

Chapter DOC 393

YOUTH AFTERCARE CONDUCT AND REVOCATION

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Note: Chapter HSS 343 as it existed on June 30, 2000 was repealed and a new Chapter DOC 393 was created, Register, June, 2000, No. 534, effective July 1, 2000.

Note: This chapter applies to the Department of Corrections and the Department of Children and Families according to their respective responsibilities as designated in ch. 938, Stats., until such time as each of the departments can adopt separate rules.

DOC 393.01 Authority and purpose. This chapter is promulgated under the authority of ss. 227.11 (2), 301.025, 938.357 (5) (g) and 938.48 (16), Stats., to establish rules of conduct for youth who are on state or county supervised aftercare, including standards and procedures for dealing with violations of expected conduct and procedures to revoke a youth's aftercare status.

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

DOC 393.02 Applicability. This chapter applies to the department, to a county department that operates an aftercare program, to any youth on aftercare under a court order issued pursuant to s. 938.34, Stats., and to any youth on aftercare under a court order issued pursuant to s. 48.34, 1993 Stats., or s. 48.366, Stats., relating to extended jurisdiction.

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

DOC 393.03 Definitions. In this chapter:

(1) "Administrative detention" means secure, temporary confinement of a youth in a type 1 secured correctional facility, an approved juvenile detention center or the approved juvenile section of a county jail pending the completion of a violation investigation, the outcome of a revocation proceeding or the placement of a youth in an authorized placement as an alternative to revocation.

(2) "Administrator" means the administrator of the division of juvenile corrections or that person's designee.

(3) "Aftercare" means the aftercare supervision status of a youth, as used in s. 938.34 (4n), Stats., who is released from a type 1 or type 2 secured correctional facility by the office of juvenile offender review or by action of a court under s. 48.366 (5) (b) or 938.357, Stats., and is supervised outside of a type 1 or type 2 secured correctional facility by the department or a county department until the expiration or termination of the youth's court ordered supervision.

(4) "Aftercare provider" means the department or a county department designated by a juvenile court under s. 938.34 (4n), Stats., to provide aftercare supervision or the department under s. 938.532 (3), Stats.

Note: Section 938.532 (3), Stats., was repealed by 2003 Wis. Act 33.

(5) "Agent" means a person employed by the department or a county department who provides aftercare supervision or type 2 status supervision for a youth and who is authorized to make decisions regarding aftercare or type 2 status supervision.

(6) "Alternate care placement" means the placement of a youth, other than a youth on type 2 status, in a residential living arrangement other than the parental home.

(7) "Corrective action" means an action taken by the department or a county department to correct a youth's behavior that may include, but is not limited to, education, development of life skills or vocational skills or community service.

(8) "Corrective sanctions program" means the program under s. 938.533, Stats.

(9) "County department" means the county department under s. 46.215, 46.22 or 46.23, Stats.

(10) "County director" means the director of the county department or that person's designee.

(11) "County intake worker" means a person designated under s. 938.06 (3), Stats., to provide intake services.

(12) "Day" means a calendar day.

(13) "Department" means the Wisconsin department of corrections.

(14) "Division" means the department's division of juvenile corrections.

(15) "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. It includes the use of mechanical restraints or physical force.

(16) "Hearing examiner" means an attorney employed by the Wisconsin department of administration to conduct revocation hearings under this chapter.

(17) "Incapacitating agent" means any commercially manufactured device or chemical agent used by the department to temporarily control a youth.

(18) "Investigation" means a process of fact-finding to determine whether a violation of aftercare has occurred, including the period of time needed to determine the appropriate action if a violation is substantiated.

(19) "Mechanical restraint" means a commercially manufactured device approved by the department and applied to a youth's wrist, arm, legs or torso to restrain or impede free movement.

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

(21) "Regional chief" means a division regional manager responsible for oversight of community correctional services, or that person's designee.

(22) "Staff" means an employee of the department or a county department.

(23) "Summary disposition" means a written determination that a violation was committed and a consequence other than revocation shall be imposed.

(24) “Superintendent” means the superintendent of a Type 1 secured correctional facility or that person’s designee.

(25) “Supervision” has the meaning given in s. 938.505 (1), Stats.

(26) “Supervisor” means a department or a county department employee responsible for the supervision or administration of juvenile aftercare supervision, or that person’s designee.

(27) “Type 1 secured correctional facility” has the meaning given in s. 938.02 (19), Stats.

(28) “Type 2 secured correctional facility” has the meaning given in s. 938.02 (20), Stats.

(29) “Type 2 status” means the status of a youth who is placed by the department in a type 2 secured correctional facility, or who, having been so placed, is placed in a less restrictive placement under s. 938.357 (4) (am) or (c), Stats., is under the supervision and control of the department, is subject to the rules and discipline of the department and is considered to be in custody, as defined in s. 946.42 (1) (a), Stats.

(30) “Violation report” means a written report prepared by staff which describes facts relating to an alleged violation by a youth.

(31) “Youth” means a person under the supervision of the department or a county department within the meaning of s. 938.505 (1), Stats., or pursuant to s. 48.366, Stats., regardless of age.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register December 2006 No. 612; correction in (29) made under s. 13.92 (4) (b) 7., Stats., Register November 2018 No. 755.

DOC 393.04 Responsibilities of the aftercare provider. The department or county department providing aftercare shall make reasonable efforts to ensure all of the following regarding a youth on aftercare:

(1) The youth is free from discrimination based on race, national origin, color, creed, sex, age, sexual orientation, marital status, political affiliation, handicap, ethnicity, religion or ancestry.

