

STATEMENT OF SCOPE DEPARTMENT OF CORRECTIONS

Rule Number: Chapter DOC 347

Relating to: The creation of chapter DOC 347, relating to secured residential care centers.

Rule Type: Emergency Rule

1. FINDING/NATURE OF EMERGENCY.

The objective of the rule is to establish an emergency rule in response to the creation of 2017 Wisconsin Act 185, which authorizes the design and construction of secured residential care centers for children and youth. Pursuant to 2017 Act 185, notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Moreover, the Act provides that if the governor does not disapprove the statement of scope by the 7th day after the department presents the statement to the governor, the statement is considered approved by the governor.

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

The objective of the emergency rule is to create chapter DOC 347 as a result of changes to chapters 301, 938, Wis. Stats., by the enactment of 2017 WI Act 185. Chapter DOC 347 seeks to establish minimum standards for the design, construction, repair, maintenance of secured residential care centers for children and youth, the approval and operation of secured residential care centers for children and youth, and the services and programs for juveniles in secured residential care centers for children and youth. DOC will include uniform data reporting standards for counties or Indian tribes that operate or contract for secured residential care centers for children and youth.

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

Chapter DOC 347 seeks to establish minimum standards for the design and construction of secure residential care centers for children and youth and for the supervision, maintenance, operation, and performance standards criteria of same facility consistent with the federal Juvenile Justice and Delinquency Act and the Prison Rape Elimination Act.

Presently there are no DOC policies related to this, thus the department is not proposing new changes. The alternative to this is to do nothing.

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 301.36 (1), (2), (3), (4), (6), and (8).

- (1) **GENERAL AUTHORITY.** The department shall investigate and supervise all of the state prisons under s. 302.01, all juvenile correctional facilities, all secured residential care centers for children and youth, and all juvenile detention facilities and familiarize itself with all of the circumstances affecting their management and usefulness.
- (2) **PRISONS.** The department shall visit all places in which persons convicted of or suspected crime are confined, and ascertain their arrangement for the separation of the hardened criminals from juvenile offenders and person suspected of crime or detained as witnesses; collect statistics concerning the inmates, their treatment, employment and reformation; and collect information of other facts and considerations affecting the increase or decrease of crime.
- (3) **INSPECTIONS.** The department shall inquire into the methods of treatment, instruction, government and management of inmates of the institutions mentioned in this section; the conduct of their trustees, managers, directors, superintendents and other officers and employees; the condition of the buildings, grounds and all other property pertaining to the institutions, and all other matters pertaining to their usefulness and management; and recommend to the officers in charge such changes and additional provisions as it deems proper.
- (4) **FREQUENCY OF INSPECTIONS.** The department shall inspect and investigate each institution at least annually and , when directed by the governor, it shall conduct a special investigation into an institution's management, or anything connected with its management, and report to the governor the testimony taken, the facts found and conclusions drawn.
- ...
- (6) **OPPORTUNITY TO INSPECT.** All trustees, managers, directors, superintendents and other officers or employees of the institutions shall at all times afford to every member of the department and its agents, unrestrained facility for inspection of and free access to all parts of the buildings and grounds and to all books and papers of the institutions; and shall give, either verbally or in writing, such information as the

department requires. Any person who violated this subsection shall forfeit not less than \$10 nor more than \$100.

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- (8) STATISTICS TO BE FURNISHED. Wherever the department is required to collect statistics, the person or agency shall furnish the required statistics on request.

SECTION 301.37 (1), (2), (3), and (5).

- (1) The department shall fix reasonable standards and regulations for the design, construction, repair, and maintenance of all houses of correction, reforestation camps maintained under s. 303.07, jails, as defined in s. 302.30, extensions of jails under s. 59.54 (14) (g), rehabilitation facilities under s. 59.53 (8), lockup facilities, as defined in s. 302.30, work camps under s. 303.10, Huber facilities under s. 303.09, and, after consulting with the department of children and families, all juvenile detention facilities, with respect to their adequacy and fitness for the needs which they are to serve.
- (2) The selection and purchase of the site, and the plans, specifications and erection of buildings, for the institutions is subject to the review and approval of the department. Department review shall include review of the proposed program to be carried out by the institution.
- (3) Before any such building is occupied, and at least annually thereafter, the department shall inspect each institution with respect to safety, sanitation, adequacy and fitness, report to the authorities conducting the institution any deficiency found and order the necessary work to correct it or a new building. If within 6 months thereafter the work is not commenced, or not completed within a reasonable period thereafter, to the satisfaction of the department, the department shall suspend the allowance of state aid for, and prohibit the use of, the building until the order is complied with.

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- (5) The department's standards and regulations under sub. (1) for juvenile detention facilities apply to private juvenile detention facilities used under s. 938.222.

2017 Act 185 grants the department the following additional rulemaking authority.

SECTION 53. 938.22 (2) (a) of the statutes is amended to read:

- (a) Counties shall submit plans for a juvenile detention facility, secured residential care center for children and youth, or juvenile portion of the county jail to the department of corrections and submit plans for a shelter care facility to the department of children and families. A private entity that proposes to establish a juvenile detention facility or an Indian tribe or a child welfare agency that proposes to establish a secured residential care center for children and youth shall submit plans for the facility to the department of corrections. The applicable department shall review the submitted plans. A county ~~or a~~, Indian tribe, private entity, or child welfare agency may not implement a plan unless the applicable department has approved the plan. The department of corrections shall promulgate rules establishing minimum requirements for the approval and operation of juvenile detention facilities, secured residential care centers for children and youth, and the juvenile portion of county jails. The plans and rules shall be designed to protect the health, safety, and welfare of the juveniles placed in those facilities.

