

WISCONSIN DEPARTMENT OF CORRECTIONS
PROPOSED RULE MAKING ORDER
CR 09-039

INTRODUCTORY CLAUSE:

The Wisconsin Department of Corrections proposes an order to repeal and recreate DOC 346, relating to juvenile detention facilities and juvenile portions of a county jail.

TEXT OF RULE:

SECTION 1. Chapter DOC 346 is repealed and recreated to read:

Chapter DOC 346
SECURE DETENTION FOR JUVENILES

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IX.	Juvenile Portion of a County Jail			

Subchapter I—General Provisions

DOC 346.01 Purpose and authority. The purpose of this chapter is to protect the health, safety and welfare of all juveniles held in juvenile detention facilities and the juvenile portion of county jails, by establishing minimum standards for these facilities, and ensuring compliance with 42 USC 5601 to 5761 and 28 CFR Part 31. This chapter is promulgated under the authority of s. 938.22 (2) (a), Stats., and implements s. 301.36, 301.37 and 938.209, Stats.

DOC 346.02 Applicability. The provisions of this chapter apply to juvenile detention facilities and juvenile portions of a county jail. Unless otherwise specified, s. DOC 346.14 applies only to facilities that were constructed or substantially remodeled after October 1, 1994.

DOC 346.03 Definitions. In this chapter:

- (1) "Cell" means a secure room designed and used as a sleeping room for one or 2 juveniles.
- (2) "Construction plans" mean the site plans, drawings, and specifications for construction or remodeling of a facility.
- (3) "Contraband" means any item not allowed in a facility by the superintendent.
- (4) "Day room" means an area usable and accessible by juveniles, contiguous to each group of cells, and designed and used for leisure activities.
- (5) "Department" means the department of corrections.
- (6) "Dormitory" means a secure area designed for three or more juveniles and used for sleeping and day room activities.
- (7) "Facility" means either a juvenile detention facility or the juvenile portion of a county jail.
- (8) "Facility program" means a written narrative that describes basic operational functions and spaces needed to meet those functions.
- (9) "Family" means parents, grandparents, guardians, foster parents, and legal custodians.
- (10) "Holding room" means a secure room designed for holding one or more juveniles of the same gender for the purpose of processing admissions, releases, investigations or court appearances.
- (11) "Juvenile" has the meaning given in s. 938.02 (10m), Stats.
- (12) "Juvenile detention facility" has the meaning given in ch. 938 and includes a stand alone facility or a facility located in the same building or on the same grounds as a county jail.

(13) "Juvenile portion of a county jail" means an area which is used for the detention of juveniles and which is part of a county jail.

(14) "Living area" means the part of a juvenile detention facility normally occupied by juveniles, including day rooms, multi-purpose space, and adjacent control centers.

(15) "Multi-purpose space" means activity areas designed and used for education, recreation, library services, and other juvenile program activities. Multi-purpose space does not include cells, day rooms or dormitories.

(16) "Officer" or "juvenile detention officer" has the meaning given in s. 165.85 (2) (bt), Stats.

(17) "Privileged mail" means any written communication between a juvenile and an attorney, court, government or facility official.

(18) "Rated bed capacity" means the design capacity approved by the department under this chapter, based on single occupancy cells under s. DOC 346.14 (2), double occupancy cells under s. DOC 346.15, and dormitories under s. DOC 346.14 (3).

(19) "Receiving cell" means a cell used to segregate a juvenile for purposes of admission, release, discipline, investigation or court appearances.

(20) "Superintendent" means: (a) The individual designated to be in charge of a juvenile detention facility under s. 938.22 (3) (a), Stats., or the director as specified in s. 938.22 (3) (b), Stats.; or

(b) In the case of the juvenile portion of the county jail, the sheriff of a county in which the jail is located pursuant to s. 59.27 (1), Stats.

(21) "Undergarments" means underwear and socks and includes bras for females.

(22) "Unencumbered space" means usable space that is not encumbered by furnishings or fixtures.

DOC 346.04 Operational plan. (1) Before a facility may hold juveniles in secure custody, it shall have a mission statement and a written operational plan which has been approved by the department under s. 938.22 (2) (a), Stats., and which meets the requirements of 42 USC 5601 to 5761 and 28 CFR Part 31 and the standards specified in this chapter. No plan may be implemented until the department has approved the plan, under s. 938.22 (2) (a).

(2) The operational plan shall contain all of the following components:

(a) A statement setting forth the mission of the facility.

(b) Designation of whether the facility will operate as a juvenile portion of the county jail or as a juvenile detention facility.

(c) Policies and procedures to ensure against any contact between juveniles and adult inmates in all areas of the facility, including sallyports, entrances, booking, intake, living areas, elevators, visiting areas, staircases, medical areas, recreational areas, and fingerprinting areas.

(d) Policies and procedures to ensure immediate security backup in emergency situations.

(e) Policies and procedures for bedding and linens, canteen, classification, clothing, communicable disease control, crisis intervention, disciplinary hearings, discipline, educational programming, fire protection, frequency of cell checks, health screening and care, juvenile work assignments, mail, medical records, medications, nutrition, out-of-cell time, personal hygiene, personal property, programming, reading materials, recreation, release, religious programming, sanitation, searches, staffing, suicide prevention, telephone, use of restraints, use of volunteers, and visitation.

(f) Policies and procedures to ensure compliance with the standards specified in this chapter.

(3) Prior to submitting the operational plan to the department for approval under s. 938.22 (2) (a), Stats., the superintendent shall distribute the plan for review and comment to the sheriff, juvenile court judge, chief intake worker, social or human services director, and the director of the county department of community programs appointed under s. 51.42 (4), Stats.

DOC 346.05 Annual meeting. **(1)** The superintendent shall conduct a meeting at least annually to discuss and review the operation of the facility and other juvenile justice issues. The superintendent shall invite the sheriff, juvenile court judge, chief intake worker, social or human services director, and the director of the county department of community programs appointed under s. 51.42 (4), Stats., and any other appropriate persons.

(2) The superintendent shall maintain a record of the proceedings of the meeting under sub. (1) for review by the department.

DOC 346.06 Records and reporting. **(1)** The superintendent shall maintain a facility register which shall include identifying information for all juveniles, including name, age, gender, race, name of parents or guardian, alleged offense, detaining authority, time and date of admission, authority for admission, date and time of release, and destination of the juvenile after release.

(2) The facility shall maintain records of the date, time and circumstances of all of the following events involving juveniles:

(a) Death, attempted suicide which requires emergency medical care or hospitalization, or physical injury.

(b) Escape or attempted escape.

(c) Significant damage to the facility.

(d) A daily record of each juvenile's behavior, medical history, disciplinary actions, visitations, room assignment, care requirements and other special conditions.

(3) Records shall be maintained in a confidential manner as follows:

(a) Records shall be secured in locked desks or filing or storage cabinets.

(b) Records shall be maintained and stored separately from records of persons 18 or older.

(c) No person except those authorized through a court order or authorized facility or department personnel may have access to information in the records or be permitted to inspect the records.

(d) Whenever a person is allowed access to a juvenile's file, a notation which includes the person's name, date of access and authorization for access shall be made in the file.

(4) The superintendent shall notify the department's regional detention facilities specialist within 24 hours excluding weekends and holidays, after any of the following occurs:

(a) The death of a juvenile.

(b) The provision of medical treatment to a juvenile for a life-threatening injury or the admission of a juvenile to a hospital, not including an emergency room admission or admission for detention and evaluation under ch. 51, Stats.

(c) The escape of a juvenile.

(d) Any significant damage to the facility.

(e) Any change in the superintendence of the facility.

(5) The superintendent shall give the department at least 30 days notice of any intention to terminate the operation of the facility.

(6) The superintendent shall promptly furnish to the department all requested information.

DOC 346.07 Variances. (1) The department may grant a variance to a provision of this chapter, except that no variance may be granted to the provisions of s. DOC 346.14 (1) and (3) and 346.15 (3) (a) and (d).

(2) In order to obtain a variance, the superintendent shall demonstrate in writing that strict enforcement of the rule would result in unreasonable hardship for administration of the facility and that the variance would provide equivalent or better protection for the health, safety, welfare and rights of juveniles and the public.

(3) The department may impose specific conditions including reasonable time limits on a variance in order to protect the health, safety, rights or welfare of juveniles or the public.

(4) Violation of any condition under which a variance is granted constitutes a violation of this chapter. Upon finding that there has been a violation of a condition of the variance, the department may revoke the variance and require strict enforcement of the rule.

Subchapter II--Admission and release

DOC 346.08 Admission criteria for juvenile detention facilities. (1) Juveniles may be admitted to a juvenile detention facility under the provisions of applicable Wisconsin Statutes, including ch. 938 and ch. 48, or other court order.

(2) Persons who are 18 years of age or older may not be admitted or held in a juvenile detention facility, unless they are currently only under juvenile court jurisdiction under ch. 938 or ch. 48.

DOC 346.09 Admission. (1) No juvenile may be placed in juvenile detention facility unless it meets the requirements of this chapter and is approved by the department.

(2) An approved facility shall receive juveniles into secure detention 24 hours a day, 7 days a week.

(3) As soon as practicable following admission, each juvenile shall be required to take a bath or shower.

(4) A juvenile who appears to be seriously ill or injured, who exhibits significant mental or emotional distress, or who appears too intoxicated or incapacitated due to controlled substance or alcohol abuse may not be confined in the facility unless a health care professional has treated and approved the juvenile for confinement.

(5) The superintendent shall provide to juveniles upon admission a copy of the rules of the facility and a description of the services and programs of the facility. The superintendent shall assure that all juveniles have effective access to the information.

DOC 346.10 Classification. The operational plan under s. DOC 346.04 shall contain policies and procedures creating a classification system based on legal status, gender, age, behavior, information concerning present offense, current and prior detention history, medical condition, mental health, and other criteria designed to provide for the protection and safety of juveniles, staff and the community. In addition, the classification system shall identify specific criteria for the exclusion of juveniles from being housed in dormitories under s. DOC 346.14 (3) or double cells under s. DOC 346.15.

DOC 346.11 Contact. (1) There may be no physical or visual contact between juveniles and adult inmates in a juvenile detention facility.

(2) There may be no sustained sound contact between juveniles and adult inmates in a juvenile detention facility.

DOC 346.12 Release. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the release of juveniles from custody, including all of the following components:

(1) Verification of identity of juvenile.

(2) Verification of authority to release.

Subchapter III--Physical Plant

DOC 346.13 Construction plans. (1) A county which intends to build or remodel a facility shall do all of the following:

(a) Submit a letter of intent to the department before design development begins.

(b) Submit the facility program to the department for review and comment. The facility program shall include the following:

1. A statement of the facility mission and goals.

2. A description of needed spaces in terms of size, features and their relationship to one another.

3. Staff estimates.

4. Construction cost estimates.

(c) Submit the design development documents to the department for review and comment.

(d) Submit to the department for review and approval, two complete sets of construction plans of the facility.

(e) Ensure that the construction plans are approved by the department of commerce for

compliance with state building code.

(2) The county may publish the bid documents only after receiving the department's approval of the construction plans.

(3) Upon review and approval the department shall return to the county one set of construction plans and retain the second set for department records. The department shall return unapproved construction plans.

DOC 346.14 Physical environment. (1) JUVENILE HOUSING. (a) Each juvenile shall have a separate bunk or bed in a cell which meets the requirements of sub. (2), or s. DOC 346.15 or in a dormitory which meets the requirements of sub. (3). A facility may not exceed its rated bed capacity.

(b) The total number of juveniles housed in double cells under s. DOC 346.15 and in dormitories under sub. (3) may not exceed 75% of the rated bed capacity of the facility.

(2) **CELLS.** (a) Except if s. DOC 346.15 applies, all cells for juveniles in a facility shall be designated and used for single occupancy only.

(b) Unless s. DOC 346.15 applies, cells shall have minimum floor area of 35 square feet of unencumbered space. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.

(c) Unless s. DOC 346.15 applies, each cell shall have all of the following:

1. A rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor or a bed built in masonry construction of a similar strength.

2. An unbreakable, institution-type mirror.

3. A detention strength, metal, institution-type wash basin and toilet. The wash basin and toilet may be combined in one unit. The wash basin shall have hot and cold running water.

4. A rigidly constructed shelf-type table and seat which are bracketed to the wall or bolted to the floor.

5. Unless s. DOC 346.15 applies, 2 or more nonremovable, collapsible, detention strength clothing and towel hooks.

7. Light fixtures of detention strength and providing at least 30 foot candles at 30 inches above the floor. Lights shall have a dimming capability or there shall be a nightlight to allow for comfortable sleeping. There shall be enough illumination for observation of juveniles during security checks.

(d) There shall be no exposed heating pipes, radiators or controls in cells.

(e) There shall be a release system designed to unlock cell doors individually and as a group from a single point outside the confinement area.

(3) **DORMITORIES** (a) A juvenile detention facility may use dormitories in addition to cells for the secure detention of juveniles.

(b) Each dormitory shall be designed for a minimum of 3 and a maximum of 8 juveniles.

(c) If a juvenile detention facility contains one dormitory, it shall have a minimum of 2 cells designed and used for single occupancy.

(d) If more than one dormitory is built, the number of dormitory beds may not exceed 50% of the rated bed capacity of the juvenile detention facility.

(e) If, based on all the criteria under s. DOC 346.10, a juvenile detention facility determines that placement of a juvenile in a dormitory may jeopardize the health or safety of the juvenile, other juveniles in the facility, staff or the community, the juvenile may not be placed in a dormitory.

(f) Each dormitory shall have all of the following:

1. A minimum combined sleeping area and adjacent day room space of 70 square feet per juvenile based on rated bed capacity of the dormitory, excluding toilets, showers and lavatories.

2. A minimum floor to ceiling height of 8 feet.

3. Non-locking doors on sleeping rooms, if separate sleeping rooms are provided.

4. Unrestricted physical access to the day room, lavatories and toilets.

5. A rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor for each juvenile based on the rated bed capacity of the dormitory.

6. For facilities constructed or substantially remodeled after the effective date of this chapter...[LRB inserts date] all upper bunks equipped with an anti-rollout plate.

7. Detention strength washbasins and toilets.

8. Unbreakable, detention strength mirrors sufficient for the number of juveniles confined.

9. Detention strength tables and seating in the day room based on the rated bed capacity of the dormitory.

10. Two nonremovable, collapsible, detention strength clothing and towel hooks for each juvenile confined based on the rated bed capacity of the dormitory.

11. Detention strength light fixtures that provide at least 30 foot candles at 30 inches above the floor. Lights shall have a dimming capability or there shall be a nightlight to allow for comfortable sleeping. There shall be enough illumination for observation of juveniles during security checks.

(4) DAY ROOM. (a) Each day room shall have all of the following:

1. A minimum floor area of 35 square feet for each juvenile based on the rated bed capacity of the adjacent group of cells. In addition, each day room shall have a minimum of 70 square feet of unencumbered space.

2. Detention strength light fixtures that provide at least 30 foot candles at 30 inches above the floor.

3. Adequate furnishings and equipment for leisure time activities as required under this chapter.

4. Detention strength tables and seating based on the rated bed capacity of the adjacent cells.

(b) There shall be in the day room no exposed heating pipes, radiators or controls which are accessible to juveniles.

(5) HOLDING ROOMS. (a) Holding rooms shall be located in an area that allows continuous staff observation or electronic video surveillance of juveniles.

(b) Each holding room shall have all of the following:

1. Detention strength, rigidly constructed seats or benches bracketed to the wall or bolted to the floor or seats or benches of masonry construction of similar strength.

2. A detention strength, metal, institution-type wash basin and toilet.

3. A minimum floor area of 50 square feet of unencumbered space for 5 or fewer occupants and an additional 10 square feet of unencumbered space for each additional occupant.

4. Detention strength light fixtures that provide at least 30 foot candles at 30 inches above the floor.

(c) Holding rooms are not included in the rated capacity of a facility.

(d) Juveniles may not be held in a holding room for more than 24 continuous hours.

(e) Holding rooms outside the secure perimeter shall comply with the requirements of this section.

(6) RECEIVING CELLS. (a) All receiving cells shall be designed and used for single occupancy.

(b) Each receiving cell shall have all of the following:

1. A rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor or a bed built in masonry construction or similar strength.

2. A detention strength, metal, institution-type wash basin and toilet. The wash basin and toilet may be combined in one unit. The wash basin shall have hot and cold running water.

3. Detention strength light fixtures that provide at least 30 foot candles at 30 inches above the floor. Lights shall have a dimming capability or there shall be a nightlight to allow for comfortable sleeping. There shall be enough illumination for observation of juveniles during security checks.

4. A minimum floor area of 35 square feet of unencumbered space. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.

(c) Receiving cells are not included in determining the rated capacity of a facility.

(d) Juveniles may not be held in a receiving cell for more than 72 continuous hours.

(7) NATURAL LIGHTING. Cells under sub. (2) and s. DOC 346.15 and dormitories under sub. (3) shall be provided with natural light in accordance with the International Building Code, s. 1204 as adopted by the department of commerce under s. Comm 61.05 (1). Artificial light may

not be used as an alternative to the natural light requirements under the International Building Code.

(8) EXTERIOR WINDOWS. (a) This subsection applies to all windows that lead to the exterior of the facility or to an area outside the secure perimeter of the facility.

(b) All exterior windows shall be translucent or shall be located to prevent persons outside the secure perimeter of the facility from observing juveniles within the facility.

(c) Each exterior window that has an opening in any direction in excess of 5½ inches shall be covered with security steel grills to prevent escape.

(d) If an exterior window is accessible to juveniles and opens, the window shall be mounted in a detention strength frame and shall be covered on the inside with a 1,600 pound per lineal inch tensile strength security screen of .047 mil. wire diameter to prevent the passage of contraband.

(e) If an exterior window is not accessible to juveniles and opens, the screen shall have a tensile strength of at least 800 pounds per lineal inch and shall be made of wire of at least .028 mil. diameter.

(f) If an exterior window does not open, whether or not it is accessible to juveniles, the security screen required under par. (d) or (e) may be omitted if the window is mounted in a detention strength frame and the pane is security glass of sufficient strength to resist breakage and prevent the passage of contraband.

(9) SHOWERS. There shall be at least one shower for every 8 juveniles. There shall be an adequate supply of hot and cold water so that juveniles shall be permitted to shower on a daily basis.

(10) MULTI-PURPOSE SPACE. Facilities shall contain multi-purpose space which shall have a minimum of 300 square feet of floor area or provide 35 square feet of floor area for the maximum number of juveniles expected to use the space at one time, whichever is greater.

(11) CLASSROOM SPACE. For juvenile detention facilities which are constructed or substantially remodeled after the effective date of this chapter...[LRB inserts date] there shall be classroom space designed in conformity with local or state educational requirements.

(12) HEALTH CARE AREA. If medical or dental services are provided in the facility, there shall be sufficient space, equipment, supplies and materials for the performance of primary health care delivery in a confidential and private manner. The superintendent shall consult with the health care provider to determine the adequacy of the space, equipment, supplies and materials.

(13) OUTDOOR RECREATION SPACE. (a) If provided, there shall be a minimum of 70 square feet of outdoor recreational space per occupant.

(b) The operational plan under DOC 346.04 shall contain policies and procedures for the safe and secure use of outdoor recreational space.

(14) STORAGE SPACE. (a) Sufficient space shall be provided in the facility to store and issue clothing, bedding, cleaning supplies and other items for daily operations.

(b) Space shall be provided for storing the personal property of juveniles safely and securely.

(15) VISITING SPACE. Sufficient space for visitation shall be provided.

DOC 346.15 Double celling. (1) A juvenile detention facility may use cells for double occupancy. This section does not apply to a juvenile portion of a county jail.

(2) If a juvenile detention facility determines based on all the criteria under s. DOC 346.10 that placement of a juvenile in a double cell may jeopardize the health or safety of the juvenile, other juveniles in the facility, staff or the community, the juvenile may not be placed in a double cell. If a juvenile detention facility determines based on all the criteria under s. DOC 346.10 that placement of 2 particular juveniles in a double cell may jeopardize the health or safety of either juvenile, other juveniles in the facility, staff or the community, those juveniles may not be placed together in the double cell.

(3) In addition to the requirements for single occupancy cells under s. DOC 346.14 (2) and before a cell may be used for double occupancy, all of the following conditions shall be met:

(a) *Minimum floor area.* 1. In juvenile detention facilities which were constructed or substantially remodeled between October 1, 1994, and the effective date of this chapter ... [LRB inserts date], a cell shall have a minimum floor area of 70 square feet. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.

2. In juvenile detention facilities which were constructed before October 1, 1994 and have not been substantially remodeled after October 1, 1994, a cell shall have a minimum floor area of 54 square feet. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.

3. In juvenile detention facilities which are constructed or substantially remodeled after the effective date of this chapter ... [LRB inserts date], a cell shall have a minimum floor area of 70 square feet of unencumbered space.

(b) *Receiving cells.* Receiving cells may not be used for double occupancy.

(c) *Single occupancy cells.* Each juvenile detention facility shall maintain a minimum of 2 cells which are designed and used for single occupancy only.

(d) *Double occupancy cells.* A juvenile detention facility may not exceed 75% double occupancy of the total number of cells, excluding receiving cells and holding rooms.

(e) *Clothing hooks.* Each cell shall contain a minimum of two nonremovable, collapsible, detention strength clothing and towel hooks for each occupant.

(f) *Anti-rollout plates.* For facilities constructed or substantially remodeled after the effective date of this chapter...[LRB inserts date] all upper bunks shall be equipped with an anti-rollout plate.

DOC 346.16 Fire protection. (1) The operational plan under DOC 346.04 shall contain policies and procedures relating to fire protection and evacuation, including evacuation of persons with disabilities and appropriate training of staff. The policies and procedures shall comply with local fire department recommendations.

(2) The evacuation plan shall be posted in a conspicuous place for staff to view.

(3) The facility shall have and shall properly maintain fire alarms, smoke and thermal detectors, and fire extinguishers. The facility shall place this equipment in accordance with the advice of the local fire department.

(4) All staff shall be trained in the proper use of the equipment in sub. (3) and in emergency rescue and evacuation procedures. Documentation of such training shall be maintained in the facility files.

(5) There shall be fire inspection services at least annually with documentation of such inspection in facility files.

DOC 346.17 Sanitation. (1) FOOD SERVICE. (a) No person who is known to be infected with a disease in a form that is communicable by food handling may be employed or work as a food handler in a facility. If the superintendent suspects that a person has a communicable disease that may be transmitted by food handling, the superintendent shall exclude the person from working with food and, in the case of a reportable communicable disease defined under s. DHS 145.03 (4), shall notify the local health authority immediately.

