

## Chapter DOC 396

### TYPE 2 SECURED CORRECTIONAL FACILITIES

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**Note:** Chapter HSS 346 as it existed on June 30, 2000 was repealed and a new Chapter DOC 396 was created, Register, June, 2000, No. 534, effective July 1, 2000.

**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, 938.34 (4h), (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.

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

**DOC 396.02 Applicability.** This chapter applies to the department and to youth whose supervision is transferred to the department pursuant to ss. 48.366 and 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.

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

**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 ap-

proved 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-lethal 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), Stats., 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. 48.366, 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.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (42) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2000, No. 534.

**DOC 396.04 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.

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

**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.

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

**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 CCIs 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 sub. (2) or (3) by filing an appeal with the division of hearings and appeals in the department of administration under ch. 227, Stats., in the manner specified by the division of hearings and appeals.

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

**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.

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

**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) NOTICE OF POSSIBLE TERMINATION.** 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."

**Note:** The terminology in the Notice referring to "aftercare" and "revocation" should be modified for a youth on type 2 status to "type 2 status" and to "terminated."

**(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.

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

**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).

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

**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.

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

**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.

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

**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).

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

**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.

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

**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.

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

**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.

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

**DOC 396.16 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 inci-

dent 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.

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

#### **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.

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

**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.

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

**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.

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

**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.

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

**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.

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