for the youth within the community.

3. The willingness of the youth and the youth's family or other adult with whom the youth will reside to participate in the ISP and comply with the rules and conditions of the program.

4. The ability of the community to provide treatment and other needs of the youth.

(b) Referral and screening shall take place before the report under s. 938.33(1), Stats., is submitted to the court.

(3) PARTICIPANT RIGHTS. A county department shall make reasonable efforts to ensure that a youth, while participating in the program:

(a) Is free from discrimination based on race or ethnicity, color, religion, sex, national origin or any other category protected by federal or state law while receiving program services.

(b) Is provided with accessible and usable services, and any reasonable accommodations or auxiliary aids and services needed to benefit from treatment and other programs.

(c) Is provided with translators if the youth's ability to speak, understand, read or write English is limited.

(d) Is protected from abuse or neglect by program service providers.

(e) Is involved in planning for his or her treatment.

(f) Has access to the courts.

(g) May visit, use the mail and communicate with family members and an attorney within reasonable guidelines while in secure detention or other out-of-home placement.

(h) Has access to county department and community programs and services consistent with the protection of the public.

(i) Has his or her educational, vocational, drug or alcohol abuse, mental health and other treatment needs addressed by the ISP case plan.

(j) May participate in authorized recreational, leisure time and religious activities.

(4) STATEMENT DESCRIBING GOALS, SERVICES AND CASE PLAN COMPONENTS. (a) *Required written description.* A county department shall develop a written description of its ISP that shall include identification of goals, assurances of service availability and specification of case plan components.

(b) *Program goals.* Goals shall be identified based on assessed strengths and needs of youth in the program and their families and may include reduction of recidivism, increased participation in educational or vocational programming, participation in treatment and avoidance of a more restrictive placement.

(c) *Services.* 1. A written description shall include assurances that an individual youth and the youth's family will receive the following services, if needed:

a. School tutoring and other educational services.

b. Vocational training and counseling.

c. Alcohol and other drug abuse outpatient treatment and education. Programs used to treat alcohol or drug abuse by youth shall be certified by the department of health and family services under ch. HFS 61.

d. Family-focused services and family counseling.

e. Employment services.

f. Recreational opportunities.

g. Assistance with independent living skills and arrangements.

2. A written description shall address the availability and accessibility of other community services that a youth and the youth's family may need, such as:

- a. Day treatment or alternative school programs.
- b. Restitution programs.
- c. Interpersonal skills training.
- d. Discipline training including anger and impulse control.
- e. Problem-solving and decision-making skills training for youth.
- f. Training for parents, including discipline management skills, communication skills and interpersonal skills.
- g. Health-related care.

3. A written description shall identify the manner in which a youth and the youth's family will obtain or have access to needed services.

(d) *Case plan.* A written description shall provide assurances that a case plan under sub. (5) shall be developed for each youth and his or her family, and will be filed with the court within 30 days of the dispositional order.

(5) CASE PLAN REQUIREMENTS. A youth in an ISP shall have a case plan that specifies the following:

- (a) The goals for the youth and family for the time the youth is in the ISP.
- (b) The community-based treatment services and educational, vocational, employment and other programs that are expected to be used to meet the needs of the youth and family.
- (c) The number and frequency of supervisory contacts that the youth shall receive.
- (d) The estimated time the youth and his or her family will participate in the program.
- (e) The rules and conditions of the youth's participation in the program, including the following:

1. Avoiding of any conduct that violates a federal, state or municipal law.
2. Reporting any contact with the police to ISP staff within 12 hours.
3. Reporting any arrest or citation to ISP staff immediately.
4. Cooperating with ISP staff and fully participating in all aspects of the case plan.
5. Following all curfews established by ISP staff.
6. Attending all scheduled educational and vocational programs.

7. Following his or her daily appointment schedule with ISP staff.
8. Obtaining advance permission from the lead caseworker to travel outside the state.
9. Cooperating with electronic monitoring procedures and refraining from altering, damaging or interfering in any way with the operation of the electronic monitoring equipment.
10. Refraining from using or possessing any drug, item or substance which is illegal to possess, or any prescription drugs except as prescribed for the youth by a licensed health care provider.
11. Refraining from purchasing, owning, carrying or possessing a firearm, knife or other weapon, or ammunition, without the advance written permission of an ISP caseworker. The ISP caseworker may not grant a youth permission to possess a firearm if the youth is prohibited from possessing a firearm under state or federal law.
12. Agreeing to submit to any test ordered by the ISP caseworker that is permitted under law, including but not limited to, urinalysis, breathalyzer and blood tests.
13. Complying with any special rules issued by ISP staff including, but not limited to, rules relating to companions, medical and dental appointments, counseling, therapy or other mental health appointments, family responsibilities, court-ordered restitution, participation in community service, educational and vocational programs, job seeking and job attendance, purchasing, trading, selling or operating a motor vehicle, and borrowing money or making a purchase on credit.

(f) The consequences for violation of a rule or condition, may include, but are not limited to:

1. Counseling and a warning.
2. Changing one or more of the rules or provisions of the youth's case plan.
3. Placing the youth in a secure detention facility for not more than 72 hours.
4. Placing the youth in non-secure custody under s. 938.534 Stats., for not more than 30 days as a crisis intervention if the youth is in need of crisis intervention.
5. Requesting revision of the dispositional order under s. 938.363 or s. 938.357, Stats.
6. Imposing a sanction permitted by law.

(6) DISCUSSION WITH PARENTS. A case plan shall include a statement signed by a youth and the youth's parent, if the youth is under 18 years old, that the plan has been discussed with the youth and the parent and that they understand the content, conditions, consequences and sanctions delineated in the plan.

(7) CASELOAD REQUIREMENTS. (a) *Caseworker.* A caseworker shall be assigned to each youth participating in the ISP. The assigned caseworker is responsible for developing and

monitoring the case plan under sub. (5), any decision to take the youth into custody under s. DOC 398.05 and the majority, more than 50%, of the face-to-face contacts.

(b) *Limited caseload.* A caseworker assigned to the ISP full time shall have a caseload of no more than 10 youth. A caseworker assigned to the program part time shall have a pro-rata partial caseload.

(c) *Face-to-face contacts.* 1. Each participant in the program shall receive at least one face-to-face contact per day with the assigned caseworker and the participant's activities shall be monitored through the use of intensive surveillance.

2. Face-to-face contacts shall be of a planned and purposeful nature to include monitoring behavior and compliance with rules, problem solving or skills training.

(d) *Contacts with others.* An assigned caseworker shall have at least one contact every week with a youth's parent or caretaker and supervision and one contact every week with the educational or vocational service provider for each youth participating in the ISP.

(e) *Multiple caseworkers.* Caseworkers other than an assigned caseworker may be designated by the case plan to make face-to-face contacts with a youth, in addition to those required by par. (c), if the following conditions are met:

1. The case plan for a youth identifies the caseworker(s) and the frequency of contacts.

2. Any contract or written working agreement with agencies providing related services delineates the responsibilities and requirements for supervision of a youth.

3. The assigned caseworker communicates weekly with other caseworkers supervising the youth regarding pertinent information relating to contacts with a youth and other people involved with the youth during the past week. A daily log shall be maintained for each youth. The information from the log shall be summarized in the case record every 30 days.

DOC 398.05 Placement in non-secure or secure detention. (1) **AUTHORITY.** (a) Notwithstanding ss. 938.19 to 938.21, Stats., but subject to any written policies adopted by the court or the county board, a youth's assigned caseworker may, without a hearing, take the youth into custody and place the youth in a place of non-secure custody for not more than 30 days as crisis intervention, if the youth is in need of crisis intervention. The placement may be made only if the court at the dispositional hearing informed the youth of the possibility of that placement or if before the violation the youth has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

(b) Notwithstanding ss. 938.19 to 938.21, Stats., but subject to any written policies adopted by the court or the county board, if a youth violates a rule or condition of the youth's participation in the ISP, the youth's assigned caseworker may, without a hearing, take the youth into custody and place the youth in a secure detention facility for not more than 72 hours as a consequence of that violation or while the alleged violation and the appropriateness of a sanction are being investigated, if at the dispositional hearing the court explained those conditions to the youth and informed the youth of the possibility of that placement or if before the violation the youth has

acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement. Investigation of the violation includes inquiry into the facts of the violation and the appropriateness or availability of a proposed response to the violation.

