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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Corrections and Courts (AC-CC)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

CRule
01-045
folder

To create HFS 95, relating to the use of force to prevent escapes, pursue and capture escaped persons detained or committed under Ch. 980, Stats., and to provide security at facilities housing such persons.

Analysis Prepared by the Department of Health and Family Services

This order creates rules to guide the use of force to prevent escapes and recapture escaped persons detained or committed under Ch. 980, Stats., and to provide security at the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., and any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.

1999 Wisconsin Act 9 created s. 46.058(2m), Stats. That law requires the department to establish rules to define the use of "necessary and appropriate force" in relation to preventing escapes and in pursuing and capturing persons detained at or committed under ch. 980, Stats., who have escaped. This order complies with that statutory requirement.

In addition to defining the use of force in such circumstances, this order sets forth standards for the appropriate use of force in order to provide security at facilities housing such persons. Use of force is sometimes required in situations to prevent injuries, regain control of parts of a facility, control disruptive persons, or prevent property damage. This order requires the adoption of policies and procedures to ensure that only so much force is used as is necessary under the circumstances.

This order also sets forth criteria for use of firearms and incapacitating devices. Proper and ongoing training is required.

The department's authority to create these rules is found in ss. 46.055, 46.058(2m), 51.61, 227.11(2), 980.04(1), 980.06 and 980.065(2), Stats. The rule interprets ss. 46.055, 46.058(2m), 51.61, 980.04(1), 980.06 and 980.065(2), Stats.

SECTION 1. Chapter HFS 95 is created to read:

CHAPTER HFS 95
USE OF FORCE TO PREVENT ESCAPES, TO PURSUE AND CAPTURE
ESCAPED PERSONS AND TO PROVIDE SECURITY AT
FACILITIES HOUSING SUCH PERSONS
COMMITTED OR DETAINED UNDER CH. 980, STATS.

HFS 95.01 Authority and purpose
HFS 95.02 Applicability
HFS 95.03 Definitions
HFS 95.04 Preventing escapes
HFS 95.05 Pursuing capturing escapees
HFS 95.06 Use of force
HFS 95.07 Documentation
HFS 95.08 Training

HFS 95.01 Authority and purpose. Pursuant to the authority vested in the department by ss. 46.055, 46.058(2m), 51.61(9), 227.11(2), 980.04(1), 980.06, and 980.065(2), Stats., the department adopts this chapter to define the use of "necessary and appropriate force" in relation to preventing escapes and pursuing and capturing persons detained at or committed to a facility, center or unit under ch. 980, Stats., who have escaped and to establish security standards at facilities housing such persons. Primary security objectives of the department are to protect the public, staff and patients and to afford patients the opportunity to participate in treatment and activities in a safe setting. Every employee of a facility is responsible for the safe custody of patients.

HFS 95.02 Applicability. This chapter applies to the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., and any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.

HFS 95.03 Definitions.

- (1) "Administrator" means the administrator of the division.
- (2) "Bodily injury" means physical injury, illness, or any impairment of physical condition.
- (3) "Department" means the department of health and family services.
- (4) "Director" means the superintendent of a facility, or that person's designee.
- (5) "Disturbance" means a situation caused by a patient that disrupts the normal functioning of the facility, including but not limited to any of the following:
 - (a) An assault on any person by 2 or more patients.
 - (b) The taking of a hostage by a patient.

- (c) The destruction of state property or the property of another by 2 or more patients.
- (d) The refusal by 2 or more patients, acting in concert, to comply with an order.
- (e) Any word or acts by two or more patients which incite or encourage other patients to do any of the above.
- (6) "Division" means the division of care and treatment facilities in the department.
- (7) "Emergency" means an immediate threat to the safety of the public, staff or patients of the facility. An emergency includes, but is not limited to any of the following:
 - (a) A utility malfunction.
 - (b) A fire.
 - (c) A bomb threat or an explosion.
 - (d) A natural disaster.
 - (e) A civil disturbance.
 - (f) A patient's escape.
- (8) "Facility" means the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., or any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.
- (9) "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.
- (10) "Great bodily injury" means bodily injury which creates a high probability of illness, death or 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.
- (11) "Incapacitating device" means any commercially manufactured chemical agent or mechanical device approved by the department for the purpose of incapacitating someone.
- (12) "Lethal force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.
- (13) "Non-lethal force" means force which the user reasonably believes will not create a substantial risk of causing death or bodily injury to another.
- (14) "Patient" means a person detained at or committed to a facility under ch. 980, Stats.
- (15) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable.
- (16) "Secretary" means the secretary of the department.

(17) "Security Director" means the security director at a facility, or that person's designee.

(18) "Strength or power" means the use of physical strength alone or with any device or object, including but not limited to an incapacitating device, firearm, or any other mechanical, electronic or physical object.

HFS 95.04 Preventing escapes. The director shall adopt written policies and procedures consistent with this chapter to prevent escapes.

HFS 95.05 Pursuing and capturing escapees. The director shall adopt written policies and procedures consistent with this chapter to pursue and capture escapees. The director may enter agreements with local and state law enforcement agencies to pursue and capture escapees.

HFS 95.06 Use of force. (1) FORCE OPTION CONTINUUM. (a) *Policies and procedures.* The director shall adopt written policies and procedures that establish a systematic progression of force based on the perceived level of threat to guide staff in the use of force in a disturbance or emergency, to prevent escapes or to pursue and capture escapees. This progression includes staff presence, dialogue, empty-hand control, incapacitating devices, and lethal force. The policies and procedures shall be designed to help ensure that force is only used when necessary and that only the amount of force that is necessary under the circumstances is used.

(b) *Non-lethal force.* Staff may use non-lethal force against patients only if the user reasonably believes that the use of non-lethal force is immediately necessary to achieve any of the following:

1. Prevent death or bodily injury to oneself or another.
2. Regain control of a facility or part of a facility.
3. Prevent escape or apprehend an escapee.
4. Change the location of a patient.
5. Control a disruptive patient.
6. Prevent unlawful damage to property.
7. Enforce a departmental rule, a facility policy or procedure or an order from a staff member.

