

CR 92-23

CERTIFICATE

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

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to supervision in communities of persons committed to the Department for treatment after being found not guilty of a crime by reason of mental disease or mental defect were duly approved and adopted by this Department on May 27, 1992.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 27th day of May, 1992.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

RECEIVED

MAY 27 1992
10:00 am
Revisor of Statutes
Bureau

8-1-92

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MAY 27 1992

Revisor of Statutes
Bureau

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

To create HSS 98, relating to supervision in communities of persons found not guilty of a crime by reason of mental disease or mental defect.

Analysis Prepared by the Department of Health and Social Services

When a court finds a defendant in a criminal case not guilty by reason of mental disease or mental defect, s. 971.17, Stats., provides that the court commit the person to the Department, and that the commitment order specify either institutional care or conditional release. The specification of conditional release rather than institutional care in an order is for a person who committed an offense on or after January 1, 1991. If the court specifies conditional release (outpatient care), the Department and a county department under s. 51.42, Stats., are to prepare a plan for treatment and other services the person is to receive in the community, and the person on conditional release is made subject to conditions set by the court and to rules of the Department. Until the recent amendment of s. 971.17 (3) (e), Stats., by 1991 Wisconsin Act 39, the rules referred to were those of the Wisconsin Department of Corrections. With the modification of s. 971.17 (3) (e), Stats., by Act 39, the Department must have its own rules for field supervision of these persons as well as for field supervision of persons committed to the Department for institutional care under s. 971.14 or 971.17, Stats., and subsequently conditionally transferred or discharged under supervision under s. 51.37(9), Stats. These are the rules. They are modelled on ch. DOC 328, the Department of Corrections rules for parolees.

These rules will replace emergency rules. The statutory changes requiring the Department to have its own rules for the field supervision of persons committed to the Department under s. 971.17, Stats., and only its rules for the field supervision of persons committed to the Department under s. 971.14, Stats., went into effect, as provided in ss. 9312(1p) and 9412(2) of Act 39, on October 1, 1991. Those statutory changes also authorized the Department to contract with the Department of Corrections for supervision of the affected clients in accordance with new rules. The contract went into effect on December 15, 1991, the date that emergency rules were effective. The Department published emergency rules because it had to act quickly to protect the public by establishing a legal basis for supervising criminal defendants committed to the Department for treatment whose mental commitment order specified conditional release or who had been conditionally transferred or discharged under supervision from a state mental health institute.

The proposed replacement permanent rules cover agent responsibilities, rules and conditions of a client's supervision, levels of supervision, notice to local law enforcement agencies that a client will be under field supervision, management of a client's financial resources, transfer of the client within Wisconsin, resolution of client complaints, purchase of services for clients, agent action when a client absconds or when contraband is found in the client's possession, use of force, use of mechanical restraints, searches, taking a client into custody and transporting the client, the predispositional report and maintenance of a case record on a client.

The Department's authority to create these rules is found in ss. 51.37(9) and 971.17(3)(e), Stats. The rules interpret ss. 46.03(1) and (5), 51.37(9) and 971.17(3) to (6) Stats.

SECTION 1. HSS 98 is created to read:

Chapter HSS 98
FIELD SUPERVISION OF CLIENTS

Subchapter-I. General

HSS 98.01	Authority and purpose	HSS 98.14	Contraband
HSS 98.02	Applicability	HSS 98.15	Discharge
HSS 98.03	Definitions	HSS 98.16	Revocation

Subchapter-II. The client under supervision

HSS 98.04	Field supervision
HSS 98.05	Prerelease planning
HSS 98.06	Notice to law enforcement of client release to supervision
HSS 98.07	Funds, property and loans
HSS 98.08	Intrastate transfer
HSS 98.09	Cooperation with other jurisdictions
HSS 98.10	Client complaint process
HSS 98.11	Purchase of services
HSS 98.12	Absconding
HSS 98.13	Fraternization

Subchapter-III. Use of force and related matters

HSS 98.17	Definitions
HSS 98.18	Use of force
HSS 98.19	Mechanical restraints
HSS 98.20	Chemical agents and firearms
HSS 98.21	Search and seizure
HSS 98.22	Custody and detention
HSS 98.23	Transporting clients in custody

Subchapter-IV. Records and reports

HSS 98.24	Predispositional investigation report
HSS 98.25	Modified predispositional investigation report
HSS 98.26	Sources of information for predispositional report
HSS 98.27	Recordkeeping

Subchapter I - General

HSS 98.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 51.37(9) and 971.17(3)(e), Stats., to provide rules for supervision in communities of persons who are committed to the department and placed under its control after being found not guilty by reason of mental illness or defect of having committed a crime. Supervision is intended to provide for the public's safety, promote social reintegration, reduce repetition of crime and carry out the statutory directives under s. 46.03(1) and (5), Stats. The following goals and objectives are relevant for fulfillment of these purposes:

(1) To supervise and control offenders to the extent necessary to protect the public, staff and clients;

(2) To provide clients with opportunities for obtaining education, training, work experience, coping skills and other programs and services to enable them to live constructive lives;

(3) To provide access to community-based programs for persons on supervision for whom those programs are desirable and necessary;

(4) To establish necessary guidelines, procedures, and controls to maintain program, staff and fiscal accountability and to promote program efficiency and effectiveness;

(5) To cooperate with other public and private agencies in activities directed at preventing crime and mental illness and providing alternatives to institutionalization; and

(6) To protect the health and rights of all persons involved in the department's programs and activities.

HSS 98.02 APPLICABILITY. This chapter applies to the department and to all persons under its custody and supervision who were committed to the department after being found not guilty by reason of mental disease or mental defect of a crime and for whom the commitment order specifies conditional release or who were conditionally transferred or discharged by the department to field supervision.