(2) **INFORMING AND TRANSPORTING THE YOUTH.** (a) An assigned caseworker making the decision to place a youth in a non-secure or secure facility shall promptly inform the youth, the youth's parent(s) or caretaker of the decision to place the youth, the condition or rule the youth violated, when the youth violated the rule, and the reason for the placement decision.

(b) An assigned caseworker shall make arrangements for transporting and admitting a youth to the facility pursuant to county department policy.

(c) A youth may request to speak with the caseworker's supervisor if the youth disagrees with the placement. That request shall be granted within 24 hours, exclusive of Saturdays, Sundays and legal holidays. A youth's request to speak with a supervisor does not stay the decision to proceed with the placement. During the conversation with the assigned caseworker's supervisor, the youth shall be allowed to make a statement as to why the youth believes the placement to be inappropriate.

DOC 398.06 Right to hearing in secure detention. A youth held in a secure detention facility for more than 72 hours, regardless of whether the continued detention is for a new or additional violation, is entitled to a hearing under s. 938.21, Stats. as provided in s. 938.534(1), Stats.

DOC 398.07 Duration of program. A youth ordered to participate in an ISP may be released from the program in any of the following ways:

(1) The original dispositional order specifies that participation in the program is time-limited in duration, and the time period has expired.

(2) The original dispositional order is revised pursuant to s. 938.363 or 938.357, Stats.

(3) The original dispositional order expires.

(4) A subsequent dispositional order is entered which would preclude the youth from participating in the program, such as placement in another county or transfer of supervision to the department for placement in a secured correctional facility.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary

Date

5/10/2000

SEAL

PROPOSED ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

The Wisconsin department of corrections proposes an order to create ch. DOC 399, relating to training of juvenile court intake workers.

Statutory authority: ss. 301.03 (10) (c) and 938.06 (1) (am) and (2) (b), Stats.

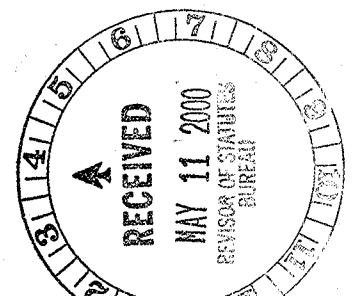
Statutes interpreted: s. 938.06 (1) and (2), Stats.

Analysis by the Department of Corrections

The proposed rule establishes the standards for training of juvenile court intake workers who carry out functions for the court under ch. 938, Stats. The rule is based on ch. HSS 49, juvenile court intake worker training, which provided guidance to the then-division of youth services in the then-department of health and social services, prior to the July 1, 1996 transfer of juvenile corrections into the department of corrections. Chapter HSS 49 continues to govern the department of health and family services in its oversight of juvenile court intake services provided under ch. 48, Stats.

Under this proposed rule:

1. The rules incorporate references to the department of corrections and ch. 938, Stats., the juvenile justice code created by 1995 WI act 77, so that the rules are consistent with current law.
2. Section DOC 399.03 defines terms used in the rule in the same manner as ch. HSS 49 except for the technical changes required by changes in the law.
3. Section DOC 399.04, specifies who is required to successfully complete training in order to function as a juvenile court intake worker.
4. The procedures by which the department monitors compliance with the training requirements, and reviews and approves training proposals are described under ss. DOC 399.05 and .06.
5. Proposed s. DOC 399.07, governing administration of the examination differs somewhat from s. HSS 49.07. While s. HSS 49.07 (2) allowed the person providing the training to administer the examination, s. DOC 399.07 (2) states that only an employee of the department may administer the intake worker exam to allow for a consistent level of objectivity in administration and scoring of exams.
6. New par. (5) requires an intake worker, who fails to successfully complete the initial exam and a supplemental "make-up" exam, to re-take the 30 hours of training and achieve a passing score on the exam.
7. Both s. DOC 399.08 and s. HSS 49.08, provide an opportunity for participants to evaluate the training, and require the department to take specified action based upon the evaluation results.



