

CR 94-92

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to operation of the Youth Corrective Sanctions Program were duly approved and adopted by this Department on December 13, 1994.

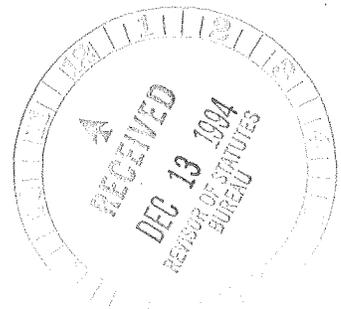
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 13th day of December, 1994.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services



ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
CREATING RULES



To create chapter HSS 346, relating to the operation of the youth corrective sanctions program.

Analysis Prepared by the Department of Health and Social Services

Certain youth whose supervision has been transferred to the Department by courts for placement in secured correctional facilities for youth may, under s. 48.533, Stats., as created by 1993 Wisconsin Act 16, be released from these facilities by action of the Department to a special program that the Department operates in communities called the corrective sanctions program. These are rules for operation of the corrective sanctions program.

Corrective sanctions is not aftercare, that is, a program of post-institutional supervision. Nor is it an early release program. Corrective sanctions is a new custodial release status, with youth usually living in their parents' homes or the homes of other responsible adults but with strict rules and close monitoring of their activities and behavior by Department staff which could involve use of electronic monitoring devices. These youth are considered to be in custody for purposes of the criminal escape statutes only.

Section 48.533 (1), Stats., as created by 1993 Wisconsin Act 16, directed the Department to operate a corrective sanctions pilot program beginning April 1, 1994, for about 20 youth who have been placed in a secured correctional facility under s. 48.34 (4m), Stats., and, pursuant to s. 48.533 (2), Stats., to operate a corrective sanctions program beginning July 1, 1994 in at least 3 counties, including Milwaukee County, for about 60 youth. Rules were necessary for operation of the program, but there was not enough time since the enactment of s. 48.533, Stats., to develop the rules, including discussing proposed policies and procedures with the advisory committee required under s. 9126 (16b) (a) of Act 16, and to proceed through the regular 9-month rule-making process with them. Therefore, to comply with the statutory directive for the start-up of the corrective sanctions program and because the program is in the best interests of youth who would otherwise be incarcerated, the Department published emergency rules effective April 23, 1994, under the authority of s. 227.24, Stats., on public welfare grounds. These are permanent rules to replace the emergency rules.

The rules cover how a youth is selected to participate in the program; case plans for the youth, which are to include goals; the responsibilities of the program for the youth;

periodic progress reviews; sanctions for youth misconduct; dealing with escape by youth; use of force and mechanical restraints; searches; and the decision by the Department's Office of Juvenile Offender Review (OJOR) to release the youth to aftercare.

The Department's authority to create these rules is found in s. 48.533 (2), Stats., as created by 1993 Wisconsin Act 16, and s. 227.11 (2), Stats. The rules interpret s. 48.533, Stats., as created by 1993 Wisconsin Act 16.

SECTION 1. Chapter HSS 346 is created to read:

(b) Maintain public safety and youth discipline through supervision and sanctions appropriate to the needs and requirements of the youth in the program;

(c) Provide the necessary treatment, services, discipline and supervision to help youth in the program make meaningful, positive changes in their lives;

(d) Encourage every youth in the program to lead a crime-free lifestyle;

(e) Provide every youth with education or vocational training or employment; and

(f) Involve the youth's family, as appropriate, with the program.

HSS 346.02 APPLICABILITY. This chapter applies to the department and to youth whose supervision is transferred to the department pursuant to s. 48.34 (4m), Stats., for placement at a secured correctional facility operated by the department and who are evaluated for and selected to participate in the youth corrective sanctions program.

HSS 346.03 DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the division or designee.

(2) "Aftercare" means the status of a youth who is supervised outside of an institution by the department or a county agency following release from an institution by action of OJOR, after participation in the youth corrective sanctions program by action of OJOR, following placement by the department subsequent to an examination under s. 48.50, Stats., or by action of a court under s. 48.366 (5) (b), Stats., until expiration of the youth's commitment term.

(3) "Aftercare provider" means a person designated by an aftercare supervisor to provide the aftercare supervision of a youth, that person's designee or any employe of the department or county agency authorized to make decisions regarding aftercare matters.

(4) "Aftercare supervisor" means a department employe responsible for the administration of the aftercare program for a specified geographical area of the state or that person's designee.

(5) "Bodily injury" means physical pain or injury, illness or any impairment of physical condition.

(6) "Body cavity search" means a strip search in which a person's body cavities are inspected for contraband by the entry of a medical instrument or fingers.

(7) "Case manager" means the department staff member responsible for the case supervision, planning, case management and treatment for youth in the youth corrective sanctions program.

Note: A "case manager" is the same as a "corrective sanctions agent" under s. 48.533 (2), Stats.

(8) "Close room confinement" means confinement to the youth's room with a minimum of one hour per day out of the room.

(9) "Community counselor-monitor" means a department staff member responsible for monitoring a youth's daily activities while the youth is in the corrective sanctions program.

Note: A "community counselor-monitor" is the same as a "contact worker" under s. 48.533 (2), Stats.

(10) "Contraband" means:

1. Any item the youth may not possess under the rules and special conditions of his or her release;

2. Stolen property; or

3. Any item which a youth may possess but which comes into his or her possession through unauthorized channels such as an item that a youth may possess that is obtained from a person who does not legally possess the item.

(11) "Corporal punishment" means the intentional infliction of physical pain as a means of discipline.

(12) "County department" means the county department responsible for the youth under s. 46.26, Stats.

(13) "Day" means a calendar day.

(14) "Deadly force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.

(15) "Department" means the Wisconsin department of health and social services.

(16) "Director" means the director of the division's office of the youth corrective sanctions program.

(17) "Division" means the department's division of youth services.

(18) "Electronic monitoring device" means an electronic device of a type approved by the administrator and worn by a youth in the youth corrective sanctions program to monitor the youth's location during the specified periods of time each day that the youth is required to be at her or his place of residence or at another approved location.

(19) "Family" means a youth's parents or guardian or adult brother or sister or a grandparent or aunt or uncle taking the place of a parent.

(20) "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 and includes the use of physical power or strength and the use of mechanical restraints.

(21) "Great bodily injury" means injury to a person's body which creates a high probability of death, or which causes serious permanent disfigurement or a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(22) "Institution" means a secured correctional facility.

(23) "JPRC" means the joint planning and review committee which makes short-term and long-term planning recommendations for

youth with members representing the institution, OJOR, the committing county, the aftercare provider and the youth corrective sanctions program when a youth is being evaluated for or participates in the program.

(24) "Mechanical restraints" means a device used to control or restrain a youth, including handcuffs, handcuffs with restraining belt or chain, restraining chain, leg restraints or any other restraining device approved by the administrator.

(25) "Nondeadly force" means force which the user reasonably believes will not cause a substantial risk of causing death or great bodily injury to another.

(26) "OJOR" means the division's office of juvenile offender review which retains a youth in an institution, decides to release a youth from an institution to a program such as aftercare supervision or the youth corrective sanctions program, or recommends discharge to the administrator. OJOR also establishes the category of release for a youth released to aftercare and convenes the program planning and case review process from the time of a youth's admission to an institution until the release decision.

(27) "OJOR director" means the director of the division's office of juvenile offender review.

(28) "Parent" means either a biological or adoptive parent or a legal guardian.

(29) "Personal search" means a search of a youth's clothed body, including inspecting 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. It does not include a strip search or body cavity search.

(30) "Physical power or strength" means a staff member's use of her or his body to control a youth.

(31) "Program" means the youth corrective sanctions program (YCSP).

(32) "Reasonably believes" means a person believes that a certain situation exists and this belief, though potentially erroneous, is reasonable considering the facts known to the person.

(33) "Report center" means a place where youth in the youth corrective sanctions program are required to report at specified times as a condition of release.

(34) "Sanctions" means the range of actions that may be taken by staff when youth fail to cooperate with the YCSP rules

and conditions.

(35) "Secured correctional facility" means a youth correctional institution operated by the division or under contract with the division.

(36) "Strip search" means a search in which the person is required to remove all of his or her clothes, with inspection limited to examination of the youth's clothing and body and visual inspection of his or her body cavity orifices.

(37) "Superintendent" means the superintendent of an institution or that person's designee.

(38) "YCSP" or "youth corrective sanctions program" means the program under s. 48.533, Stats., of close monitoring of a youth's activities and behavior in the community.

(39) "Youth" means a person supervised by the department under s. 48.34, Stats., regardless of that person's age.

(40) "Youth corrective sanctions supervisor" means a department employe responsible for the administration of the YCSP for a specified geographical area of the state or that person's designee.

HSS 346.04 REFERRAL OF A YOUTH TO THE YOUTH CORRECTIVE SANCTIONS PROGRAM. (1) CRITERIA FOR PARTICIPATION. (a) A youth shall meet the following criteria to be considered for participation in the YCSP:

1. The youth would not likely present a physical danger to self or to others if living in the community;
2. A suitable home within the community is available to the youth;
3. The youth and the youth's family or other adult with whom the youth will reside indicate that they are willing to participate in the YCSP and comply with the rules and conditions of the program; and
4. The supervision, treatment and service needs of the youth can be met in the community.

(b) Youth adjudicated delinquent for any of the following crimes shall not be considered for participation in the YCSP:

1. First degree intentional homicide under s. 940.01, Stats.;
2. First degree reckless homicide under s. 940.02, Stats.;

3. Second degree intentional homicide under s. 940.05, Stats.;
4. Mayhem under s. 940.21, Stats.;
5. Sexual assault under s. 940.225 (1) and (2)(a) or s. 948.02, Stats.;
6. Physical abuse of a child under s. 948.03, Stats; or
7. Mental abuse of a child under s. 948.04, Stats.

(c) Waived youth placed in an institution under s. 973.013 (3m), Stats., and extended jurisdiction youth placed in an institution under s. 48.366, Stats., shall not be considered for participation in the YCSP.

(2) REFERRAL. When a youth in a secured correctional facility appears to meet the criteria under sub. (1), any member of the JPRC may recommend in writing to the YCSP case manager that the youth be screened for acceptance into the YCSP. Copies of the recommendation shall be sent to all members of the JPRC.

Note: Although a JPRC member must recommend that a youth be screened for acceptance into the YCSP, this does not preclude a judge or anyone else who knows a youth from suggesting to a JPRC member that the youth would be appropriate for referral to the YCSP.

(3) SCREENING. Whenever a youth is referred to the YCSP, YCSP staff shall do all of the following:

(a) Review all relevant, available written records relating to the youth, including but not limited to court and education records;

(b) Interview the youth and the youth's parents or other adult with whom the youth would be placed if released to the YCSP;

(c) Following the review of records, interviews and consultations, determine either:

1. That the youth is appropriate for YCSP planning; or
2. That the youth does not meet the criteria for YCSP planning; and

(d) Recommend in writing whether a youth is appropriate for YCSP participation or not and forward that recommendation to all members of the JPRC.

HSS 346.05 OJOR DETERMINATION OF ELIGIBILITY OF A YOUTH FOR YCSP PLANNING. (1) AUTHORITY. OJOR shall have sole authority to issue an order for YCSP planning for a youth.

(2) ELIGIBILITY FOR PLANNING EVALUATION. Whenever the YCSP staff recommend under s. HSS 346.04 (3) that OJOR consider a youth for eligibility for YCSP planning, OJOR shall consult with all members of the JPRC to determine whether the youth shall be made eligible for planning. OJOR may schedule a formal conference or may consult informally with JPRC members by telephone or in writing.

(3) NOTICE OF CONFERENCE. When OJOR schedules a formal conference, members of the JPRC, the youth and the youth's family shall be invited to attend the conference and participate in the discussion. Prospective participants shall be given advance notice, in a timely manner, of the date, time, place and purpose of the conference.

(4) PLANNING ORDER DECISION. (a) Decision. OJOR may decide to make a youth eligible for YCSP planning at any time after receiving the YCSP staff recommendation under s. HSS 346.04 (3) and consulting with all members of the JPRC.

(b) Order. Except as provided in par. (c), when OJOR decides to make a youth eligible for YCSP planning, OJOR shall prepare a written planning order and send copies within 7 days of the decision to JPRC members, the youth and the youth's parents or other adult with whom the youth will reside.

(c) Special circumstances. When all JPRC members are in agreement and when all case planning requirements under s. HSS 346.06 are met in an accelerated time-frame, an OJOR planning order is not required. In these cases, OJOR may order release of the youth to the YCSP upon completion of the requirements under s. HSS 346.07.

(5) APPEAL. Any member of the JPRC may appeal OJOR's decision to make the youth eligible for YCSP planning. An appeal shall be submitted in writing within 10 days after OJOR's decision to the OJOR director who shall respond within 10 days after receipt of the appeal.

HSS 346.06 IMPLEMENTATION OF PLANNING ORDER. (1) CASE PLAN. The YCSP case manager shall prepare a written case plan and forward it to all JPRC members within 25 days of the OJOR planning order under s. HSS 346.05 (3). The plan shall:

(a) Summarize the youth's individual psychosocial, social, educational, vocational, dental, medical and mental health needs;

(b) Evaluate the strengths and weaknesses of the youth, and the youth's family or other adult with whom the youth may be placed;

(c) Assess the likelihood that the youth would present a

physical danger to self or others while residing in the community;

(d) Establish goals for the youth for the time the youth is in the YCSP;

(e) Describe the community-based treatment services and educational, vocational, employment and other programs that are expected to be made use of to meet the needs of the youth;

(f) Include a requirement that the youth follow the 24 hours per day 7 days per week schedule which will be written by YCSP staff upon the youth's release to the YCSP and amended as necessary;

(g) Establish the rules and conditions of the youth's release, including the following;

1. Avoid any conduct that violates a state statute or municipal ordinance;

2. Report any contact with the police to YCSP staff within 12 hours;

3. Report any arrest or citation immediately;

4. Cooperate with YCSP staff and fully participate in all aspects of the youth's case plan;

5. Follow all curfews established by YCSP staff;

6. Attend all scheduled educational and vocational programs;

7. Follow his or her daily appointment schedule with YCSP staff;

8. Obtain prior approval from YCSP staff, whenever practical at least 48 hours before making any changes in his or her 24 hour schedule;

9. Obtain advance permission from YCSP staff to travel outside the state of Wisconsin;

10. Cooperate with electronic monitoring procedures and refrain from altering, damaging or interfering in any way with the operation of the electronic monitoring equipment;

11. Refrain from using or possessing any drug listed in subch. II of ch. 161, Stats., drug paraphernalia as defined in s. 161.571, Stats., and any prescription drugs except those prescribed for the youth by a licensed physician;