HSS 98.03 DEFINITIONS. In this chapter:

(1) "Absconding" means the failure of a client to make himself or herself available as directed by the agent.

(2) "Administrator" means the administrator of the department's division of care and treatment facilities or designee.

(3) "Agent" means the employe of the division or a person under contract to the division who may be assigned the responsibilities of an agent under this chapter.

(4) "Client" means a person who is committed to the custody of the department for treatment purposes and is under the department's field supervision.

(5) "Collateral" means a family member, friend, employer, teacher or any person who has contact with or information about a client.

(6) "Commitment term" or "term" means that period of time during which the client is under commitment to the department.

(7) "Conditionally transferred or released" means released from an institution to field supervision, in accordance with s. 51.37(9), Stats.

(8) "Conditions" means specific regulations imposed on the client by the court or the department.

(9) "Contacts" means communications between an agent and a client or collateral.

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

(11) "Department of corrections cashier" means the cashier whose services are provided to the department under contract for the purposes set out in s. HSS 98.07.

(12) "Discharge" means the successful completion of the term of supervision by a client.

(13) "Division" means the department's division of care and treatment facilities or an organization under contract to the department to carry out responsibilities of the division under this chapter.

(14) "Field staff" or "staff" means the professional and paraprofessional workers of the department or under contract to the department assigned the responsibility for the control and supervision of clients and provision of program services to clients.

(15) "Field supervision" or "supervision" means the control and supervision of clients exercised by field staff.

(16) "Intoxicating substance" means anything which if taken into the body may alter or impair normal mental or physical functions, including lysergic acid diethylamide, cocaine, marijuana, alcohol or any controlled substance as defined in ch. 161, Stats.

(17) "Physical custody" means actual custody of the person in the absence of a court order granting custody to the physical custodian.

(18) "Referral" means the introduction of a client to an agency or service to obtain necessary or desired assistance.

(19) "Regional chief" means that employe of the department or person under contract to the department responsible for the administration of the program of field supervision under this chapter in a particular area of the state, or designee.

(20) "Reporting" means the required contact between the agent and client determined by the rules or conditions of supervision.

(21) "Revocation" means the removal of a client from supervision in accordance with s. 971.17(3)(e), Stats.

(22) "Rules" means those written departmental regulations applicable to a specific client under supervision.

(23) "Secretary" means the secretary of the department.

(24) "Supervisor" means an employe of the department or a person under contract to the department responsible for the supervision of agents.

(25) "Transfer" means the change of a client assignment to a new agent in accordance with this chapter.

(26) "Waiver" means the written relinquishment of known rights by a client.

(27) "Working day" means any day, Monday through Friday, except a legal holiday.

Subchapter II - The Client under Supervision

HSS 98.04 FIELD SUPERVISION. (1) GENERAL. Supervision is a mechanism of control and an attempt to guide clients into socially appropriate ways of living. Field staff are to provide individualized supervision of clients in a manner consistent with the goals and objectives of this chapter. Specifically, field staff are to attempt to help clients be successfully reassimilated into the community, help clients adjust to and cope with community living, reduce crime, and protect the public.

(2) AGENT RESPONSIBILITIES. An agent shall abide by this chapter. An agent's responsibilities upon receiving a client for control and supervision shall include:

(a) Obtaining information necessary for appropriate supervision and control of the client;

(b) Evaluating the client's needs and security risk and classifying the client's supervision as intensive, maximum, medium or minimum in accordance with sub. (4);

(c) Determining the short-term and long-term goals and objectives of the client's overall supervision consistent with the court order;

(d) Establishing written rules of supervision that supplement existing court-imposed conditions, and providing the client with a copy of them;

(e) Informing the client of the possible consequences of not abiding by the rules and conditions of supervision;

(f) Explaining the conditions and rules of supervision and the reporting requirements immediately upon the client's reception to field supervision in a manner the client can understand;

(g) Informing the client of the client complaint process under s. HSS 98.10;

(h) As necessary, providing individualized counseling designed to foster growth and development of the client;

(i) Informing the client of local law enforcement registration requirements that apply to the client;

(j) Monitoring the client's compliance with the conditions and rules of supervision to ensure that the client is appropriately controlled and the public is protected;

(k) Periodically reassessing the client's needs and risks, and reevaluating the client's supervision in light of meeting those needs;

(l) Making appropriate referrals to other agencies for client services;

(m) Maintaining complete and accurate case records for each client under supervision in accordance with s. HSS 98.27;

(n) Monitoring the client's progress where services are provided by another agency and evaluating the need for continuation of the services;

(o) Recommending transfer, discharge, revocation and any other appropriate actions under this chapter or otherwise, for the necessary care and control of the client and the protection of the public consistent with the purposes, goals and objectives under this chapter;

(p) Supervising persons committed under ss. 971.14 and 971.17, Stats., who are conditionally released by the court or conditionally transferred by the department in accordance with the agreement between the department and the department of corrections;

(q) Conducting periodic institution contacts with institutionalized clients when necessary;

(r) Reporting child abuse cases under s. 48.981, Stats., to the appropriate authority;

(s) Reporting to a supervisor as directed on the status of all clients under supervision;

(t) Maintaining an effective and cooperative working relationship with public and private client service agencies;

(u) Reporting all violations of the criminal law by clients to a supervisor or appropriate law enforcement authority; and

(v) Assisting in the development of release plans in accordance with s. HSS 98.05.