(c) *Lethal force.* 1. Staff may use lethal force only if the user reasonably believes that the use of such force is immediately necessary to achieve any of the following:

- a. Prevent death or bodily injury to oneself or another.
- b. Prevent unlawful damage to property that may result in death or bodily injury to oneself or another.

c. Regain control of a facility or part of a facility when less forceful means of regaining control are unsuccessful or not feasible under the circumstances.

d. Prevent escape or apprehend an escapee.

2. Staff may not use lethal force if its use creates a substantial danger of harm to non-involved third parties, unless the danger created by not using such force is greater than the danger created by using it.

(d) *Other uses of force prohibited.* Force may not be used except as provided in this chapter and under policies and procedures adopted in accordance with this chapter, including but not limited to use of force as a means of disciplining patients.

(2) FIREARMS. (a) *Authority to carry firearms.* 1. Only staff designated by the director or that person's designee may authorize use of firearms.

2. Except in disturbances or emergencies only staff assigned to posts requiring the use of firearms may be armed.

3. Staff may only carry or use firearms approved and issued by the department and only after successfully completing the training program under s. HFS 95.08.

4. Only staff authorized by the director may in the course of their duties carry firearms off the grounds of the facility.

(b) *Reporting discharged firearm.* If a staff member discharges a firearm, staff shall do all of the following:

1. The staff member who discharged the firearm shall verbally notify the staff member's supervisor as soon as possible.

2. As soon as possible after the discharge of the firearm, each staff member present during the incident shall write and submit a written report about the incident on a form approved by the director.

3. The security director shall investigate the incident and submit a report to the director. The report shall state all facts relevant to the discharge of the firearm and shall include copies of all reports written by staff members present during the incident and the security director's opinion as to whether the discharge was justified and occurred in accordance with facility policies and procedures and this chapter. The director shall send to the administrator the security director's report, along with the director's conclusion regarding whether the discharge was consistent with this chapter.

(c) *Death or injury caused by firearm.* 1. If a person is injured or killed by the discharge of a firearm, the department shall convene a firearm review panel to investigate the incident. The 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. The department staff member designated by the secretary shall serve as chairperson.

b. Two members designated by the administrator, one of whom shall be a member of central office staff and one of whom shall be a member of the public.

c. One member designated by the director of the facility, center or unit where the incident occurred, who is a member of the institution staff.

2. The panel shall submit a written report to the secretary. The report shall include a description of the incident and the panel's conclusion regarding whether the use of force complied with the policies and procedures adopted under this chapter.

(3) **INCAPACITATING DEVICES.** (a) Staff may only use incapacitating devices approved by the department and only in compliance with this chapter and facility policies and procedures.

(b) The director shall adopt policies and procedures consistent with this chapter for the control and issuance of incapacitating devices, including the chain of command for authorization to issue such devices.

(c) Staff may only use incapacitating devices after successfully completing the training program under s. HFS 95.08.

(d) As soon as possible after an incapacitating device has been used, staff shall consult with medical staff who shall provide appropriate medical care and provide the exposed person an opportunity to clean off any incapacitating chemical agent that was used and to change clothing.

(e) As soon as possible following the use of an incapacitating device, all staff present shall write and submit a written report to the director about the incident on a form approved by the director. The report shall include a description of the incident, the name of each person present during the incident, the incapacitating device that was used and any resultant physical health treatment that was required or provided.

(4) **HOSTAGES.** Notwithstanding any other provision of this section, a staff member taken hostage has no authority to order use of force or any other action or inaction by staff.

HFS 95.07 Documentation. The director shall adopt written policies and procedures to ensure that all uses of force are documented in a manner approved by the department.

HFS 95.08 Training. (1) The director shall adopt written policies and procedures to ensure that facility staff who may be called upon to use force under s. HFS 95.06 are properly trained and regularly updated on the systematic progression of force policies and procedures adopted under s. HFS 95.06(1)(a).

(2) Staff authorized to use firearms under s. HFS 95.06(1)(c) and (2) shall attend a department-approved training and qualification program that includes instruction on all of the following:

(a) Safe handling of firearms while on duty.

(b) Legal use of firearms and the use of lethal force.

(c) Facility policies and procedures regarding firearms.

(d) Fundamentals of firearms use, including range firing.

(e) In situations where firearms may be used, the manner in which they must be used, including the use of verbal warnings and warning shots.

(3) Staff authorized to use incapacitating devices under HFS 95.06(1)(b) and (3) shall attend a department-approved training and qualification program that includes instruction on all of the following:

(a) Safe handling of incapacitating devices

(b) Legal use of incapacitating devices and the use of non-lethal force.

(c) Facility policies and procedures regarding incapacitating devices.

(d) In situations where incapacitating devices may be used, the manner in which they must be used, including the use of verbal warnings.

The rule included 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

Dated:

By: _____
Phyllis J. Dubé
Secretary

SEAL:

**PROPOSED ADMINISTRATIVE RULES – HFS 95
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.**

Need for Rules

This order creates rules to guide the use of force to prevent escapes and recapture escaped persons detained or committed under Ch. 980, Stats., and to provide security at the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., and any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.

1999 Wisconsin Act 9 created s. 46.058(2m), Stats. That law requires the department to establish rules to define the use of "necessary and appropriate force" in relation to preventing escapes and in pursuing and capturing persons detained at or committed under ch. 980, Stats., who have escaped. This order complies with that statutory requirement.

In addition to defining the use of force in such circumstances, this order sets forth standards for the appropriate use of force in order to provide security at facilities housing such persons. Use of force is sometimes required in situations to prevent injuries, regain control of parts of a facility, control disruptive persons, or prevent property damage. This order requires the adoption of policies and procedures to ensure that only so much force is used as is necessary under the circumstances.

This order also sets forth criteria for use of firearms and incapacitating devices. Proper and ongoing training is required.

The department's authority to create these rules is found in ss. 46.055, 46.058(2m), 51.61, 227.11(2), 980.04(1), 980.06 and 980.065(2), Stats. The rule interprets ss. 46.055, 46.058(2m), 51.61, 980.04(1), 980.06, and 980.065(2), Stats.