12. Refrain from purchasing, owning, carrying or possessing a firearm, knife or other weapon, or ammunition;

13. Agree to and cooperate with searches authorized under this chapter of the youth's person, living quarters and property;

14. Agree to submit to any test ordered by a YCSP staff member that is permitted under the law, including urinalysis, DNA, breathalyzer or a blood test;

15. Obtain prior approval from YCSP staff before making any change in the youth's place of residence;

16. Refrain from possessing or using paging devices, cellular phones or similar communication devices; and

17. Follow any special rules issued by YCSP staff including rules relating to:

- a. Companions;
- b. Contacts with family members with whom the youth does not reside;
- c. Sending and receiving mail;
- d. Medical and dental appointments;
- e. Counseling, therapy or other mental health appointments;
- f. Family responsibilities;

- g. Court-ordered restitution;
 - h. Participation in community service;
 - i. Educational and vocational programs;
 - j. Job seeking and job attendance;
 - k. Purchasing, trading, selling or operating a motor vehicle; and
- l. Borrowing money or making a purchase on credit.

(2) EXPLANATION OF THE CONDITIONS AND RULES. The YCSP staff member shall explain the conditions and rules to the youth and to the adult with whom the youth will reside. The YCSP staff member shall provide information about sanctions, revocation and the youth complaint procedures.

(3) ACCEPTANCE OF CONDITIONS. The YCSP case manager shall put in writing the conditions and rules of the release which apply to the youth and to the adult with whom the youth resides. The youth and the adult shall agree in writing to comply with all the conditions and rules contained in the document. 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 the institution under s. 48.533 (3), Stats., revocation of the youth's release to the YCSP or application of any other sanction allowed by law.

(4) RELEASE DECISION. (a) OJOR shall evaluate whether the

requirements of subs. (1), (2) and (3) have been met and decide either to:

1. Issue an order for release of the youth from the institution to the YCSP; or

2. Not issue an order for release of the youth from the institution to the YCSP and rescind the planning order made under s. HSS 346.05.

(b) If OJOR's decision is to order the release of the youth to the YCSP, OJOR shall prepare a written release order and send copies to JPRC members, the youth and the youth's parents or other adult with whom the youth will reside.

HSS 346.07 RELEASE TO THE YOUTH CORRECTIVE SANCTIONS PROGRAM. (1) A youth shall be released to the YCSP within 30 days of the date of the planning order under s. HSS 346.05, whenever practical.

(2) The YCSP case manager shall determine the date of release from the institution to the community, arrange for the release of the youth and communicate all arrangements to the institution social worker and OJOR.

(3) The institution shall send a notice of the youth's

release to the YCSP, local law enforcement agencies, school district, county department and, if appropriate, the victim of the youth's act as required by s. 48.51 (1)(b), Stats.

HSS 346.08 RESPONSIBILITIES OF THE YOUTH CORRECTIVE SANCTIONS PROGRAM. The YCSP shall make reasonable efforts to ensure that a youth in the program:

(1) Is free from discrimination based on race, color, religion, sex, national origin or any other category protected by federal or state law;

(2) Is protected from abuse or neglect;

(3) Is involved in planning for his or her treatment;

(4) Has access to the courts and the youth's attorney;

(5) Has access to department and community programs and services consistent with the protection of the public;

(6) Has his or her educational, vocational, drug or alcohol abuse, mental health and other treatment needs addressed by the YCSP case plan, consistent with available resources;

(7) May participate in authorized recreational, leisure-time and religious activities; and

(8) Is monitored by the YCSP staff 24 hours a day every day by a combination of programming, staff contacts and electronic monitoring.

HSS 346.09 PERIODIC CASE REVIEWS. (1) PROGRESS REPORTS.

At least once every 90 days following a youth's placement in the program, the YCSP case manager shall write a progress report summarizing the youth's progress in the program including recommendations regarding changes in the case plan, continuation in the program, release to aftercare or discharge. The progress report shall be forwarded to the members of the JPRC, the youth and the youth's parents.

(2) WHEN FORMAL CONFERENCE REQUIRED. A formal conference shall be held for every youth in the YCSP at least once every 6 months. The YCSP shall schedule the conference 30 days prior to the end of a 6 month period and shall notify all JPRC members, the youth and the youth's parents. The conference shall be held at the YCSP office. OJOR shall be informed in writing about the results of the conference and shall issue a department order either retaining the youth in the YCSP, releasing the youth to aftercare or discharging the youth.

(3) OJOR REVIEW. (a) OJOR shall conduct a file review of all progress reports and decide whether to continue the youth in the YCSP, to release the youth to aftercare or to recommend to the administrator that the youth be discharged. OJOR may consult with JPRC members by telephone or in writing. If members of the JPRC do not agree with OJOR's proposed action, OJOR shall schedule a formal conference.

(b) When OJOR schedules a formal conference, the youth, youth's parents or the adult with whom the youth resides, the institution, the aftercare provider and the committing county shall be given timely notice of the date, time and place of the conference.