(3) RULES AND CONDITIONS OF SUPERVISION. When supervision begins, an agent shall meet with a client to review or develop written rules and specific conditions of the client's supervision, or both. These rules shall require that the client:

(a) Avoid all conduct which is in violation of state statutes or municipal or county ordinances or which is not in the best interests of the public or the client's rehabilitation;

- (b) Report all arrests and police contacts to an agent within 72 hours;
- (c) Make every effort to accept the opportunities and counseling offered by supervision;
- (d) Inform the agent of his or her whereabouts and activities as directed;
- (e) Submit a written monthly report to the agent and any other relevant information as may be required;
- (f) Secure advance approval from an agent for a change of residence or employment, except that in the event of a housing or employment emergency notify the agent of the change within 72 hours;
- (g) Obtain advance permission from an agent to purchase, trade, sell or operate a motor vehicle;
- (h) Secure advance approval from an agent to borrow money or purchase on credit;
- (i) Obtain advance permission from an agent to purchase, possess, own or carry a firearm or other weapon. An agent may not grant a client permission to possess a firearm if the client is prohibited from possessing a firearm under s. 941.29, Stats., or federal law;
- (j) Make himself or herself available for searches or tests ordered by the agent including but not limited to urinalysis, breathalyzer, and the taking of blood samples or search of residence or any other property under his or her control; and
- (k) Follow any specific rules that may be issued by the agent to achieve the goals and objectives of this chapter. The rules may be modified at any time as appropriate.

(4) LEVELS OF SUPERVISION. Monitoring of a client by an agent shall be done through one of 3 levels of supervision, as follows, unless modified by the administrator of the department of corrections, division of probation and parole:

(a) Maximum level of supervision. Maximum supervision shall require a minimum of one face to face contact with the client by an agent every 14 days. A home visit shall be made at least once every 30 days unless this requirement is waived by a supervisor in writing, and collateral contacts shall be made by the agent as deemed appropriate. The client shall submit a monthly report to the agent personally which includes verification of the client's residence and employment.

(b) Medium level of supervision. Medium supervision shall require a minimum of at least one face to face contact with the client by an agent every 30 days. A home visit shall be made at least once every 60 days unless this requirement is waived by a supervisor, and collateral contacts by the agent shall be made as deemed appropriate. The client shall submit a monthly report to the agent

personally which includes verification of the client's residence and employment as required.

(c) Minimum level of supervision. Minimum supervision shall require a minimum of one face to face contact with the client by an agent every 90 days. Home visits by the agent shall be made as deemed appropriate. The client shall submit a periodic report, and shall verify his or her residence and employment once every month. The monthly report may be mailed rather than submitted in person if a supervisor approves.

(5) REASSESSMENT. Any time after the client's most recent reassessment, the agent shall determine whether the client shall be placed in a different level of supervision consistent with the needs and risks of the client. The determination shall be based only upon the agent's assessment of the appropriate supervision necessary to provide for the proper care and control of the client and the protection of the public subject to the written approval of a supervisor.

(6) ACTION IN THE EVENT OF NONCOMPLIANCE. If a client fails to comply with the written conditions or rules of his or her supervision, that failure may result in modification of conditions or rules of supervision or revocation.

HSS 98.05 PRERELEASE PLANNING. The prerelease plan shall be prepared by the client and institution staff or by the department and the county department under s. 51.42, Stats., as appropriate. After the client and institution or the department and county department under s. 51.42, Stats., have prepared a proposed plan, the agent shall investigate the plan, comment as to its appropriateness and suggest modifications if necessary. The results of the investigation shall be reported to the institution or department promptly, so the results may be included in the institution's report to the committing court.

HSS 98.06 NOTICE TO LAW ENFORCEMENT OF CLIENT RELEASE TO SUPERVISION. Before releasing a client to field supervision, the department shall notify the municipal police department and the county sheriff in the area where the individual will reside, unless the municipal police department or the county sheriff's office has submitted to the department a written statement waiving the right to be notified.

HSS 98.07 FUNDS, PROPERTY AND LOANS. (1) In this section, "financial resources" means any special benefits the client is eligible for, e.g., benefits from the social security or veteran's administration or railroad retirement fund, any income earned by the client, any money in a savings or checking account controlled by the client, any unearned income given to the client, e.g., from family or friends, and any income the client receives through inheritances, grants or income tax refund.

(2) An agent may assist in the management of the financial resources of a client. When an agent manages money under this section, the agent shall specify the reason the client's money is being managed and the facts supporting that reason. The management of the client's funds may be done only through a savings account in the client's name administered in accordance with this section and only if one of the following applies:

(a) The client requests it;

(b) The agent believes that management is necessary to control the client's funds and to teach mature money management so that the client may develop skills for a more successful reassimilation into the community upon discharge;

(c) Reimbursement is necessary for the cost of purchased services provided to the client by the department; or

(d) The agent believes that management is necessary to ensure compliance with the client's existing financial obligations.

(3) An agent may require the client to provide financial information to assist in the management of the client's financial resources, including but not limited to:

(a) The amount and source of all the gross annual earned and unearned income of the client;

(b) The names of the people in the client's household dependent upon the income under par. (a);

(c) The names and addresses of all third party payors to, or on behalf of, the client such as insurance companies or medical assistance programs, and relevant policyholders and account claim numbers;

(d) The work-related expenses of the client;

(e) Any outstanding court obligations or judgments against the client;

(f) The social security number of the client, and any other claim numbers for special benefits for which the client may be eligible; and

(g) Federal or state income tax returns.

(4) All financial resources of a client managed by an agent shall be deposited directly into the client's account upon receipt.