(2) The youth is protected from abuse or neglect.

(3) The youth is provided with accessible and usable services, and any reasonable accommodations and services needed to benefit from correctional programming.

(4) The youth is provided with an interpreter if his or her ability to speak, understand, read or write English is limited.

(5) The youth is placed in the youth’s parental home when this is consistent with correctional programming and the protection of the public.

(6) The youth is involved in planning his or her ongoing correctional program.

(7) The youth has appropriate access to the courts and legal counsel.

(8) The youth has access to appropriate department, county department and community programs and services consistent with the protection of the public and the youth’s needs.

(9) The youth has his or her educational, vocational, drug or alcohol abuse, health, mental health and other programming needs met.

(10) The youth may visit, use the mail and communicate with family members or an attorney within reasonable guidelines established by the department or a county department.

(11) The youth may participate in authorized recreational and religious activities.

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

DOC 393.05 Expected conduct. (1) A youth’s agent shall inform the youth orally and in writing of the conduct rules imposed by the agent and the conditions imposed by the court. All of the following conduct rules apply to a youth on aftercare:

(a) The youth may not violate any state, federal or municipal law or regulation.

(b) The youth shall report any arrest or law enforcement contact to his or her agent as soon as possible, but no later than 72 hours after the arrest or contact. If a youth is taken into custody, the youth shall inform the law enforcement officer and any intake worker of his or her aftercare status and the name and agency of his or her agent.

(c) The youth shall cooperate with his or her agent and fully participate in the youth’s aftercare program.

(d) The youth shall be completely truthful with his or her agent at all times.

(e) The youth shall keep all scheduled appointments with the agent and all service providers.

(f) The youth shall report to and inform his or her agent of the youth’s whereabouts and activities as directed and may not go to or be present at any place prohibited by the agent.

(g) The youth shall obtain prior permission from his or her agent to terminate employment or change employment or to drop out of or change an educational or vocational program. If an unforeseen situation occurs causing the youth to act without prior permission, the youth shall notify the agent of the change as soon as possible, but not later than 72 hours after the change.

(h) If the youth resides with his or her parents or guardian, the youth shall notify his or her agent of the family’s change of residence in advance of the change, except when this is not possible, the youth shall notify his or her agent of the change as soon as possible, but not later than 72 hours after the change.

(i) If the youth is in an alternate care placement, the youth shall obtain advance permission from his or her agent before requesting or making a change of residence.

(j) The youth may not leave the state of Wisconsin unless the youth obtains prior permission and a signed travel permit from his or her agent.

(k) The youth may not purchase, own, carry or possess a firearm, knife, any other weapon, or ammunition without prior written authorization of his or her agent. An agent may not grant a youth permission to possess a firearm if the youth is prohibited from possessing a firearm under s. 941.29, Stats., any other state law, federal law, municipal ordinance or court order.

(L) The youth may not use or possess any drug, item or substance that is illegal to possess, any intoxicating substance or any prescription drug except as properly prescribed for the youth and used by the youth in accordance with law.

(m) The youth may not purchase, lease, possess, trade, sell, own or operate a motor vehicle without prior approval of the youth’s agent. To obtain approval to operate a motor vehicle, the youth shall demonstrate proof of insurance, have a valid Wisconsin driver’s license and, if the vehicle is owned by another person, have the written permission of the owner to operate the vehicle. Approval shall be denied if ownership, possession or use of a motor vehicle is inconsistent with the youth’s rehabilitation.

(n) The youth may not borrow money or purchase on credit without prior approval of his or her agent.

(o) The youth shall submit to and cooperate with searches of the youth, living quarters and property and with tests ordered by the department, a county department, or a placement agency consistent with law including, but not limited to, urinalysis, breathalyzer and blood tests.

(p) The youth shall follow any additional rules, given orally or in writing, that may be issued by the youth’s agent. These rules may include, but are not limited to, directions relating to any of the following:

1. Companions.
2. Hours and curfews.
3. Medical, mental health or dental attention.

4. Counseling or therapy.
5. Family responsibilities and child support.
6. Support of self, including the sources of earned and unearned income.
7. Educational and vocational obligations.
8. Job attendance.
9. Court obligations, including court ordered restitution and surcharges, and the collection and handling of all restitution monies.
10. Frequency and manner of reporting to the agent.
11. Conditions to be met when residing in an alternate care placement.
12. Payment of debts.

(2) A youth shall comply with conduct rules that his or her agent may require to achieve the goals and objectives of the youth's aftercare or any conditions established by the court.

(3) A youth shall sign a written copy of the conduct rules established for the youth's aftercare prior to release from a type 1 or type 2 secured correctional facility, whenever possible, or immediately upon arrival at the initial community placement.

(4) The copy of the conduct rules signed by a youth under sub. (3) shall include the following notice: "These conduct rules are in addition to any court-ordered conditions. Your aftercare may be revoked if you do not comply with any of your court-ordered conditions or if you violate any of these conduct rules."

(5) At a youth's first meeting with his or her agent following the youth's release, the agent shall personally review the conduct rules and court-ordered conditions with the youth, and the agent and the youth shall sign a copy of the conduct rules if the youth did not sign the rules prior to release from the institution. The agent may modify or supplement the youth's conduct rules at any time, either orally or in writing. If the agent modifies or supplements the conduct rules orally, the agent shall promptly give the youth a written copy of the changed or additional conduct rule.