(4) APPEAL. Members of the JPRC may appeal a decision of OJOR to the OJOR director. An appeal shall be submitted in writing within 10 days of OJOR's decision. The OJOR director shall issue a written decision within 10 days of receipt of the appeal and provide copies to all members of the JPRC, the youth and the youth's parents or other adult with whom the youth resides.

HSS 346.10 STAFF RESPONSE TO MISCONDUCT BY YOUTH. (1)
RANGE OF CONSEQUENCES. When a youth violates a rule or condition of release to YCSP, the YCSP case manager may take one or more of the following actions:

(a) Change one or more of the rules or conditions of the youth's program;

(b) Change one or more of the provisions of the youth's case plan;

(c) Recommend to the youth corrective sanctions supervisor that the youth be returned to a secured correctional institution under s. 48.533 (3), Stats., and sub. (2);

(d) Recommend to the youth corrective sanctions supervisor that the procedures of ch. HSS 343 be followed to revoke the youth's release to the YCSP; or

(e) Apply any other sanction allowed by law.

(e) Follow the procedures of ch. HSS 343 to revoke the youth's release to the YCSP.

*duplicates
(d)
remove
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letter*

(2) FORMAL SANCTION FOR MISCONDUCT. (a) Recommendation and decision. When a youth's case manager believes the youth has violated a condition or rule of release to YCSP, the case manager may recommend to a supervisor that the youth be formally sanctioned and returned to a secured correctional institution as allowed under s. 48.533 (3), Stats. The youth corrective sanctions program supervisor shall decide whether to proceed with

the formal sanction. Less serious violations may result in the application of less serious sanctions in the community, as allowed by law.

(b) Implementation of decision. When the youth corrective sanctions program supervisor decides that the youth should be formally sanctioned, the supervisor shall arrange for transportation of the youth to the institution as soon as practicable.

(c) Informing the youth. 1. Before the youth is returned to the institution, a YCSP staff member shall inform the youth of the decision and the reason for it.

2. The youth may request to speak to the supervisor who made the decision. The request shall be granted and, whenever practical, the supervisor shall speak with the youth within 24 hours.

3. A youth's request to speak to the supervisor does not by itself reverse or delay the decision to proceed with the sanction.

4. The supervisor shall confirm or reverse the decision to impose the formal sanction after the discussion with the youth.

(d) Conditions of the sanction. 1. Chapters HSS 331 to 341 and all institution policies and procedures apply to the youth while the youth is at the institution for the period of the sanction.

2. Institution staff may place the youth in a security cottage or other cottage under closed room confinement during the period of the sanction.

(e) Record. The case manager shall prepare a report to be submitted to the supervisor including the following:

1. The name of the youth;

2. The condition or rule violated by the youth and the date it was violated;

3. Names of all individuals who observed or have knowledge of the violation;

4. The date and the time period for which the youth was returned to the institution;

5. The youth's conduct during the period of the sanction;
and

6. Changes made in the youth's case plan as a result of the violation by the youth.

(3) REVOCATION PROCEDURE. When a youth's case manager believes the youth has violated a condition or rule of release to YCSP to the extent that revocation is necessary, the case manager may recommend to the supervisor that the youth be formally revoked and returned to a secured correctional institution. The youth corrective sanctions supervisor shall decide whether to proceed with revocation. All revocation procedures in ch. HSS 343 shall be followed.

HSS 346.11 ESCAPE. (1) Youth in the YCSP are under the supervision of the department as defined in s. 48.505, Stats., and in custody as defined in s. 946.42(1)(a), Stats., for purposes of the criminal escape statutes. As applied to youth in the YCSP, "escape" means any running away from scheduled program activities such as school, work, the report center or other YCSP office, a treatment program, community service or any other activity outlined in the youth's 24-hour schedule, or from the youth's place of residence.

(2) When a YCSP staff member reasonably believes that a youth has escaped, the staff member shall either contact law enforcement authorities or take the youth into custody.

(3) A youth in the YCSP who escapes is considered to have violated s. 946.42 (3)(c), Stats.

(4) The YCSP staff member shall notify the supervisor promptly whenever a youth escapes.

HSS 346.12 USE OF PHYSICAL POWER OR STRENGTH. (1)

GENERAL. Whenever practical, staff shall rely on law enforcement authorities to exercise force to control youth. When this assistance is not available, staff may use physical power or strength to control youth, but only in accordance with this section.

(2) CORPORAL PUNISHMENT. Corporal punishment of youth is forbidden. There are no exceptions.

(3) AMOUNT OF FORCE. Only so much force may be used as is necessary to achieve the objective for which it is used.

(4) NONDEADLY FORCE. (a) Staff may use nondeadly force to control a youth only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:

1. To prevent death or bodily injury to oneself or another;

2. To prevent unlawful damage to property; or
3. To take a youth into custody or transport the youth.

(5) DEADLY FORCE. (a) Staff may use deadly force to control youth only to prevent death or great bodily injury to oneself or another.