(5) An agent shall maintain a personal receipt book, provided by the department of corrections, containing sequentially numbered receipt forms. If an agent receives money (cash, a check or money order) on behalf of a client from anyone, the agent shall immediately issue that person a receipt indicating the date the money was received, the name of the person, the name of the client and the amount of money received. No temporary receipts may be issued and all receipts voided shall be marked "VOID" and retained in proper sequence in the receipt book. Checks or money orders paid to the order of the agent may be accepted by the agent and shall be restrictedly endorsed to the order of the department of corrections. If the agent receives cash on behalf of a client, it shall be converted to a money order payable to the department of corrections within one working day of its receipt. Any employe of the division who is assigned a receipt book shall comply with this subsection.

(6) An agent shall transmit all collections received on behalf of clients to the department of correction's cashier for deposit into the client's account at the close of the work week within which it was collected. Any employe of the division who is assigned a receipt book shall comply with this subsection.

(7) An agent shall maintain a personal remittance sheet book and sequentially numbered remittance sheet forms. When an agent transmits collections received on behalf of clients to the department of corrections' cashier, a remittance sheet stating the issued receipt numbers, the dates the money was received, the names of the clients who are to have the money credited to an account and the amount of money credited to each client's account, shall accompany the collections. All voided receipts shall be recorded on the remittance sheet. The agent may not submit personal checks drawn on his or her account. Any employe of the division who is assigned a receipt book shall maintain remittance sheets and shall comply with this subsection.

(8) An agent's supervisor shall audit the agent's management of a client's financial resources semiannually, at the termination or upon transfer of his or her employment as an agent or division employe, and when a receipt book is filled.

(9) An agent shall file a disbursement order with the department of corrections cashier drawn on the client's savings account when payments towards the client's bills are due or when the client, with the agent's permission, wishes to withdraw money. A disbursement order shall state the name of the person or agency to receive the money, the amount of money to be disbursed and the purpose for the disbursement, and shall include an itemized account of how the money is to be spent if this is applicable. No money shall be disbursed unless the order is signed by the client and the agent. A disbursement order requesting a disbursement of \$250.00 or more shall not be honored by the department of corrections cashier unless it contains the signature of the agent's supervisor. A disbursement order may be filed with the department of corrections cashier authorizing the payment of a client's bills, for instance, for rent, on a routine basis.

(10) An agent and the department of correction's cashier shall maintain accurate and complete itemized records of all disbursements from or deposits to a client's account. An agent shall record this information on a ledger sheet contained in the client's record. The department of corrections cashier shall maintain the official department record.

(11) An agent may seek a wage assignment against a client if it is necessary to assure timely collection of restitution and court costs and to control the client's earnings.

(12) All funds in a client's savings account administered by the department of corrections cashier shall be disbursed to the client through the agent upon the client's discharge.

(13) One year after a client absconds, any funds remaining in a client's savings account administered by the department may be used to extend loans to

other clients. Within 5 years after such a transfer, any person upon proof of ownership may have the funds repaid to them in accordance with the law.

(14) An agent may not receive or store any property for a client except as provided under s. HSS 98.14.

HSS 98.08 INTRASTATE TRANSFER. (1) CRITERIA. A client may request transfer to another geographical area of the state if transfer is consistent with the goals and objectives of supervision for the client, and:

(a) The client's family has moved to the area and the transfer is considered advisable to maintain or strengthen familial ties; or

(b) The client has obtained verified residence, employment or schooling in the area.

(2) RECOMMENDATION. An agent may recommend a transfer and, if that agent obtains supervisory approval, shall prepare a transfer summary and recommendation which should be sent with the client file directly to the designated receiving office.

(3) INVESTIGATION. A transfer is authorized only after the receiving agent investigates the transfer request, obtains supervisory approval, and then acknowledges the transfer in writing. Any rejection of the transfer by the receiving agent is to have the receiving agent's supervisor's written approval of the reasons for the rejection and shall be provided to the agent in writing and communicated to the client. The agent shall notify the receiving agent as soon as possible of the client's anticipated arrival in the designated area.

(4) INITIAL MEETING. The client and new agent shall meet within 10 working days after the receiving agent has been notified of the client's arrival to the new area to discuss the goals and objectives of the client's supervision and confirm an understanding of the rules and conditions of the client's supervision. Any modification of the rules of supervision shall be explained to the client prior to its effective date and the client shall be given a copy of it.

(5) RETURN. If the transfer plan is not implemented within 60 days of arrival for reasons other than the client's misconduct, the client may be transferred back to the prior geographical area and agent.

(6) RECORDS. Records relevant to a client's transfer shall be maintained in the client's record.

HSS 98.09 COOPERATION WITH OTHER JURISDICTIONS. The department shall cooperate with other jurisdictions that have signed the uniform act for out-of-state probation and parole supervision to provide for the welfare and protection of clients and the public by means of the return from one state to another of clients who have absconded or escaped and any additional measures for the protection of clients and the public which 2 or more of the party states may undertake cooperatively in accordance with s. 304.13, Stats.

HSS 98.10 CLIENT COMPLAINT PROCESS. (1) PURPOSE. The department shall afford clients an opportunity for administrative review of certain types of decisions through the client complaint process.

(2) OBJECTIVES. The objectives of the client complaint process are:

(a) To allow clients to raise questions in an orderly fashion regarding decisions affecting their supervision;

(b) To encourage communication and cooperation between clients and staff;
and

(c) To resolve problems that arise under supervision in an orderly and uniform fashion.

(3) SCOPE. The client complaint process may be used by any client to obtain a review of a decision which affects the client personally.

(4) EXCEPTIONS. The client complaint process may be used to challenge any decision affecting a client except those concerning:

(a) Revocation;

(b) Custody and detention;

(c) A violation of a criminal law or ordinance;

(d) A denial of use or possession of firearms pursuant to the federal gun control act of 1968, 18 USC 921 to 928 and s. 941.29, Stats.;

(e) Special conditions or terms of supervision imposed by a court; or

(f) Discharge prior to the completion of the term of supervision.