SECTION 54. 938.22 (2) (d) of the statutes is created to read:

1. Except as provided in subd. 2., a juvenile detention facility is authorized to accept juveniles for placement for more than 30 consecutive days under s. 938.34 (3) (f) 1. if all of the following apply:

- a. The juvenile detention facility is operated by a county, the county board of supervisors of which has adopted a resolution under section 938.34 (3) (f) 3., prior to January 1, 2018, authorizing placement of juveniles at the juvenile detention facility under section 938.34 (3) (f) for more than 30 consecutive days.
 - b. The county that operates the juvenile detention facility is not awarded a grant under 2017 Wisconsin Act (this act), section 110 (4).
2. After January 1, 2021, the number of juveniles that may be housed at a juvenile detention facility under subd. 1. is limited to the number that are housed at the juvenile detention facility on January 1, 2021, and the juvenile detention facility may not be altered or added to or repaired in excess of 50 percent of its assessed value. If a juvenile detention facility violates this subdivision, it is no longer authorized to accept juveniles for placement for more than 30 consecutive days.

SECTION 90. 938.48 (16) (b) of the statutes is created to read:

- (b) Promulgate rules governing services and programming for juveniles in a secured residential care center for children and youth. The department shall include uniform data reporting standards for counties or Indian tribes that operate or contract with a child welfare agency for a secured residential care center for children and youth in rules promulgated under this paragraph. The department shall base the rules it promulgates under this paragraph on the recommendations provided by the juvenile corrections study committee under 2017 Wisconsin Act (this act), section 110 (6) (c) 1.

SECTION 110 . Nonstatutory provisions.

...

(5) EMERGENCY RULE MAKING.

- (a) Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate emergency rules under sections 301.37 (1) and 938.22 (2) (a) of the statutes as needed to establish standards for the approval, design, construction, repair, maintenance, and operation of secured residential care centers for children and youth. Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate emergency rules under section 938.48 (16) (b) of the statutes as needed to establish standards for services, programming, and uniform data reporting requirements for counties or Indian tribes that operate or contract with a child welfare agency to operate a secured residential care center for children and youth. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect for 2 years after the date they become effective, or until the date on which permanent rules take effect, whichever is sooner, and the effective period may not be further extended under section 227.24 (2) of the statutes.
- (b) The department of corrections shall present the statement of scope of the rules required under paragraph (a) to the department of administration for gubernatorial approval under section 227.135 (2) of the statutes no later than August 24, 2018. Notwithstanding section 227.24 (1) (e) 1d. of the statutes, if the governor does not disapprove the statement of scope of the rules under this paragraph by the 7th day after the department presents the statement to the governor, the statement is considered approved by the governor.

- (c) The department of corrections shall submit to the governor the rules required under paragraph (a) in final draft form no later than December 17, 2018. Notwithstanding section 227.24 (1) (e) 1g. of the statutes, if the governor does not reject the rules under this paragraph by the 14th day after the rules are submitted to the governor in final draft form, the rules are considered to be approved by the governor.

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 2,080 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 juveniles, children, county entities, child welfare agencies, including county juvenile facilities and secure residential care centers, and 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.

There are various federal laws that might relate to the provisions created in the proposed chapter that affect the management and operation of the secure residential care centers anticipated to be created in this chapter.

First, Wisconsin opted to come into compliance with the federal Juvenile Justice and Delinquency Act (JJJDA), 42 USC 5601, et seq., and the implementing regulations (28 CFR Part 31), thereby making certain funds under the Act available to Wisconsin counties.

In general the JJJDA and its regulations generally prohibit sight and sound contact between juveniles and adults. A facility may achieve sight and sound separation through architectural or procedural means. Sight or sound contact is permitted if it is both brief and inadvertent or accidental. Contacts must be reported as violations of the JJJDA. The JJJDA permits the transfer or placement of adjudicated delinquents in adult facilities once the juvenile has attained the age of full criminal responsibility under State law (17 years of age for Wisconsin). (42 USC 5633 (a) (11), (12), and (13))

The JJJDA also regulates co-located facilities, that is, adult and juvenile facilities which are in the same building complex. The JJJDA requires sight and sound separation of juveniles and adults through architectural or procedural means. (42 USC 5633 (a) (11), (12), and (13))

The JJJDA also limits the amount of time that a juvenile may be held in an adult jail or lockup. (42 USC 5633 (a) (11), (12), and (13))

The DOC anticipates that this proposed chapter will be consistent and in compliance with the standards imposed by the JJJDA.

Second, the Prison Rape Elimination Act (PREA) imposes certain standards on juvenile facilities pursuant to 28 CFR Part 115, Subpart D – Standards for Juvenile Facilities. In general, PREA imposes certain supervision and monitoring standards. The standards also impose staffing requirements, such as minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours.

The DOC anticipates that this proposed chapter will be consistent and in compliance with the standards imposed by PREA.

8. 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.

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