

CR 91-184

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CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF CORRECTIONS)

I, Patrick J. Fiedler, Secretary of the Department of Corrections and custodian of the official records of the Department, do hereby certify that the annexed rule relating to the secure detention of juveniles was duly approved and adopted by this Department on July 24, 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, 149 East Wilson Street, in the city of Madison, this 24th day of July, 1992.

Patrick J. Fiedler

Patrick J. Fiedler, Secretary
Department of Corrections

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**ORDER
OF
DEPARTMENT OF CORRECTIONS
PROMULGATING CLEARINGHOUSE RULE 91-184 (DOC 346)**

INTRODUCTORY CLAUSE

The Wisconsin Department of Corrections proposes an order to repeal DOC 346.04 and 346.055 and 346.08(4)(b) and 346.08(5)(b)3; to renumber DOC 346.08(4)(a) and 1 and 2 and 3 and 346.08(5)(d); to amend DOC 346.01 and 346.03(8) and (10); to repeal and recreate DOC 346.03(6); to create DOC 346.035 and 346.04(title) and (1) and (2) and (3) and 346.044 and 346.055(title) and (1) and (2) and 346.08(5)(d), relating to secure detention for juveniles.

PLAIN LANGUAGE ANALYSIS

Statutory Authority: Sections 48.209, 301.36, 301.37 and 227.11 (2), Statutes

Statutes interpreted: Sections 48.209, 301.36 and 301.37, Statutes

Reference to the federal Juvenile Justice and Delinquency Prevention Act of 1974 (JJJPA), as amended in 1988, 42 USC 5601 to 5751, and the federal regulations promulgated thereunder (28 CFR

Part 31) have been added under the proposed rule. This incorporation makes parallel the standards for state and federal juvenile jail removal as it relates to the administrative rule.

The current definition of secure detention facility incorporates the definition found in s. 48.02(16) of the Statutes. The proposed rule clarifies that a secure detention facility includes a stand alone facility or a facility located in the same building or on the same grounds as a county jail.

The current definition of a living unit narrowly describes a particular area of a secure detention facility. The proposed change renames the space a "living area" and broadens the definition to include the staff control area. In so doing, counties will have greater flexibility in the use of their facilities for the establishment of secure detention facilities.

Under the proposed rule there may not be any contact between adult inmates and juvenile inmates in both secure detention facilities and the juvenile portion of a county jail. This is consistent with the provisions of the JJDPA and the Wisconsin Jail Removal Plan (revised June, 1990) (WJRP).

The current rule requires an operation plan be submitted by the counties to the department for approval. It requires the inclusion of policies and procedures related to specific program topics contained within the chapter. The proposed changes require the addition of a mission statement, whether the facility will be operated as a secure detention facility or juvenile portion of a county jail, policies and procedures to prevent contact with adult inmates, policies and procedures to ensure backup security in emergencies. The amendment also requires the superintendent to submit the operational plan to the various users of the facilities for their review and comment. Under the new rule the superintendent must conduct an annual meeting bringing together the users of the facilities to discuss the operation of the facility and to review the operational plan as it relates to actual practice.

Under the current rule, the use of a jail for the detention of juveniles may only be as a juvenile portion of a county jail. Through Wisconsin's resumed participation in the JJDP and the conditions of the WJRP, counties can create secure detention facilities in the same building or on the same grounds as the adult jail. In fact, a facility could actually be created in the adult

jail, provided it met all the provisions under this chapter. The proposed changes give the department the authority to approve a facility as either a juvenile portion of the county jail or a secure detention facility.

The proposed change prohibits a person who supervises adult inmates from supervising juvenile inmates in a secure detention facility during the same shift. This is consistent with the requirements of the JJDPa and the WJRP. However, under the proposed rule, counties may use as the second staff person in a secure detention facility a person who is specially trained and who performs only administrative, clerical or other duties which do not include the supervision of adult inmates. The current provision prohibiting a staff member responsible for the supervision of juveniles in a secure detention facility from concurrently supervising juveniles in a non-secure facility has been deleted.

TEXT OF RULE

SECTION 1. DOC 346.01 is amended to read:

DOC 346.01 PURPOSE AND AUTHORITY. The purpose of this chapter is to protect the health, safety and welfare of all juveniles held in

secure detention facilities and the juvenile portion of county jails, by establishing minimum standards for these facilities, and to ensure compliance with 42 USC 5601 to 5761 (1988) and 28 CFR Part 31. These rules are promulgated under the authority of s. 48.22(2)(a), Stats., and implement ss. 301.36, 301.37 and 48.209, Stats.

Note: 42 USC 5601 to 5761 (1988) is known as the Juvenile Justice and Delinquency Prevention Act of 1974 (JJJPA), as amended in 1988; 28 CFR Part 31 are the federal regulations promulgated under the JJJPA.

SECTION 2. DOC 346.03(6) is repealed and recreated to read:

DOC 346.03 (6) "Living area" means the part of a secure detention facility normally occupied by juveniles, including dayrooms, multi-purpose rooms, and adjacent control centers.

SECTION 3. DOC 346.03(8) and 346.03(10) are amended to read:

DOC 346.03 (8) "Secure detention facility" has the meaning prescribed given in s. 48.02(16), Stats., and includes a stand

alone facility or a facility located in the same building or on the same grounds as a county jail.

DOC 346.03 (10) "Superintendent" means:

(a) The individual designated to be in charge of a public secure juvenile detention facility ~~for juveniles pursuant to~~ under s. 48.22(3)(a), Stats., or the director as specified in s. 48.22(3)(b), Stats., or

(b) In the case of the juvenile portion of the county jail, The the sheriff of a county in which the jail is located pursuant to s. 59.23(1), Stats.

SECTION 4. DOC 346.035 is created to read:

DOC 346.035 CONTACT. There may be no physical, verbal or visual contact between juveniles and adult inmates in the juvenile portion of a county jail or a secure detention facility.

SECTION 5. DOC 346.04 is repealed and recreated to read:

DOC 346.04 OPERATIONAL PLAN. (1) Before a facility may hold juveniles in secure custody, it shall have a mission statement and a written operational plan which has been approved by the department under s. 48.22(2)(a), Stats., and which meets the requirements of 42 USC 5601 to 5761 (1988) and 28 CFR Part 31 and the standards specified in this chapter. No plan may be implemented until the department has approved the plan, under s. 48.22(2)(a).

(2) The operational plan shall contain the following components:

(a) Statement setting forth the mission of the facility.

(b) Designation of whether the facility will operate as a juvenile portion of the county jail or as a secure detention facility.

(c) Policies and procedures to ensure against any contact between juveniles and adult inmates in all areas of the facility, including sallyports, entrances, booking, intake, living areas, dayrooms, multi-purpose rooms, elevators, visiting, staircases, medical areas and all other areas in which juveniles could have

contact with adult inmates.

(d) Policies and procedures for a secure detention facility to ensure immediate security backup in emergency situations.

(e) Policies and procedures for fire protection, staffing, discipline, daily recreation, mail and telephone privileges, visitations, and health care.

(f) Procedures which the facility will follow to ensure compliance with the standards specified in this chapter.

(3) Prior to submitting the operational plan to the department for approval under s. 48.22(2)(a), the superintendent shall distribute the plan for review and comment to the sheriff, juvenile court judge, chief intake worker, social or human services director, and the director of the county department of community programs appointed under s. 51.42 (4), Stats.

Note: 42 USC 5601 to 5761 (1988) is known as the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA), as amended in 1988; 28 CFR Part 31 are the federal regulations promulgated under the

JJDPA.

SECTION 6. DOC 346.044 is created to read:

DOC 346.044 ANNUAL MEETING. In any county in which there is a secure detention facility, the superintendent shall conduct an annual meeting to discuss and review the operation of the secure detention facility, and to review the operational plan to ensure it is current and reflects practices at the facility. The superintendent shall schedule the annual meetings, and invite the sheriff, juvenile court judge, chief intake worker, social or human services director, and the director of the county department of community programs appointed under s. 51.42 (4), Stats.

SECTION 7. DOC 346.055 is repealed and recreated to read:

DOC 346.055 USE OF JAILS. (1) The department may approve a county jail for use as a juvenile portion of a county jail or as a secure detention facility.

(2) The juvenile portion of a county jail may only be used to hold juveniles under the provisions permitted by 42 USC 5601 to 5761

(1988) and 28 CFR Part 31.

Note: 42 USC 5601 to 5761 (1988) is known as the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA), as amended in 1988; 28 CFR Part 31 are the federal regulations promulgated under the JJDPA.

SECTION 8. DOC 346.08(4)(a) and 1 and 2 and 3 are renumbered 346.08(4)(intro) and (a) and (b) and (c).

SECTION 9. DOC 346.08(4)(b) and (5)(b)3 are repealed.

SECTION 10. DOC 346.08(5)(d) is renumbered DOC 346.08(5)(e).

SECTION 11. DOC 346.08(5)(d) is created to read:

DOC 346.08 (5) (d) No staff member responsible for supervision of juveniles may during the same work shift have responsibility for supervision of adult inmates in a county jail, except that a person with solely administrative, clerical, or other duties which do not include the supervision of adult inmates, may provide non-emergency backup or assistance in the secure detention facility, provided

that person has been trained in the supervision of juveniles under sub. (4).

EFFECTIVE DATE

This rule 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.

Dated: 7/24/92 Agency: Patrick J. Fiedler
Patrick J. Fiedler, Secretary
Department of Corrections

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Tommy G. Thompson
Governor

Patrick J. Fiedler
Secretary



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State of Wisconsin
Department of Corrections

July 24, 1992

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Mr. Bruce E. Munson
Revisor of Statutes
119 Martin Luther King Jr. Blvd.
2nd Floor
Madison, Wisconsin 53702

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of Clearinghouse Rule 91-184 (DOC 346), which is a rule relating to secure detention of juveniles.

This rule is also being submitted to the Secretary of State as provided in s. 227.20, Stats.

Very truly yours,

A handwritten signature in cursive script that reads "Patrick J. Fiedler".

Patrick J. Fiedler
Secretary

Enclosure