(b) Staff may not use deadly force to control a youth if its use creates a substantial danger of harm to innocent third parties, unless the danger created by not using the force is greater than the danger created by using it.

(6) FOLLOW-UP AFTER THE USE OF FORCE. (a) Check for injury. After a staff member uses physical power or strength to control a youth, the youth shall be checked for injury. When the youth has been injured, the staff member shall obtain prompt and appropriate medical treatment of any youth injury. A supervisor shall be notified of any youth injury.

(b) Record. When physical power or strength is used against a youth, a written record describing the use of physical power or strength shall be submitted to a supervisor and included in the youth's YCSP file. The record shall include:

1. The youth's full name and the date, time and place the

physical force was used against the youth;

2. The name of each staff member who used force against the youth;

3. The reason for using physical force; and

4. The names of all the youth, staff and other persons who observed the use of physical force.

HSS 346.13 MECHANICAL RESTRAINTS. (1) GENERAL. YCSP staff may use mechanical restraints to control the behavior of a youth or transport a youth, but 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 take a youth into custody;

(b) To transport a youth;

(c) To prevent death or bodily injury to oneself or another;

(d) To prevent unlawful damage to property;

(e) To change the physical location of a youth; and

(f) To prevent a youth from escaping.

(3) LIMITATIONS ON USE. Mechanical restraints may never be used:

(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; or

(d) To secure a youth to a motor vehicle.

(4) WHEN MECHANICAL RESTRAINTS USED. (a) Custody and transporting. When a staff member places a youth in mechanical restraints to take the youth into custody and to transport the youth, the staff member shall either promptly transport the youth to a detention facility, a mental health or medical facility or an institution, or immediately arrange for this transportation by institution staff, if practical, or by law enforcement authorities.

(b) Behavior control. When a staff member places the youth in mechanical restraints to control the youth's behavior under sub. (2)(c), (d), (e) or (f), the staff member shall remove the restraints when the staff member believes the restraints are no longer necessary to control the youth's behavior.

(c) Observation. A YCSP staff member shall observe a youth placed in mechanical restraints at least once every 15 minutes until the restraints are removed or until the youth is admitted to a detention facility or a mental health or medical facility, or is taken into custody by law enforcement authorities.

(d) 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 sex as the youth shall attend to the youth's bodily functions.

(e) Check for injury. After a staff member uses mechanical restraints to control a youth's behavior under sub. (2)(c), (d), (e) or (f), the youth shall be checked for injury. When the youth has been injured, the staff member shall obtain prompt and appropriate medical treatment for the youth. A supervisor shall be notified of any youth injury.

(f) Record. When mechanical restraints are used by staff to control a youth's behavior under sub. (2)(c), (d), (e) or (f), a supervisor shall be notified within 4 hours. A written record describing the incident shall be prepared, submitted to the supervisor and included in the youth's YCSP file. The record shall include:

1. The youth's full name and the date, time and place the youth was placed in mechanical restraints;

2. The name of each staff member who placed the youth in restraints;

3. The reason for placing the youth in restraints and a description of the type of restraints used; and

4. A statement indicating when and under what circumstances the restraints were removed.

(5) SUPPLY. YCSP staff shall have access to mechanical restraints. Staff shall examine the supply of mechanical restraints at least every 6 months. Any excessively worn or defective mechanical restraints shall be destroyed.

(6) ANNUAL REPORT. The YCSP director shall submit an annual report to the administrator describing the incidents of

the use of mechanical restraints to control youth behavior. The report is not to include the use of mechanical restraints solely to take youths into custody and transport them.

HSS 346.14 CHEMICAL AGENTS AND FIREARMS. (1) Staff may carry and use chemical agents only within guidelines established by the administrator.

(2) YCSP staff may not carry firearms while on duty.

HSS 346.15 SEARCH AND SEIZURE. (1) GENERAL. Staff may conduct a search of a youth and a youth's living quarters or property at any time, but only in accordance with this section. In this section, "living quarters" means common familial or communal living areas and areas under a youth's control, and "property" means objects under a youth's control, regardless of ownership. Staff may not conduct strip searches or body cavity searches of youth.

(2) PERSONAL SEARCH. Staff may conduct a personal search of a youth:

(a) When the staff member has reasonable grounds to believe that the youth possesses contraband;

(b) After the youth has been taken into custody and before

transporting the youth;

(c) Routinely when the youth enters the report center or YCSP office; and

(d) At random only with the advance permission of a supervisor.

(3) SEARCH OF LIVING QUARTERS AND PROPERTY. (a) Staff shall rely on law enforcement authorities to conduct or assist in a search of a youth's living quarters and property whenever practical. When this assistance is not practical, staff may conduct a search of a youth's living quarters and property only with the consent of the youth's parents or other adult with whom the youth resides, and:

1. When a staff member has reasonable grounds to believe that the living quarters or property contain contraband;

2. At random only with the advance permission of a supervisor; or

3. When a staff member has reasonable grounds to believe the youth may be hiding on the premises.

(b) Staff shall obtain prior approval for a search of a

youth's living quarters and property from a supervisor unless emergency circumstances, such as a reasonable suspicion the youth will destroy contraband or use a weapon, require a search without approval.