Response to Clearinghouse Recommendations

The Department accepted all comments of the Legislative Council's Rules Clearinghouse and modified the proposed rules accordingly.

Public Hearings Summary

The department held one public hearing on the proposed rules. The hearing was held in Madison on May 30, 2001. Two people testified at the hearing. One of them submitted a written copy of her testimony at the time. The other person submitted a written supplement to his oral testimony after the hearing. The department received written comments from 22 other individuals and organizations.

There were several objections to the proposed rules. The main objection to the rule raised by its opponents is that it authorizes the use of "lethal force" in some limited circumstances. However, the rule does not (indeed, it cannot) authorize the use of lethal force. That authorization already exists. Any citizen has the authority to use force, including lethal force, where they reasonably believe it is necessary to prevent imminent death or great bodily harm to self or others.

[See, for example, § 939.48, Wis. Stats.] This rule regulates the use of force in circumstances related to the Ch. 980 patients held in state custody.

Regarding the use of lethal force to prevent escapes or recapture escapees, the department believes that the danger posed to the public by a person committed under or facing commitment under Ch. 980 is substantial enough to warrant the use of lethal force. The risk posed to the community is not just the risk of further sexually violent acts. While such acts can be considered very violent to the victims, they may not warrant the use of lethal force to prevent them. However, this population poses an even greater risk in that, for patients unwilling to change through treatment, a Ch. 980 commitment is potentially lengthy. This extended commitment creates a risk of a Ch. 980 patient perpetrating acts of desperation in order to escape or to avoid recapture.

Furthermore, the Ch. 980 population includes individuals who have participated in or led disturbances in secure institutions, attempted escape from secure institutions, or assaulted staff in a secure institution. The department would be remiss in the performance of its responsibilities if it did not include "lethal force" as part of the "proper means" to prevent escapes or recapture escaped patients. The only other circumstance where lethal force may be used in accordance with this rule is where lethal force is necessary to prevent death or bodily injury or to regain control of a facility or part of a facility.

To preclude the use of lethal force would indicate that the department is willing to potentially sacrifice the safety and well-being of other patients, staff and members of the public if their lives are endangered by the actions of Ch. 980 patients and a lower level of force could not safely resolve the situation. Ensuring the health and safety of patients is one of the state's obligations under the patient rights statutes. [See § 51.61(1)(m), Stats.] Staff need the capability to respond to serious security and safety incidents with the full array of potential response options. The rule would ensure that only that amount of force that is necessary under the circumstances is used.

Another objection to the rule is that it is not limited to the use of force to prevent escapes and recapture escapees, as authorized in §46.058(2), Stats. It is correct that the rule does apply to all situations that may involve the use of force relative to Chapter 980 patients. The Department chose to include this scope of activities for several reasons. First, it seemed inconsistent to address the rare circumstance of an escape in the rule, but not have much more frequent situations addressed in the same rule. Second, if the general topic of the use of force was not addressed in the rule, the institutions would have in place policies that establish the same criteria for the use of force. Thus, the decision to include this issue in the rule enhances the accountability of the institutions for the use of force under all circumstances, by specifying that only the lowest level of force necessary to accomplish the desired end is authorized.

Some opponents of the rule noted its similarity to Department of Corrections rules and objected to the idea of treating patients like inmates. However, the model used for this rule is the same one used by law enforcement agencies around the country. In fact, wardens of the Wisconsin Department of Natural Resources use this same model. Deviation from that model is fraught with potential abuse of force and liability for the department.

Other objections to the rule are responded to in the attached hearing comments section.

The department is committed to providing treatment to the Ch. 980 patients in a secure setting. Adoption of this rule is necessary to ensure the security of the facilities housing these patients and to protect the safety of patients, staff and members of the community.

The Sand Ridge Secure Treatment Center, a new facility for the Ch. 980 patients, has recently opened in the City of Mauston in Juneau County. This rule is supported as written by the Mauston Police Department, the Chair of the Juneau County Board of Supervisors, the Mayor of Mauston, and the Juneau County Sheriff.

Final Regulatory Analysis

The proposed permanent rule will not affect small businesses as “small business” is defined in s. 227.114(1)(a), Stats.

**Department of Health and Family Services
Division of Care and Treatment Facilities
Public Hearing and Written Comment Summary
Chapter HFS 95**

One public hearing on the proposed permanent rules was held as follows:

Madison, WI on May 30, 2001

Staff in attendance:

Linda Harris, Hearing Officer, Forensic Services Supervisor, Division of Care and Treatment Facilities, DHFS

James Yeadon, Supervisor, Client Rights Office, Division of Care and Treatment Facilities, DHFS

The department kept the hearing record open for written comments until June 12, 2001.

Participation in the hearings is tabulated below. The indication of support and opposition reflects the positions indicated on the registrations or written statements filed by the hearing participants.

Registered: 2

Oral testimony: 2

Written testimony from people who attended and gave oral testimony: 2

Written comments from people who attended, but did not testify: 0

Written comments from people who did not attend a hearing: 22

Support the rules: 4

Support the rules with changes: 0

Oppose the rules: 20

Undecided: 0

**Proposed HFS 95
Hearing Attendees or Commenters**

The following is a complete list of the people who attended a public hearing or submitted written comments on the proposed ch. HFS 95, permanent rules. Each person's name and affiliation is accompanied by an indication of the person's position on the proposed rules and whether or not the person testified or provided written comments. The number preceding a name indicates in the attached summary of hearing comments who made the specific comment.

