

CR 94-15

CERTIFICATE

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

I, Richard W. Lorang, Acting 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 release of information to the public about runaways from youth correctional institutions and other matters related to security at youth correctional institutions were duly approved and adopted by this Department on March 20, 1995.

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 20th day of March, 1995.

SEAL:



Richard W. Lorang, Acting Secretary
Department of Health and Social Services



5-1-95

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING AND RECREATING RULES

To repeal and recreate HSS 333.03, 336.09 and 336.20, relating to keeping track of the whereabouts of youth at a correctional institution for youth, taking action when a youth runs away from the institution or does not return from an authorized leave and the annual report to the division administrator and department secretary on use of leather mechanical bed restraints, use of chemical agents and body cavity searches at an institution.

Analysis Prepared by the Department of Health and Social Services

When a youth placed at a correctional institution for youth runs away or does not return from an approved leave, the institution needs to take some action, perhaps in the case of a particular youth to protect the public and, in any case, to try to have the youth found and returned to the institution.

This order repeals and recreates the Department's rules for taking action when a youth runs away from an institution or does not return from authorized leave. The rules are repealed and recreated in order to update them. They have not been revised since they were adopted in 1982. Since then s. 48.78(3), Stats., was created. That statute requires the Department to promulgate rules establishing guidelines for the release of information to the public about runaway or non-returning youths who were sent to an institution after having committed a serious offense such as homicide, battery, arson or armed robbery. The proposed revised rules meet that requirement.

The revised rules list the components of a plan which an institution must have and put into effect if a youth has run away or appears to have run away or if a youth does not return from a leave authorized under ch. HSS 341. Most of the required plan components are carried over from the current rules. The revised rules add authorization for release to the public of specified confidential information about certain runaway youths when the Department determines that this is necessary for the protection of the public or for the return of the youths to the institution.

This rulemaking order makes two other changes in ch. HSS 336. There is currently a requirement that a system be in place for keeping track of all youth at an institution. This is modified to add that the system be described in writing and that all staff become familiar with it. The other change is modification of the requirement that each institution superintendent report annually to the Division of Youth Services' Administrator on every application of a leather bed restraint, every use of a chemical agent and every body cavity search at the institution during the preceding 12 months. This is modified so that the report is to be submitted within 30 days after the end of the calendar year and submitted also to the Department Secretary.

The Department's authority to repeal and recreate these rules is found in ss. 46.03 (1) and (6)(a), 48.78(3) and 227.11 (2)(a), Stats. The rules interpret ss. 46.03 (1) and (6)(a) and 48.78(3), Stats.

SECTION 1. HSS 336.03 is repealed and recreated to read:

HSS 336.03 RESIDENT COUNT. An institution shall have a system for accurately accounting for the whereabouts of all youth in its custody at all times. The system shall interfere as little as practical with school, work, program and recreational activities. The system shall be described in writing. All institution staff shall be familiar with the system.

SECTION 2. HSS 336.09 is repealed and recreated to read:

HSS 336.09 RUNAWAYS. (1) PLAN. Each institution shall have a written plan approved by the superintendent to be implemented in the event a youth has allegedly run away from the institution or has not returned from an approved leave. The plan shall provide for:

(a) Notification to the superintendent and the administrator as soon as practicable when a youth has allegedly run away under s. HSS 333.42;

(b) Staff communication;

(c) Notification of local law enforcement authorities that a youth has allegedly run away under s. HSS 333.42 (1)(a) or (b) or failed to return to the institution within the institution-designated return time under s. HSS 333.42 (1)(d), and whether staff are pursuing the youth;

(d) If the superintendent determines that it is necessary for protection of the public or to secure the youth's return to the institution, the superintendent may release information under sub. (3)(b) about the youth. The information may only be released when the youth was adjudicated delinquent for a violation of s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2)(a), 943.23(1g), (1m) or (1r) 943.32 (2), 948.02, 948.03, 948.05, 948.60, 948.605 or 948.61, Stats., or for any crime specified in ch. 940, Stats., and either:

1. Has allegedly violated s. HSS 333.42 (1)(a) or (b); or

2. Has allegedly violated s. HSS 333.42 (1)(d) and fails to return to the institution or other designated facility within 12 hours after the institution-designated return time;

(e) An immediate count of all youth under the institution's custody;

(f) A search of the institution, when necessary;

(g) An investigation into the reason for the runaway; and

(h) Notification of local law enforcement authorities, the superintendent, the administrator and, if the superintendent believes it is necessary, the public of the apprehension of a runaway youth.

(2) CHAIN OF COMMAND. When a youth takes the superintendent or any staff member hostage in a runaway or an attempt at running away, the hostage shall have no authority to order any action or inaction by staff. Any order from a hostage shall be disregarded by staff.

(3) PURSUIT. Any pursuit of a runaway youth by staff shall be done in cooperation with local law enforcement authorities. Until local law enforcement authorities are able to supervise pursuit, staff shall conduct the pursuit under supervision of the superintendent and in accordance with s. HSS 336.04(5).

(4) RELEASE OF INFORMATION. (a) Superintendent's decision. The superintendent shall consider all of the following factors regarding a youth in reaching a decision to release information about the youth under sub. (1)(a) 4:

1. Offenses committed by the youth before admission and at the institution;

2. History of aggressive behavior;

3. Past or recent threats to persons in the community;

4. Behavior while in the institution;

5. Emotional state at the time of the runaway;
6. Circumstances under which youth ran away; and
7. Anticipated community reaction.

(b) Information released. When the superintendent decides to release information about a youth who has allegedly run away, that information may include:

1. The youth's name;
2. A physical description of the youth, including photographs;
3. Information about whether the youth is known to be dangerous and a threat to the public;
4. Information about whether the youth is believed to be armed;
5. Information about where the youth is likely to be heading; and
6. Any other information the department determines is necessary for the protection of the public or to secure the youth's return to the institution.

(5) **WAIVED YOUTH.** A youth waived into circuit court and sentenced under s. 973.013 (3m), Stats., who allegedly runs away from an institution shall be treated as an adult in regard to confidentiality of information.

Note: HSS 336.09. The specified crimes referenced in sub. (1)(d) are the following: negligent handling of burning material (941.10), unsafe burning of buildings (941.11), endangering safety by use of dangerous weapon (941.20), disarming a police officer (941.21), carrying concealed weapon (941.23), carrying firearm in public building (941.235), carrying a handgun in a tavern or liquor store (941.237), possession of switchblade knife (941.24), selling, possessing, using or transporting a machine gun or other full automatic firearm (941.26), possession of a short-barreled rifle (941.28), possession of an electric weapon (941.295), selling, delivering or possessing a firearm silencer (941.298), recklessly endangering safety (941.30), possession of explosives (941.31), administration of dangerous or stupefying drugs (941.32), placing foreign objects in edibles (941.325), arson to

buildings or damage of property by explosives (943.02), arson to property other than buildings (943.03), arson with intent to defraud (943.04), burglary while armed with a dangerous weapon (943.10(2)(a)), taking a vehicle without the consent of the owner while using or threatening to use a dangerous weapon (943.23 (1g), (1m) or (1r)), robbery using or threatening use of a dangerous weapon (943.32(2)), sexual assault of a child (948.02), physical abuse of a child (948.03), sexual exploitation of a child (948.05), possession of a dangerous weapon (948.60), possession or discharge of a firearm in a school zone (948.605), having a dangerous weapon other than a firearm on school premises (948.61) or any crime against life and bodily security specified in ch. 940, Stats., such as homicide, sexual assault or abuse of vulnerable persons.

Subsection (2) states that no hostage, no matter what his or her rank, has any authority while a hostage. A person under such stress cannot be expected to make decisions that affect herself or himself, the institution or youth. To permit a person to retain authority while a hostage is an invitation to take high-ranking officials hostage.

Subsection (3) indicates that the pursuit of runaways must be with the cooperation of local law enforcement officials. In some rural areas, correctional institutions and camps are a great distance from population centers where police are located, and so this subsection authorizes staff pursuit under supervision of the superintendent and in accordance with s. HSS 336.04(5), until local law enforcement authorities are able to take over supervision of the pursuit.

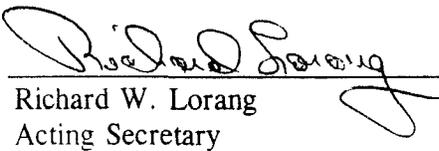
SECTION 3. HSS 336.20 is repealed and recreated to read:

HSS 336.20 ANNUAL REPORT. The superintendent of each institution shall annually submit a written report to the administrator and the department secretary listing each use of leather mechanical bed restraints under s. HSS 336.07 (7), each use of chemical agents under s. HSS 336.05 and each body cavity search under s. HSS 336.13 (4), with the date of the incident and the name of the youth. The report shall also state the justification for each use of bed restraints or chemical agents and each body cavity search. The report shall be submitted within 30 days after the end of the calendar year and shall cover all of the specified incidents during that calendar year. The administrator and the secretary shall review the reports to determine whether any incidents were inappropriate so that corrective measures may be taken.

The repeals and 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: March 20, 1995

By: 
Richard W. Lorang
Acting Secretary

SEAL:

