

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES

To create HFS 95, relating to the use of force to prevent escapes, pursue and capture escaped persons detained or committed under Ch. 980, Stats., and to provide security at facilities housing such persons.

Analysis Prepared by the Department of Health and Family Services

This order creates rules to guide the use of force to prevent escapes and recapture escaped persons detained or committed under Ch. 980, Stats., and to provide security at the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., and any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.

1999 Wisconsin Act 9 created s. 46.058(2m), Stats. That law requires the department to establish rules to define the use of "necessary and appropriate force" in relation to preventing escapes and in pursuing and capturing persons detained at or committed under ch. 980, Stats., who have escaped. This order complies with that statutory requirement.

In addition to defining the use of force in such circumstances, this order sets forth standards for the appropriate use of force in order to provide security at facilities housing such persons. Use of force is sometimes required in situations to prevent injuries, regain control of parts of a facility, control disruptive persons, or prevent property damage. This order requires the adoption of policies and procedures to ensure that only so much force is used as is necessary under the circumstances.

This order also sets forth criteria for use of firearms and incapacitating devices. Proper and ongoing training is required.

The department's authority to create these rules is found in ss. 46.055, 46.058(2m), 51.61, 227.11(2), 980.04(1), 980.06 and 980.065(2), Stats. The rule interprets ss.46.055, 46.058(2m), 51.61, 980.04(1), 980.06 and 980.065(2), Stats.

SECTION 1. Chapter HFS 95 is created to read:

CHAPTER HFS 95
USE OF FORCE TO PREVENT ESCAPES, TO PURSUE AND CAPTURE
ESCAPED PERSONS AND TO PROVIDE SECURITY AT
FACILITIES HOUSING SUCH PERSONS
COMMITTED OR DETAINED UNDER CH. 980, STATS.

HFS 95.01 Authority and purpose
HFS 95.02 Applicability
HFS 95.03 Definitions
HFS 95.04 Preventing escapes
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HFS 95.06 Use of force
HFS 95.07 Documentation
HFS 95.08 Training

HFS 95.01 Authority and purpose. Pursuant to the authority vested in the department by ss. 46.055, 46.058(2m), 51.61(9), 227.11(2), 980.04(1), 980.06, and 980.065(2), Stats., the department adopts this chapter to define the use of "necessary and appropriate force" in relation to preventing escapes and pursuing and capturing persons detained at or committed to a facility, center or unit under ch. 980, Stats., who have escaped and to establish security standards at facilities housing such persons. Primary security objectives of the department are to protect the public, staff and patients and to afford patients the opportunity to participate in treatment and activities in a safe setting. Every employee of a facility is responsible for the safe custody of patients.

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

HFS 95.03 Definitions.

- (1) "Administrator" means the administrator of the division.
- (2) "Bodily injury" means physical injury, illness, or any impairment of physical condition.
- (3) "Department" means the department of health and family services.
- (4) "Director" means the superintendent of a facility, or that person's designee.
- (5) "Disturbance" means a situation caused by a patient that disrupts the normal functioning of the facility, including but not limited to any of the following:
 - (a) An assault on any person by 2 or more patients.
 - (b) The taking of a hostage by a patient.

- (c) The destruction of state property or the property of another by 2 or more patients.
- (d) The refusal by 2 or more patients, acting in concert, to comply with an order.
- (e) Any word or acts by two or more patients which incite or encourage other patients to do any of the above.
- (6) "Division" means the division of care and treatment facilities in the department.
- (7) "Emergency" means an immediate threat to the safety of the public, staff or patients of the facility. An emergency includes, but is not limited to any of the following:
 - (a) A utility malfunction.
 - (b) A fire.
 - (c) A bomb threat or an explosion.
 - (d) A natural disaster.
 - (e) A civil disturbance.
 - (f) A patient's escape.
- (8) "Facility" means the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., or any secure mental health unit or facility provided by the department of corrections under s. 980.065(2), Stats.
- (9) "Force" means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way.
- (10) "Great bodily injury" means bodily injury which creates a high probability of illness, death or serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
- (11) "Incapacitating device" means any commercially manufactured chemical agent or mechanical device approved by the department for the purpose of incapacitating someone.
- (12) "Lethal force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.
- (13) "Non-lethal force" means force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.
- (14) "Patient" means a person detained at or committed to a facility under ch. 980, Stats.
- (15) "Reasonably believes" means that the actor believes that the use of force is necessary in a given situation and such belief is reasonable under the circumstances.
- (16) "Secretary" means the secretary of the department.

(17) "Security Director" means the security director at a facility, or that person's designee.

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

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

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

HFS 95.06 Use of force. (1) FORCE OPTION CONTINUUM. (a) *Policies and procedures.* The director shall adopt written policies and procedures that establish a systematic progression of force based on the perceived level of threat to guide staff in the use of force in a disturbance or emergency, to prevent escapes or to pursue and capture escapees. This progression includes staff presence, dialogue, empty-hand control, incapacitating devices, and lethal force. The policies and procedures shall be designed to help ensure that force is only used when necessary and that only the amount of force that is necessary under the circumstances is used.

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

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

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

- a. Prevent death or bodily injury to oneself or another.
- b. Prevent unlawful damage to property that may result in death or bodily injury to oneself or another.

c. Regain control of a facility or part of a facility when less forceful means of regaining control are unsuccessful or not feasible under the circumstances.

d. Prevent escape or apprehend an escapee.

2. Staff may not use lethal force if its use creates a substantial danger of harm to non-involved third parties, unless the danger created by not using such force is greater than the danger created by using it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Safe handling of firearms while on duty.

(b) Legal use of firearms and the use of lethal force.

(c) Facility policies and procedures regarding firearms.

(d) Fundamentals of firearms use, including range firing.

(e) In situations where firearms may be used, the manner in which they must be used, including the use of verbal warnings and warning shots.

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

(a) Safe handling of incapacitating devices

(b) Legal use of incapacitating devices and the use of non-lethal force.

(c) Facility policies and procedures regarding incapacitating devices.

(d) In situations where incapacitating devices may be used, the manner in which they must be used, including the use of verbal warnings.

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

Wisconsin Department of Health and
Family Services

Dated: December 7, 2001

By: _____
Phyllis J. Dubé
Secretary

SEAL: