

**STATEMENT OF SCOPE
DEPARTMENT OF CORRECTIONS**

Rule Number: _____

Relating to: Amending Chapter DOC 328, relating to adult field supervision.

Rule Type: Permanent

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

The objective of the rule amendment is to achieve the following:

- Eliminate outdated language.
- Review current standard rules of community supervision and clarify language, remove outdated provisions, and update for changes in operations or practice of supervising clients.

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

The current rule chapter provides for the Department of Corrections' (Department) supervision of persons on probation, parole, and extended supervision. The process identifies agent duties, standard rules of supervision, institution release planning, notice to law enforcement of release, client financial obligations, travel conditions, as well as discharge and extension of supervision. The chapter also provides enforcement options and related matters. Standard rules of supervision are defined in DOC 328.04 (3). The standard rules of supervision are imposed upon all probation, parole or extended supervision offenders. The Department intends to review DOC 328.04(3) and related provisions in the chapter, if appropriate, and potentially remove or revise standard rules of supervision in the event they are determined to be outdated or potentially onerous.

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

3. STATUTORY AUTHORITY.

Section 227.11 (2) (a) – (e): Rule-making authority is expressly conferred on an agency 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 the 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.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

Section 301.03 (3): Administer parole, extended supervision, and probation matters, except that the decision to grant or deny parole to inmates shall be made by the parole commission and the decision to revoke probation, extended supervision, or parole, in cases in which there is no waiver of the right to a hearing, shall be made by the division of hearings and appeals in the department of administration. The secretary may grant special action parole releases under s. 304.02. The department shall promulgate rules [effectuate short-term sanctions].

Section 301.03 (7m): Supervise criminal defendants accepted into the custody of the department under s. 969.02 (3) (a) or 969.03 (1) (a). The department shall charge the county that is prosecuting the defendant a fee for providing this supervision. The department shall set the fee by rule.

Section 302.113 (10): The department may promulgate rules establishing guidelines and criteria for the exercise of discretion under this section [release to extended supervision for felony offenders not serving life sentences].

Section 302.114 (10): The department may promulgate rules establishing guidelines and criteria for the exercise of discretion under this section [petition for release and release to extended supervision for felony offenders serving life sentences].

Section 302.19: Temporary detention of inmates: The department may use any of its facilities for the temporary detention of persons in its custody.

Section 302.31 (5) and (6): The county jail may be used for any of the following purposes:

....

(5) The detention of persons participating in the intensive sanctions program.

(6) The temporary detention of persons in the custody of the department.

Section 939.615 (5) (a): A person placed on lifetime supervision under this section [lifetime supervision of serious sex offenders] is subject to the control of the department under conditions set by the court and regulations established by the department that are necessary to protect the public and promote the rehabilitation of the person placed on lifetime supervision.

Section 973.01 (2) (intro): Structure of bifurcated sentences. A bifurcated sentence is a sentence that consists of a term of confinement in prison followed by a term of extended supervision under s. 302.113.

The total length of a bifurcated sentence equals the length of the term of confinement in prison plus the length of the term of extended supervision. A order imposing a bifurcated sentence under this section shall comply with all of the following:

Section 973.10: Control and supervision of probationers.

(1) Imposition of probation shall have the effect of placing the defendant in the custody of the department and shall subject the defendant to the control of the department under conditions set by the court and rules and regulations established by the department for the supervision of probationers, parolees and persons on extended supervision.

4. 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 300 hours to develop this rule, including drafting the rule, cost estimates, public hearings, and complying with rulemaking requirements.

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

This rule will affect persons on probation, parole, or extended supervision and Department staff.

6. 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.

There are no federal regulations which address the issue of the supervision of persons on probation, parole or extended supervision in Wisconsin with the exception of federal standards addressing the Prison Rape Elimination Act (PREA) of 2003 (42 U.S.C. chapter 147 (ss. 15601-09) (2004)). This chapter is already compliant with these regulations.

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

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

CONTACT PERSON:

Jared Hoy, Wisconsin Department of Corrections, 3099 East Washington Ave, P.O. Box 7925, Madison, WI 53707-7925, (608)240-5055, DOCAdministrativeRulesCommittee@wisconsin.gov.