

## Chapter DHS 95

### CUSTODY AND CONTROL OF CH. 980, STATS., PATIENTS

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**Note:** Chapter HFS 95 was renumbered to chapter DHS 95 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

#### Subchapter I — General Provisions

**DHS 95.01 Authority and purpose.** Pursuant to the authority vested in the department by ss. 46.055, 46.058 (2m), 51.61 (9), 227.11 (2), 980.04 (1), 980.06, 980.065 (2) and 980.067, Stats., the department adopts this chapter to do all of the following:

(1) Define the use of “necessary and appropriate force” in relation to preventing escapes and pursuing and capturing persons detained at or committed to a facility, center or unit under ch. 980, Stats., who have escaped and to establish security standards at facilities housing such persons. Primary security objectives of the department are to protect the public, staff and patients and to afford patients the opportunity to participate in treatment and activities in a safe setting. Every employee of a facility is responsible for the safe custody of patients.

**History:** CR 01–045: cr. Register January 2002 No. 553, eff. 2–1–02; CR 02–112: am. Register March 2003 No. 567, eff. 4–1–03.

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

**History:** CR 01–045: cr. Register January 2002 No. 553, eff. 2–1–02.

**DHS 95.03 Definitions.** (1) “Administrator” means the administrator of the division.

(2) “Bodily injury” means physical injury, illness, or any impairment of physical condition.

(3) “Department” means the department of health services.

(4) “Director” means the superintendent of a facility, or that person’s designee.

(5) “Disturbance” means a situation caused by a patient that disrupts the normal functioning of the facility, including but not limited to any of the following:

- (a) An assault on any person by 2 or more patients.
- (b) The taking of a hostage by a patient.
- (c) The destruction of state property or the property of another by 2 or more patients.
- (d) The refusal by 2 or more patients, acting in concert, to comply with an order.
- (e) Any word or acts by two or more patients which incite or encourage other patients to do any of the above.

(6) “Division” means the division of care and treatment facilities in the department.

(7) “Emergency” means an immediate threat to the safety of the public, staff or patients of the facility. An emergency includes, but is not limited to any of the following:

- (a) A utility malfunction.
- (b) A fire.
- (c) A bomb threat or an explosion.
- (d) A natural disaster.
- (e) A civil disturbance.
- (f) A patient’s escape.

(8) “Facility” means the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., or any secure mental health unit or facility provided by the department of corrections under s. 980.065 (2), Stats.

(9) “Force” means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way.

(10) “Great bodily injury” means bodily injury which creates a high probability of illness, death or serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(11) “Incapacitating device” means any commercially manufactured chemical agent, organic agent or mechanical device approved by the department for the purpose of incapacitating someone.

(12) “Less than lethal force” means force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.

(13) “Lethal force” means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.

(14) “Patient” means a person detained at or committed to a facility under ch. 980, Stats.

(15) “Reasonably believes” means that the actor believes that the use of force is necessary in a given situation and such belief is reasonable under the circumstances.

(15m) “Relative” means a parent, son, daughter, grandparent, greatgrandparent, grandchild, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt. This relationship shall be by blood, marriage, or adoption.

(16) “Secretary” means the secretary of the department.

(17) “Security director” means the security director at a facility, or that person’s designee.

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

**History:** CR 01–045: cr. Register January 2002 No. 553, eff. 2–1–02; CR 02–112: am. (11) and (13), cr. (15m) Register March 2003 No. 567, eff. 4–1–03; renumber

(12) and (13) under s. 13.93 (2m) (b) 1., Stats., Register March 2003 No. 567; correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register November 2008 No. 635.

## Subchapter II — Use of Force

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

**History:** CR 01-045: cr. Register January 2002 No. 553, eff. 2-1-02.

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

**History:** CR 01-045: cr. Register January 2002 No. 553, eff. 2-1-02.

### DHS 95.06 Use of force. (1) FORCE OPTION CONTINUUM.

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

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

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

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

- a. Prevent death or bodily injury to oneself or another.
  - b. Prevent unlawful damage to property that may result in death or bodily injury to oneself or another.
  - c. Regain control of a facility or part of a facility when less forceful means of regaining control are unsuccessful or not feasible under the circumstances.
  - d. Prevent escape or apprehend an escapee.
2. Staff may not use lethal force if its use creates a substantial danger of harm to non-involved third parties, unless the danger created by not using such force is greater than the danger created by using it.

(d) *Other uses of force prohibited.* Force may not be used except as provided in this chapter and under policies and procedures adopted in accordance with this chapter. Force may never be used as a means of disciplining patients.

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

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

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

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

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

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

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

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

(c) *Death or injury caused by firearm.* 1. If a person is injured or killed by the discharge of a firearm, the department shall convene a firearm review panel to investigate the incident. The panel shall consist of 5 persons selected as follows:

a. Two members designated by the secretary, one of whom shall be a member of the public and one of whom shall be a member of the department staff. The department staff member designated by the secretary shall serve as chairperson.

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

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

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

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

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

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

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

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

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

**History:** CR 01-045: cr. Register January 2002 No. 553, eff. 2-1-02; CR 02-112: am. (1) (b) (intro.) and (3) (d) Register March 2003 No. 567, eff. 4-1-03.

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

**History:** CR 01-045: cr. Register January 2002 No. 553, eff. 2-1-02.

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

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

- (a) Safe handling of firearms while on duty.
- (b) Legal use of firearms and the use of lethal force.
- (c) Facility policies and procedures regarding firearms.
- (d) Fundamentals of firearms use, including range firing.
- (e) In situations where firearms may be used, the manner in which they must be used, including the use of verbal warnings and warning shots.

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

- (a) Safe handling of incapacitating devices.
- (b) Legal use of incapacitating devices and the use of less than lethal force.
- (c) Facility policies and procedures regarding incapacitating devices.
- (d) In situations where incapacitating devices may be used, the manner in which they must be used, including the use of verbal warnings.

**History:** CR 01–045: cr. Register January 2002 No. 553, eff. 2–1–02; CR 02–112: am. (3) (b) Register March 2003 No. 567, eff. 4–1–03.

### Subchapter III — Other Custody and Control Issues

#### DHS 95.10 Escorted leaves for chapter 980 patients.

(1) Pursuant to s. 980.067, Stats., the director of the secure mental

health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., or any secure mental health unit or facility provided by the department of corrections under s. 980.065 (2), Stats., may, at his or her discretion, allow a patient detained or committed under ch. 980, Stats., to leave the grounds of a facility under staff escort for a purpose consistent with the therapeutic interests of the patient and the security interests of the facility and the community, including any of the following:

(a) To visit a dying or deceased relative under security conditions imposed by the facility director.

(b) To receive medically necessary health services that are not available at the facility.

(c) To engage in pre–placement activities when the patient has a proposed or approved supervised release plan under s. 980.08 (5), Stats.

**Note:** Section 980.08 (5), Stats., was repealed by 2005 Wis. Act 434.

(2) If the patient requests a visit under sub. (1) (a), the director shall base his or her decision upon consideration of all issues deemed pertinent by the director, including any of the following:

(a) The degree of kinship between the patient and the person the patient is visiting.

(b) The meaningfulness of the relationship between the patient and the person the patient is visiting.

(c) The therapeutic interests of the patient.

(d) The distance the patient would need to be transported.

(e) The risks the patient poses to the community.

(f) The recommendations of the patient’s treatment team and the security director.

(3) The director shall determine the maximum duration of escorted leave and may impose other conditions appropriate to the safety of the community, security of the facility, or therapeutic interests of the patient.

**History:** CR 02–112: cr. Register March 2003 No. 567, eff. 4–1–03.