

## Chapter DOC 375

### OBSERVATION STATUS IN TYPE 1 SECURED CORRECTIONAL FACILITIES

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**Note:** Chapter HSS 335 as it existed on June 30, 2000 was repealed and a new Chapter DOC 375 was created, Register, June, 2000, No. 534, effective July 1, 2000.

**DOC 375.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 227.11 (2), 938.48 (16) and 938.505 (1), Stats., to establish standards and procedures for the involuntary non-punitive, temporary confinement of a youth to ensure the youth's safety and the safety of others if the youth is mentally ill and dangerous, is experiencing acute mental distress or has a medical problem that requires separation for treatment.

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

**DOC 375.02 Applicability.** This chapter applies to the department and all youth under its supervision in a type 1 secured correctional facility.

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

**DOC 375.03 Definitions.** In this chapter:

(1) "Acute mental distress" means a condition in which a youth's emotional, social or behavioral functioning is significantly impaired and the impairment may result in physical harm to the youth or others.

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

(3) "Advanced practice nurse prescriber" means an advanced practice nurse as defined in ch. 441, Stats., and ch. N 8 who has been certified to prescribe medication.

(4) "Dangerous" means a youth presents a substantial probability of physical harm to self or to other persons as manifested by any of the following:

- Recent homicidal or other violent behavior.
- The reasonable fear of others of violent behavior and serious physical harm, because of a recent overt act or an attempt or threat to cause serious physical harm.
- Serious self-destructive behavior or a threat of that behavior.
- The inability to cope with life in the institution to the degree that the youth or others are endangered.

(5) "Day" means a calendar day.

(6) "Department" means the department of corrections.

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

(8) "Guardian" has the meaning given in s. 938.02 (8), Stats.

(9) "Health services professional" means a nurse, an advanced practice nurse prescriber, a physician's assistant or a physician who are licensed or certified to practice in Wisconsin.

(10) "Institution" means a type 1 secured correctional facility operated by the department.

(11) "Mental health facility" means any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including, but not limited to, inpatient and outpatient programs, community support programs and rehabilitation programs.

(12) "Mentally ill" means that a youth has a substantial disorder of thought, mood, perception, orientation or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life in an institution.

(13) "Nurse" means a registered or licensed practical nurse as defined by ch. 441, Stats.

(14) "Parent" has the meaning given in s. 938.02 (13), Stats.

(15) "Physician" means a person licensed as a physician under ch. 448, Stats.

(16) "Physician's assistant" means a person licensed to practice as a physician's assistant under ch. 448, Stats.

(17) "Psychologist" means a person licensed to practice psychology under ch. 455, Stats.

(18) "Shift supervisor" means a staff member designated by the superintendent to perform supervisory functions under this chapter on a particular shift.

(19) "Staff" means a person employed by the institution or under contract by the department.

(20) "Superintendent" means the superintendent of a type 1 secured juvenile correctional facility or that person's designee.

(21) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19), Stats.

(22) "Youth" means a person or persons under the supervision of the department in an institution consistent with the requirements of law and regardless of age.

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

**DOC 375.04 Observation.** (1) **CRITERIA.** Observation is an involuntary non-punitive status used for the temporary confinement of a youth to ensure the individual's safety and the safety of others. A youth may be placed in observation if any of the persons listed in sub. (2) (b) have reasonable cause to believe that one or more of the following are true:

- The youth is mentally ill and dangerous to self or others.
- The youth is exhibiting symptoms of acute mental distress.
- The youth has a communicable disease, infection or other medical problem that requires separation from the institution population for treatment by a physician.

(2) **PLACEMENT AUTHORITY.** (a) Any staff member may recommend to a supervisor that a youth be placed in observation. The staff member shall state in writing the reasons for the recommendation and describe the conduct or condition that forms the basis for the recommendation.

(b) If there is reasonable cause to believe that the criteria under sub. (1) are met, a youth may be placed in observation only by one or more of the following:

- A psychologist or physician.
- Any health services professional, if a psychologist or physician is not available for consultation, either in person or by telephone.
- The superintendent.
- The shift supervisor with the approval of the superintendent.

(3) **EXAMINATION.** (a) *Review of placement.* 1. If a youth is placed in observation under sub. (2) (b) 2., 3. or 4., a psychologist or physician shall examine the youth and evaluate the placement to verify a condition under sub. (1) as soon as practical, but in no case may the examination take place later than 3 days after placement.

2. A psychologist or physician shall examine a youth placed in observation under sub. (1) (a) or (b) as needed, but at least every 3 days, to determine if the placement is consistent with the requirements of this chapter.

3. A health services professional shall examine a youth placed in observation under sub. (1) (c) as needed, but at least every 3 days, to determine if the placement is consistent with the requirements of this chapter.

4. If a physician, psychologist or health services professional's examination under this paragraph determines that a youth does not meet the requirements for observation under sub. (1), the youth shall be promptly released from observation.

(b) *Voluntary transfer.* If a psychologist or physician determines that a youth needs treatment in a mental health facility, staff shall ask for written consent to transfer to a mental health facility from: the parent or guardian, if the youth is under 14 years of age; the parent or guardian and the youth if the youth is 14 through 17 years of age; and the youth only if the youth is 18 years of age or older. If individual required to consent does so in writing and the superintendent approves, the psychologist or physician shall initiate the voluntary transfer procedure by contacting the mental health facility to obtain information regarding bed availability. All legal requirements under ch. 51, Stats., for voluntary transfer shall be followed.

(c) *Involuntary transfer.* If an institution cannot obtain consent under par. (b), a physician or psychologist may recommend involuntary transfer of the youth to the superintendent. If the superintendent approves, the psychologist or physician shall initiate the involuntary transfer procedure by contacting the mental health facility to obtain information regarding bed availability. All legal requirements under ch. 51, Stats., for involuntary transfer shall be followed.

(d) *Medical need.* If a youth is placed in observation under sub. (1) (c), a health services professional shall document the youth's medical treatment needs and review the youth's status as needed. If a youth's medical needs cannot be met at the institution, the superintendent shall promptly transfer the youth to an appropriate medical facility.

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

**DOC 375.05 Limits on time in observation.** (1) A youth placed in observation under s. DOC 375.04 (1) (a) may not remain in observation longer than 14 days unless notice of review of the youth's status under s. DOC 375.06 (2) has been served, the superintendent has approved a voluntary or involuntary transfer under s. DOC 375.04 (3) (b) or (c) and legal proceedings under ch. 51, Stats., have been initiated. The superintendent shall promptly inform the administrator if a youth is kept in observation beyond 14 days and the administrator shall review the need for observation at least every 7 days after the youth has been in observation for 14 days.

(2) A youth placed in observation under s. DOC 375.04 (1) (b) may not remain in observation for longer than 14 days.

(3) A youth placed in observation under s. DOC 375.04 (1) (c) may remain in observation for a reasonable period of time for diagnosis and, if necessary, treatment until the disease or condition is in remission or the youth has passed the communicable stage of the disease or infection.

(4) When a youth is placed in observation, the superintendent shall give the youth written notice of this section and s. DOC 375.10.

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

**DOC 375.06 Review of need for continued observation.** (1) If a physician or psychologist determines that observation of a youth under s. DOC 375.04 (1) (a) must continue beyond 14 days and the superintendent has initiated transfer proceedings under s. DOC 375.04 (3) (b) or (c), a psychologist or physician, other than the person who made the original placement, shall review the need for continued confinement of the youth following notice under sub. (2).

(2) The psychologist or physician who conducts the review under sub. (1) shall serve written notice of the review on the youth within 14 days after the youth is first placed in observation. Notice shall include:

(a) The allegation of the youth's mental illness and dangerousness.

(b) The standards used to determine mental illness and dangerousness.

(c) The evidence to be considered at the review.

(d) The sources of information relied upon, unless such disclosure would threaten personal safety or institution security. If information is not disclosed, the notice shall state that information is not being disclosed and the reason it has not being disclosed.

(e) An explanation of the possible consequences of the review.

(f) An explanation of the youth's rights at the review which include all of the following:

1. The right to be present.

2. The right to deny the allegation.

3. The right to an advocate in accordance with s. DOC 373.74 and the right to present or have the advocate present information obtained from witnesses.

4. The right to present documentary evidence.

5. The right to question witnesses.

6. The right to receive a written decision, stating the reasons based upon the evidence.

7. The right to appeal the finding in accordance with s. DOC 375.10.

8. The date, time and place of the review and an order that the youth appear at the review.

(3) The review under sub. (1) shall take place not sooner than 2 days and not later than 5 days after service of notice to the youth. The youth may not waive the review or the time limits under this subsection.

(4) All of the following procedures apply at the review under sub. (1):

(a) The person conducting the review shall read aloud the allegations of the youth's dangerousness and mental illness.