(b) No person may use tobacco in food storage or food preparation areas, or while serving food.

(c) All persons who work in food service areas shall wear clean garments and clean caps or hairnets, and shall keep their hands clean at all times when engaged in the handling of food, drink, utensils or equipment. Particular attention shall be given to the cleaning of fingernails.

(d) Adequate and convenient hand washing facilities shall be provided for use by persons working in food services areas, including hot and cold running water, soap and approved sanitary towels. Use of a common towel is prohibited.

(e) All milk and milk products served shall be pasteurized and shall be from sources certified as grade A.

(f) No spoiled or contaminated food may be used.

(g) All raw vegetables, fruits and poultry shall be thoroughly washed in clean water.

(h) All purchased meats and poultry shall be from sources that are subject to federal or state inspection.

(i) All ice used for cooling drinks or food by direct contact shall be from a safe public water supply and stored and handled to prevent contamination.

(j) Food shall be prepared by methods that conserve nutritive value, flavor and appearance.

(k) Food shall be covered or protected when in transit.

(L) Food and drink shall be stored in a clean, well-ventilated place protected from insects, dust, vermin, overhead leakage, sewage backflow and other contamination.

(m) Staple foods and bulk supplies of flour, sugar and similar ingredients shall be stored in metal or plastic containers with tight-fitting covers once the original container is opened.

(n) Food shall be stored at least 6 inches above the floor on clean surfaces to permit cleaning underneath and to protect from splash and other contamination.

(o) All readily perishable foods, except when being prepared or served, shall be refrigerated at or below 40° F.

(p) Dishes, glassware, utensils and other food use or service equipment shall be stored in an area protected from contamination.

(q) Tables, cooking and working surfaces and food contact surfaces of equipment, including multi-use utensils, shall be thoroughly cleaned and sanitized after each usage.

(r) The walls, floors and ceilings of all rooms in which food or drink is stored, prepared or served, or in which utensils are washed shall be kept clean and in good repair.

(s) Ventilation fans, oven hoods and ducts shall be kept clean and free of grease.

(t) Animals shall be kept out of the kitchen, pantry or places where food is handled or prepared.

(u) All garbage and kitchen refuse which is not disposed of through a garbage disposal unit connected with the sewerage system shall be kept in leak-proof, nonabsorbent containers with close-fitting covers in areas separate from those used for preparation and storage of food. The contents shall be removed as often as necessary to prevent decomposition and overflow. Garbage containers shall be reasonably clean and show no evidence of accumulated grease of longstanding.

(2) UTENSIL CLEANING. (a) In manual washing, dishes and utensils shall first be pre-washed and then shall be washed in hot water at a temperature of at least 100° F, containing an adequate amount of an effective soap or detergent. Water shall be kept clean by changing it frequently. Sanitizing all utensils following hand washing shall be done by one of the following:

1. Submerging all utensils for 30 seconds in clean water maintained at a temperature of 170°F or more.

2. Submerging all utensils for rinsing in hot water at a minimum temperature of 100° F to remove soap or detergent, then submerging for at least 2 minutes in a hypochlorite solution with a chlorine solution concentration of at least 100 parts per million. A different chemical sanitizing solution may be used if approved by the department. Soaps, water softeners, washing compounds and detergents shall not be added to sanitizing solutions. All utensils shall be air-dried after sanitizing.

(b) Mechanical washing of utensils shall be done as follows:

1. Utensils shall be stacked in racks or trays so as to avoid overcrowding and in such a manner as to ensure complete washing contact with all surfaces of each article.

2. The wash water temperature of utensil washing machines shall be held from 130° F to 150° F.

3. A detergent shall be used in all washing machines.

4. For sanitizing in a spray-type machine, dishes shall be subjected to a rinse period of 10 seconds or more at a temperature in the supply line of the machine of at least 180° F. For sanitizing in an immersion-type machine, dishes shall be submerged for 30 seconds or more with the water at the temperature of 170° F or more. There shall be a constant change of water through the inlet and overflow.

5. Thermometers shall be located in both the wash compartment and rinse water line, in such locations as to be readily visible. Thermostatic control of the temperature of the rinse water shall be provided in new equipment.

6. The pressure of the water used in the spray washing and rinsing shall be 15 to 25 pounds per square inch at the machine nozzles.

7. Utensils shall be allowed to air-dry in racks or on drain-boards.

(3) INSECT AND RODENT CONTROL. (a) All outside openings shall be covered with wire screening of not less than number 16 mesh or its equivalent and shall be properly maintained to prevent entry of insects. Screen doors shall be self-closing.

(b) All means necessary for the elimination of vermin shall be used.

(c) All poisonous compounds used in the extermination of rodents or insects shall be clearly labeled as poisons. Poisonous compounds shall be stored in a locked area separate from food, kitchenware, and medications.

(d) Poisonous or toxic materials may not be used in a way that contaminates food, equipment, or utensils, or in a way that constitutes a hazard to juveniles, staff or other person, or in a way that is not in full compliance with the manufacturer's labeling.

(4) WATER SUPPLY. All water shall be obtained from a safe public water source.

Subchapter IV--Staffing

DOC 346.18 Employment practices. Employment practices of each facility shall be in compliance with subch. II of ch. 111, Stats., the equal employment opportunity act of 1972 (42 USC 2000e – 2000e – 17) and s. DHS 5.07 (1).

DOC 346.19 Job descriptions. There shall be written job descriptions kept on file for all staff and prior employment references shall be verified and documented in the employee's personnel record.

DOC 346.20 Health qualifications for employment. Staff shall receive a medical examination by a physician at the time of initial employment. Personnel records shall contain verification of the medical examination.

DOC 346.21 Education and training. **(1)** Within the first 30 days of employment, all security staff shall receive at least 40 hours of orientation training which shall be documented in the employee's personnel record and which shall include but not be limited to the following:

- (a) Facility policies and procedures.
- (b) Information on the administrative rules governing secure detention of juveniles.
- (c) First aid, the use of emergency equipment, and medical screening.
- (d) Supervision and control of juveniles.
- (e) Suicide prevention, mental health and crisis intervention.
- (f) Health screening and care and medications.
- (g) Use of restraints and control devices.
- (h) Communications skills.

(2) Officers shall receive at least 8 hours of annual training on the care and custody of juveniles, suicide prevention, mental health, crisis intervention, medications, health screening at the time of admission, and use of restraints and control devices.

DOC 346.22 Staffing plan in juvenile detention facilities. (1) The superintendent of a juvenile detention facility shall submit to the department for approval a staffing plan which specifies methods by which adequate staffing will be provided to ensure the health, safety and welfare of the juveniles.

(2) In juvenile detention facilities:

(a) There shall be at least one officer on duty at all times in each living area where juveniles are present.

(b) There shall be no less than one officer supervising a maximum of 15 juveniles in the living area. Additional officers shall be available at all times as back up.

(c) There shall be no less than 2 officers on duty in the facility at any time when juveniles are present and at least one of those officers shall be in the living area. In a facility that is co-located with a county jail the superintendent may substitute for the second officer an officer whose duties do not include the supervision of adult inmates.

(d) An officer of the same gender as the juveniles being admitted or held in custody shall be on duty in the living area.

(e) No officer responsible for supervision of juveniles may during the same work shift have responsibility for supervision of adult inmates in a county jail.

(3) Staff may not accept any gift or gratuity from a juvenile or juvenile's family.

Subchapter V--Health Care

DOC 346.23 Health screening and care. (1) The facility shall provide necessary medical and mental health care and emergency dental care while the juvenile is in custody. Consent of a juvenile's parent, guardian or legal custodian shall be required for treatment, except in the event of an emergency during which a parent, guardian or legal custodian is not available.

(2) The facility shall review the current health of every juvenile admitted to the facility in accordance with all of the following:

(a) The facility shall perform health screening upon admission.

(b) The facility shall use a health screening form which has been developed in conjunction with health care professionals.

(c) The health screening form shall be designed to obtain health information, including the juvenile's medical, mental, and dental condition, current medications, medical illnesses or disabilities, mental illnesses, developmental disabilities, substance abuse problems, and suicide risk.

(3) The operational plan under s. DOC 346.04 shall contain policies and procedures for juvenile health care, including all of the following components:

(a) The names of staff who are designated with the authority to make health care decisions, including emergency medical and dental care.

(b) The completion of health screening in a manner which ensures the privacy of a juvenile and confidentiality of information.

(c) Names, addresses and telephone numbers of health care professionals who provide emergency and other health care services, including counseling, shall be listed and available to staff.

(d) Referral of juveniles to health care professionals or to agencies which provide health care or counseling at the time of admission and throughout the period of detention.

(e) Provision of non-emergency health care, including use of a juvenile's personal physician.

(f) A schedule of access to routine health care which is provided to juveniles.

(g) Submission, processing, and disposition of requests for health care by juveniles.

(h) Provision of a special diet if ordered by a health care professional.

(4) The superintendent shall maintain agreements with health care professionals.

DOC 346.24 Medications. (1) The operational plan under s. DOC 346.04 shall contain policies and procedures developed in consultation with health care professionals, relating to the control, administration, and delivery of prescription and nonprescription medications, including all of the following components:

(a) Process by which security staff or health care professionals verify and determine the necessity of medications brought in by juveniles or other persons for a juvenile.

(b) Process for continuing administration of verified medications.

(c) Process for the inventory and secure storage of all medications brought into the facility.

(d) Consent of a juvenile's parent, guardian or legal custodian shall be required for treatment, except in the event of an emergency during which a parent, guardian or legal custodian is not available.

(e) Administration or delivery of prescription and nonprescription medications to juveniles, including identification of staff authorized by the facility to do so.

(f) Documentation of the administration or delivery of medication to a juvenile. The documentation shall include the type and dosage of medication, the name of the practitioner who prescribed the medication, the name of the person who administered or delivered the medication, the date and time of administration or delivery, and any refusal by a juvenile of recommended or prescribed medications.

(g) Return or disposal of a juvenile's unused medications inventoried upon admission or unused non-facility provided medications received by the juvenile after admission.

(h) Inventory and disposal of unused facility provided medications upon the juvenile's release.

(i) Delivery of insulin for juveniles who are insulin dependent diabetics.

(2) Drugs requiring parenteral administration shall be prescribed by a practitioner as defined under s. 961.01 (19), Stats., and administered by a health care professional, except juveniles who are insulin dependent diabetics may be permitted to self-administer insulin injections.

DOC 346.25 Communicable disease control. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the care, treatment and supervision of juveniles who may have communicable diseases, including all of the following components:

(1) Provision of treatment and supervision of juveniles during isolation or quarantine under s. 252.06 (6) (b), Stats.

(2) Documentation of the need for isolation or quarantine under s. 252.06 (6) (b), Stats. In the juvenile's confidential medical file.

(3) Provision of laboratory screening for juveniles who may have been exposed to a communicable disease, if ordered by a health care professional.

(4) Screening for tuberculosis shall be performed on all juveniles in custody for more than one week if ordered by a health care professional. Separate parental consent is not required for ordered tuberculosis screening.

DOC 346.26 Suicide prevention. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the supervision and housing of juveniles who may be at risk of seriously injuring themselves, including all of the following components:

(1) Assessment of a juvenile's suicide risk at admission and documentation of the results.

(2) Designation of security staff or health care professionals who may assess a juvenile's level of suicide risk and who may authorize placement on or removal from a suicide watch status for juveniles who are suicide risks.

(3) Identification of areas within the facility where juveniles who are suicide risks shall be housed.

(4) Referral of juveniles who are suicide risks to a mental health professional.

(5) Documentation of observation of juveniles under s. DOC 346.44.

(6) Communication between health care professionals and security staff regarding the status of a juvenile who is a suicide risk.

(7) Intervention of a suicide in progress, including first aid measures.

(8) List of persons to be notified in case of potential, attempted or completed suicides.

(9) Documentation of actions and decisions regarding juveniles who are suicide risks.

(10) Annual training plan for officers and other staff.

DOC 346.27 Crisis intervention. The operational plan under s. DOC 346.04 shall contain policies and procedures for the provision of professional services for a juvenile displaying mental distress, including withdrawal, uncontrolled emotions or self-destructive behavior.

DOC 346.28 Medical records. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to medical records of juveniles, including all of the following components:

(1) Juvenile medical records shall be kept separate from other records, including custodial and adult records, and shall be maintained in a confidential manner in accordance with s. 51.30, 146.82, and 252.15, Stats. and other applicable state or federal laws.

(2) Records shall be maintained in locked storage and accessible only by designated staff.

(3) No person except those authorized under s. 51.30 or 146.82, Stats, or other applicable state or federal law may have access to information in the records or be permitted to inspect the records.

(4) Whenever a person is allowed access to a juvenile's confidential medical record, a notation shall be made in the file which includes the person's name, date of access and authorization for access.

DOC 346.29 Nutrition. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the nutrition of juveniles, including all of the following components:

(1) The facility shall provide nutritious and quality food for all juveniles. Menus shall satisfy generally accepted nutritional standards.

(2) Milk shall be offered as a beverage at every meal.

(3) A juvenile may abstain from any foods that violate the juvenile's religion. Consistent with available resources, the facility shall provide a substitute from other available foods from the menu served at the meal. The substitutions shall be consistent with sub. (1).

(4) Daily menus of food actually served shall be kept on file for at least 60 days and shall be made available to the department upon request.

(5) Menus and portion sizes shall be reviewed at least annually by a dietitian to ensure compliance with nationally recommended food allowances. Reports shall be available to the department upon request.

(6) Supplementary food or modified diet, as ordered by a physician, shall be provided for those juveniles who have special needs.

(7) A minimum of 3 meals, 2 of which are hot, shall be provided at regular meal times during each 24 hour period with no more than 14 hours between the evening meal and breakfast. Provided basic nutritional standards are met, the superintendent may permit variations based on weekend and holiday food service demands.

Subchapter VI--Resources for Juveniles

DOC 346.30 Personal hygiene. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the personal hygiene of juveniles, including all of the following components:

(1) Toilet articles sufficient for the maintenance of cleanliness and hygiene, including but not limited to, toothpaste and toothbrush, soap, comb, toilet paper, shampoo, shaving materials, and feminine hygiene materials shall be provided. There shall be no common use of these items.

(2) Juveniles shall be permitted to shower on a daily basis.

DOC 346.31 Personal property. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the inventory, storage and return of a juvenile's personal property, including all of the following components:

(1) Items of personal property, including money, which are taken from the juveniles shall be listed in writing, stored in a safe place and returned to the juvenile upon release. Each juvenile and an employee shall sign the written property list at the time of admission and release. If a juvenile cannot or will not sign the property list, a written notation to that effect shall be placed on the list and verified by one witness.

(2) Provision for the possession of authorized personal property.

(3) Provision for the return of juvenile's property.

(4) Provision for the disposal of unclaimed or unauthorized property.

DOC 346.32 Clothing and Linen. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the clothing and linen which a juvenile is permitted to have, including all of the following: (1) Clothing. All of the following shall be provided:

(a) A set of clean clothing if juveniles are not allowed to wear their personal clothing.

(b) Clean undergarments which shall be issued daily.

