



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-045

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. In the various locations at which s. 46.058, Stats., is cited as authority for the rule, the more specific citation s. 46.058 (2m), Stats., should be provided. That provision provides authority for the department to define by rule “necessary and appropriate force” to prevent escapes of sexually violent persons and to capture escaped sexually violent persons. The rule also pertains to providing security at facilities housing such persons. These facilities include the secure mental health facility under s. 46.055, Stats., the Wisconsin Resource Center under s. 46.056, Stats., and a secure mental health unit or facility provided by the Department of Corrections under s. 980.065 (2), Stats. Section 980.065 (2), Stats., directs the department to promulgate rules governing the custody and discipline of persons placed by the department in the secure mental health unit or facility provided by the Department of Corrections. Therefore, that statute should also be cited as authority for this rule. Any specific statutes authorizing the department to promulgate rules relating to providing security at the other two facilities should also be cited. Finally, the lists of statutes providing authority for this rule in the transmittal page, the analysis and s. HFS 95.01 should be consistent.

b. The rule is replete with requirements that the director of an institution adopt written policies and procedures to govern specified institution activities. To the extent that these anticipated policies and procedures are substantive and capable of uniform expression, rather than merely internal management matters for each institution, they should be promulgated fully in ch. HFS 95, in accordance with the statutory directive that the department promulgate rules.

2. Form, Style and Placement in Administrative Code

- a. In s. HFS 95.01, the statutory cross-references should be cited in ascending order.
- b. In s. HFS 95.03, the definition of “disturbance” in sub. (4) is out of alphabetical order and should be switched with the definition of “director,” currently in sub. (5).
- c. In s. HFS 95.03 (10), the first comma should be replaced by the word “or.”
- d. In s. HFS 95.08 (1), the notation “s.” should be inserted before the first cross-reference. In sub. (2) (intro.), the phrase “all of” should precede the phrase “the following.” These comments also apply to sub. (3) (intro.).

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the analysis, it would be helpful to list the various types of facilities to which the rule applies.
- b. In s. HFS 95.03 (2), “illness” is included in the definition of “bodily injury.” However, it is not included in the definition of “great bodily injury” in sub. (10).” Is there a reason why it is included in one and not the other?
- c. In s. HFS 95.03 (5) and (17), it is suggested that the phrase “that person’s” be inserted before the word “designee.” [See, also, s. HFS 95.06 (2) (a) 1.] Also, in sub. (5), should the term “superintendent” be used to denote the head of a facility, rather than “director,” in order to avoid confusion with the term “security director” under sub. (17) and to be consistent with the use of the word “superintendent” in s. 46.058 (2m), Stats.?
- d. In s. HFS 95.03 (7) (d), it is suggested that the word “Any” be replaced by the word “A.”
- e. In s. HFS 95.03 (10), why is the phrase “serious bodily injury” used? The rule defines the term “bodily injury” and “great bodily injury” and does not appear to use the phrase “serious bodily injury” anywhere else. The use of the latter term could cause confusion.
- f. In s. HFS 95.03 (11), where are the incapacitating devices “approved” by the department? In rules? If no, should they be?
- g. In ss. HFS 95.05 and 95.08, why are the policies not *written*, as is in ss. HFS 95.04, 95.06 and 95.07? Also, in s. HFS 95.05, the word “into” should be inserted after the word “enter” on line 3.
- h. In s. HFS 95.06 (1) (a), the word “progression” should be inserted after the word “This” on line 4.
- i. In s. HFS 95.06 (1) (b) (intro.), the phrase “the use of” should be inserted after the word “that” on line 2.

j. In s. HFS 95.06 (1) (c) 1. (intro.), the word “such” should be inserted after the first “of” on line 2.

k. The following comments pertain to s. HFS 95.06 (2) (b):

(1) In subd. 2., if the intent of the provision is to have *each* staff person present during the firearm discharge incident write a separate written report, that should be clarified by changing the word “all” to “each staff member.” Also, to whom is the written report submitted? Does each staff person submit a report to his or her supervisor? Do all reports go to the director?

(2) In subd. 3., the supervisor is required to investigate the incident and submit a report to the director. Is the supervisor required to forward the reports submitted by “all staff present” to the director? If not, how will the director “send to the administrator the *reports* required by this paragraph”?

l. In s. HFS 95.06 (3) (a), is the word “division” correct or should it be either “director” or “administrator”?

m. In s. HFS 95.06 (3) (d), the comma after the word “used” on line 3 should be changed to the word “and.” Also, might there be circumstances in which medical staff should be consulted *prior to* cleaning off an incapacitating chemical agent, to ensure that it is removed properly and safely?

n. Section HFS 95.06 (4) provides that a staff member taken hostage “has no authority to order use of force” In accordance with s. 1.01 (2), Manual, this prohibition should instead be expressed as “No staff member taken hostage may order the use of force”

o. In s. HFS 95.08 (2) (intro.), the comma following the rule citation on line 1 should be deleted.

p. In s. HFS 95.08 (3) (intro.), should the training in the use of incapacitating devices be “a department-approved training and qualification program,” as is the program for staff authorized to use firearms under s. HFS 95.08 (2) (intro.)? Also, for consistency with the wording in sub. (2) (intro.), the phrase “that shall include instruction on the following” in sub. (3) (intro.) could be rewritten “that includes instruction on all of the following.”