8. The appendix specifies the sections of the children's code, juvenile justice code and related statutes that shall be included in an approved juvenile court intake worker training curriculum.

SECTION 27. Chapter DOC 399 is created to read:

Chapter DOC 399

INTAKE WORKER TRAINING

DOC 399.01	Authority and purpose	DOC 399.05	Monitoring of compliance with the training requirement
DOC 399.02	Applicability	DOC 399.06	Review and approval of training proposals
DOC 399.03	Definitions	DOC 399.07	Examination
DOC 399.04	Intake training	DOC 399.08	Participant evaluation of training

DOC 399.01 Authority and purpose. This chapter is promulgated under the authority of ss. 301.03 (10) (c) and 938.06 (1) (am) and (2) (b) Stats., to ensure that all intake workers receive basic training appropriate to their functions and responsibilities.

DOC 399.02 Applicability. This chapter applies to the department, intake workers who began employment after July 1, 1989, county sheriff's department employees who provide intake services and began employment after July 1, 1989 and to juvenile courts and county departments that provide intake services under ss. 48.06 and 938.06, Stats.

DOC 399.03 Definitions. In this chapter:

(1) "Administrator" means the administrator of the department's division of juvenile corrections or that person's designee.

(2) "Basic intake training" means 30 hours of department approved training required under s. 938.06 (1) (am) and (2) (b) Stats., which includes 90 minutes for a test at the conclusion of the instruction and may include up to 4 hours of child abuse and neglect training approved by the department.

(3) "County department" has the meaning given in s. 938.02 (2g), Stats.

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

(5) "Employing agency" means a juvenile court, a county department or a county sheriff's department that employs one or more intake workers.

(6) "Juvenile court" means the court assigned to exercise jurisdiction under ch. 938, Stats.

(7) "Intake worker" means an employee of a juvenile court, a county department or the sheriff's department who performs juvenile court intake functions as specified in s 938.067, Stats.

(8) "Successfully completed" means was present for 30 hours of basic intake training and gave correct answers to 70% or more of the test questions.

DOC 399.04 Intake training. (1) REQUIREMENT. Except as provided in sub. (2), every intake worker hired on or after July 1, 1989 shall successfully complete 30 hours of department approved basic intake training within the first 6 months after beginning work as an intake worker.

(2) EXEMPTION. A person hired on or after July 1, 1989 to perform intake service responsibilities shall be exempt from the training requirement under sub. (1) if either of the following apply:

(a) The person successfully completed basic intake training while employed by another agency as an intake worker.

(b) The person was employed as an intake worker in Wisconsin prior to May 15, 1980.

DOC 399.05 Monitoring of compliance with the training requirement. (1) NOTIFICATION OF APPOINTMENT OR ASSIGNMENT. Within 20 working days after the appointment of an intake worker or the assignment of intake responsibilities to an employee, the employing agency shall notify the department in writing of the appointment or assignment. The notification shall include all of the following:

(a) The name of the new employee or newly assigned employee.

(b) The starting date of the new employee or newly assigned employee.

(2) NOTIFICATION OF NON-COMPLIANCE. If an intake worker does not successfully complete the required basic intake training within the first 6 months after the person begins work, the department shall advise the following persons, as appropriate, in writing of the failure to complete:

(a) The chief juvenile court judge of the county where the intake worker is employed.

(b) The director of the county department, if the intake worker is an employee of that department.

(c) The district attorney or corporation counsel, as appropriate.

(d) The sheriff of the county or the head of the agency which administers the county's juvenile detention facility.

(e) The intake worker's supervisor or the chief intake worker.

DOC 399.06 Review and approval of training proposals. (1) SUBMISSION OF TRAINING PROPOSAL. Any individual, agency or organization intending to provide basic intake training to intake workers shall submit a proposal to the department for all 30 hours of training, including a 90 minute test, at least 60 days before the training is to begin. The proposal shall include all of the following:

(a) A description of the organization and content of the training and a statement describing the educational objectives of the training. The content of the training shall include training regarding statutes specified by the department.