(c) Clean outer garments which shall be issued a minimum of twice weekly.

(2) Linen. All of the following shall be provided:

(a) A clean and sanitized, fire-retardant mattress and pillow, including integrated units, which shall be kept clean and in good repair.

(b) Two sheets or one sheet and one mattress cover and pillowcases, which shall be exchanged and cleaned weekly.

(c) A towel and washcloth, which shall be exchanged and cleaned twice weekly.

(d) A clean, fire-retardant blanket, which shall be laundered monthly and before reissue to another juvenile.

DOC 346.33 Mail. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to written contact between juveniles and their families, friends, attorneys, the court system, governmental officials and others, including all of the following components:

(1) The amount of mail a juvenile may send or receive may not be limited unless the reasons for such limitation are documented in the juvenile's record.

(2) Privileged correspondence may not be limited.

(3) Mail to the juvenile shall be delivered on the same day that it is received at the facility.

(4) Appropriate writing materials shall be provided to juveniles upon request.

(5) Postage for a minimum of 2 non-privileged letters a week shall be provided for each juvenile. Postage for privileged correspondence may not be limited.

(6) Incoming privileged mail may be opened and inspected in the presence of the juvenile to whom the mail is addressed. Privileged mail may not be read.

(7) Juveniles shall be provided notice upon admission that their non-privileged incoming letters and packages may be inspected for contraband.

(8) Provision for staff inspection and reading of non-privileged incoming and outgoing mail.

(9) Juveniles shall be notified of confiscated mail.

(10) Mail which is confiscated shall be inventoried. Confiscated mail shall be returned to the sender, disposed of, or delivered to the juvenile upon release. A record of confiscated mail shall be maintained and include the names of the sender and receiver, the dates of receipt and disposition, and the reasons for confiscation and disposal.

(11) Cash, checks or money orders shall be receipted, inventoried and credited to the juvenile's account or placed in the juvenile's secured property.

(12) Mail addressed to a released juvenile shall be forwarded unopened to the juvenile or returned to the sender or post office if no forwarding address is available.

DOC 346.34 Telephone. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to juvenile access to the telephone, including all of the following components:

(1) Upon admission, the juvenile shall be given an opportunity as soon as possible to make a minimum of 2 telephone calls to his or her parents, legal guardians, foster parents, custodians or legal counsel.

(2) Other than those under sub. (1), a juvenile shall be given the opportunity to make telephone calls to his or her parents, legal guardians, foster parents, custodians or legal counsel, based on the facility's schedule, telephone availability, and personnel constraints. Reasons for limiting access to the telephone shall be documented.

(3) A juvenile shall be allowed to make at least one 10-minute telephone call to a family member every 24 hours.

(4) Provision for a juvenile to receive personal telephone calls or messages from parents, legal guardians, foster parents, custodians or legal counsel.

DOC 346.35 Visitation. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to visitation, including all of the following components:

(1) Family visits are of primary importance and shall be allowed on a daily basis. Each facility shall provide for family visits during designated hours. Visiting hours shall be designated during both the day and evening with a minimum of 3 hours before 5:00 p.m. and 2 hours after 5:00 p.m.

(2) Clergy, teachers, mental health professionals, social workers and legal counsel shall be permitted to visit at reasonable times. These visits may not be subject to any physical barriers and shall be free from audio monitoring.

(3) The superintendent may authorize persons in addition to those listed in sub. (1) and (2) to visit a juvenile.

(4) The number of visitors a juvenile may receive and the length of visits may be limited only as required by the facility's schedule, space availability and personnel constraints or when there are documented reasons to justify such limitations. Family visiting time may not be scheduled for less than 30 minutes.

(5) Visitors shall be required to register upon entry into the facility.

(6) Establishment of a search policy of visitors and their possessions.

(7) A superintendent may permit contact visiting based on security needs and physical plant.

DOC 346.36 Programming. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to programming for juveniles, including the following components: (1) Juveniles shall be out of their cells a minimum of 12 hours per day, except for discipline, medical, behavioral, investigative or lockdown reasons.

(2) If a juvenile is not out of his or her cell for a minimum of 12 hours each day, facility staff shall document in writing the reasons for the increased cell time.

(3) On weekdays other than legal holidays, a minimum of 6 hours of the out-of-cell time under sub. (1) shall be time spent in structured group or individual activities, including education, exercise, recreation, and, as appropriate, family counseling or drug and alcohol counseling. On weekends and legal holidays, a minimum of 3 hours of the out-of-cell time under sub. (1) shall be time spent in structured activities which may include visitation, recreation, exercise and housekeeping.

DOC 346.37 Education. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to educational programming for juveniles, including all of the following requirements:

(1) Superintendents shall ensure that juveniles have access to education, as provided by the school district in which the facility is located.

(2) Superintendents shall notify the school district in which the facility is located when juveniles are present in the facility.

(3) Superintendents shall cooperate with the school district in which the facility is located in the implementation of an educational program.

(4) Superintendents shall communicate to the department of public instruction significant concerns regarding adequacy of educational programming within facilities.

(5) Superintendents shall document on a daily basis all of the following:

(a) Number of hours of instruction by a teacher.

(b) Number of juveniles receiving instruction.

(c) Names of juveniles who refused to participate in education.

(d) Names of juveniles who were unable to participate and the reasons for the inability.

DOC 346.38 Reading materials. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to access to reading materials, including the following components: (1) Reading materials of general interest, such as books, newspapers and magazines, shall be provided.

(2) Reading materials which are prohibited for juveniles because their content creates a security risk shall be identified.

(3) Inspection of reading materials brought by visitors for juveniles if the facility allows visitors to bring in reading materials.

DOC 346.39 Recreation and exercise. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to recreation and exercise for juveniles, including the following components: (1) Juveniles shall have access to leisure time supplies and activities unless use of these materials is restricted for disciplinary or security reasons.

(2) Each juvenile shall be provided an opportunity to participate in at least one hour of large muscle or cardiovascular physical exercise per day.

(3) Superintendents shall document on a daily basis the names of juveniles who do not participate in recreation or exercise and the reason for nonparticipation.

DOC 346.40 Religion. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to religious programming, including the following components: (1) Juveniles shall have the right to religious ministrations and sacraments as provided in s. 301.33, Stats.

(2) Juveniles shall be given an opportunity to request access to clergy. Facilities shall document requests and their disposition.

(3) Juveniles shall be notified of the schedule of religious services available in the facility and of religious organizations and clergy willing to conduct religious services in the facility.

(4) The superintendent shall provide to a juvenile a Bible, Quran, or other religious text upon request under s. 301.33, Stats.

DOC 346.41 Uncompensated work assignments. Juveniles are not required to participate in uncompensated work assignments unless the work is related to housekeeping, maintenance of the facility or grounds, personal hygienic needs, or part of an approved training or community service program.

DOC 346.42 Volunteers. If a facility uses volunteers, the operational plan under s. DOC 346.04 shall contain policies and procedures relating to the use of volunteers, including recruitment and selection, training and orientation, supervision and evaluation, duty and responsibility assignments, and termination.

DOC 346.43 Canteen. If a facility provides canteen, vending or other similar services for juveniles, the operational plan under s. DOC 346.04 shall contain policies and procedures for use of the service. If there is a canteen, regular accounting procedures shall be followed.

Subchapter VII--Security

DOC 346.44 Observation of juveniles. (1) All areas occupied by juveniles shall be physically observed at irregular intervals to ensure the custody, safety and welfare of the juveniles.

(2) At a minimum, officers shall physically observe each juvenile at irregular intervals according to the following schedule:

(a) Juveniles in behavioral segregation, discipline and control, suicide watch or other special needs status at least every fifteen minutes.