Name and Address	Position	Action
1. Sharon Patrick 705 Seneca Place Madison, WI 53711	Opposed	Oral and written comments
2. Todd Winstrom Wisconsin Coalition for Advocacy 16 N. Carrol St., Suite 400 Madison, WI 53703	Opposed	Oral comments followed by a written supplement
3. Christopher Ahmuty Executive Director, ACLU 207 E. Buffalo St., Suite 325 Milwaukee, WI 53202-5774	Opposed	Written comments only
4. Robert J. Van Domelen Executive Director Broken Yoke Ministries, Inc. P.O. Box 361 Waukesha, WI 53187-0361	Opposed	Written comments only
5. Richard and Nancy Ganzel 1419 Harrington Dr. Racine, WI 53405	Opposed	Written comments only
6. Corryn Schulz P.O. Box 172 Hortonville, WI 54944	Opposed	Written comments only
7. Beth A. West 3795 E. Denton Ave., #58 St. Francis, WI 53235	Opposed	Written comments only
8. Crystal Graham 816 Lime Kiln Road #3 Green Bay, WI 54302-3842	Opposed	Written comments only
9. Brian H. Kuruzovich P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
10. Richard A. Walker P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
11. William E. Marberry P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
12. Harry D. Beyers P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
13. Roy C. O'Neal	Opposed	Written comments only

P.O. Box 129 Winnebago, WI 54985		
14. Dennis Thiel P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
15. Edwin C. West P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
16. Harry R. Montey P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
17. Jackson D. Carpenter P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
18. Glen A. Thayer P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
19. John L. Laxton P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
20. Ronald G. Sorenson P.O. Box 129 Winnebago, WI 54985	Opposed	Written comments only
21. Chief Mark A. Messer Mauston Police Department 303 Mansion St. Mauston, WI 53948-1329	In Support	Written comments only
22. James Barrett County Board Chairperson Juneau Co. Board of Supervisors 220 E. State St. Mauston, WI 53948	In Support	Written comments only
23. David E. Pelton Mayor, City of Mauston 303 Mansion St. Mauston, WI 53948-1329	In Support	Written comments only
24. Brent H. Olson Sheriff, Juneau County 220 E. State St. Mauston, WI 53948	In Support	Written comments only

**Summary of HFS 95 Public Hearing Testimony
Including Written Comments and Departmental Responses**

Rule Reference	Comment	Departmental Response
General comments	The rule is too similar to the Department of Corrections rules. This blurs the distinction between Ch. 980 patients and inmates. #1, #4, #5, #6, #7, #8, #15, #20	The rule is not based on a "DOC" model, but rather on the model that is used by law enforcement officials around the country whenever the use of force is applied in any situation. It is not advisable to deviate from that model.
General comments	The rule could be counter-therapeutic to Ch. 980 patients. It allows the use of extraordinary force. The message to patients is that the officials who care for them do not value their lives. This is not good for their treatment and self-esteem. #1, #4, #5, #6, #11, #12, #14, #15, #17, #20	The rule is designed to protect the patients from harm from each other, as well as protect the staff and the community. All lives are valued. Only extreme acts of violence or escape attempts will possibly lead to the use of lethal force. A secure environment fosters treatment.
General comments	The use of lethal force to prevent escapes is unwarranted. Ch. 980 patients are dangerous because of the probability of committing sexual violence. Lethal force should not be used to prevent acts which do not endanger the lives of others. The risk they pose to the community at large if they escape is low. Escapees tend to get caught rather quickly. It is unlikely they will commit a new sex offense in the relatively short time they are at large. #1, #5, #8,	Ch. 980 patients not only pose a danger of sexually violent acts, they also pose a high probability of committing other violent offenses against the community. Someone facing a potentially long period of incarceration has great incentive to escape and to resist arrest after an escape, by any means possible, including the use of violent measures. While Wisconsin has been lucky so far, other states have experienced escapes from their SVP facilities. The most daring escape from a sex offender treatment center took place in Florida in June 2000, using a helicopter. The pilot and the escapee were both armed when captured. This is just one example of the desperate measures some SVPs are willing to undertake to escape and remain free.
General comments	The rule is inconsistent with the statutes it purports to interpret. § 46.058(2), Stats., requires the department to "adopt proper means" to prevent escapes and recapture escapees. These "proper means" can only be those means appropriate to deal with escapes of civil patients since a Ch. 980 commitment is a civil one. Civil patients retain a higher degree of rights than inmates. Practices that may be appropriate to prevent escapes of prisoners are not appropriate of civil patients. "Proper means" must be consistent with the rights in §51.61, Stats., and the constitutional rights of civil patients. #2	The "proper means" defined in the rule are consistent with the statutes cited.

Rule Reference	Comment	Departmental Response
General comments	<p>The rule does not define "necessary and appropriate force", but delegates that responsibility to the director of the facility to develop policies and procedures to establish a "systematic progression of force". This does not meet the legislative requirement that the <u>rules</u> define the amount of force to be used. The department cannot delegate this responsibility. #2</p>	<p>The rule sets the outside parameters of the use of force – from the least intrusive (staff presence and dialogue), through intermediary force (empty-hand control and incapacitating devices), up to and including the use of lethal force. It defines the circumstances where non-lethal force can be used and when lethal force can be used. The rule only delegates the exact details of implementation to the facilities.</p>
General comments	<p>The rule does not meaningfully limit the use of force. The only standard is that the user must "reasonably believe" the force is necessary. But "unreasonable force" is already prohibited. #2</p>	<p>This is the same standard used by responsible law enforcement agencies throughout the country, on a daily basis, in their interactions with the public. It is also the standard used in the "self defense and defense of others" statute. [§ 939.48, Stats.]</p>
General comments	<p>Nothing in §51.61, Stats., allows the use of any force against patients. Rather, the patient rights law <u>limits</u> the use of force against patients to the most extreme circumstances. The law on restraint and seclusion (§51.61(1)(i)) allows patients to be subject to these intrusive measures only when authorized by a physician to prevent imminent harm to self or others, only for the shortest time possible, and only when less restrictive measures cannot be used. This suggests that if force against patients is permitted at all, it should be permitted only with similar stringent limitations. The use of force under the rule would far exceed the limits on the use of restraint and seclusion. The rule would permit exceedingly high levels of force – like firearms – to prevent a much lower degree of injury to others. The rule also allows force to be used to change the location of patients, prevent unlawful damage to property, or to enforce a rule, policy, procedure or staff order. #2</p>	<p>Force has been and will continue to be used when necessary to control patients' behavior that is dangerous to self or others. While standards for the use of restraint and seclusion are set forth in §51.61, there are no statutory standards for the use of such force. On occasion, patients must be "subdued" first in order to then restrain or seclude them. Constitutional standards would apply to the use of force in such circumstances. This rule sets forth the equivalent of statutory standards for the use of force in facilities for the Ch. 980 patients. The rule does not contradict anything in §51.61, Stats.</p>
General comments	<p>The rule requires no review of uses of force, except for those cases where firearm use results in injury or death. #2</p>	<p>All uses of force must be documented and must comply with the rule and facility policies and procedures. Use of force will be internally monitored at each facility. The rule requires additional levels of review when firearms are discharged or incapacitating devices are used. Firearms will not be routinely carried within the confines of the facility. Firearms will be</p>