(b) A list of trainers, including documentation of their knowledge of the subject and ability to teach it.

(c) An agreement to have the test administered as required under s. DOC 399.07.

(d) A description of procedures to be used to verify attendance at the training sessions:

(e) Identification of any tuition or other fees to be charged to participants.

(f) The maximum number of participants that can be accommodated.

(g) The specific location or locations at which the training will take place.

(h) A list of dates on which the training will be given.

(2) EVALUATION AND APPROVAL OF TRAINING PROPOSAL. (a) 1. The department shall evaluate the training proposal for completeness, timeliness and adequacy under sub. (1).

2. The department shall notify the applicant in writing of approval or denial within 20 days after receipt of the proposal. If the proposal is not approved, the department shall include in the notice the reason for not approving the proposal.

(b) A county employee may not provide basic intake training for employees of that county.

(3) APPEAL OF AN ADVERSE DECISION. (a) An applicant whose training proposal is denied may appeal the decision to the administrator. An appeal shall be submitted in writing to the administrator within 10 working days after receipt of the notice of denial and shall include information that responds to the reasons given by the department to deny the proposed training.

(b) The administrator shall either affirm or overturn the decision to deny approval of the proposal within 10 working days after receiving the appeal. The administrator's decision shall be final.

(4) DURATION OF APPROVAL. A decision to approve a proposal includes approval of all training dates included in the proposal. The effective period for the approval is 12 months from the date of notification of approval. The approved training shall be conducted during the 12-month period unless a change is made to the training proposal which is approved by the department. If the department approves a change, the period of approval shall extend to 12 months from the date that the department notifies the applicant that the amended proposal is approved.

DOC 399.07 Examination. **(1) TEST QUESTIONS.** The department shall develop a pool of questions related to the content of the basic intake training, including questions designed to measure knowledge of relevant statutes. The department shall select questions from the pool of questions in creating a test that intake workers shall take at the conclusion of the training.

(2) ADMINISTRATION OF THE TEST. An employee of the department shall administer a test at the end of the training using all of the following procedures:

(a) The test may not be distributed to training participants until the time for testing at the end of the training.

(b) Ninety minutes shall be allowed to complete the test and the 90 minutes shall be included as part of the 30 hours of required training.

(c) Training participants may use statutes and other resources to complete the test, but training participants shall individually complete the test.

(3) EVALUATION AND SCORING OF TESTS. Staff of the department designated by the administrator shall evaluate the responses to the test questions and shall determine the percentage of questions that each training participant has answered correctly. The department shall notify each training participant and his or her supervisor of that percentage within 20 working days after the training is completed. A training participant who has answered 70% or more of the questions correctly has passed the test. A training participant who has answered fewer than 70% of the questions correctly has failed the test.

(4) OPPORTUNITY TO SUCCESSFULLY COMPLETE THE TEST. If a training participant fails the test, he or she shall be given an opportunity to respond again to the questions for which erroneous responses were given on the original test. The questions that a training participant failed to answer correctly shall be included with the notice of the score on the original test. The training participant shall have 5 working days to complete answers to the questions and return the answers to the department. If all of the answers are correct, the department shall notify the training participant that he or she has passed the test.

(5) FAILURE TO SUCCESSFULLY COMPLETE THE EXAMINATION. If a training participant fails to complete the supplemental test in sub. (4), notification shall be sent in accordance with s. DOC 399.05 (2). A participant who has failed to successfully complete the supplemental test in sub. (4) may achieve certification only by retaking the 30 hours of department approved basic intake training and achieving a passing score of 70% or better on the examination.

DOC 399.08 Participant evaluation of training. (1) EVALUATION. Participants in the training shall be given an opportunity to evaluate the training experience, including the trainer's knowledge and ability, the curriculum, the content, the examination and the format of the training. The department shall supply the trainer with evaluation forms to be completed by the participants. The trainer shall return all the completed evaluation forms to the department after administration of the test.

(2) EVALUATION RESULTS. The department shall notify the trainer of the results of the evaluations under sub. (1). The trainer shall meet with department representatives at the request of the department if evaluations indicate dissatisfaction with the training experience.

