

**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 amending Wisconsin Administrative Code DOC 306 and 376 to protect those individuals in DOC custody from SARS-CoV-2 virus, which cause the coronavirus disease of 2019 (in this Statement the virus and disease will be referred to as "COVID-19") and from other future emergencies. In 2020, the Governor issued Emergency Order #9 to implement a moratorium on admissions to 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 recur, Emergency Order #9 expires, emergency and permanent rules are necessary for the protection 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 DOC's custody from COVID-19 and prevent the spread of COVID-19 in this state and to create a rule to do the same for future emergencies.

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

Currently, under the Emergency Order # 9, DOC was ordered to implement a moratorium on admissions to 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 lift the moratorium, either in whole or in part, at any time. If the Secretary of the DOC issued the moratorium, either in whole or in part, the Secretary could have also rescinded such order.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 custody of persons in its custody, including those on probation with an imposed and stayed prison sentence or extended supervision. Emergency Order # 9 order was effective Monday, March 23, 2020, and will remain in effect for the duration of the public health emergency declared in Executive Order #72 or until a new order is issued.

To the extent they are within the rulemaking authority of the Department under 301.02, 301.03(2), (10) & 938.48, Stats., the provisions of Emergency Order # 9 will be included in the

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 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. The following apply to the promulgation of a rule interpreting the provisions of a statute administered by an agency:
1. A statutory or non-statutory provision containing a statement or declaration of purpose, findings, or policy does not confer rule-making authority on the agency beyond 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 administered by it, if the agency considers it necessary to effectuate the purpose of the statute. This paragraph does not authorize the imposition of a substantive requirement in a statute, form or procedure.
- (c) Each agency authorized to exercise discretion in deciding individual cases may formulate policies evolving from its decisions by promulgating policies as rules which the agency may amend or repeal 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 rule 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 community supervision under s. 938.533, and the serious juvenile offender program under s. 938.534.

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

301.03. General provisions. (1) The department shall

- (a) Execute the laws relating to the detention, reformation, and correction of delinquents under its jurisdiction.
- (b) Supervise all juveniles under its jurisdiction who have been adjudicated delinquent and perform 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. 46.23, licensed child welfare agencies, and institutions in providing community-based services, including in-home programming and intensive supervision, for delinquent juveniles under its jurisdiction. The department shall also establish and enforce standards for the delivery of services provided by the department under ch. 938 in regard to juveniles who are adjudicated delinquent and placed under the jurisdiction of the department.
- (d) Administer the office of juvenile offender review in the division of juvenile corrections of the department. The office shall be responsible for decisions regarding case planning for juveniles and 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 and 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 department exercises jurisdiction under chs. 48 and 938 waives its jurisdiction under s. 938.505 (2) and the nature of the waiver that was ordered and annually report those statistics to the governor and the appropriate standing committees under s. 13.172 (3).

SECTION 938.48:

938.48 Authority of department of corrections. The department of corrections may perform the following:

- (1) Enforcement of laws. Promote the enforcement of the laws relating to delinquency and take the initiative in all matters involving juveniles in need of protection or services and take the initiative in all matters involving the care and supervision of those juveniles when adequate provision for those matters is not made. Take the initiative in the care and supervision of discharged juveniles in cooperation with the courts, the department of children and families, county departments, licensed child welfare agencies, parents, and other individuals interested in the care and supervision of juveniles.
- (3) Supervision and special treatment or care. Accept supervision over juveniles transferred to the department of corrections by the court under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (3) or (4), and provide supervision, treatment, or care to juveniles when directed by the court. Except as provided in s. 938.505 (2), the department shall direct the department to administer psychotropic medications to juveniles who are receiving treatment or care under this subsection.

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 ON THE EMERGENCY RULE AND OTHER RESOURCES NECESSARY TO DEVELOP THE RULE.

Department staff will devote approximately 60 hours promulgating the rule. This includes investigation and analysis, rule drafting, and preparing related documents. The department 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, and other entities.

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

8. ANTICIPATED ECONOMIC IMPACT OF IMPLEMENTING THE RULE. NOTE IF ANY ENTITY 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.

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