Rule Reference	Comment	Departmental Response
General comments	No rule should allow security personnel to carry firearms. The use of force should be strictly limited. Peace officers must respect the constitutional restrictions on the use of force in the Fifth, Eighth, and Fourteenth Amendments. #3	allowed inside the perimeter only under emergency situations. Anyone using force must respect people's constitutional rights. There is nothing in the Constitution that prohibits security personnel from carrying firearms, so long as they are used in a constitutional manner.
General comments	We have grave concerns about the use of lethal force on mentally ill patients. Individuals who lack self-control because of their illness should not be subject to lethal force for something they cannot control. #3, #7, #14	If someone without self-control puts another's life in danger and the use of lethal force is necessary to prevent a death, then it is justified to use it. Most Ch. 980 patients lack self-control only with regard to sexually violent acts.
General comments	We also have grave concerns with the use of incapacitating devices. The use of less restrictive alternatives must be thoroughly explored before incapacitating devices are used. #3	Incapacitating devices can only be used by trained staff and only in compliance with the rule and facility policies and procedures. They can only be used only when necessary and when less intrusive amounts of force are not feasible to use.
General comments	Regarding the fiscal impact, the interests of keeping liability costs at a minimum must not drive state actions. <i>Appropriate</i> rules must be in place, not just rules. #5	It just happens that one of the benefits of the rule will be to reduce state liability. That is not its purpose. The rule is appropriate as written.
General comments	The rule should be limited to pursuing and capturing escapees. #6	If the rule was limited as suggested, there would be no standards for the use of force in any other situation, except for those set by facility policy. Without the rule, such policies could vary between facilities. This could lead to abuse of the use of force and increased liability for the department.
General comments	Staff members at WRC have been unprofessional. Some of them detest the Ch. 980 patients. The potential exists for abuse of the use of force against Ch. 980 patients. #6, #7, #8, #12	The rule is designed to prevent the misuse of force by anyone. There are safeguards built in to ensure that any use of force is necessary under the circumstances and not used as any form of retaliation. Specific complaints relative to the abuse of force against Ch. 980 patients can be raised through proper channels, such as grievances or court actions, that already exist. This rule is not intended to deal with those situations.
General comments	No type of force should ever be used against civil patients –especially lethal force. #7, #8, #11, #13, #19	That is up to the legislature to decide. However, if force was not to allowed to be used against civil patients, that would establish civil patients as a protected class with rights exceeding those of the general public. If any member of the public engaged in activities that endangered the lives of others, law enforcement officials would be authorized to use force, including lethal force if necessary.
General comments	Ch. 980 has been in effect for years without this type of	There have been incidents at the Wisconsin Resource Center

Rule Reference	Comment	Departmental Response
	rule. It is not needed now. #7, #8, #12, #13, #15, #16, #19	(WRC) of patients' disruptive behavior. As noted, there have been escapes from similar facilities in other states. For example, the most desperate escape from a sex offender treatment center took place in June 2000 in Florida where a helicopter was used in the escape. The escapee and the pilot were both armed when captured. The rule is warranted. There have been "trouble calls" at WRC caused by patients.
General comments	At WRC, "trouble calls" are almost always caused by inmates, not Ch. 980 patients. #9, #12	
General comments	What justification could you have to use "lethal force" against Ch. 980 patients other than if one were trying to take another person's life? #9, #15	Lethal force will only be used when necessary to prevent death or bodily injury, to stop a take-over by patients, or to prevent an escape – which poses danger to the public. Use of lethal force is appropriate in those circumstances.
General comments	SRSTC is already a secure facility with an electric fence, cameras and perimeter vehicles. It would be very difficult to escape from the Sand Ridge facility. WRC already has DOC 306 rules applying. This rule is not necessary. #10, #12, #16, #18	Even with security precautions, escape is still possible, and the rule is required by statute.
General comments	As a man who has been chased by the "Klan", I worry that overzealous officers with similar views may use this rule as a way to hurt someone of color. #11	Safeguards are built into the rule to ensure that force is used only when necessary and never used for illegitimate reasons.
General comments	This is an overt attempt to eradicate Ch. 980 patients. #12	The state is dedicated to treating the Ch. 980 patients, as evidenced by the creation of a new facility, the Sand Ridge Secure Treatment Center, dedicated to that purpose. The new facility will employ a "state of the art" treatment program for sex offenders.
General comments	It is only a "short jump" to start applying this type of rule to other civil and forensic patients. #12	The department has no plans to apply this rule to other facilities.
General comments	There is no distinction between those awaiting commitment and those already committed under Ch. 980. Is it still OK to shoot someone who has not even been committed? #12	Patients at all stages of the Ch. 980 commitment process pose the same danger since they are all facing a potentially long-term commitment.
General comments	A civil commitment under Ch. 980 is not the same as being guilty of a felony. Someone who kills people will only go to jail, but under this rule a Ch. 980 patient can be shot, perhaps by a staff member with a grudge. This is a chance for "legal murder" by staff. #12, #15,	Safeguards are built into the rule to ensure that force is used only when necessary and never used for illegitimate reasons. The rule <u>limits</u> the use of force rather than expands it since there are currently no statutory standards for its use.