(5) FILING A COMPLAINT. (a) A client may initiate a review of a decision by filing a complaint with the agent.

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

(c) If the complaint is not resolved as provided under par. (b), the client may file a written request for review directed to the agent's supervisor.

(d) A written request for review shall be filed with the supervisor within 5 working days of the decision giving rise to the complaint, except that a supervisor may for good cause accept a complaint after that time.

(6) SUPERVISOR'S INVESTIGATION AND DECISION. (a) Upon receipt of a written request for review, the supervisor shall notify the agent of its receipt. The agent shall be given an opportunity to respond to the complaint in writing within 5 working days of notice to the agent.

(b) The supervisor shall review the complaint and agent's response and may interview the client and others to investigate the complaint within 10 working days of receipt of the complaint.

(c) Within 5 working days after the supervisor's investigation is completed, the supervisor shall issue a written decision, stating the reasons for it. Copies of the decision shall be sent to the client and the agent.

(d) If no decision is issued, the client may appeal under sub. (7).

(7) APPEAL OF SUPERVISOR'S DECISION. (a) The client or agent may appeal the supervisor's decision in writing within 5 working days to the regional chief, stating the reasons for the appeal and requesting further review.

(b) The regional chief shall review the client's complaint and the supervisor's decision and may investigate the complaint and issue a written decision stating the reasons for it within 10 working days of receipt of the appeal. Copies of the decision shall be sent to the client, the client's agent, and supervisor.

(8) APPEAL OF THE REGIONAL CHIEF'S DECISION. (a) If the client, agent or supervisor disagrees with the decision of the regional chief, he or she may within 5 working days of receipt of the decision, appeal in writing to the administrator of the department of corrections, division of probation and parole.

(b) The administrator of the department of corrections, division of probation and parole, shall review all relevant written material, including the client's complaint and the supervisor's and regional chief's decisions, and shall issue a written decision stating the reasons for it within 10 working days of receipt of the appeal. The client, agent, supervisor and regional chief shall be sent copies of the decision. If the administrator is unable to decide within 10 working days, he or she shall notify the parties of this and of the reason for it. In this case a decision shall be rendered within 10 working days of that notification. If the administrator fails to decide, the regional chief's decision shall be final.

(c) The administrator of the department of corrections, division of probation and parole's decision regarding the complaint shall be final.

(d) A copy of the final decision in a complaint will be forwarded to the administrator of the division of care and treatment facilities.

(9) EFFECT OF APPEAL ON DISPUTED DECISION. During the period required under this section to investigate any complaint or review any decision, the affected parties shall comply with the decision under dispute.

(10) EXPEDITED APPEAL. If resolution of a complaint under the periods of time provided for under this section would moot the complaint, the complaint process shall be expedited.

(11) PENALTY. No penalty to a client may result from the mere filing of a complaint by the client.

HSS 98.11 PURCHASE OF SERVICES. (1) If a client requires assistance or materials that cannot feasibly be provided through any other available resource, the department may provide the assistance through individual or group service contracts with service agencies.

(2) The department shall follow established, specific policies and procedures consistent with the goals and objectives of this chapter and s. 46.036, Stats., for the provision of assistance to clients. These guidelines may set priorities for the types of assistance which may be provided by the department.

(3) (a) A client may request and an agent may arrange for assistance to be provided to the client. Documentation of the provision of service shall be maintained in the client's record and that documentation shall include the reasons why the assistance is needed and the agent's attempts to provide the necessary assistance through other sources. The documentation shall be reviewed by the agent's supervisor.

(b) Appropriate staff may audit the provision of services to a client where a purchase of services contract has been entered into.

(4) Assistance to clients may be provided after receiving departmental approval pursuant to the procedures under sub. (2). Purchase of service funds may be used in service of clients by contracting with other service agencies. Approval of the contract is necessary before such services may be provided.

HSS 98.12 ABSCONDING. (1) If a client absconds, an agent shall request that the committing court issue a capias ordering the apprehension of the client.

(2) A violation report shall be prepared for a client who absconds, in accordance with s. DOC 331.03 (4).

(3) An agent shall make reasonable attempts to locate a client who has absconded which may include a letter to the last known address. A certified letter may be used.

(4) As soon as is feasible after a client is located, a field staff member or other department of corrections representative shall meet with the client to discuss the facts underlying the absconding, the possible consequences of it and any extenuating or mitigating circumstances, and shall evaluate the factors contributing to the absconding.

(5) A client shall be continued on supervision if revocation proceedings are not initiated against the client following an absconding, subject to s. 304.072 (1), Stats. Any modification of the rules of supervision made subsequent to the client's absconding shall be discussed with the client prior to their effective date and the client shall be given a copy of them.

(6) Upon notification that a client who has absconded is in custody out of the state of Wisconsin, an agent shall request that the committing court issue a capias ordering the apprehension of the client and submit a petition for revocation of conditional release.

(7) Relevant records relating to a client's absconding shall be maintained in the client's record.

HSS 98.13 FRATERNIZATION. No agent or other department employe may have a nonprofessional relationship with a client, except as permitted by the secretary at the request of the employe.

HSS 98.14 CONTRABAND. (1) In this section, "contraband" means:

(a) Any item which the client may not possess under the rules or conditions of the client's supervision; or

(b) Any item whose possession is forbidden by law.

(2) Any field staff member who reasonably believes that an item is contraband may seize the item, whether or not the staff member believes a violation of the client's rules or conditions of supervision has occurred. The client shall be issued a receipt for the item seized and the supervisor shall be notified in writing of the circumstances of the seizure. Property which is not contraband shall be returned to the owner, if feasible, and a receipt shall be obtained, or disposed of in accordance with this section and a report of the disposal kept.

