

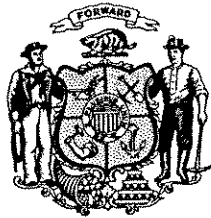
98-160 HFS 94.24 - SEARCHES - RAUDON  
SEXUAL REVIORS

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

**RULES CLEARINGHOUSE**

**Ronald Sklansky**  
Director  
(608) 266-1946



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

**Richard Sweet**  
Assistant Director  
(608) 266-2982

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-160**

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

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

10-26-98      RECEIVED BY LEGISLATIVE COUNCIL.  
11-20-98      REPORT SENT TO AGENCY.

RNS:PS:kjf;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

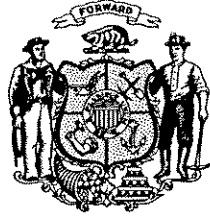
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## *RULES CLEARINGHOUSE*

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One E. Main St., Ste. 401  
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## CLEARINGHOUSE RULE 98-160

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

Section HFS 94.24 (2) (e) permits searches of the room and personal belongings of inpatients in certain enumerated units and facilities ". . . as specified in written facility policies." Will these policies be promulgated as administrative rules? See ss. 227.01 (13) and 227.10 (1), Stats.

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

In the last paragraph of the analysis, "criminogenic" should replace "crimogenic."

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

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

Analysis Prepared by the Department of Health and Family Services

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

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

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

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

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

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

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

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

*crimogenic*

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

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

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

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

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

Wisconsin Department of Health and  
Family Services

Date:

By: \_\_\_\_\_  
Joseph Leean  
Secretary

SEAL:





State of Wisconsin  
Department of Health and Family Services

Tommy G. Thompson, Governor  
Joe Lekan, Secretary



December 1, 1998

The Honorable Robert Welch, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 201, One East Main  
Madison, Wisconsin

Dear Senator Welch:

The Department of Health and Family Services has an emergency rulemaking order in effect that amends s. HFS 94.24 (2) (e), to authorize random searches of the rooms and personal belongings of ch. 980, Stats., patients at the Wisconsin Resource Center and the rooms and personal belongings of patients in the maximum security facility at the Mendota Mental Health Institute. The emergency order will expire before the rule change is made permanent unless the effective period of the emergency order is extended. Pursuant to s. 227.24(2), Stats., I ask the Joint Committee to extend the effective period of the emergency order by 60 days, from January 13, 1999 through March 13, 1999.

The rule change was promulgated by emergency order to protect public safety. Before August 1, 1998, staff at the Wisconsin Resource Center conducted random searches of the rooms and personal belongings of ch. 980 patients. These searches were carried out for treatment purposes and to protect other patients and staff and, in the long run, the general public. The searches were temporarily suspended effective August 1 after a patient brought a lawsuit challenging the practice, claiming that it violated s. HFS 94.24 (2) (e) which permits searches of patient rooms and belongings only if there is documented reason to believe that security rules have been violated or if the living unit is a forensic unit. The unit housing ch. 980 patients at the Wisconsin Resource Center is not a forensic unit.

The emergency order was published on August 15, 1998, and will expire on January 13, 1999, unless extended. The replacement permanent order, which also amends s. HFS 94.24 (2) (d) 1. d. to clarify that routine personal searches of these patients are authorized, was sent to the Legislative Council for review on October 26, 1998, and will be taken to public hearing on December 17, 1998.

A copy of the emergency rulemaking order is attached to this letter. If you have any questions about it, you may contact Neil Gebhart of the Department's Office of Legal Counsel at 267-2002.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Lekan'.

Joe Lekan  
Secretary

Attachment

cc Representative Grothman

7-29-98

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

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

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

At the Wisconsin Resource Center staff have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center effective August 1 will temporarily suspend random searches, pending amendment of the rule.

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

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

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

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

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

A facility cannot effectively treat these patients without the ability to effectively monitor and confront crimogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives

for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

### ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 51.61 (9), 227.11 (2) (a) and 227.24 (1) (a), Stats., the Department of Health and Family Services hereby amends rules interpreting ss. 51.61 (1) and 980.06 (2) (b), Stats., as follows:

SECTION 1. HFS 94.24 (2) (e) is amended to read:

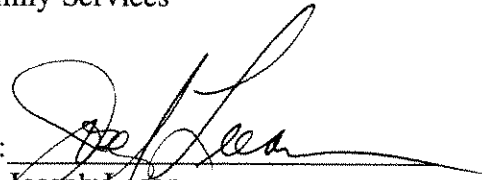
HFS 94.24 (2) (e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except that ~~in forensic units where routine~~ searches may be conducted under other circumstances in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with as specified in written facility policies.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health and  
Family Services

Date: July 30, 1998

By:

A handwritten signature in black ink, appearing to read "Joseph Lecan", written over a horizontal line.