(6) A youth who disagrees with a conduct rule established by his or her agent may appeal the agent's decision to the agent's supervisor within 5 working days of the decision. The supervisor shall review the appeal and make a written response to the youth within 5 working days of receipt of the appeal, upholding, reversing, or modifying the conduct rule. If the supervisor does not make a written response, the conduct rule is upheld.

(7) If the youth is in disagreement with the supervisor's decision, the youth may appeal that decision to the next supervisory level of the department or county department within 5 working days of the supervisor's decision or failure to issue a decision under sub. (6). The next level supervisor shall issue the final decision of the department or county department within 5 working days of receipt of the appeal. If the next level supervisor does not make a written response, the supervisor's decision is upheld.

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

DOC 393.06 Use of force. (1) GENERAL. Whenever practical, staff shall rely on law enforcement authorities when it is necessary to exercise force to control a youth. When it is not practical, staff may use force to control the youth in accordance with this section.

(2) **CORPORAL PUNISHMENT.** Staff may not impose corporal punishment on a youth.

(3) **AMOUNT OF FORCE.** Only reasonable and the minimum necessary force may be used to achieve control of a youth. Staff may not use excessive force.

(4) **NON-DEADLY FORCE.** (a) Staff may use non-deadly force to control a youth only if the user of force reasonably believes its use is immediately necessary to accomplish one of the following purposes:

1. To prevent an escape.
2. To prevent death or bodily injury to oneself or another.

3. To prevent unlawful damage to property.
4. To change the location of a youth.
5. To take a youth into custody or transport a youth.

(b) Before non-deadly force is used to accomplish one of the purposes under par. (a), staff shall use all reasonable efforts to persuade the youth to be voluntarily taken into custody or to cease inappropriate behavior.

(5) **DEADLY FORCE.** (a) Staff may use deadly force to control a youth only if the user reasonably believes that its use is immediately necessary to prevent death or great bodily harm 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 an innocent third party, unless the danger created by not using deadly force is greater than the danger created by its use.

(6) **FOLLOW UP AFTER THE USE OF FORCE.** (a) After staff use force to control a youth, the youth and any involved staff shall immediately be checked for injury. If the youth or staff have been injured, the staff shall immediately seek appropriate medical treatment of any injury to the youth or staff. A supervisor shall be notified immediately of any injury to the youth or staff.

(b) When force is used against a youth, all staff who observed or were involved in the incident, shall submit a written record to a supervisor within 24 hours of the incident. The record shall describe the use of force and be placed in the youth's file. The record shall include all of the following:

1. The youth's full name and the date, time and place force was used against the youth.
2. The name of all staff who used force against the youth.
3. The reason for using force.
4. The names of all persons who observed the use of force.

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

DOC 393.07 Mechanical restraints. (1) GENERAL. Staff may use mechanical restraints to control the behavior of a youth or transport a youth 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
- (f) To prevent a youth from escaping

(3) **LIMITATIONS ON USE.** Mechanical restraints may not be used in any of the following ways:

- (a) As a method of punishment
- (b) About the head or neck of a youth
- (c) In a way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of a youth
- (d) To secure a youth to a motor vehicle

(4) **MECHANICAL RESTRAINT PROCEDURES.** (a) *Custody and transportation.* When staff place a youth in mechanical restraints to take the youth into custody and transport the youth, staff shall promptly transport the youth to a detention facility, a mental health or medical facility or a type 1 secured correctional facility.

(b) *Behavior control.* When staff place a youth in mechanical restraints to control the youth's behavior under sub. (2) (c), (d), (e) or (f), staff shall remove the restraints as soon as staff believe the restraints are no longer necessary to control the youth's behavior. Restraints shall be used at all times while the youth is being transported in a secure manner under sub. (2) (b).

(c) *Observation.* Staff shall observe a youth placed in mechanical restraints at least once every 15 minutes until the restraints are removed or until the youth's admission to a place of secure con-

finement or into custody. Staff shall maintain a written record of the observations including the date and times staff observed the youth, name of the person making the observation, and comments on the youth's condition and behavior while in restraints.

(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 or the youth is being transported in a secure manner. When it is unsafe to release a youth from restraints, a person shall feed the youth and a person of the same gender shall assist the youth to perform necessary bodily functions.

(e) *Check for injury.* When staff use mechanical restraints, the youth shall be checked for injury as soon as the restraints are removed. If the youth has been injured, staff shall immediately seek appropriate medical treatment for the youth. A supervisor shall be notified immediately of any injury to a youth.

(f) *Record.* When staff use mechanical restraints to control a youth's behavior under sub. (2) (c), (d), (e) or (f), a supervisor shall be notified as soon as possible. Staff shall submit to a supervisor a written report describing the incident within 24 hours and include in the youth's file. The report shall include all of the following:

1. The youth's full name and the date, time and place the youth was placed in mechanical restraints.
2. The name of staff who placed the youth in restraints.
3. The reason for placing the youth in restraints and a description of the restraints used.
4. A statement indicating when and under what circumstances the restraints were removed.

(5) **EQUIPMENT.** Staff shall only use mechanical restraints approved by the department. Staff shall examine the supply of mechanical restraints at least every 6 months. Any mechanical restraints which are excessively worn or which become defective through use shall be delivered to a supervisor to be destroyed.

(6) **ANNUAL REPORT.** Each regional chief shall submit an annual report to the administrator describing all incidents involving the use of mechanical restraints by program staff to control youth behavior under sub. (2) (c), (d), (e) or (f).