Rule Reference	Comment	Departmental Response
General comments	There have been no escapes by Ch. 980 patients and no incidents of them injuring staff. Staff have, however, injured patients. You should not allow them to use even more force. #12, #15, #16	One Ch. 980 patient in Wisconsin escaped while in custody of the sheriffs department and grabbed a 4-year old hostage. Patients held under similar laws in other states have escaped and have used desperate measures to remain at large.
General comments	The purpose of Ch. 980 is to keep people locked up forever. #12	The state is dedicated to treating the Ch. 980 patients so that they may be safely returned to the community.
General comments	The rule gives safeguards to staff, but not to patients. What is to protect them from staff? #15, #16, #20	The safeguards in the rules protect everyone – patients, staff and the community at large.
General comments	This rule puts the loved ones and visitors of Ch. 980 patients in danger. They could be shot or killed if something happens during a visit. #17, #20	Lethal force may not be used if its use creates a substantial danger of harm to non-involved third parties, unless the danger created by not using such force is greater than the danger created by not using it. [HFS 95.06(1)(c)2.]
General comments	Ch. 980 patients are being treated as a “sub-class” of civil patients. They should have all the rights of other civilly committed people. Where will it stop? #19	The rule is designed to ensure a safe environment for the patients, as they are entitled to as civil committees.
General comments	This rule is “cruel and unusual punishment”. #20	The rule is not intended to be “cruel and unusual,” nor is it intended to be “punishment”. It is intended to ensure that when it is necessary to use force, the force is used properly. This rule will foster a safe treatment environment for patients and staff alike and protect the public’s interests as well. Nothing in this rule violates the patients’ constitutional rights to be free from “cruel and unusual punishment.”
General comments	The rule parallels the Law Enforcement Force Continuum. That continuum is designed to use minimal force to gain compliance to protect offenders, patients, staff and the community in general. This rule may even help prevent escapes. Adoption of this rule is imperative to protect everyone involved. #21	It was the department’s intent to model this rule after the Law Enforcement Force Continuum. We agree that it is designed to protect everyone involved.
General comments	It is essential that Sand Ridge be equipped and authorized to deal with any eventuality associated with potentially disruptive and dangerous actions by patients. This rule is another vital tool to meet the state’s commitment to the local community that the Sand Ridge facility will not in any way jeopardize community safety. #22, #23, #24	We agree. That is the intent of the rule.
General comments	The majority of Ch. 980 patients are being held against their will and will attempt to breach security if at all	We agree. That is the intent of the rule.

Rule Reference	Comment	Departmental Response
	<p>possible. Sand Ridge has an obligation to protect the public and prevent any breaches in security. In doing so, they may be required to use force, up to and including lethal force. The rule requires policies and procedures to address circumstances when force may be used, the amount of force that can be used, and training is required in the proper use of force. While we all hope lethal force will never be necessary, the fact is that a situation could arise where such force becomes the only viable solution to prevent great harm or death to others. #24</p>	
95.03 (5)(d)	<p>This portion of the rule defines a disturbance as including, "the refusal of 2 or more patients, acting in concert, to comply with an order". This language is overly broad. What constitutes an order? What if the order is not valid? What if following the order violates the patient's rights? A patient will have to follow any "order". #19</p>	<p>Patients should obey all staff orders. If they only obeyed ones they agreed with, chaos would result. They can always challenge the order later in a grievance or lawsuit. If 2 or more patients are disobeying an order at the same time, this is the beginning of a very dangerous situation.</p>
95.06(1)(b) and (c)	<p>The use of any compliance device must be based on an observable violent criminal act or a gross observable loss of self-control. The "imminently physical danger" standard should be used, not the standard of the user's "reasonable belief" – that is too subjective. #3, #7</p>	<p>The "reasonably believes" standard is the one used by the law-enforcement model this rule is based on. It is also the standard used in the "self-defense and defense of others" statute. To set a higher standard would hamstring the staff and increase the risks to everyone involved.</p>
95.06(3)(e)	<p>The rule is inadequate with reporting requirements for the use of incapacitating devices. There is no agency or independent review. #3</p>	<p>Incapacitating devices do not carry the same risk of physical harm that firearms do. That is why they do not have the same level of reporting and review requirements.</p>

FISCAL ESTIMATE FORM

2001 Session

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # HFS-97

Subject The use of force to prevent escapes and recapture escaped persons under Ch. 980, Stats., and to provide security at facilities housing such persons.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive
 - Mandatory
- 2. Decrease Costs
 - Permissive
 - Mandatory

- 3. Increase Revenues
 - Permissive
 - Mandatory
- 4. Decrease Revenues
 - Permissive
 - Mandatory

5. Types of Local Governmental Units Affected:

- Towns
- Villages
- Cities
- Counties
- Others _____
- School Districts
- WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

This rule governs the use of force to prevent escapes or to recapture escaped persons under Ch. 980, Stats., and to provide security at facilities housing such persons. This affects the Wisconsin Resource Center and the Sand Ridge Secure Treatment Center. The affected facilities will be required to use force under certain circumstances. Any costs associated with the use of force will be absorbed within existing resources at the Wisconsin Resource Center and Sand Ridge Secure Treatment Center. This rule merely sets parameters for the use of force under certain circumstances and for other security matters.

By having rules in place for the use of force, when such use becomes necessary, the state's potential civil liability will likely be reduced.

Long-Range Fiscal Implications:

Prepared By: / Phone # / Agency Name

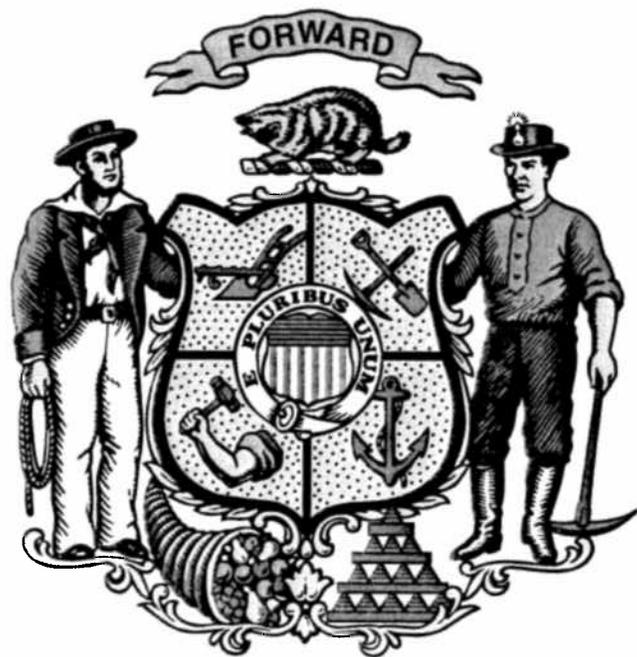
DHFS/James Yeadon, 266-5525/DCTF

Authorized Signature / Telephone No.

John Klesan

Date

4-23-01



Marked-up
Version

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

To create HFS 95, relating to the use of force to prevent escapes, pursue and capture escaped persons detained or committed under Ch. 980, Stats., and to provide security at facilities housing such persons.

Analysis Prepared by the Department of Health and Family Services

This order creates rules to guide the use of force to prevent escapes and recapture escaped persons detained or committed under Ch. 980, Stats., and to provide security at the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., and any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.

1999 Wisconsin Act 9 created s. 46.058(2m), Stats. That law requires the department to establish rules to define the use of "necessary and appropriate force" in relation to preventing escapes and in pursuing and capturing persons detained at or committed under ch. 980, Stats., who have escaped. This order complies with that statutory requirement.

In addition to defining the use of force in such circumstances, this order sets forth standards for the appropriate use of force in order to provide security at facilities housing such persons. Use of force is sometimes required in situations to prevent injuries, regain control of parts of a facility, control disruptive persons, or prevent property damage. This order requires the adoption of policies and procedures to ensure that only so much force is used as is necessary under the circumstances.

This order also sets forth criteria for use of firearms and incapacitating devices. Proper and ongoing training is required.

The department's authority to create these rules is found in ss. 46.055, 46.058(2m), 51.61, 227.11(2), 980.04(1), 980.06 and 980.065(2), Stats. The rule interprets ss. 46.055, 46.058(2m), 51.61, 980.04(1), 980.06 and 980.065(2), Stats.

SECTION 1. Chapter HFS 95 is created to read:

CHAPTER HFS 95
USE OF FORCE TO PREVENT ESCAPES, TO PURSUE AND CAPTURE
ESCAPED PERSONS AND TO PROVIDE SECURITY AT
FACILITIES HOUSING SUCH PERSONS
COMMITTED OR DETAINED UNDER CH. 980, STATS.

HFS 95.01 Authority and purpose
HFS 95.02 Applicability
HFS 95.03 Definitions
HFS 95.04 Preventing escapes
HFS 95.05 Pursuing capturing escapees
HFS 95.06 Use of force
HFS 95.07 Documentation
HFS 95.08 Training

HFS 95.01 Authority and purpose. Pursuant to the authority vested in the department by ss. 46.055, 46.058(2m), 51.61(9), 227.11(2), 980.04(1), 980.06, and 980.065(2), Stats., the department adopts this chapter to define the use of "necessary and appropriate force" in relation to preventing escapes and pursuing and capturing persons detained at or committed to a facility, center or unit under ch. 980, Stats., who have escaped and to establish security standards at facilities housing such persons. Primary security objectives of the department are to protect the public, staff and patients and to afford patients the opportunity to participate in treatment and activities in a safe setting. Every employee of a facility is responsible for the safe custody of patients.

HFS 95.02 Applicability. This chapter applies to the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., and any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.

HFS 95.03 Definitions.

- (1) "Administrator" means the administrator of the division.
- (2) "Bodily injury" means physical injury, illness, or any impairment of physical condition.
- (3) "Department" means the department of health and family services.
- (4) "Director" means the superintendent of a facility, or that person's designee.
- (5) "Disturbance" means a situation caused by a patient that disrupts the normal functioning of the facility, including but not limited to any of the following:
 - (a) An assault on any person by 2 or more patients.
 - (b) The taking of a hostage by a patient.

- (c) The destruction of state property or the property of another by 2 or more patients.
- (d) The refusal by 2 or more patients, acting in concert, to comply with an order.
- (e) Any word or acts by two or more patients which incite or encourage other patients to do any of the above.
- (6) "Division" means the division of care and treatment facilities in the department.
- (7) "Emergency" means an immediate threat to the safety of the public, staff or patients of the facility. An emergency includes, but is not limited to any of the following:
 - (a) A utility malfunction.
 - (b) A fire.
 - (c) A bomb threat or an explosion.
 - (d) A natural disaster.
 - (e) A civil disturbance.
 - (f) A patient's escape.
- (8) "Facility" means the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., or any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.
- (9) "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.
- (10) "Great bodily injury" means bodily injury which creates a high probability of illness, death or 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.
- (11) "Incapacitating device" means any commercially manufactured chemical agent or mechanical device approved by the department for the purpose of incapacitating someone.
- (12) "Lethal force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.
- (13) "Non-lethal force" means force which the user reasonably believes will not create a substantial risk of causing death or bodily injury to another.
- (14) "Patient" means a person detained at or committed to a facility under ch. 980, Stats. ^{great?}
- (15) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable. [?]
- (16) "Secretary" means the secretary of the department.

(17) "Security Director" means the security director at a facility, or that person's designee.

(18) "Strength or power" means the use of physical strength alone or with any device or object, including but not limited to an incapacitating device, firearm, or any other mechanical, electronic or physical object.

HFS 95.04 Preventing escapes. The director shall adopt written policies and procedures consistent with this chapter to prevent escapes.

HFS 95.05 Pursuing and capturing escapees. The director shall adopt written policies and procedures consistent with this chapter to pursue and capture escapees. The director may enter agreements with local and state law enforcement agencies to pursue and capture escapees.

HFS 95.06 Use of force. (1) FORCE OPTION CONTINUUM. (a) *Policies and procedures.* The director shall adopt written policies and procedures that establish a systematic progression of force based on the perceived level of threat to guide staff in the use of force in a disturbance or emergency, to prevent escapes or to pursue and capture escapees. This progression includes staff presence, dialogue, empty-hand control, incapacitating devices, and lethal force. The policies and procedures shall be designed to help ensure that force is only used when necessary and that only the amount of force that is necessary under the circumstances is used.

(b) *Non-lethal force.* Staff may use non-lethal force against patients only if the user reasonably believes that the use of non-lethal force is immediately necessary to achieve any of the following:

1. Prevent death or bodily injury to oneself or another.
2. Regain control of a facility or part of a facility.
3. Prevent escape or apprehend an escapee.
4. Change the location of a patient.
5. Control a disruptive patient.
6. Prevent unlawful damage to property.
7. Enforce a departmental rule, a facility policy or procedure or an order from a staff member.

(c) *Lethal force.* 1. Staff may use lethal force only if the user reasonably believes that the use of such force is immediately necessary to achieve any of the following:

- a. Prevent death or bodily injury to oneself or another.
- b. Prevent unlawful damage to property that may result in death or bodily injury to oneself or another.

c. Regain control of a facility or part of a facility when less forceful means of regaining control are unsuccessful or not feasible under the circumstances.

d. Prevent escape or apprehend an escapee.

2. Staff may not use lethal force if its use creates a substantial danger of harm to non-involved third parties, unless the danger created by not using such force is greater than the danger created by using it.

(d) *Other uses of force prohibited.* Force may not be used except as provided in this chapter and under policies and procedures adopted in accordance with this chapter, including but not limited to use of force as a means of disciplining patients. 2

(2) FIREARMS. (a) *Authority to carry firearms.* 1. Only staff designated by the director or that person's designee may authorize use of firearms.

2. Except in disturbances or emergencies only staff assigned to posts requiring the use of firearms may be armed.

3. Staff may only carry or use firearms approved and issued by the department and only after successfully completing the training program under s. HFS 95.08. → could also be used with or without?

4. Only staff authorized by the director may in the course of their duties carry firearms off the grounds of the facility.

(b) *Reporting discharged firearm.* If a staff member discharges a firearm, staff shall do all of the following:

1. The staff member who discharged the firearm shall verbally notify the staff member's supervisor as soon as possible.

2. As soon as possible after the discharge of the firearm, each staff member present during the incident shall write and submit a written report about the incident on a form approved by the director.

3. The security director shall investigate the incident and submit a report to the director. The report shall state all facts relevant to the discharge of the firearm and shall include copies of all reports written by staff members present during the incident and the security director's opinion as to whether the discharge was justified and occurred in accordance with facility policies and procedures and this chapter. The director shall send to the administrator the security director's report, along with the director's conclusion regarding whether the discharge was consistent with this chapter.

(c) *Death or injury caused by firearm.* 1. If a person is injured or killed by the discharge of a firearm, the department shall convene a firearm review panel to investigate the incident. The 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. The department staff member designated by the secretary shall serve as chairperson.

b. Two members designated by the administrator, one of whom shall be a member of central office staff and one of whom shall be a member of the public.

c. One member designated by the director of the facility, center or unit where the incident occurred, who is a member of the institution staff.

2. The panel shall submit a written report to the secretary. The report shall include a description of the incident and the panel's conclusion regarding whether the use of force complied with the policies and procedures adopted under this chapter.

(3) **INCAPACITATING DEVICES.** (a) Staff may only use incapacitating devices approved by the department and only in compliance with this chapter and facility policies and procedures.

(b) The director shall adopt policies and procedures consistent with this chapter for the control and issuance of incapacitating devices, including the chain of command for authorization to issue such devices.

(c) Staff may only use incapacitating devices after successfully completing the training program under s. HFS 95.08.

(d) As soon as possible after an incapacitating device has been used, staff shall consult with medical staff who shall provide appropriate medical care and provide the exposed person an opportunity to clean off any incapacitating chemical agent that was used and to change clothing.

(e) As soon as possible following the use of an incapacitating device, all staff present shall write and submit a written report to the director about the incident on a form approved by the director. The report shall include a description of the incident, the name of each person present during the incident, the incapacitating device that was used and any resultant physical health treatment that was required or provided.

(4) **HOSTAGES.** Notwithstanding any other provision of this section, a staff member taken hostage has no authority to order use of force or any other action or inaction by staff.

HFS 95.07 Documentation. The director shall adopt written policies and procedures to ensure that all uses of force are documented in a manner approved by the department.

HFS 95.08 Training. (1) The director shall adopt written policies and procedures to ensure that facility staff who may be called upon to use force under s. HFS 95.06 are properly trained and regularly updated on the systematic progression of force policies and procedures adopted under s. HFS 95.06(1)(a).

(2) Staff authorized to use firearms under s. HFS 95.06(1)(c) and (2) shall attend a department-approved training and qualification program that includes instruction on all of the following:

(a) Safe handling of firearms while on duty.

(b) Legal use of firearms and the use of lethal force.

(c) Facility policies and procedures regarding firearms.

(d) Fundamentals of firearms use, including range firing.

(e) In situations where firearms may be used, the manner in which they must be used, including the use of verbal warnings and warning shots.

(3) Staff authorized to use incapacitating devices under HFS 95.06(1)(b) and (3) shall attend a department-approved training and qualification program that includes instruction on all of the following:

(a) Safe handling of incapacitating devices

(b) Legal use of incapacitating devices and the use of non-lethal force.

(c) Facility policies and procedures regarding incapacitating devices.

(d) In situations where incapacitating devices may be used, the manner in which they must be used, including the use of verbal warnings.

The rule included 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

Dated:

By: _____
Phyllis J. Dubé
Secretary

SEAL:



hearing 11/14/01

CR 01-045

Steve Waters

director Sand Ridge

Mike Dittman

Security director at S.R.

(FL, AZ)

* other states have had breaches of security

Force continuum in rule modeled after law enforcement

controversy over lethal force

sexually violent population usually not needing severe force

1. prevent death

2. prevent damage that could lead to death

3. regain control

4. prevent escapes, apprehend escapees

only firearms are in secure room, permit for vehicle

patients, not inmates
but removing the right to use force would create "protected class"

Brent Oleson - Juneau Co. Sheriff

75% of sex offenders re-offended
after release - reason for Sandridge

4% of sex offenders kill victims

* these are violent individuals

120 hrs. of training for deputy sheriff

↳ longer for employees at S.R.

Rule is well-written -
reflects police policy

Mauston Police Chief:

law enforcement continuum

adopted in WI in 1987

other states have since adopted