(3) The supervisor shall dispose of seized contraband after all proceedings in which the contraband may be required have been completed. Disposition shall be as follows:

(a) All confiscated currency, whose true owner cannot be determined, shall be placed in the general fund.

(b) Checks and other negotiable instruments shall be returned to the maker. If it is not possible to determine an address for the maker of the check, the check shall be destroyed.

(c) U.S. bonds and other securities shall be held in the department of corrections cashier's office, and upon proof of ownership, the item shall be returned to the owner.

(d) Property shall be returned to the owner if the owner is known, or sent at the client's expense to another, in accordance with the nature of the property, unless the owner transferred the property in an unauthorized manner. Otherwise, items of inherent value shall be sold through the department of corrections purchasing officer and money received shall be placed in the state's general fund. Items of inconsequential value, that is, having a value of \$5.00 or less, shall be destroyed.

(e) Intoxicating substances, such as alcohol, narcotics or dangerous drugs, shall be disposed of by the client's agent after obtaining supervisory approval or given to a law enforcement agency for use as evidence or for disposal.

(f) Firearms not required for use as evidence shall be disposed of in accordance with s. 968.20, Stats.

(g) Any item originally assigned as property of the state shall be returned to service.

(4) If a client believes that property should be returned or sent out at his or her direction and a decision to dispose of it in a different manner has been made, the client may file a complaint under s. HSS 98.11. The property shall not be disposed of until the complaint is resolved.

HSS 98.15 DISCHARGE. The department shall inform a client of the individualized objectives and conditions of the client's supervision so that the client may be aware of the effort and achievement required of him or her, and to encourage discharge of the client at the earliest possible time consistent with the client's progress in satisfying the objectives and conditions and the protection of the public.

HSS 98.16 REVOCATION. (1) A client committed under s.971.17 Stats., may have his or her conditional release revoked only by the releasing court.

(2) A client released on conditional transfer under s. 51.37(9), Stats., may have his or her conditional transfer revoked only:

(a) On recommendation of the supervising agent who determines that the client presents a risk of physical harm to self or others or has failed to comply with the conditions of conditional transfer;

(b) Following return of the client to the institution for evaluation and detention; and

(c) Following an administrative hearing conducted by the department's office of administrative hearings to ascertain whether there is a preponderance of evidence to substantiate the necessity for rescinding the conditional transfer and ensuring that the action of the department is consistent with the client's treatment needs and the protection of the community.

Subchapter III - Use of Force and Related Matters

HSS 98.17 DEFINITIONS. In this subchapter:

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

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

(3) "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 and physical power or strength.

(4) "Great bodily injury" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ.

(5) "Non-deadly force" means force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.

(6) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though it may be erroneous.

HSS 98.18 USE OF FORCE. (1) Whenever feasible, field staff shall rely on law enforcement authorities to exercise force against clients when force is necessary. When that assistance is not practical, field staff may use force subject to this section. Only so much force may be used as is reasonably necessary to achieve the objective for which it is used.

(2) Corporal punishment of clients is forbidden. This prohibition allows no exceptions and applies to public and private programs.

(3) Non-deadly force may be used by field staff against clients only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:

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

(b) To prevent unlawful damage to property that may result in death or bodily injury to oneself or another;

(c) To prevent a client from fleeing the control of a field staff member;

(d) To change the location of a client; or

(e) To prevent unlawful damage to property.

(4) Non-deadly force may be used to apprehend a client or take a client into custody only in the following manner:

(a) Staff should exhaust all efforts to persuade clients to voluntarily be taken into the custody of field staff prior to using force;

(b) If the client refuses to voluntarily be taken into custody, staff may exercise minimal physical force necessary to apprehend the client. Minimal force should be exercised in the following way:

1. If possible, staff should not attempt to physically handle the client until sufficient staff are present to evidence a show of force;

2. The client should again be asked to voluntarily be taken into custody;

3. If the client refuses to voluntarily be taken into custody, the client may be firmly grasped by one or more staff; and

4. The client shall then be handcuffed behind his or her back or restrained by other appropriate methods;

(c) After use of force, the client and staff should be checked for injury and treated by a physician if necessary. If injury resulted, the regional chief shall be notified and a summary report shall be submitted to the regional chief and the administrator of the division of care and treatment facilities detailing the cause and extent of the injury and the treatment provided for it; and

(d) If force is used, a written report describing the incident including the names of all people who observed the exercise of force shall be submitted to the regional chief and the administrator of the division of care and treatment facilities, and shall be included in the client's record.

(5) Deadly force may not be used by field staff against clients except to prevent death or great bodily injury to oneself or another.

(6) Deadly force may not be used by field staff if its use creates a substantial danger of harm to innocent third parties, unless the danger created by not using such force is greater than the danger created by using it.

(7) The use of excessive force is forbidden. "Excessive force" means force greater than what is reasonably necessary to achieve the objective for which it is used.

(8) In an emergency, field staff may be used at an institution. In those circumstances, staff shall abide by the use of force rules under ch. DOC 306.

HSS 98.19 MECHANICAL RESTRAINTS. (1) Mechanical restraints are limited to handcuffs, handcuffs with restraining belt or chain, restraining chain, leg restraints, and leather and plastic restraints. These may be used to restrain and transport a client, but only in accordance with this section.

(2) Mechanical restraints may only be used in the following circumstances:

(a) To protect staff or others from a client who poses an immediate risk of flight or physical injury to others, unless restrained;

(b) To protect a client who poses an immediate threat of physical injury to himself or herself, unless restrained;

(c) When taking a client into custody; or

(d) To transport a client.