(b) All witnesses present including the youth and the staff member who recommended the placement into observation shall have an opportunity to speak.

(c) The person conducting the review may require that available evidence be offered.

(d) The youth may ask questions or submit written questions to be asked of a witness. Repetitive, disrespectful, or irrelevant questions may be forbidden.

(e) The person conducting the review shall maintain a written record consisting of exhibits presented at hearing and a summary of witness statements.

(f) If the person conducting the review determines that a witness shall not be called or that the identities or sources of information relied upon or any statements or evidence should not be included in the record, because personal safety or institution security is implicated, the omission shall be noted in the record. Witness availability shall be determined consistent with s. DOC 373.76 (3).

(5) After the review under sub. (1), the person conducting the review shall deliberate in private considering only the evidence presented, the youth's records and the definitions of dangerous-

ness and mental illness in this chapter. The superintendent shall immediately release the youth from observation if the person conducting the review determines that the youth is not both mentally ill and dangerous. If the person conducting the review determines that the youth is both mentally ill and dangerous, the youth shall remain in observation. The reasons for the decision shall be given to the youth orally and in writing within 5 days after the decision is issued.

(6) The superintendent shall require a review under sub. (1) at least once every 21 days after issuance of the decision under sub. (5). A youth may not be confined in observation for more than 60 days from the day the youth is placed in observation, unless the administrator grants an extension of that time period. The reviews under sub. (1) must be conducted at least every 21 days during a period of extension.

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

**DOC 375.07 Conditions of observation.** (1) Staff shall confine a youth in observation status in a room appropriate to meet the purposes of this chapter. The youth may have access to common areas if behavior permits such access. The youth shall be entitled to the same privileges and property as youth in the general population, unless any of the following apply:

(a) The person who placed the youth in observation under s. DOC 375.04 (2) or the supervisor on the observation unit where the youth is placed reasonably believes that the privileges or property may be used by the youth or another youth in observation to harm self or another person.

(b) The property is not permitted, because of the security needs of the observation unit.

(2) Staff shall promptly remove any privilege or property used by a youth in observation to harm self or another person. The superintendent shall promptly review the decision and may restore the privilege or property if it is safe to do so.

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

**DOC 375.08 Supervision.** (1) Staff shall have unimpeded access to youth placed in observation under s. DOC 375.04 (1) (a) or (b), shall observe the youth at least once every 15 minutes and shall accompany the youth at all times while the youth is out of his or her room.

(2) Staff shall use the most appropriate setting to achieve the objectives of this chapter and to treat youth in observation. Staff shall make a reasonable effort to interact with youth throughout each day.

(3) The shift supervisor shall promptly inform a health services professional, psychologist or crisis intervention worker of any suicide attempt or other self-harm that occurred prior to or during placement in observation. Staff shall promptly report all placements into and transfers from observation and any suicide attempts prior to or during placement in observation to the superintendent.

(4) A psychologist or health services professional shall provide appropriate treatment and document the youth's progress in treatment while the youth is in observation. The psychologist or health services professional shall document in the youth's file specific descriptions of incidents that may relate to the youth's mental illness, dangerousness, mental distress or physical condition.

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

**DOC 375.09 Removal from observation.** A youth shall be returned to previous status and assignment or shall be re-assigned by the institution programming authority after removal from observation, with particular attention given, as appropriate, to the special needs which required placement in observation status. A youth may be returned to observation consistent with this chapter.

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

**DOC 375.10 Appeal.** (1) A youth placed in observation under s. DOC 375.04 (1) (a) who does not receive timely reviews in accordance with this chapter or who has had an adverse decision under s. DOC 375.06 (5) may appeal to the administrator.

(2) A youth placed in observation under s. DOC 375.04 (1) (b) who does not receive timely reviews in accordance with this chapter or who has had an adverse decision under s. DOC 375.04 (3) (a) 2. may appeal to the administrator.

(3) A youth placed in observation under s. DOC 375.04 (1) (c) for more than 5 days may appeal to the administrator.

(4) The administrator may request an additional clinical or medical assessment of a youth's condition prior to completing a written decision, which the administrator shall issue to the youth and appropriate staff within 5 days of receipt of the appeal.

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

**DOC 375.11 Report to administrator.** A superintendent shall provide the administrator with a written report every 3 months which identifies by name each youth placed in observation, the reasons for the placement, the date the youth was placed in observation and the date the youth was released from observation.

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