

CERTIFICATE

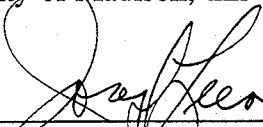
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND FAMILY SERVICES)

I, Joseph Leean, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to searches of the persons and of the rooms and personal belongings of patients residing in a secure mental health unit under s. 980.065, Stats., or the maximum security facility at the Mendota mental health institute were duly approved and adopted by this Department on March 12, 1999.

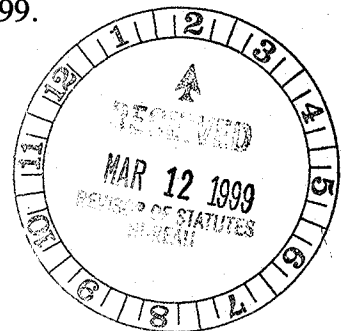
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 12th day of March, 1999.

SEAL:



Joseph Leean, Secretary
Department of Health and Family Services



ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING RULES



To amend HFS 94.24 (2) (d) 1. d. and (e), relating to searches of the persons and of the rooms and personal belongings of patients residing in a secure mental health unit under s. 980.065, Stats., or the maximum security facility at the mendota mental health institute.

Analysis Prepared by the Department of Health and Family Services

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% of the patients are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center, staff before August 1, 1998 were making random searches of the rooms and personal belongings of patients who were committed to the Department under ch. 980, Stats. A patient challenged the practice in a lawsuit, claiming that it violated s. HFS 94.24 (2) (e) which permitted a search only when there was documented reason to believe that security rules had been violated, unless the search was of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is a civil commitment. The court handling the case was expected to rule in favor of the patient. Therefore, the Center temporarily suspended random searches, pending amendment of the rule. The rule was amended by emergency order on August 15, 1998.

This is the permanent order to amend s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota Mental Health Institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change permits the Wisconsin Resource Center to continue random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

These patients have been committed or are being detained because they have been found to be dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is that this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

This permanent rulemaking order also amends s. HFS 94.24 (2) (d) 1. d. to authorize routine personal searches of ch. 980 patients at the Wisconsin Resource Center and to provide that routine personal searches may take place also of patients who reside in the maximum security facility at the Mendota Mental Health Institute. A "personal search," as defined in s. HFS 94.02 (33), is a search of a patient's person, including the patient's pockets, frisking his or her body, an examination of the patient's shoes and hat and a visual inspection of the patient's mouth.

Random searches of the rooms and personal belongings of ch. 980 patients and routine searches of their persons help the Wisconsin Resource Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. The searches can also deter patients from harboring dangerous items in their rooms or on their person. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront criminogenic behaviors and patterns. Random searches of patient rooms and belongings and routine personal searches of these patients are very effective treatment tools in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

The Department's authority to amend these rules is found in ss. 51.61 (9) and 227.11 (2) (a), Stats. The rules interpret ss. 51.61 (1) and 980.06 (2) (b), Stats.

SECTION 1. HFS 94.24 (2) (d) 1. d. and (e) are amended to read:


HFS 94.24 (2) (d) 1. d. If, for security reasons, the facility routinely conducts personal searches of patients committed under ch. 971 or 975, Stats., patients residing in the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., and persons transferred under s. 51.35 (3) or 51.37, Stats.;

(e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except that in forensic units where routine searches may be conducted in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with written facility policies.

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) (intro.), Stats.

Wisconsin Department of Health and
Family Services

Date: **March 12, 1999**

By: 
Joseph Lekan
Secretary

SEAL: