

STATEMENT OF SCOPE
DEPARTMENT OF CORRECTIONS

Rule Number: Chapter DOC 306 and 376

Relating to: The amendment of chapter DOC 306 and 376, relating to the secure custody and care of individuals in the DOC's custody.

Rule Type: Emergency and Permanent Rule

1. FINDING/NATURE OF EMERGENCY.

The Department of Corrections (DOC) seeks to promulgate new emergency and permanent rules by amending Wisconsin Administrative Code DOC 306 and 376 to protect those individuals in the DOC's custody from SARS-CoV-2 virus, which cause the coronavirus disease of 2019 (in this Statement of Scope, the virus and disease will be referred to as "COVID-19") and from other future emergencies. On March 20, 2020, the Governor issued Emergency Order #9 to implement a moratorium on admissions to the state prisons and juvenile facilities operated by the Department of Corrections to mitigate the spread of COVID-19. Because the risks associated with COVID-19, or other future emergencies, are likely to continue after Emergency Order #9 expires, emergency and permanent rules are necessary for the preservation of public health, safety, and welfare.

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

The objective of the proposed emergency rule is to create requirements to protect those individuals in the DOC's custody from COVID-19 and prevent the spread of COVID-19 in this state and to create a permanent rule to do the same for future emergencies

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

Currently, under the Emergency Order # 9, DOC was ordered to implement a moratorium on admissions to the state prisons and juvenile facilities operated by the Department of Corrections to mitigate the spread of COVID-19. Emergency Order # 9 also authorized the Secretary of the Department of Corrections to issue an order lifting the moratorium, either in whole or in part, at any time. If the Secretary of the DOC issued an order lifting the moratorium, either in whole or in part, the Secretary could have also rescinded such order. Emergency Order # 9 also provided that the DOC may continue to utilize any of its facilities for the temporary detention of persons in its custody, including those on probation with an imposed and stayed prison sentence, parole, or extended supervision. Emergency Order # 9 order was effective Monday, March 23, 2020, and remained in effect for the duration of the public health emergency declared in Executive Order #72 or until a superseding order is issued.

To the extent they are within the rulemaking authority of the Department under 301.02, 301.025, 301.03(1) - (2), (10) & 938.48, Stats., the provisions of Emergency Order # 9 will be included in the emergency and permanent rules to supplant the requirements imposed by Emergency Order #9 and address similar concerns for future emergencies. The policy alternative is for the DOC to continue to enforce under 301.02, 301.025, 301.03(1) - (2), (10) & 938.48, Stats., without imposing additional requirements that would protect those individuals in the DOC's custody from COVID-19 and prevent the spread of COVID-19 in this state or protect those individuals in the DOC's custody from future emergencies.

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 non-statutory 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 301.02: The department shall maintain and govern the state correctional institutions.

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, community supervision under s. 938.533, and the serious juvenile offender program under s. 938.538.

SECTION 301.03 (1) - (2), (10):

301.03 General corrections authority. The department shall:

(1) Supervise, manage, preserve and care for the buildings, grounds and other property pertaining to the state correctional institutions and promote the objectives for which they are established.

(2) Supervise the custody and discipline of all prisoners and the maintenance of state correctional institutions and the prison industries under s. 303.01.

(10)

- (a) Execute the laws relating to the detention, reformation, and correction of delinquent juveniles placed under its jurisdiction.
- (b) Supervise all juveniles under its jurisdiction who have been adjudicated delinquent and exercise such functions as the department considers appropriate for the prevention of delinquency.
- (c) Promote the enforcement of laws for the protection of delinquent juveniles under its jurisdiction. To this end, the department shall cooperate with courts assigned to exercise jurisdiction under chs. 48 and 938, the department of children and families, county departments under ss. 46.215, 46.22, and 46.23, licensed child welfare agencies, and institutions in providing community-based programming, including in-home programming and intensive supervision, for delinquent juveniles under its jurisdiction. The department shall also establish and enforce standards for the development and delivery of services provided by the department under ch. 938 in regard to juveniles who have been adjudicated delinquent and placed under the jurisdiction of the department.
- (d) Administer the office of juvenile offender review in the division of juvenile corrections in the department. The office shall be responsible for decisions regarding case planning and the release of juvenile offenders who are under the supervision of the department from juvenile correctional facilities or secured residential care centers for children and youth to aftercare or community supervision placements.
- (e) Provide educational programs in all juvenile correctional facilities operated by the department.
- (f) Provide health services and psychiatric services for residents of all juvenile correctional facilities operated by the department.
- (g) Keep statistics, by race, age and gender, of the number of juveniles over whom the court assigned to exercise jurisdiction under chs. 48 and 938 waives its jurisdiction under s. 938.18 as well as the nature of the waiver that was ordered and annually report those statistics to the governor, and to the appropriate standing committees under s. 13.172 (3).

SECTION 938.48:

938.48 Authority of department of corrections. The department of corrections may do all of the following:

- (1) Enforcement of laws. Promote the enforcement of the laws relating to delinquent juveniles and juveniles in need of protection or services and take the initiative in all matters involving the interests of those juveniles when adequate provision for those matters is not made. This duty shall be discharged in cooperation with the courts, the department of children and families, county departments, licensed child welfare agencies, parents, and other individuals interested in the welfare of juveniles.
- (3) Supervision and special treatment or care. Accept supervision over juveniles transferred to it by the court under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (3) or (4), and provide special treatment or care to juveniles when directed by the court. Except as provided in s. 938.505 (2), a court may not direct the department to administer psychotropic medications to juveniles who receive special treatment or care under this subsection.
- (4) Care, training, and placement. Provide appropriate care and training for juveniles under its supervision under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (3) or (4), including serving those juveniles in their own homes, placing them in licensed foster homes or licensed group homes under s. 48.63 or in independent living situations as provided in s. 938.34 (3) (e), contracting for their care by licensed child welfare agencies, or replacing them in juvenile correctional facilities or secured residential care centers for children and youth in accordance with rules promulgated under ch. 227, except that the department may not purchase the educational component of private day treatment programs for a juvenile in its custody unless the department, the school board, as defined in s. 115.001 (7), and the state superintendent of public instruction all determine that an appropriate public education program is not

available for the juvenile. Disputes between the department and the school district shall be resolved by the state superintendent of public instruction.

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

Department staff will devote approximately 60 hours promulgating the rule. This includes time required for investigation and analysis, rule drafting, and preparing related documents. The department anticipates that it will use existing staff to develop this rule.

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

The rule affects inmates, offenders, juveniles, children, county and tribal entities, child welfare agencies.

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.

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

The DOC anticipates that the proposed rule will have minimal to no economic impact statewide or locally.

AGENCY CONTACT INFORMATION:

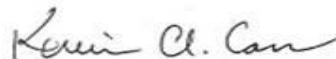
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