

**STATEMENT OF SCOPE
DEPARTMENT OF CORRECTIONS**

Rule Number: Chapter DOC 328

Relating to: Custody and Detention

Rule Type: Permanent

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

The objective of this rulemaking is to review the provisions related to custody and detention of persons on community supervision in state correctional facilities and to update these provisions accordingly to reflect changes in operations and practices of the Department.

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

The Department is responsible for administering parole, extended supervision and probation matters. As part of that responsibility, the Department may take physical custody of clients who have been paroled and clients who have been released to extended supervision for a felony offense for the investigation of an alleged violation and the Department may use any of its facilities for the temporary detention of these clients. Additionally, as part of this responsibility, the Department may take into custody a client under investigation for violating a condition of probation. There is a need to update the current rule to reflect changes in terminology regarding detention in state correctional facilities.

The alternative to this proposed rulemaking is not amending the provisions of this rule which would result in the Department having outdated policies and a rule which needs reform.

3. 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 301.03(3): Administer parole, extended supervision, and probation matters... The Department shall promulgate rules to do all of the following: (a) Develop a system of short-term sanctions for violations of conditions of parole, probation, extended supervision, and deferred prosecution agreements that sets forth a list of sanctions to be imposed for the most common violations.

Section 302.113(8m)(a): Every person released to extended supervision under this section remains in the legal custody of the department. If the department alleges that any condition or rule of extended supervision has been violated by the person, the department may take physical custody of the person for the investigation of the alleged violation.

Section 302.114(8m)(a): Every person released to extended supervision under this section remains in the legal custody of the department. If the department alleges that any condition or rule of extended supervision has been violated by the person, the department may take physical custody of the person for the investigation of the alleged violation.

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

Section 302.31: The county jail may be used for any of the following purposes:

- (1) The detention of persons charged with crime and committed for trial.
- (1m) The detention of persons subject to confinement under s. 322.011.
- (2) The detention of persons committed to secure their attendance as witnesses.
- (3) To imprison persons committed pursuant to a sentence or held in custody by the sheriff for any cause authorized by law.
- (4) The detention of persons sentenced to imprisonment in state penal institutions or a county house of correction, until they are removed to those institutions.
- (5) The detention of persons participating in the intensive sanctions program.
- (6) The temporary detention of persons in the custody of the department.
- (7) The temporary placement of persons in the custody of the department, other than persons under 17 years of age, and persons who have attained the age of 17 years but have not attained the age of 25 years who are under the supervision of the department under s. 938.355(4) and who have been taken into custody pending revocation of community supervision or aftercare supervision under s. 938.357(5)(e).
- (8) Under an agreement under s. 66.0303, the detention of persons detained or imprisoned before, during, or after trial by a county that borders on this state and is located in the state of Michigan. The agreement under s. 66.0303 for the detention of persons from another state shall take into account the provisions of this chapter regarding the detention of persons in county jails.
- (8m) Under an agreement under s. 66.0303, the detention of persons detained or imprisoned before, during, or after trial by a county that borders on this state. An agreement under this subsection may not provide for the detention of a person detained or imprisoned in a county jail by a county that borders on this state who has been sentenced to imprisonment in a state prison in that state. The agreement under s. 66.0303 for the detention of persons from another state shall take into account the provisions of this chapter regarding the detention of persons in county jails.
- (9) Other detentions authorized by law.

Section 304.06(3): Every paroled prisoner remains in the legal custody of the department unless otherwise provided by the department. If the department alleges that any condition or rule of parole has been violated by the prisoner, the department may take physical custody of the prisoner for the investigation of the alleged violation.

Section 973.10(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.

Section 973.10(3): A copy of the order of the department of corrections in the case of a waiver or the division of hearings and appeals in the department of administration in the case of a final administrative hearing is sufficient authority for the officer executing it to take the probationer to court or to prison. The officer shall execute the order as warrant for the arrest but any officer may, without order or warrant, take the probationer into custody whenever necessary in order to prevent escape or enforce discipline or for violation of probation.

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 100 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

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

Rule revisions will primarily affect persons on community supervision and DOC 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 that are intended to address the activities regulated by the proposed rule.

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

Rule changes will likely have no economic impact on DOC or on small businesses.

CONTACT PERSON:

Caitlin Washburn, Office of Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Ave, P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5020, DOCAdministrativeRulesCommittee@wisconsin.gov.