

**STATEMENT OF SCOPE
DEPARTMENT OF CORRECTIONS**

Rule Number:

Relating to: Repeal and recreate Ch. DOC 396, Type 2 Secured Correctional Facilities

Rule Type: Permanent

1. FINDING/NATURE OF EMERGENCY (FOR EMERGENCY RULE ONLY).

Not Applicable.

2. DETAILED DESCRIPTION OF THE OBJECTIVE OF THE PROPOSED RULE.

The objective of the rule amendment is to bring Ch. DOC 396 into conformance with the changes made to Ch. 938, *Wis. Stats.*, by 2015 WI Act 55. In addition, the amendment would:

- Eliminate outdated provisions,
- Clarify language, and
- Update citations to statutes for accuracy.

There is no alternative means to address the need for revisions as discussed above.

3. DESCRIPTION OF EXISTING POLICIES AND NEW POLICIES INCLUDED IN PROPOSED RULE AND AN ANALYSIS OF POLICY ALTERNATIVES.

The main policy change to be reflected in the rule amendments is the substitution of the term “community supervision” for the terms “aftercare” and “Corrective Sanctions program” as they pertain to post-release supervision of delinquent youth committed by a court to juvenile correctional supervision under ss. 938.183(1m) and 938.34 (4h),(4m) and (4n).

4. STATUTORY AUTHORITY.

Section 227.11 (2) (a) – (c): Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency’s rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency’s general powers or duties does not confer rule-making authority on the agency or augment the agency’s rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

Section 301.025:

The division of juvenile corrections shall exercise the powers and perform the duties of the department that relate to juvenile correctional services and institutions, juvenile offender review, aftercare, corrective sanctions, and the serious juvenile offender program under s. 938.538.

Section 301.032 (1) (a):

The department shall supervise the administration of juvenile correctional services.

In addition to that, as of July 1, 2017, or the second day after the date of the publication of the 2-17-2019 Wisconsin state budget act, whichever is later, statutory language designating post-release supervision for youth committed to juvenile correctional placement will read as follows:

(4n) COMMUNITY SUPERVISION OR AFTERCARE SUPERVISION. In the case of a juvenile who has been placed in a juvenile correctional facility or a secured residential care center for children and youth, designate the department of corrections to provide community supervision for the juvenile following the juvenile's release from that facility or center or, subject to any arrangement between the department of corrections and a county department regarding the provision of aftercare supervision for juveniles who have been released from a juvenile correctional facility or a secured residential care center for children and youth, designate one of the following to provide aftercare supervision for the juvenile following the juvenile's release from that facility or center:

(b) The county department of the county of the court that placed the juvenile in the juvenile correctional facility or secured residential care center for children and youth.

(c) The county department of the juvenile's county of legal residence.

The revised statutory language in this paragraph and throughout Ch. 938 and related statutes (for example, s. 48.526) eliminates the distinction between "aftercare" and "Corrective Sanctions" in describing services provided by the Department of Corrections (DOC) to youth released or transferred from a juvenile correctional facility by the Office of Juvenile Offender Review under s. 938.50. Chapter DOC 393 must be changed to conform to the statute.

Updates to the rules are also needed to reflect current DOC policies and procedures. Rules of supervision in s. DOC 396 need to be updated to reflect types of youth conduct that have come into prominence in the past decade, such as social media activity. Updates to the rules are also needed to reflect current statutory language; specifically, to replace the term "Type 2 secured correctional facility" with "juvenile correctional facility" to reflect s. 938.02(20)..

References to the Extended Jurisdiction disposition in the former s. 48.366 should be eliminated. No youth has received the Extended Jurisdiction disposition since June 30, 1996 when it was removed from statute. Currently, s. 48.366 describes eligibility for extended out-of-home care for youth who need ongoing services after turning age 18.

5. ESTIMATE OF AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OTHER RESOURCES NECESSARY TO DEVELOP THE RULE.

The Department estimates that it will take approximately 100 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

6. LIST WITH DESCRIPTION OF ALL ENTITIES THAT MAY BE AFFECTED BY THE PROPOSED RULE.

Rule revisions will primarily affect the DOC Division of Juvenile Corrections. The provision of correctional aftercare by county human/social services agencies will continue as is. This rule will affect juveniles in the department's custody and department staff.

7. SUMMARY AND PRELIMINARY COMPARISON WITH ANY EXISTING OR PROPOSED FEDERAL REGULATION THAT IS INTENDED TO ADDRESS THE ACTIVITIES TO BE REGULATED BY THE PROPOSED RULE.

No federal regulations are affected or have an effect on the proposed changes.

8. ANTICIPATED ECONOMIC IMPACT OF IMPLEMENTING THE RULE. NOTE IF THE RULE IS LIKELY TO HAVE AN ECONOMIC IMPACT ON SMALL BUSINESSES.

Rule changes will have minimal to no economic impact statewide or locally.

CONTACT PERSON:

Shelley Hagan, Wisconsin Department of Corrections, c/o Glen Mercier II DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email: DOCAdministrativeRulesCommittee@wisconsin.gov, or by phone at: 608-240-5918.