(c) Staff may search areas not under the direct control of a youth only with the consent of the adult in control of those areas.

(4) RESPECT FOR YOUTH. (a) Staff shall strive to preserve the dignity of youth in all searches conducted under this section.

(b) Before a nonrandom search of a youth's living quarters or property, whenever practical and advisable the youth shall be informed that a search is about to occur, why and how the search will be conducted and of the place where the search is to occur.

(c) Staff may not disturb a youth's living quarters or property more than necessary for thoroughness in conducting searches.

(d) Staff may not read any legal documents, any communication between a youth and an attorney or any materials prepared in anticipation of a lawsuit during searches.

(e) When any objects are damaged by a staff member in the search of a youth's living quarters or property, the staff member shall inform the youth. A written report describing the damage shall be submitted to a supervisor.

(5) CONTRABAND. (a) Reasonable grounds. 1. A YCSP staff member may determine that there are reasonable grounds to believe a youth possesses contraband, or that a youth's living quarters or property contain contraband, based on any of the following:

- a. The observations of staff members;
- b. Reliable information provided by others;
- c. The behavior of the youth that relates to whether the youth might possess contraband;
- d. Information provided by the youth which is relevant to whether the youth possesses contraband; and
- e. The experience of a staff member with that youth or with a similar circumstance previously experienced within the program.

2. In evaluating the reliability of information provided by others, the staff member shall give attention to whether the information is detailed and consistent and whether it is

corroborated. In evaluating informant reliability, the staff member shall give attention to whether the informant has provided reliable information in the past and whether the informant has reason to supply inaccurate information.

(b) Seizure. Staff shall either confiscate items believed to be contraband or report those items to the appropriate law enforcement authorities. If an item seized by staff is later determined not to be contraband, it shall be returned to the youth. If an item seized by staff is determined to be contraband, it shall be handled according to the YCSP policies and procedures which shall provide for a chain of custody and for preservation for use at a revocation hearing.

(6) RECORD. A written record describing a search of a youth or a youth's living quarters or property under this section shall be prepared, submitted to a supervisor and included in the youth's YCSP file. The record shall include:

1. The youth's full name and the date, time, place and nature of the search;

2. The name of each staff member who conducted the search, all persons who observed it and the supervisor who approved the search;

3. A description of the special circumstances when the search was conducted without a supervisor's approval;

4. The reason for conducting the search;

5. A description of all items seized in the search; and

6. A description of any damage done to the living quarters or property.

(7) DRUG AND ALCOHOL TESTS. A YCSP staff member may require a youth to submit to routine drug and alcohol tests. The urine and blood samples shall be collected and tests shall be administered in a manner approved by the administrator.

HSS 346.16 CUSTODY AND TRANSPORTING. (1) GENERAL. Staff shall rely on law enforcement authorities to take a youth into custody and transport the youth to a detention facility, a mental health or medical facility or an institution whenever this is practical. When that assistance is not practical, staff may take a youth into custody and transport him or her, but only in accordance with this chapter.

(2) TRANSPORTING. When a youth is taken into custody by staff she or he shall be transported as soon as practicable.

HSS 346.17 COMPLAINTS BY YOUTH. A youth may file a complaint in accordance with the procedures contained in ch. HSS 340.

HSS 346.18 RELEASE TO AFTERCARE STATUS. (1)
RECOMMENDATION. The committing county, aftercare provider or the YCSP case manager may recommend to OJOR at any time that the youth be released to aftercare status. The recommendation shall be in writing and copies shall be forwarded to all JPRC members.

(2) CONSULTATION OR CONFERENCE. OJOR shall consider the recommendation according to the release to aftercare rules of ch. HSS 331. OJOR may consult with all members of the JPRC by telephone or in writing. If agreement is not reached, OJOR shall schedule a formal conference.

(3) NOTICE. When OJOR schedules a formal conference, the youth, the youth's parents or other adult with whom the youth resides and members of the JPRC shall be given timely notice of the date, time, place and purpose of the conference.

(4) DECISION. OJOR has the sole authority to release a youth from the YCSP to aftercare status. OJOR shall put the decision in writing and forward it to all members of the JPRC, the youth and the youth's parents or other adult with whom the youth resides.

(5) APPEAL. Any member of the JPRC may appeal a decision of OJOR to the OJOR director. An appeal shall be submitted in writing within 10 days of OJOR's decision. The OJOR director shall issue a written decision within 10 days of receipt of the appeal and provide copies to all members of the JPRC, the youth and the youth's parents or other adult with whom the youth resides.

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), Stats.