(b) Juveniles in receiving cells or holding rooms at least every fifteen minutes.

(c) Except as provided in par. (a) or (b), juveniles in general population or administrative segregation at least every thirty minutes.

(3) Each observation shall be documented.

(4) Closed circuit television is not a substitution for physical observations by officers.

DOC 346.45 Searches. The operational plan under DOC 346.04 shall contain policies and procedures relating to searches to ensure the safety and security of the facility, juveniles, staff, or public, including all of the following components:

(1) Search of facility premises.

(2) Search of the living quarters of juveniles, including their personal property.

(3) Searches of juveniles.

(4) Searches of visitors.

(5) Searches of professional staff.

(6) Searches of volunteers.

(7) Searches of staff.

(8) Strip searches may be conducted only in accordance with s. 968.255 (2) and (3), Stats.

(9) Searches may not be conducted as a disciplinary measure.

DOC 346.46 Security practices. (1) There shall be at least 3 complete sets of secure area and fire escape keys, one set in use, one set stored in a safe place which is accessible only to staff workers for use in an emergency and one set stored in a secure place outside the confinement area.

(2) There shall be an accurate record of the location of all keys.

(3) All staff workers shall be given instructions concerning the use and storage of the keys and shall be held strictly accountable for keys assigned to them.

(4) All staff workers shall be familiar with the locking system of the secure area and able to release juveniles promptly in the event of a fire or other emergency.

(5) The superintendent shall ensure that monthly inspections are made to determine if cell, dormitory and fire escape locks are in good working order. The inspections shall be documented.

(6) An approved security door with security glass observation openings shall be provided for locked entrances into all confinement rooms and areas.

(7) Any damage to the facility which compromises safety or security shall be promptly and securely repaired.

Subchapter VIII -- Discipline

DOC 346.47 Discipline. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to discipline of juveniles, including all of the following components:

(1) At the time of admission, each juvenile shall be notified verbally and provided with a copy of the rules of behavior required in the facility and the potential disciplinary actions imposed for violation of the rules. Copies of the rules shall be posted in conspicuous places.

(2) Documentation of a rule infraction and any disciplinary action shall be made part of the juvenile's record as required under s. DOC 346.06.

(3) Disciplinary action shall be determined on an individual basis. Group discipline for the misbehavior of one juvenile is prohibited.

(4) No juvenile may be given authority over another juvenile or be involved in taking disciplinary action against another juvenile.

(5) The following sanctions shall be allowed as disciplinary actions:

(a) Cell confinement, except that cell confinement for 6 hours or more shall not occur unless the juvenile is first given a disciplinary hearing in accordance with s. DOC 346.48. Supervisory personnel shall review cell confinement of less than 6 hours.

(b) Restriction of privileges, including use of radio, television, leisure time materials or canteen, provided that procedures under sub. (6) are followed. Restriction on opportunities for religious worship, food or special dietary requirements, sleep, access to attorneys, courts, legislators, mental health personnel or social workers, and basic health and sanitation requirements is prohibited.

(c) Restriction of family visits, telephone, education, non-privileged mail and exercise when the restriction is directly related to a violation of rules concerning these activities, provided that the procedures under sub. (6) are followed.

(6) A juvenile's privileges may be restricted for a rule violation after the juvenile is given an opportunity to explain the circumstances of the alleged violation. A supervisor shall review the rule violation and restriction within 24 hours. The supervisor's review shall include an opportunity for the juvenile to explain the circumstances of the alleged violation.

(7) A juvenile may not be disciplined by corporal or unusual punishment, intentional humiliation, mental abuse, interference with the daily functions of living, the use of chemical agents, the use of restraints such as handcuffs or shackles, or by placement in a cell designed for the administrative or disciplinary segregation of adults.

DOC 346.48 Disciplinary hearings. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to disciplinary hearings, including all of the following components:

(1) Whenever cell confinement of 6 hours or more is proposed as a disciplinary measure, the juvenile shall be given a disciplinary hearing. Notice of the hearing and specific charges shall be given at least 12 hours prior to the hearing unless the notice is waived by the juvenile. The juvenile shall be advised of the following rights:

(a) The right to request the presence of available material witnesses.

(b) The right to have the facility provide a staff advocate or adequate substitute to assist the juvenile in responding to the charges.

(2) The disciplinary hearing shall be held before an impartial hearing officer or committee within 24 hours of receipt of the written notice by the juvenile.

(3) At the hearing, the juvenile or the juvenile's representative shall be entitled to call witnesses and present documentary evidence which are material to the determination of the facts of the alleged violation.

(4) No later than 24 hours after the hearing, the hearing officer shall issue a written decision and instructions for possible appeal to the superintendent.

(5) A juvenile may waive the right to a disciplinary hearing in writing at any time. A waiver does not constitute an admission of the alleged violation.

(6) A juvenile may appeal the decision of the hearing officer to the superintendent within 24 hours of receipt of the decision.

(7) The superintendent shall issue a written decision no later than 24 hours after receipt of an appeal under sub. (6).

DOC 346.49 Control. The operational plan under s. DOC 346.04 shall contain policies and procedures for the control of juveniles, including all of the following components:

(1) **CELL CONFINEMENT.** (a) If a juvenile's behavior presents a serious risk of harm to self or others or if a juvenile presents a serious risk to security, the juvenile may be confined to his or her own cell for purposes of control and shall be referred to health care professionals as soon as possible if appropriate. The juvenile shall be released as soon as the danger has ended. Cell confinement for control for more than one hour shall require the approval of the superintendent or designee. If the juvenile is held in cell confinement for more than one hour, the superintendent or designee shall personally visit the confined juvenile before the juvenile has been confined for 6 hours, excluding hours between 8:00 p.m. to 7:00 a.m., and at least once every 6 hours thereafter until the juvenile is released from cell confinement. Documentation of cell confinement and required approvals shall be made a part of the juvenile's record.

(b) A juvenile may be confined to his or her own cell for discipline or control only as follows:

1. There may be no additional loss of privileges, and reading, recreational and educational materials shall be provided unless there is reason to believe that these materials will be damaged or their presence presents a danger to the juvenile.

2. No juvenile may be placed in cell confinement for more than 24 consecutive hours without medical authorization based on a finding that further confinement will not harm the juvenile.

3. A written or electronic log of cell confinements shall be recorded and maintained.

4. A juvenile may not be placed in confinement in a cell designed for the administrative or disciplinary segregation of adults.

(2) **USE OF RESTRAINTS AND CONTROL DEVICES.** (a) Instruments of restraint, such as handcuffs, leg irons, restraint chairs, and straight jackets may not be applied as treatment or punishment. Restraints and control devices may only be used with the approval of the superintendent for prevention of escape during transfer, for medical reasons by direction of a health care professional, or to prevent juvenile self-injury, injury to others, or property damage.

(b) Instruments of restraint may not be applied for more time than is necessary to achieve the purposes under par. (a).

(c) Staff shall examine restraints and other control devices to assure proper use and operation. Staff shall not use restraints or other control devices which are defective or excessively worn.

(d) Documentation of use of restraints and control devices shall include the reason for and duration of use.

(e) Officer and other staff shall receive training on the use of restraints and control devices under s. DOC 346.21 (2).

Subchapter IX--Juvenile Portion of a County Jail

DOC 346.50 Admission criteria for juvenile portions of county jails. Juveniles may be admitted to a juvenile portion of a county jail under s. 48.209 or 938.209, Stats., only subject to the following:

(1) Juveniles may be held in a juvenile portion of a county jail for a maximum of 24 hours, not including weekends or holidays, except juveniles may be held for a maximum of 6 hours, excluding weekends or holidays in counties that are within a metropolitan statistical area under the current designation of the federal Bureau of Census.

