

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules

(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hr_AC-EdR_RCP_pt01a
- 97hr_AC-EdR_RCP_pt01b
- 97hr_AC-EdR_RCP_pt02

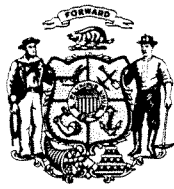
- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
-
- Committee Hearings ... CH
-
- Committee Reports ... CR
-
- Executive Sessions ... ES
-
- Hearing Records ... HR
-
- Miscellaneous ... Misc
- 97hr_JCR-AR_Misc_pt03
- Record of Comm. Proceedings ... RCP
-

DOC 349 - JUVENILE COURT
FACILITIES



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



State of Wisconsin
Department of Corrections

DOC 349

Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

December 3, 1998

Representative Glenn Grothman, Co-Chair
Joint Committee on Review of Administrative Rules
125 West State Capitol
Madison, WI 53702

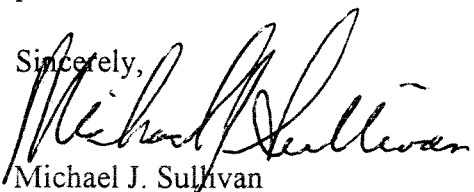
✓ Senator Robert Welch, Co-Chair
Joint Committee on Review of Administrative Rules
1 East Main Street, Room 201
Madison, WI 53702

Re: Emergency Rule of the Department of Corrections, relating to holding juveniles
in municipal lockup facilities

Gentlemen:

Enclosed is a copy of the Emergency Rule of the Department of Corrections, relating to holding juveniles in municipal lockup facilities. Also, enclosed is a copy of the fiscal estimate for the emergency rule. This rule will be published in the Wisconsin State Journal during the week of December 6, 1998, and will become effective upon publication.

Sincerely,


Michael J. Sullivan
Secretary

Enclosures

Cc Marty Ordinans
Robert Margolies

ORDER OF THE
DEPARTMENT OF CORRECTIONS
CREATING RULES

FINDING OF EMERGENCY

The Department of Corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to establish an approval process and operational standards for the safety of the public and juveniles while permanent rules are being developed.

This order:

1. Adopts the statutory definitions of adult, delinquent, and juvenile.
2. Defines the term secure custody status.
3. Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.
4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.
5. Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.
6. Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.
7. Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.
8. Provides that the lockup administrator shall develop and implement policies and procedure to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.
9. Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the

observations. If the juvenile is identified by the facility staff as being at risk (for example, suicidal tendency, under the influence of drugs or alcohol, or mental disturbance) the observations shall be at least once every 15 minutes at irregular intervals.

10. Requires that juvenile records be maintained in a confidential manner and kept separate from adult records, in accordance with s. 938.396, Stats.

The order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

ORDER

Under the authority vested in the Department of Corrections by s. 938.209(2m)(b), Stats., the Department of Corrections hereby creates rules interpreting s. 938.209(2m), Stats, as follows:

SECTION 1. DOC 349.01 is renumbered DOC 349.01(1), and as renumbered is amended to read:

DOC 349.01 Purpose and authority. (1) The purpose of this chapter is to establish minimum standards for the design, construction and security of municipal lockup facilities, for maintaining sanitary and safe conditions in lockups and for the development of inmate written program standards for municipal lockup facilities relating to holding inmates and juveniles who are alleged to have committed a delinquent act. ~~The rules are promulgated under the authority of ss. 227.11(2)(a), 301.03(5), 301.37, and 302.365, Stats.~~

SECTION 2. DOC 349.01(2) and (3) are created to read:

DOC 349.01(2) The purpose of this chapter as it applies to juveniles is to protect the health, safety and welfare of juveniles held in municipal lockup facilities, and to ensure compliance with 42 USC 5601 to 5761 and 28 CFR Part 31.

(3) These rules are promulgated under the authority of ss. 227.11(2)(a), 301.03(5), 301.36, 301.37, 302.365, and 938.209(2m), Stats.

SECTION 3. DOC 349.03(1m), (4m) and (10m) are created to read:

DOC 349.03(1m) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

DOC 349.03(4m) "Delinquent" means a juvenile who is 10 years of age or older who has violated any state or federal criminal law, except as provided in ss. 938.17, 938.18, and

938.183, Stats., or who has committed a contempt of court, as defined in 785.01(1), Stats., as specified in s. 938.355(6g), Stats.

DOC 349.03(10m) "Juvenile" means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "juvenile" does not include a person who has attained 17 years of age.

DOC 349.03(14m) "Secure custody status" means the status of a juvenile in a lockup facility, which begins when the juvenile is placed in a cell, holding room, or other locked or secure room within the lockup until the juvenile is released from custody or is removed from the secure portion of a police station.

SECTION 4. DOC 349.04(1) is renumbered to DOC 349.04.

SECTION 5. DOC 349.04(2) is renumbered DOC 349.21(1), and as renumbered is amended to read:

DOC 349.21(1) A lockup may not be used for the secure detention of juveniles ~~as defined under s. DOC 346.03(4)~~, except a lockup may be used to hold juveniles who are alleged to have committed a delinquent act.

SECTION 6. DOC 349.16(1)(c) is renumbered DOC 349.16(1)(d), and as renumbered is amended to read:

DOC 349.16(1)(d) Statement of the procedure for notification of inmates and juveniles of each policy under par. (b) and (c).

SECTION 7. DOC 349.16(1)(c) is created to read:

DOC 349.16(1)(c) Statement of policies and procedures for detention of juveniles who are alleged to have committed a delinquent act, consistent with s. DOC 349.21.

SECTION 8. DOC 349.21(title) and (2) are created to read:

DOC 349.21 Detention of juveniles.

(2) A lockup administrator may authorize the holding of a juvenile who is alleged to have committed a delinquent act only if the following criteria are met:

(a) Except as provided in this section, the provisions of this chapter apply to the detention of juveniles in lockup facilities.

(b) The lockup administrator may authorize that a juvenile who is alleged to have committed a delinquent act be placed in secure custody status for a period of time not to exceed 6 hours.

(c) The lockup administrator shall develop and implement policies and procedures which ensure sight or sound separation between juveniles and adult inmates in all areas of the lockup facility, including entrances, booking, intake, elevators, staircases, cells, holding rooms, and all other areas in which juveniles could have contact with adult inmates.

(d) Lockup facility staff shall physically observe each juvenile and document each observation. The observations shall be in accordance with the following schedule:

1. Every juvenile at least once every 20 minutes at irregular intervals.
2. Every juvenile identified by lockup facility staff as being at risk, such as mental disturbance, suicidal tendency, or under the influence of alcohol or drugs, at least once every 15 minutes at irregular intervals.

(e) The lockup administrator shall establish and implement policies and procedure to ensure that juvenile records are maintained in a confidential manner and kept separate from adult inmate records in accordance with s. 938.396, Stats.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Corrections

Dated: 12/3/98 By: Michael J. Sullivan
MICHAEL J. SULLIVAN
Secretary

SEAL:

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DOC Adm. Rule 349
Amendment No. if Applicable

Subject

Holding Juveniles in Municipal Lockup Facilities

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under 1997 Wisconsin Act 296 juveniles may be held, under certain circumstances, up to 6 hours in municipal lockup facilities for investigative purposes. The act also authorizes the Department of Corrections to promulgate rules establishing minimum requirements for the approval of the lockup facility as suitable to hold juveniles.

State Costs

The Department anticipates an increase in workload associated with the review of municipal lockup units but is able to absorb the workload without additional resources.

Local Costs

This administrative rule will not increase municipal governments' costs and may, in fact, reduce costs. The rule requires lockup facility staff to physically observe the juvenile at least every 20 minutes while in a lockup. Until the administrative rule is in place, municipalities must continue to operate as before, with an officer or jailer required to physically observe the juvenile 100% of the time the juvenile is on site. This often results in the arresting officer being pulled from patrol to supervise the juvenile. Allowing municipalities the leeway to assign a single staff person to observe a group of juveniles in lockup status and to free up officers to continue patrol assignments may reduce officer overtime costs.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Department of Corrections
C. Halpin 267-0934

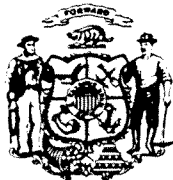
Authorized Signature/Telephone No.
Robert Margolies
Robert Margolies 266-2931

Date
December 2, 1998



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



State of Wisconsin
Department of Corrections

DOC 349
Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

December 3, 1998

Member
Wisconsin State Assembly and Senate
1 East Main Street
Madison, WI 53702

BEG 1 8 1998

Re: Emergency Rule relating to holding juveniles in municipal lockup facilities

Dear Member:

As provided in s. 227.24(3), Stats., enclosed is a copy of the Emergency Rule of the Department of Corrections, relating to holding juveniles in municipal lockup facilities. Also, enclosed is a copy of the fiscal estimate for the emergency rule as required under s. 227.24(1)(e)2, Stats.

Sincerely,

Michael J. Sullivan
Secretary

Enclosures

ORDER OF THE
DEPARTMENT OF CORRECTIONS
CREATING RULES

FINDING OF EMERGENCY

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Wisconsin Department of Corrections

Dated: 12/3/98 By: Michael J. Sullivan
MICHAEL J. SULLIVAN
Secretary

SEAL:

FISCAL ESTIMATE
DOA-2048 N(R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DOC Adm. Rule 349
Amendment No. if Applicable

Subject

Holding Juveniles in Municipal Lockup Facilities

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb
Within Agency's Budget Yes No

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs

Permissive Mandatory

2. Decrease Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

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Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Department of Corrections
C. Halpin 267-0934

Authorized Signature/Telephone No.
Robert Margolies
Robert Margolies 266-2931

Date

December 2, 1998