(3) Mechanical restraints shall never be used:

(a) As a method of punishment;

(b) About the head or neck of the client;

(c) In a way that causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the client; or

(d) To restrain a client to a moving vehicle.

(4) When a client is placed in restraints, a staff member shall transport the client to a detention facility, a mental health or medical facility, or to the appropriate law enforcement authorities.

(5) A staff member shall observe a client in restraints at least once every 15 minutes until the restraints are removed, or the client is admitted to a detention facility, mental health facility, or medical facility.

(6) If feasible, a client should be released from restraints to perform bodily functions and for meals.

(7) Except when restraints are used to take a client into custody or transport a client, a report shall be maintained in the client's record of each time the client is placed in restraints. It shall include:

(a) The client's full name, number, and the date the client was placed in restraints;

(b) The name of the staff member who placed the client in restraints;

(c) The reason for placing the client in restraints; and

(d) A statement indicating when, and under what circumstances, the restraints were removed.

(8) Field staff shall have access to mechanical restraining devices which shall be periodically examined. Any excessively worn or defective restraining devices shall be removed from the supply. Only commercially manufactured restraining devices may be used.

HSS 98.20 CHEMICAL AGENTS AND FIREARMS. (1) Chemical agents shall not be used by field staff against clients.

(2) Field staff shall not carry firearms or other weapons during their working hours.

HSS 98.21 SEARCH AND SEIZURE. (1) GENERAL POLICY. A search of a client or the client's living quarters or property may be made at any time, but only in accordance with this section.

(2) PERSONAL SEARCH. (a) In this subsection, "personal search" means a search of a client's person, including but not limited to the client's pockets, frisking the client's body, an examination of the client's shoes and hat, and a visual inspection of the client's mouth.

(b) A personal search of a client may be conducted by any field staff member under one or more of the following circumstances:

1. If the staff member has reasonable grounds to believe that the client possesses contraband;

2. At the direction of a supervisor;

3. Before a client enters and after a client leaves the security enclosure of a correctional institution, jail or detention facility; or

4. When a client is taken into custody.

(c) A written report of every personal search shall be prepared by the staff member who conducted the search and shall be filed in the client's case record.

(3) SEARCH OF LIVING QUARTERS OR PROPERTY. (a) A search of a client's living quarters or property may be conducted by field staff if there are reasonable grounds to believe that the quarters or property contain contraband. Approval of the supervisor shall be obtained unless exigent circumstances, such as suspicion the client will destroy contraband or use a weapon, require search without approval.

(b) There shall be a written record of all searches of a client's living quarters or property. This record shall be prepared by the staff member who conducted the search and shall be filed with the agent's supervisor. If the search was conducted without the supervisor's approval because of exigent circumstances, a report stating what the exigent circumstances were shall be made part of the record and shall be filed with the supervisor within 48 hours of the search. The report shall state:

1. The identity of the client whose living quarters or property was searched;

2. The identity of the staff member who conducted the search and the supervisor, if any, who approved it;

3. The date, time, and place of the search;

4. The reason for conducting the search. If the search was a random one, the report shall state this;

5. Any items seized pursuant to the search; and

6. Whether any damage was done to the premises or property during the search.

(c) If any items are damaged pursuant to the search of a client's living quarters or property, the agent shall document the damage in the case record, inform his or her supervisor and inform the client.

(d) In conducting searches, field staff may not disturb the effects of the client more than is necessary for thoroughness.

(e) During searches, staff may not read any legal materials, any communication between the client and an attorney or any materials prepared in anticipation of a lawsuit. Staff are not prohibited from reading business records.

(f) The agent may not forcibly enter a locked premises to conduct a search if the premises are the living quarters or property of a client and the client is not present.

(4) RESPECT FOR THE CLIENT. Field staff shall strive to preserve the dignity of clients in all searches conducted under this section.

(5) INFORMING THE CLIENT. Whenever feasible before a search is conducted under this section, the client shall be informed that a search is about to occur, why and how the search will be conducted and the place where the search is to occur.

(6) CONTRABAND. In deciding whether there are reasonable grounds to believe that a client possesses contraband as defined in s. HSS 98.16 (1), or that a client's living quarters or property contain contraband, a staff member shall consider:

(a) The observations of staff members;

(b) Information provided by informants;

(c) The reliability of the information relied on. In evaluating reliability, attention shall be given to whether the information is detailed and consistent and whether it is corroborated;

(d) The reliability of the informant. In evaluating reliability, attention shall be given to whether the informant has supplied reliable information in the past and whether the informant has reason to supply inaccurate information;

(e) The activity of the client that relates to whether the client might possess contraband;

(f) Information provided by the client that is relevant to whether the client possesses contraband;

(g) The experience of a staff member with that client or in a similar circumstance;

(h) Prior seizures of contraband from the client; and

(i) The need to verify compliance with rules of supervision and state and federal law.

HSS 98.22 CUSTODY AND DETENTION. (1) Whenever feasible, staff shall rely on law enforcement authorities to take a client into custody. When that assistance is not practical, field staff shall take clients into custody in accordance with this section.

(2) A client shall be taken into custody and detained if the client is alleged to have been involved in assaultive or dangerous conduct. A regional chief may permit exceptions to this requirement.

(3) A client may be taken into custody and detained:

(a) For investigation of an alleged violation by the client;

(b) After an alleged violation by the client to determine whether to commence revocation procedures;

(c) To prevent a possible violation by the client; or

(d) For disciplinary purposes.

HSS 98.23 TRANSPORTING CLIENTS IN CUSTODY. (1) A field staff member may transport a client to jail or other detention facility, to an institution or to court.

(2) A client may be handcuffed or otherwise appropriately restrained when being transported by field staff.