Joseph Lecan  
Secretary

SEAL:

LRB or Bill No./Adm. Rule No.  
HFS 94.24 (2) (e)  
Amendment No. if Applicable

**FISCAL ESTIMATE**

DOA-2048 N(R10/96)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**

CONDITIONS FOR SEARCHING THE ROOMS AND BELONGINGS OF CH. 980, STATS., PATIENTS AT THE WISCONSIN RESOURCE CENTER AND PATIENTS IN THE MAXIMUM SECURITY FACILITY AT MENDOTA MENTAL HEALTH INSTITUTE

**Fiscal Effect**

State:  No State Fiscal Effect

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

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

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

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 change will not affect the expenditures or revenues of state government or local governments.**

Section HFS 94.24 (2) (e) in the Department's rules relating to the rights of patients receiving treatment for a mental disability, currently prohibits searches of the rooms and personal belongings of inpatients except when there is documented reason to believe that security rules have been violated. An exception to this prohibition is made in the case of patients in forensic units. This order amends s. HFS 94.24 (2) (e) to make exceptions also for searches of the rooms and personal belongings of patients in the maximum security facility at the Mendota Mental Health Institute and patients at the Wisconsin Resource Center who were committed for treatment under ch. 980, Stats.

The amendment of s. HFS 94.24 (2) (e) will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of ch. 980, Stats., patients. Those searches were done until recently for security and effective treatment reasons, but their legality under the current rule has been challenged and on the advice of counsel they have been suspended until the rule is amended.

The rule change concerns only the operation of state-operated mental health inpatient facilities, and not mental health inpatient facilities operated by local governments.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)

H&FS/Paul Menge, 266-5602

Authorized Signature/Telephone No.

  
Richard W. Lorang, 266-9622

Date

7-28-97



Tommy G. Thompson  
Governor

Joe Leean  
Secretary



State of Wisconsin

Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET  
P.O. BOX 7850  
MADISON WI 53707-7850

TELEPHONE: (608) 266-8428

August 11, 1998

The Honorable Robert Welch, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 201, One East Main  
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 125 West, State Capitol  
Madison, Wisconsin

Dear Senator Welch and Representative Grothman:

This is notification that the Department at the end of this week will publish an emergency order to amend its rules relating to the rights of patients receiving treatment for a mental disability to permit staff at the Wisconsin Resource Center (WRC), which is located on the grounds of the Winnebago Mental Health Institute near Oshkosh, to resume random searches of the rooms and personal belongings of persons committed to the Department for treatment under ch. 980, Stats., the Sexual Predator Law. The rule change is being promulgated by emergency order to preserve public safety. A copy of the emergency order is attached to this letter.

Staff at WRC until recently conducted random searches of the rooms and personal belongings of ch. 980 patients. These searches were carried out for treatment purposes and to protect other patients and staff and, in the long run, the general public. The random searches were temporarily suspended effective August 1 on the advice of counsel after a patient brought a lawsuit challenging the practice, claiming that it violated s. HFS 94.24 (2) (e) which permits searches of patient rooms and belongings only if there is documented reason to believe that security rules have been violated or the living unit is a forensic unit. The unit housing ch. 980 patients at WRC is not a forensic unit.

If you have any questions about these emergency rules, you may contact Neil Gebhart of the Department's Office of Legal Counsel at 267-2002

Sincerely,

Paul E. Menge  
Administrative Rules Manager

Attachment

7-27-98

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

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

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

At the Wisconsin Resource Center staff have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center effective August 1 will temporarily suspend random searches, pending amendment of the rule.



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

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

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

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

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

A facility cannot effectively treat these patients without the ability to effectively monitor and confront crimogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives

for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

### ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 51.61 (9), 227.11 (2) (a) and 227.24 (1) (a), Stats., the Department of Health and Family Services hereby amends rules interpreting ss. 51.61 (1) and 980.06 (2) (b), Stats., as follows:

SECTION 1. HFS 94.24 (2) (e) is amended to read:

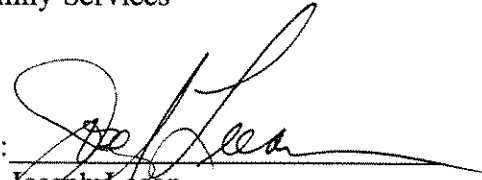
HFS 94.24 (2) (e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except that in forensic units where routine searches may be conducted under other circumstances in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with as specified in written facility policies.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health and  
Family Services

Date: July 30, 1998

By:

A handwritten signature in black ink, appearing to read "Joseph Lecan", written over a horizontal line.

Joseph Lecan  
Secretary

SEAL: