

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 6/12/18
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DHS 95	
4. Subject Custody and Control of ch. 980, Stats., Patients	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Under the current s. DHS 95.06 (1), use of force in secure facilities must be governed by policies and procedures that establish a "Force Option Continuum." This model was replaced with "Intervention Options," rendering the current rule out-of-date and at odds with existing training practices. The Intervention Options model was adopted in the Principles of Subject Control Manual (hereinafter "Manual") in 2012. The Manual is based on the Department of Corrections' version of the Defense and Arrest Tactics Manual—which was approved by the WI Department of Justice and is currently used for every sworn law enforcement officer in the state. The Manual has been approved by the department and is supported by directors at both the Wisconsin Resource Center and Sand Ridge Secure Treatment Center as the standard training program designed to provide instruction on defensive tactics and use of force, consistent with federal and state guidelines. Intervention Options emphasizes a dynamic approach to confronting threats. The model is intended to eliminate confusion about how to respond to threats that may not originate or evolve along a linear path, resulting in diminished risk of harm and liability to staff, as well as improved threat response and management. The department also proposes to revise current rules related to escorted leaves. Under the current rule, superintendents of secure mental health facilities have discretion to grant escorted leaves to patients under limited circumstances. Requests for escorted leaves may be granted for off-site appointments and death-bed visit of relatives, to secure medically necessary health services, and to engage in pre-placement activities pursuant to an approved supervised release plan. Out-of-state escorted leaves are not currently prohibited under ch. DHS 95. However, they present logistical obstacles, require additional resources, and pose risks that secure mental health facilities face difficulty in meeting. To mitigate these challenges, the department proposes to only permit escorted leaves within the state.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals	

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that may be Affected by the Proposed Rule that were Contacted for Comments.

The department published a solicitation in the Administrative Register, requesting comments on the economic impact of the proposed rule, from May 21, to June 4, 2018. In addition, the department published the proposed rule order and enabled public comments on its own website (<https://www.dhs.wisconsin.gov/rules/permanent.htm>) throughout the entire rule promulgation process, following adoption of the the Statement of Scope (SS 070-17).

13. Identify the Local Governmental Units that Participated in the Development of this EIA.
Wisconsin Resource Center and Sand Ridge Secure Treatment Center

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule is not anticipated to have an economic or fiscal impact.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed rule updates outdated language related to the use of force practices in secure facilities and revises provisions related to escorted leaves, rendering them more manageable.

16. Long Range Implications of Implementing the Rule
None.

17. Compare With Approaches Being Used by Federal Government

28 CRF § 552.22 addresses principles governing the use of force and application of restraints. This federal rule is based on similar concepts contained in ch. DHS 95, although it is stated in different terms. The federal rule requires documentation of all incidents, prohibits the use of force or restraints for punitive purposes, authorizes use of force in proportion to risk, and places limits on the use of restraints. The department was unable to locate any federal regulations addressing patient/offender release.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Illinois:

Illinois Admin. Code tit. 59 § 299.350 of the states:

Section 299.350 Security

a) Use of Force

- 1) Force shall be employed only as a last resort or when other means are unavailable or inadequate, and only to the degree reasonably necessary to achieve a permitted purpose. Department staff shall not employ deadly force.
- 2) Use of force shall be terminated as soon as force is no longer necessary.
- 3) Medical screening and/or care shall be conducted following any use of force that results in bodily injury.
- 4) Corporal punishment is prohibited.

b) Force may be used under the following circumstances:

- 1) To compel compliance with a lawful order given by an employee to ensure the safety and security of the facility.
- 2) To protect oneself or any other person from physical assaults, injury or death.
- 3) To prevent escapes from the facility or from the custody of employees in the community.
- 4) To protect State property or the property of others from unauthorized use, possession, damage or destruction.
- 5) To prevent or suppress a riot, revolt, mutiny or insurrection, or other serious disturbance.

The department was unable to locate administrative rules governing patient/offender leaves.

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Iowa:

IAC Rules 201.38.1-4 address sex offender management and treatment. However these rules do not include provisions related to the use of force. IAC Rule 201.20.12 and Iowa's Department of Corrections policy IS-RL-04 discuss the availability of "Furloughs" for certain types of offenders, but exclude sex offenders in particular and in all cases prohibit out-of-state leaves.

Michigan:

Michigan Admin. Code r. 791.706 states:

Use of force.

Rule 6. A facility shall establish and maintain written policy, procedure, and practice which restrict the use of physical force to instances of justifiable self defense, protection of others, protection of property, and prevention of escapes, and then only as a last resort and in accordance with appropriate statutory authority. Physical force shall not be used as punishment. A written report is prepared after force is used and is submitted to administrative staff for review.

Policy directive 04.05.110 from the Michigan Department of Corrections, which addresses Use of Force, is exempt from public disclosure.

The department was unable to locate administrative rules governing patient/offender leaves. However, policy direction 04.04.140 from the Michigan Department of Corrections, addresses "Funeral and Sick Bed Visits." These visits are restricted to in-state destinations.

Minnesota:

Minnesota Rules ch. 2965 addresses Adult Sex Offender Treatment. However, these rules do not discuss the use of force, or patient/offender leaves. Part 2920.5700 § E. states: "physical force shall be used only in instances of justifiable self-protection, protection of others, and prevention of property damage, and only to the degree necessary to control the situation. The action taken shall be documented and placed on file."

19. Contact Name

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20. Contact Phone Number

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This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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