WISCONSIN DEPARTMENT OF HEALTH
AND SOCIAL SERVICES

Date: December 13, 1994

By: 

Gerald Whitburn
Secretary

SEAL:



Tommy G. Thompson
Governor

Gerald Whitburn
Secretary



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State of Wisconsin Department of Health and Social Services

November 28, 1994

The Honorable Rebecca Young, Chairperson
Assembly Committee on Children and Human Services
119 Martin Luther King Boulevard, Room 303
P.O. Box 8953
Madison, WI 53702

Dear Representative Young:

On November 18, 1994 Silvia Jackson and James Kramlinger of the Department's Division of Youth Services met with you and others, at your request, to discuss Clearinghouse Rule 94-92 (HSS 346), relating to operation of the Youth Corrective Sanctions Program. In response to concerns you expressed about the proposed rules and your suggestions for change in rule language, the Department has decided, pursuant to s. 227.19 (4)(b)3., Stats., to make germane modifications to CR 94-92. These are identified in this letter and are incorporated in the attached new copy of the proposed rules.

The modifications we have made in CR 94-92 (HSS 346) are the following (page numbers refer to the new copy of ch. HSS 346):

1. On page 13 we have added a note after s. HSS 346.04(2) to make clear that just because the recommendation to the YCSP case manager that a youth be screened for acceptance into the YCSP must come from a JPRC member does not mean that a judge or anyone else is prohibited from suggesting that a particular juvenile be considered for referral to YCSP.
2. On page 22, in s. HSS 346.08(6) we have deleted "and" before "consistent" on the third line.
3. On page 23, in s. HSS 346.09(1) and (2) we have inserted "the youth and the youth's parents," in addition to JPRC members, who are to receive the progress report on the youth prepared at least every 90 days and to be notified of the formal case review conference to be held at least every 6 months.
4. On page 25, we have modified s. HSS 346.10(1)(c) and (d) to indicate that the YCSP case manager only recommends to the YCSP supervisor that a youth be returned to a secured correctional institution or that the youth's release to the YCSP be revoked,

Representative Young
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and we have reversed the order of the last two paragraphs of sub. (1).

5. On page 26, we have modified the second sentence in s. HSS 346.10(2)(c)2 to read that the youth's request to speak to the supervisor who decided that the youth should be returned to the institution as a sanction for misconduct "shall be granted and, whenever practical, the supervisor shall speak with the youth within 24 hours ~~after it is received, whenever practical.~~

6. On page 27, we have substituted "conditions" for "period" in the title of s. HSS 346.10(2)(d) because the paragraph covers more than the period of the sanction.

7. On page 28, we have added s. HSS 346.10 (3) on revocation procedure.

8. Also on page 28, we have revised the definition of "escape" so that it is "running away from scheduled program activities... or from the youth's place of residence" rather than "failure to physically appear at a time and place as required...."

9. On page 37, we have substituted "emergency" for "special" in s. HSS 346.15(3)(b), and in sub. (4)(d) we have deleted the phrase "without the written comment of the youth" at the end of that paragraph.

If you have any questions about these rule modifications, please contact Silvia Jackson, Administrator of the Department's Division of Youth Services, at 266-9342.

Sincerely,



Gerald Whitburn
Secretary

Attachment

cc Senator Carol Buettner

(b) When OJOR schedules a formal conference, the youth, youth's parents or the adult with whom the youth resides, the institution, the aftercare provider and the committing county shall be given timely notice of the date, time and place of the conference.

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committee
11-22-94*

(4) APPEAL. Members of the JPRC may appeal a decision of OJOR to the OJOR director. An appeal shall be submitted in writing within 10 days of OJOR's decision. The OJOR director shall issue a written decision within 10 days of receipt of the appeal and provide copies to all members of the JPRC, the youth and the youth's parents or other adult with whom the youth resides.

HSS 346.10 STAFF RESPONSE TO MISCONDUCT BY YOUTH. (1)

RANGE OF CONSEQUENCES. When a youth violates a rule or condition of release to YCSP, the YCSP case manager may take one or more of the following actions:

(a) Change one or more of the rules or conditions of the youth's program;

(b) Change one or more of the provisions of the youth's case plan;

(c) ~~Recommend~~ *Recommend to the youth corrective sanctions supervisor that* the youth *be returned* to a secured correctional institution

under s. 48.533 (3), Stats., and sub. (2);

(e) ~~Apply~~ Apply any other sanction allowed by law ~~that~~.

(d) ~~Apply~~ *Recommend to the youth corrective sanctions supervisor that* the procedures of ch. HSS 343, to revoke the youth's release to the YCSP; *be followed*

(2) FORMAL SANCTION FOR MISCONDUCT. (a) Recommendation and decision. When a youth's case manager believes the youth has violated a condition or rule of release to YCSP, the case manager may recommend to a supervisor that the youth be formally sanctioned and returned to a secured correctional institution, as allowed under s. 48.533 (3), Stats. The youth corrective sanctions program supervisor shall decide whether to proceed with the formal sanction. Less serious violations may result in the application of less serious sanctions in the community, as allowed by law.

(b) Implementation of decision. When the youth corrective sanctions program supervisor decides that the youth should be formally sanctioned, the supervisor shall arrange for transportation of the youth to the institution as soon as practicable.

(c) Informing the youth. 1. Before the youth is returned to the institution, a YCSP staff member shall inform the youth of