(3) CANCELLATION OF APPROVAL. If the department determines that the training was inadequate or inappropriate, the department may cancel the training approval by sending written

notice to the trainer of the cancellation and the reasons for the cancellation. The trainer may appeal a decision to cancel an approval as provided in s. DOC 399.06(3).

APPENDIX A

WISCONSIN STATUTES TO BE INCLUDED IN BASIC INTAKE TRAINING FOR JUVENILE COURT INTAKE WORKERS (DOC 399.06 (1) (a) and (2) (a) 1)

Instruction regarding ss. 48.01 and 938.01 on title and legislative purpose of the Children's and Juvenile Justice Codes, 48.02 and 938.02 on definitions, 48.067 and 938.067 on powers and duties of intake workers, 48.069 and 938.069 on powers and duties of disposition workers, 48.08 and 938.08 on duties of persons furnishing services to the court, 48.10 and 938.10 on power of the judge to act as intake worker and 48.981 on abused or neglected children shall be part of the approved training.

Training must also include instruction on ss. 938.12 on jurisdiction over youth alleged to be delinquent, 938.125 on jurisdiction over youth alleged to have violated civil law or ordinances, 48.13 on jurisdiction over children alleged to be in need of protection or services, 938.13 on jurisdiction over youth alleged to be in need of protection or services, 48.135 and 938.135 on referral of children and youth to proceedings under ch. 51 or 55, Stats., 48.14 on jurisdiction over other matters relating to children, 938.14 on jurisdiction over interstate compact proceedings, 48.16 on jurisdiction over petitions for waiver of parental consent to a minor's abortion, 938.17 on jurisdiction over traffic and boating, civil law and ordinance violations, 938.18 on waiver of jurisdiction for criminal proceedings, 938.183 on original adult court jurisdiction for criminal proceedings, 48.185 and 938.185 on venue, 48.45 and 938.45 on orders applicable to adults; 118.15 and 118.16 on compulsory school attendance and school attendance enforcement and an overview of chs. 939 to 948, the Criminal Code.


Training is required regarding custody intake, ss. 48.19 and 938.19 on taking a child or youth into custody, 48.20 and 938.20 on release or delivery from custody, 48.205 and 938.205 on criteria for holding a child or youth in physical custody, 48.207 and 938.207 on places where a child or youth may be held in nonsecure custody, 48.208 and 938.208 on criteria for holding a child or youth in a secure detention facility, 938.209 on criteria for holding a youth in a county jail, 48.21 and 938.21 on hearing for a child or youth in custody, 48.227 on homes for runaways and 48.981 on abused or neglected children.

Training is required regarding court intake, ss. 48.23 and 938.23 on right to counsel, 48.24 and 938.24 on receipt of jurisdictional information and intake inquiry, 48.243 and 938.243 on basic rights and duties of the intake worker, 48.245 on informal disposition, 938.245 on deferred prosecution agreement, 48.25 and 938.25 on authorization to file a petition, 48.299 and 938.299 on procedures at hearings, 48.30 and 938.30 on plea hearings, 48.305 and 938.305 on a hearing upon the involuntary removal of a child or juvenile, 48.31 and 938.31 on fact-finding hearings, 48.315 and 938.315 on delays, continuances and extensions, 48.32 and 938.32 on consent decrees, 48.33 and 938.33 on court reports, 938.331 on victim impact, 938.335 on disposition hearings, 938.34 on disposition of a youth adjudged delinquent, 938.341 on delinquency adjudication and restriction on firearm possession, 938.342 on disposition of truancy and school dropout ordinance violations, 48.345 on disposition of a child adjudged in need of protection or services, 938.345 on disposition of a juvenile adjudged to be in need of protection or services, 938.46 on notice to victims of a juvenile's acts, 48.355 and 938.355 on

dispositional orders, 48.38 and 938.38 on permanency planning, 48.396 and 938.396 on records and 48.78 and 938.78 on confidentiality of records and 895.035 on parental liability for acts of a youth.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS



Jon E. Litscher, Secretary

Date 5/10/2000

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