Note: When a client is being taken into custody, it is usually desirable to restrain the client.

(3) Two field staff members shall transport a client whenever feasible, and the client shall be informed of the reasons why he or she is being transported prior to such transport.

(4) Relevant records relating to transport of a client shall be maintained in the client's record.

Subchapter IV - Records and Reports

HSS 98.24 PREDISPOSITIONAL INVESTIGATION REPORT. (1) PURPOSE. The primary purpose of the predispositional investigation report is to provide the court with accurate and relevant information upon which to base its dispositional decision. The report is also important in the planning process. It is used for such things as determining levels of supervision, classification, program assignment, release planning and in the overall treatment of offenders.

(2) COURT ORDER. Upon order of the court, the department shall prepare a predispositional investigation report. It shall contain the information provided for under this section unless the court orders otherwise.

(3) CONTENT. (a) Information. A predispositional report should contain the following information relating to the client:

1. Present offense;
2. Prior criminal record;
3. Prior correctional institution record;
4. Victim's statement;

5. Family information; and
6. Personal history.

(b) Summary and conclusions. A predispositional investigation report shall contain information about the offender's present situation. Pending charges may be included in this information. If department staff conclude the offender has immediate problems that require attention, this shall be stated together with the facts and reasons for that conclusion.

(c) Recommendation. Unless the court otherwise directs, the recommendation or recommendations by department staff for disposition shall be included in the predispositional report. The conclusions of the department staff shall be reported together with the reasons for the conclusions and the facts upon which they are based.

(d) Tentative plan. A tentative treatment plan shall be recommended as part of the predispositional investigation report, addressing any specific conclusions arrived at under par. (b). The plan shall contain the offender's response.

HSS 98.25 MODIFIED DEPARTMENT STAFF PREDISPOSITIONAL INVESTIGATION REPORT.

(1) Upon order of the court, department staff may prepare a predispositional investigation report that contains only the information that the court orders, notwithstanding s. HSS 98.24.

(2) Upon order of the court, department staff may present the report orally in open court or in the judge's chambers. Defense counsel, district attorney, and client may be present.

HSS 98.26 SOURCES OF INFORMATION FOR A PREDISPOSITIONAL REPORT. (1) (a) All sources of information relied upon for an investigation and report shall be identified in writing in the predispositional investigation report unless otherwise ordered under s. HSS 98.25. All sources shall be informed of this requirement.

(b) No pledge of confidentiality may be given to any person by department staff in return for facts included in the report except in accordance with sub. (2).

(2) When a person who supplies information used in a predispositional investigation report may be in danger if identified, department staff shall request that the judge conceal the identity of that person under s. 972.15 (3), Stats.

(3) Arrest records that did not lead to conviction and were not confirmed by the client may not be used as a source of information in a predispositional investigation report, except that adjudications under s. 161.47, Stats., and ch. 54, Stats. (1975), information relating to misdemeanor expunction, and pending charges may be included.

(4) An attempt shall be made to interview the offender during the preparation of the report under ss. HSS 98.24 or 98.25.

HSS 98.27 RECORDKEEPING. (1) A case record of each client shall be maintained by the department. That record shall include:

- (a) Chronological log entries;
 - (b) Periodic case planning summaries prepared in accordance with the department of correction's case classification policies;
 - (c) Case transfer summaries, if any;
 - (d) Supervisory contact summaries;
 - (e) Records of administrative decisions;
 - (f) Reports from community-based residential facilities, if any;
 - (g) A record of all written disclosures of information to social welfare agencies, law enforcement agencies or third parties, and of all information disclosed pursuant to a written request for specific information to social welfare agencies, law enforcement agencies or third parties;
 - (h) The client's court order and any court imposed conditions and obligations;
 - (i) Copies of the client's predispositional investigation report prepared under s. HSS 98.24 or 98.25.
 - (j) The rules and conditions of the client's supervision and the reasons for them;
 - (k) Relevant information regarding institutional experience;
 - (l) Information relating to conditional release or transfer planning, decisions and conditions; and
 - (m) Other information as required by the court or the department.
- (2) The agent shall maintain a chronological log of all case-related contacts.
- (3) The agent shall prepare a case transfer summary as the last entry in the case record when the client's supervision is transferred.
- (4) The agent shall record all relevant information regarding administrative decisions including those relating to a client's alternate care, absconding, revocation, transfer, discharge and extension. The record shall contain documentation of the reasons for each decision.
- (5) The agent shall enter in the client's record all reports received from alternate care facilities, educational institutions or contracting agencies which provide services to the client.

(6) Additional entries to the client's record may be made at any other time if the agent or supervisor determines the entries are necessary or helpful in describing a client's progress or adjustment under supervision.

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

Wisconsin Department of Health and
Social Services

Date: May 27, 1992

By:



Gerald Whitburn
Secretary

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Bureau

Tommy G. Thompson
Governor
Gerald Whitburn
Secretary



Mailing Address:
1 West Wilson Street
Post Office Box 7850
Madison, WI 53707-7850
Telephone (608) 266-3681

State of Wisconsin Department of Health and Social Services

May 27, 1992

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Revisor of Statutes
Bureau

Mr. Bruce E. Munson
Revisor of Statutes
119 Martin Luther King, Jr., Blvd.
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 98, administrative rules relating to supervision in communities of persons committed to the Department for treatment after being found not guilty of a crime by reason of mental disease or mental defect.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules will not affect small businesses as "small business" is defined in s. 227.114(1)(a), Stats. They apply only to the Department, the state agency under contract to the Department to supervise clients under these rules, and certain persons committed to the Department for treatment and conditionally released to field supervision status.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerald Whitburn".

Gerald Whitburn
Secretary

Enclosure