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (4) (f) made under s. 35.17, Stats., Register November 2018 No. 755.

DOC 393.08 Chemical agents and weapons.

(1) **OLEORESIN OF CAPSICUM.** For the purpose of this section, "oleoresin of capsicum" means oleoresin extracted from fruits of plants of the genus capsicum. Oleoresin contains the active ingredient capsaicin and related compounds classified as capsaicinoids.

(2) **USE OF OLEORESIN OF CAPSICUM.** Staff may carry or use oleoresin of capsicum, as permitted under s. 941.26 (4) (a) and (c), Stats., while on duty and only under all of the following conditions:

- (a) If approved by the department.
- (b) After successfully completing a department approved training program or, if applicable, after successfully updating training according to department policy and procedure.
- (c) While acting in self-defense or defense of a third person, as permitted under ss. 939.48 and 941.26 (4) (c) 1., Stats.

(3) **APPROVED PRODUCTS.** Staff may carry and use only the chemical products and delivery systems approved by the department.

(4) **MEDICAL CARE.** Staff shall immediately provide medical attention to a person exposed to oleoresin of capsicum.

(5) **DOCUMENTATION.** Staff involved in the use of oleoresin of capsicum shall document its use according to department policy and procedure.

(6) **FIREARMS OR OTHER WEAPONS.** Staff may not carry a firearm or other weapons while on duty.

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

DOC 393.09 Search and seizure. (1) GENERAL. Staff may conduct a search of a youth and a youth's living quarters or property at any time, subject to this section. In this section:

(a) "Living quarters" means a private bedroom, common familial or communal living areas and areas under a youth's control or to which the youth has access, including, but not limited to, the grounds and motor vehicles.

(b) "Property" means objects under a youth's control, regardless of ownership.

(2) **PERSONAL SEARCH.** Staff may conduct a personal search of a youth for any of the following reasons:

- (a) When staff have a reasonable belief that a youth possesses contraband.
- (b) After the youth has been taken into custody and before transporting the youth.
- (c) Upon release from a secure detention center or type 1 secured correctional facility or other secured confinement.
- (d) Routinely when the youth enters a report center, a staff office or other placement or sanction facility.
- (e) At random with the prior authorization of a supervisor.
- (f) At the direction of a supervisor.

(3) **STRIP SEARCH.** (a) A strip search may be conducted in addition to a personal search for any reason stated in sub. (2) only when staff have a reasonable belief that the youth is concealing contraband secreted within the youth's underclothing or external body areas, and the youth refuses to voluntarily give the suspected contraband to staff.

(b) Staff shall obtain prior approval from a supervisor before conducting a strip search. The supervisor may approve the strip search if the supervisor determines that the requirements of par. (a) are met.

(c) A strip search shall be conducted in a clean and private place by a person of the same sex as the youth being searched. The search shall be conducted by two persons of the same sex as the youth when possible.

(4) **BODY CONTENTS SEARCH.** (a) Staff may conduct a body contents search if staff have a reasonable belief that a youth has consumed an intoxicating substance or is concealing contraband in a manner that might be discovered by such a search and prior authorization has been obtained from a supervisor.

(b) Staff may require a youth to submit to routine drug and alcohol tests for cause as part of a routine testing of all youth in a program or as part of a random testing program.

(c) When an agent or supervisor requires that collection of a urine specimen be observed, staff of the same sex as the youth shall observe and collect the urine specimen.

(d) Blood and stool samples may only be collected by a licensed physician, physician assistant, registered nurse or other person authorized by law.

(e) X-rays may be conducted only by licensed radiology personnel.

(5) **REASONABLE GROUNDS TO BELIEVE.** In deciding whether a reasonable belief exists under subs. (2), (3) and (4), all of the following shall be considered:

- (a) Observations of staff.
- (b) Information provided by a reliable informant.
- (c) Prior seizures of contraband from the person or living quarters of the youth.

(6) **SEARCH OF LIVING QUARTERS AND PROPERTY.** (a) Staff may search a youth's property and living quarters at any time with the

approval of a supervisor. Whenever practical, staff may request the assistance of law enforcement authorities to assist in a search.

(b) If a parent or other adult with whom a youth resides denies access to any part of the property or living quarters referred to in par. (a), the youth's agent may require the youth to move to another placement approved by the department.

(c) There is no requirement that there be any evidence that contraband is concealed in the property or living quarters of a youth before a search is conducted.

(d) A supervisor shall approve a search before it occurs, unless exigent circumstances, such as suspicion that the youth will destroy contraband or use a weapon, require a search without approval.

(e) Staff who conduct a search shall prepare a written report of the search which shall state all of the following:

1. The identity of staff who conducted the search and the supervisor who approved it.
2. The date and time of the search.
3. The identity of the youth whose residence or property was searched.
4. The location of the property which was searched.
5. The reason for conducting the search and whether the search was a random search.
6. Any objects that were seized pursuant to the search.
7. Whether any damage was done to the premises during the search.

(f) If any objects were seized or property was damaged during the search of a youth's property or living quarters, the youth shall be informed in writing. A youth shall be reimbursed for the repair or replacement of damaged property that is not contraband. Property which is damaged shall be valued at its fair market value, not its replacement cost.

(g) Staff shall confiscate items believed to be contraband and report those items to the appropriate law enforcement authorities. Contraband shall be disposed of consistent with s. DOC 376.18.

(h) In conducting a search, staff shall disturb the effects of a youth as little as possible, consistent with thoroughness.

(i) Staff shall not read legal materials belonging to a youth during a search.

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

DOC 393.10 Custody and transporting. (1) GENERAL. Staff may request that law enforcement authorities take a youth into custody and transport the youth to a detention facility, a mental health or medical facility or a type 1 secured correctional facility whenever practical. When assistance is not available, staff may take a youth into custody and transport the youth in accordance with this section.

(2) TRANSPORTING. When staff takes a youth custody, the youth shall be transported as soon as practical.

(3) PERSONNEL. Staff shall transport a youth in a secure manner to a secure facility and adequate staff shall supervise the transport consistent with department policies and procedures.

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

DOC 393.11 Finding of violation. A youth may be found to have violated a conduct rule or a court-ordered condition of aftercare under s. DOC 393.05 if any of the following applies:

(1) The youth committed the conduct prohibited by the conduct rule or court-ordered condition.

(2) The youth was convicted or was adjudicated delinquent for violating a criminal law or municipal ordinance.

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

DOC 393.12 Staff response to alleged violation. (1) INVESTIGATION. An agent who has reason to believe that a youth violated a conduct rule or court-ordered condition of aftercare shall investigate the matter. The investigation shall include

an interview with the youth to discuss the alleged violation within a reasonable period of time after the agent becomes aware of the allegation.

(2) ACTION. If following the investigation under sub. (1), the agent concludes that a youth committed a violation, the agent shall take one of the following actions:

(a) *Counseling.* 1. Procedure. If the violation is minor and does not present a substantial or immediate risk to the community or the youth, the agent may review the conduct rules and court-ordered conditions of aftercare with the youth, inform the youth why the conduct is a violation and direct the youth to take corrective action. Counseling may be the appropriate course of action if any of the following apply:

- a. The youth is unfamiliar with the conduct rule or court-ordered condition.
- b. The youth has not previously violated the same or a closely related conduct rule or court-ordered condition.
- c. The youth is unlikely to repeat the behavior if warned and counseled.
- d. The youth's ability to understand the conduct rules or court-ordered conditions is limited or impaired.
- e. Summary disposition or revocation is not appropriate.

2. Record. The agent shall place a brief written record in the youth's supervision file that describes the youth's violation and the counseling the agent provided to the youth.

(b) *Summary disposition.* 1. Procedure. The agent may inform the youth that the youth's conduct is in violation of a conduct rule or court-ordered condition of aftercare and do one or more of the following:

- a. Explain the conduct rules and court-ordered conditions and warn the youth that further violations may result in revocation of the youth's aftercare.
- b. Modify or supplement the conduct rules.
- c. Require the youth to take corrective action.
- d. Further restrict the youth's placement or supervision.

2. Report. When the agent imposes a summary disposition, the agent shall prepare a written violation report consistent with s. DOC 393.13.

3. Appeal. a. A youth may appeal a summary disposition to the next supervisory level within the department or the county department either orally or in writing within 5 days of its imposition. That supervisor shall review the action and issue a final written decision within 5 working days of receipt of the appeal. The agent shall record the appeal decision in the youth's file. If the supervisor does not issue a written decision within 5 working days, the disposition is upheld.

b. The filing of an appeal by a youth may not delay the imposition of the summary disposition pending outcome of the appeal.

(c) *Initiation of revocation proceedings.* The agent may recommend to the department or county department that revocation proceedings be initiated. The department or county department shall consider the following prior to initiating revocation proceedings:

1. The youth's committing offense.
2. The youth's past conduct and the positive and negative adjustments while on aftercare.
3. Previous violations that have occurred and the disposition of each.
4. The seriousness of the violation.
5. The alternatives to revocation.
6. Why alternatives to revocation are not appropriate and have been rejected.

(3) REVOCATION OF YOUTH UNDER EXTENDED JURISDICTION. (a) The aftercare revocation procedures in ss. DOC 393.14 to 393.16 and 393.18 do not apply to a youth subject to extended jurisdiction under s. 48.366, Stats.

(b) When the aftercare provider decides to initiate revocation proceedings for a youth subject to extended jurisdiction, the aftercare provider shall file a petition for revision of the court order with the committing court pursuant to s. 48.366 (5), Stats., requesting revocation of the youth's aftercare status.

(4) ADMINISTRATIVE DETENTION. (a) If an aftercare provider initiates revocation proceedings, the aftercare provider may place a youth under its supervision on administrative detention pending the outcome of the revocation proceedings. The administrative detention decision shall be based upon the alleged violation and the youth's past conduct. The aftercare provider may hold the youth on administrative detention if it is likely that any of the following will occur if the youth remains in the current placement:

1. The youth will seek to intimidate a witness in a pending investigation, disciplinary action or revocation action.
2. The youth will encourage others by example, expressly or by the youth's presence, to defy staff authority and thereby erode the staff's ability to control a particular situation.
3. The youth will present a substantial danger to the physical safety of himself or herself or another person.
4. The youth will attempt to flee.
5. Criminal, disciplinary or revocation proceedings will be inhibited.
6. The youth will commit a crime.
7. The youth will engage in an activity that violates a conduct rule or court-ordered condition of aftercare.
8. The youth will not achieve the goals and objectives of his or her aftercare.

(b) If a youth under aftercare supervision of the department is removed from an approved placement, whether from the youth's own home or from an alternate care placement and a suitable alternative placement is not readily available, the department may place the youth at a type 1 secured correctional facility on administrative detention until a suitable alternate placement is found. If a suitable alternate placement is not found within 30 days, the supervisor shall notify the regional chief of the youth's status. If a suitable alternate placement is not found within 60 days, the regional chief shall notify the administrator.

(c) When the aftercare provider decides to place a youth on administrative detention, the aftercare provider may request that the youth be taken into custody under s. 938.19 (1) (d) 6., Stats. and released to the aftercare provider under s. 938.20 (2) (cm), Stats.

(d) The department may place a youth in a type 1 secured correctional facility or a secure detention facility within the meaning of s. 938.02 (16), Stats., pending the outcome of revocation proceedings.

Note: Section 938.02 (16), Stats., was renumbered to s. 938.02 (10r), Stats., and the term "secure detention facility" was changed to "juvenile detention facility" by 2005 Wis. Act 344.

(e) 1. If the aftercare provider places a youth on administrative detention, the aftercare provider shall give the youth a written notice explaining why the youth is on administrative detention pending the outcome of the revocation proceeding.

2. The aftercare provider shall give the notice to the youth no later than the 7th day after the day the youth was placed on administrative detention. The notice shall state the reason why revocation of aftercare has been initiated and shall identify the basis for administrative detention under par. (a).

3. The notice shall inform the youth that he or she may appeal the administrative detention decision to the next supervisory level in writing at any time prior to the revocation hearing.

4. The supervisor reviewing the appeal shall respond in writing to the youth within 7 days after receipt of the appeal. Failure of the supervisor to respond upholds the administrative detention decision.

5. The youth may appeal the decision of the supervisor to the administrator at any time prior to the revocation hearing. The administrator shall respond in writing to the youth within 7 days after receipt of the appeal. Failure of the administrator to respond upholds the administrative detention decision.

6. The original administrative detention decision shall remain in effect pending the decision on the appeal.

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

DOC 393.13 Violation report. (1) When a violation results in a summary disposition, initiation of revocation proceedings or the youth is taken into custody by law enforcement for a violation of a law, the assigned agent shall prepare a written violation report. The violation report shall include all of the following:

- (a) A description of the alleged misconduct, including any conflicting versions of the nature or circumstances of the alleged violation.
- (b) The alleged victim's statement or a statement of the impact on the alleged victim.
- (c) The youth's statement.
- (d) A description of any alleged violations of the law, any statement or confession to law enforcement, guilty plea, pending charges, a prosecutor's recommended disposition or a conviction for the conduct underlying the alleged aftercare violation, if known.
- (e) A list of all conduct rules and court-ordered conditions the youth allegedly violated.
- (f) A description of the agent's investigation and statement of the agent's conclusions.
- (g) Information about the custody status of the youth.
- (h) Any recommendation for revocation of aftercare and the reasons for the recommendation, or a description of the specific summary disposition imposed under s. DOC 393.12 (2) (b).

(2) The assigned agent shall maintain the violation report in the youth's file.

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

DOC 393.14 Preparation for revocation hearing.

(1) **NOTICE.** Prior to a revocation hearing, the agent shall serve the youth with written notice of the hearing. If the youth is being held on administrative detention under s. DOC 393.12 (4), the notice shall be served no later than the 7th day after the day on which the youth was taken into physical custody in Wisconsin. If the youth is not in physical custody, the notice shall be served on the youth at least 14 days prior to the scheduled revocation hearing. The agent shall also send a copy of the notice to the hearing examiner's office and to the youth's attorney. The notice shall include:

- (a) A statement of the alleged violation.
- (b) A statement of the conduct rule or court-ordered condition of aftercare that the youth allegedly violated.
- (c) A statement that a revocation hearing has been scheduled under this section and an explanation of the youth's rights at that hearing including:
 1. The right to be present.
 2. The right to be represented by an attorney.
 3. The right to deny the allegation and to speak on his or her own behalf.
 4. The right to present evidence.
 5. The right to present witnesses and the right to question witnesses.
 6. The right to receive a written decision stating the reasons for the decision based upon the evidence and testimony presented.
- (d) A statement of the evidence to be considered at the hearing which may include:
 1. Documents.

2. Physical evidence.
3. Results of a breathalyzer test.
4. Incriminating statements by the youth.
5. All law enforcement reports regarding the allegation.
6. All warrants issued relating to the allegation.
7. Relevant photographs.

(e) A statement that the youth has the right to waive the revocation hearing in accordance with sub. (3), in which case the administrator or the director of the county department, shall decide whether to revoke the youth's aftercare.

(f) A statement that whatever relevant information or evidence is in the possession of the department or county department is available for inspection, unless the hearing examiner determines that the information or sources of information may be kept confidential.

(g) The date, time and place of the hearing.

(2) REISSUANCE OF NOTICE. When the notice of a revocation hearing is found to be improper and the impropriety results in the dismissal of the revocation proceedings, the department or county department may reinstate revocation proceedings by issuing a proper notice.

(3) WAIVER. (a) A youth served with notice under sub. (1) or sub. (2) may waive the right to a revocation hearing, including the right to be represented by an attorney at that hearing, if the youth waives these rights knowingly, voluntarily and in writing.

(b) The aftercare provider may not accept a waiver from a youth who is less than 14 years of age at the time of the waiver, unless the youth's attorney approves the waiver. If a youth who is less than 14 years of age at the time of the waiver does not have an attorney, the aftercare provider may not accept a waiver unless the youth's parent, guardian or legal custodian approves the waiver. A youth may consult with an attorney, if requested, before the youth waives any rights.

(c) The aftercare provider may not accept a waiver from a youth of any age if the aftercare provider reasonably believes that the youth lacks the mental capacity to make a reasoned and voluntary waiver of his or her rights.

(d) A youth's waiver shall be discussed and signed in the presence of a witness who is an adult. The witness may not be an employee of the aftercare provider, unless no other witness is available.

(4) INFORMATION PACKET. At least 5 days prior to the day of a hearing, the agent shall send copies of the following documents to the youth and the youth's attorney, if any:

- (a) The court order placing the youth under the supervision of the department or county department.
- (b) The conduct rules and court-ordered conditions signed by the youth.
- (c) The violation report.
- (d) A case history review summary.
- (e) A statement from any unavailable witness and an statement explaining why the witness is unavailable.
- (f) The document used by the agent to recommend revocation.
- (g) The department's aftercare revocation notice, rights, acknowledgment and waiver form.

(5) REVIEW OF EVIDENCE. At least 2 days prior to the day of the hearing, the youth and the youth's attorney, if any, may review all evidence to be submitted by the aftercare provider at the hearing, except evidence that the hearing examiner determines should not be disclosed, such as the identity of confidential informants.

(6) HARMLESS ERROR. When a procedural requirement under this chapter is not met by the aftercare provider, the error shall be considered harmless and disregarded if it does not substantially affect the rights of the youth. Rights are substantially affected when a variance from a requirement prejudices a fair revocation proceeding for the youth.

(7) CONCURRENT PROSECUTION. All revocation proceedings under this chapter may proceed regardless of any concurrent prosecution of a youth for the conduct underlying the alleged aftercare violation. Dismissal or acquittal in a court proceeding for a youth's conduct underlying an alleged violation does not preclude revocation of that youth's aftercare for the same conduct.

(8) DECISION TO TERMINATE REVOCATION PROCEEDINGS. At any time during the revocation proceedings, the aftercare provider may terminate the revocation proceedings in order to implement an alternative course of action. If the youth has been held on administrative detention during the proceedings, the youth shall, following the decision to terminate the proceedings, be released to an alternative placement approved by the aftercare provider at the earliest practical time. This placement may be the previous placement from which the youth was initially removed, or an alternative placement.

(9) CORRECTIVE SANCTIONS PROGRAM. An aftercare provider may place a youth in the corrective sanctions program immediately following a revocation if all of the following have occurred:

- (a) The youth has waived the revocation hearing.
- (b) The administrator or county director has signed the order revoking the youth's aftercare.
- (c) OJOR has approved the transfer to the corrective sanctions program and issued the transfer order.

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

DOC 393.15 Procedure for youth on state aftercare when hearing right is waived.

(1) SUPERVISOR'S RECOMMENDATION. When a youth on state-provided aftercare waives his or her right to a revocation hearing under s. DOC 393.14 (3), a supervisor may recommend that the administrator revoke the youth's aftercare.

(2) RECORD. When a supervisor recommends revocation under sub. (1), the supervisor shall forward the youth's revocation notice and waiver, all documents required under s. DOC 393.14 (4) and the evidence referred to in s. DOC 393.14 (1) (d) 1., 3., 4. and 5. to the administrator within 14 days after acceptance of the waiver, unless the administrator grants an extension for cause.

(3) ADMINISTRATOR'S DECISION. (a) The administrator after reviewing the documents and evidence under sub. (2) may revoke the youth's aftercare. The administrator's written decision shall state the reasons why the youth's aftercare was revoked or not revoked.

(b) The administrator shall forward a copy of the decision to the youth, the youth's attorney, if any, and the youth's agent within 14 days after the administrator receives the documents and evidence under sub. (2).

(c) If the youth is in custody at a type 1 secured correctional facility, the administrator shall promptly forward a copy of the decision to the type 1 secured correctional facility.

(d) If the youth was not in custody during the revocation proceedings, the administrator shall direct the youth be taken into custody and transferred to a type 1 secured correctional facility.

(e) If the youth's aftercare is not revoked, the administrator shall remand the youth's case to the youth's agent and the agent's supervisor for alternative planning and placement.

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

DOC 393.16 Procedure for youth on county aftercare when hearing right is waived.

(1) SUPERVISOR'S RECOMMENDATION. When a youth on county-provided aftercare waives the revocation hearing under s. DOC 393.14 (3), the county agent's supervisor may recommend that the director of the county department revoke the youth's aftercare.

(2) RECORD. When the recommendation under sub. (1) is to revoke the youth's aftercare status, the county agent's supervisor shall forward the notice of revocation and waiver, all documents required under s. DOC 393.14 (4) and the evidence referred to in s. DOC 393.14 (1) (d) 1., 3., 4. and 5. to the county director within

14 days after acceptance of the waiver, unless the county director grants an extension for cause.

(3) COUNTY DIRECTOR'S DECISION. (a) The county director after reviewing the documents under sub. (2) may revoke the youth's aftercare. The county director shall issue a written decision, stating the reasons why the youth's aftercare was revoked or not revoked.

(b) The county director shall forward copies of the decision to the youth, the youth's attorney, if any, and the youth's agent within 14 days after the county director receives the documents and evidence under sub. (2).

(c) The county director shall promptly forward the decision and all documents required under s. DOC 393.14 (4) to the department and to the type 1 secured correctional facility designated by the department to receive the youth following the revocation.

(d) If the youth was not in custody during the revocation proceedings, the county director shall direct that the youth be taken into custody and arrangements made for the youth to be transferred to the designated type 1 secured correctional facility.

(e) If the youth's aftercare is not revoked, the youth's case shall be remanded by the county director to the youth's agent and the agent's supervisor for alternative planning and placement.

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

DOC 393.17 Petition for change in placement by the court. (1) A aftercare provider may, in lieu of an administrative hearing, petition the committing court under s. 938.357 (3), Stats., for a change in placement to a type 1 secured correctional facility.

(2) If a youth who has been released to aftercare by the court under s. 48.366, Stats., violates a condition of supervision imposed by the court or the department, the administrator may direct that a petition be filed with the court requesting revocation under s. 48.366 (5) (b), Stats.

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

DOC 393.18 Revocation hearing. (1) **GENERAL.** The revocation hearing process shall be governed by ch. HA 2, except for those provisions in sub. (2).

(2) **EXCEPTIONS.** (a) *Time limit.* A revocation hearing for a youth on aftercare shall be held within 30 days after the youth was taken into custody in Wisconsin for an alleged violation, in accordance with s. 938.357 (5) (d), Stats., unless this time limit is waived under par. (b).

(b) *Waiver of revocation hearing time limit.* The 30-day required time limit in par. (a) may be waived only upon agreement of the aftercare provider, the youth and the youth's attorney, if any.

(c) *Hearing closed.* A revocation hearing for a youth shall be closed to the public.

(d) *Parents.* The youth's parents or guardian may attend the hearing.

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

DOC 393.19 Return of a youth to a type 1 secured correctional facility. (1) If a youth on state aftercare is held on administrative detention at a type 1 secured correctional facility, the signed revocation order of the administrator of the division of hearings and appeals, if there has been a hearing, or the signed revocation order of the administrator, if the hearing has been waived, shall serve to revoke the youth's aftercare and authorize transfer of supervision of the youth to a type 1 secured correctional facility.

(2) If a youth on county-provided aftercare has been held on administrative detention at a secure detention facility, the signed revocation order of the administrator of the division of hearings and appeals, if there has been a hearing, or the signed revocation order of the county director, if the hearing has been waived, shall serve to revoke the youth's aftercare and authorize return of the youth to a type 1 secured correctional facility.

(3) If a youth or the youth's attorney files an appeal of the revocation order, the appeal shall not delay transfer of the youth to supervision at a type 1 secured correctional facility pending outcome of the appeal.

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

DOC 393.20 Youth complaint procedure. (1) **GENERAL.** A youth may file a complaint to obtain administrative review of issues related to the youth's aftercare that personally affect the youth.

(2) **OBJECTIVES.** The objectives of this procedure include all of the following:

(a) To allow youth to raise questions regarding a decision affecting their supervision.

(b) To encourage communication and cooperation between youth and staff.

(c) To resolve problems in an orderly and consistent manner.

(3) **SCOPE.** The youth complaint procedure may be used by any youth on aftercare to review a decision that affects the youth personally, except a decision regarding any of the following:

(a) Revocation.

(b) Custody and detention.

(c) A violation of criminal law or ordinance.

(d) Denial of use or possession of a firearm as governed by law.

(e) Conduct rules or court-ordered conditions of supervision.

(f) Discharge of a youth prior to the original discharge date of the youth's order for supervision.

(g) Decisions of OJOR.

(h) A rule of the department.

(i) Matters over which the department has no authority.

(j) An issue which a youth may appeal under this chapter or any department rule or a decision issued by the department in response to an appeal filed by a youth under this chapter or any department rule.

(4) **FILING A COMPLAINT.** (a) A youth may initiate a review of a decision by filing a complaint within 5 days of the decision with his or her agent. The agent shall promptly forward the complaint and a statement of the facts and the reasons for the decision to his or her supervisor.

(b) The agent shall attempt to informally resolve the complaint. Any resolution agreed to by the agent and the youth shall be documented in the youth's file.

(5) **SUPERVISOR'S INVESTIGATION AND DECISION.** (a) The supervisor shall review the complaint and the agent's statement and may interview the youth or others to investigate the complaint. The supervisor shall issue a written decision within 7 days of receipt of the request for review, stating the reasons for the decision. The youth and the agent shall be given copies of the decision.

(b) If no decision is issued within the 7 day time period, the agent's decision is affirmed and the youth may appeal under sub. (6).

(6) **APPEAL OF THE SUPERVISOR'S DECISION.** (a) The youth may appeal the supervisor's decision to the regional chief in writing within 5 days of receipt of the decision or the failure to issue a decision under sub. (5) (b). The appeal shall state the reasons for the appeal and request further review.

(b) The regional chief shall review the youth's complaint and the supervisor's decision, may investigate the complaint and shall issue a final decision within 7 days of receipt of the appeal, stating the reasons for the decision. Copies of the decision shall be sent to the youth, the agent and the agent's supervisor.

(7) **EFFECT OF APPEAL ON A DISPUTED DECISION.** During the period required under this section for investigation or review of any complaint, all affected parties shall comply with the decision currently under dispute.

(8) EXPEDITED APPEAL. If the time limits provided in this section would effectively moot the complaint, the supervisor or regional chief shall make all reasonable efforts to expedite the complaint review or appeal.

(9) PENALTIES. (a) A youth may not be penalized for filing a complaint under this section.

(b) Notwithstanding par. (a), a youth may be subject to discipline, including revocation of the youth's aftercare, if the youth knowingly made a false allegation or complaint.

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