(2) Juveniles may be held only for the purposes of identification, processing, and to arrange for release to parents or transfer to juvenile court officials or juvenile shelter or detention facilities. Any holding of juveniles shall be limited to the absolute minimum time necessary to complete these purposes, not to exceed the time limits under sub. (1). An alleged or adjudicated delinquent may be detained before a court appearance for a period of time not to exceed the limits under sub. (1). An alleged or adjudicated delinquent may be detained after a court appearance for a time period not to exceed an additional 6 hours. Any hold of an adjudicated delinquent that is not related to a court appearance is prohibited.

(3) Persons who are 18 years of age or older may not be admitted or held in a juvenile portion of a county jail, unless they are currently only under juvenile court jurisdiction under ch. 938 or ch. 48.

DOC 346.51 Juvenile justice and delinquency prevention act. A juvenile portion of a county jail may be used to hold juveniles only as permitted by 42 USC 5601 to 5761 and 28 CFR Part 31.

DOC 346.52 Contact. (1) There may be no physical or visual contact between juveniles and adult inmates in the juvenile portion of a county jail.

(2) There may be no sustained sound contact between juveniles and adult inmates in the juvenile portion of a county jail.

DOC 346.53 Existing facilities. Existing juvenile portions of a county jail shall continue to meet the physical requirements for adult jails established in ch. DOC 350.

DOC 346.54 Staffing plan in a juvenile portion of a county jail. (1) No officer providing supervision to juveniles may be responsible for the supervision of more than 30 individuals.

(2) No officer responsible for supervision of juveniles may during the same time period have responsibility for radio or dispatch duties.

(3) An officer of the same gender as the juveniles being admitted or held in custody shall be on duty in the facility.

(4) At all times an officer shall be within hearing distance of the area in which a juvenile is confined.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (into.), Stats.

RULE SUMMARY:

A. Statutes interpreted: ss. 301.36, 301.37 and 938.209, Stats., and 42 USC 5601 to 5761 and 28 CFR Part 31

B. Statutory Authority to Promulgate the Rule: ss. 227.11 (2) and 938.22 (2) (a), Stats.

C. Explanation of agency authority

The Department of Corrections is responsible for establishing standards for and inspecting juvenile detention facilities and juvenile portions of a county jail.

D. Related statute or rule: ch. 938, subch. IV (Taking a Juvenile in Custody), Stats., and ch. DOC 346, Wis. Adm. Code

E. Plain Language Analysis

The rule:

1. Reorganizes and renumbers the existing chapter DOC 346. Specifically, creates subchapters: general provisions, admission and release, physical plant, staffing, health care, resources for juveniles, security, discipline, and juvenile portions of a county jail.
2. Updates citations to include references to chapter 938, Wis. Stats.
3. Updates citation to the federal Juvenile Justice and Delinquency Prevention Act, 42 USC 5601 to 5761, and its regulations, 28 CFR Part 31, to indicate Wisconsin's compliance with the current version of the act and regulations.
4. Creates definitions for the following terms: construction plans, facility program, officer, and unencumbered space.
5. Amends definitions for the following terms: cell, contraband, juvenile, holding room, multi-purpose space, and undergarments.
6. Amends the requirements for the operational plan to include policies and procedures concerning disciplinary hearings, release, and searches.
7. Creates a requirement that the facility shall maintain a record of the proceedings for the annual meeting.
8. Amends the information which the facility is required to maintain on an admitted juvenile to include date and time of admission, authority for admission, date and time of release, and destination of juvenile after release.
9. Amends the timeframe for reporting to the department major occurrences from 48 to 24 hours.
10. Amends the reporting requirement for suicide attempts to those situations where the juvenile is admitted to a hospital or if the juvenile is treated for a life-threatening injury.

11. During the final review of the chapter, the Department became aware that it had inadvertently omitted dormitories from the list of exclusions in the newly renumbered section on variances (s. DOC 346.07). Under the current rule (s. DOC 346.41), no variances may be given regarding the provisions of dormitories. The exclusion of dormitories from being subject to a variance was intended to continue. Had that not been the case, that change would have been noted in this listing since it is a significant change. The Department has in the final draft form of the new rule included dormitories in the list of exclusions under the variance section (s. DOC 346.07).
12. Clarifies that juveniles may only be admitted to juvenile detention based on statutory provisions under ch. 938 or ch. 48 or pursuant to a court order.
13. Eliminates the reference to the intake worker as a step in the admission process for a juvenile detention facility.
14. Prohibits the holding of a person who is 18 years of age or older in a juvenile detention facility or a juvenile portion of a county jail unless that person is only subject to juvenile court jurisdiction under ch. 48 or ch. 938, Stats.
15. Deletes requirement to report to the department violations of s. 938.067, Wis. Stats., powers and duties of intake workers.
16. Creates requirement that juveniles be provided upon admission a copy of the rules of the facility and description of the programs and services available. In addition, effective access is to be ensured.
17. Creates a requirement that facilities develop policies and procedures addressing the release of juveniles from the facility.
18. Clarifies the procedure for the submission and approval of construction plans.
19. Clarifies that cells designed for single occupancy shall have a minimum floor area of 35 square feet of unencumbered space. The current rule specifies that a single occupancy cell shall have a minimum floor area of 54 square feet.
20. Requires facilities which are newly built or substantially remodeled after the effective date of the rule to install anti-rollout plates on all upper bunks.
21. Clarifies that the day room must have a minimum of 70 square feet of unencumbered space.
22. Clarifies that a holding room are not included in the rated capacity of the facility.
23. Limits the use of holding rooms for holding juveniles to not exceed 24 continuous hours.
24. Clarifies that the rules apply to holding rooms outside the secure perimeter.
25. Clarifies that a receiving cell is not included in the rated capacity of the facility.
26. During the final review of the chapter, the Department became aware that it had not updated the minimum floor area of a receiving cell as it had for other cells. The Department changed the rule proposal to make the minimum floor space consistent with regular cells under s. DOC 346.14 (2) (b). The current rule requires the minimum floor space for a receiving cell to be 54 square feet. The revised minimum floor space is 35 square feet of unencumbered space.
27. Limits the use of receiving cells for holding juveniles to not exceed 72 continuous hours.
28. Requires natural lighting for cells and dormitories in accordance with the International Building Code, s. 1204 as adopted by the Department of Commerce under s. Comm 61.05 (1), Wis. Adm. Code.
29. Creates a requirement for classroom space which complies with local or state requirements. This requirement only applies to facilities that are newly constructed or substantially remodeled after the effective date of the rule.
30. Creates a requirement that if medical or dental services are provided in the facility, there shall be sufficient space, equipment, supplies and materials for the performance of the services in a confidential and private manner.
31. Creates a minimum dimensional requirement for outdoor recreation space if a facility provides for outdoor recreation.

32. Creates a requirement for storage space and visiting space but does not impose any dimensional requirements.
33. Reduces the frequency of fire inspections from semi-annually to annually.
34. Removes the requirement that plans for fire protection and evacuation be developed in collaboration with the local fire department. However, the revised rule requires that the policies and procedures for fire protection and evacuation comply with local fire department recommendations.
35. Removes the requirement that facilities have self-contained breathing apparatus.
36. Requires specific orientation training on the subjects of facility policies and procedures, administrative rules governing facilities, first aid, use of emergency equipment, medical screening, supervision and control of juveniles, suicide prevention, mental health, crisis intervention, health screening and care, medications, use of restraints and control devices, and communication skills.
37. Requires the orientation training to be given within the first 30 days of employment, instead of within the first 90 days of employment.
38. Requires that 8 hours of the current annual 24-hour recertification training address care and custody of juveniles, suicide prevention, mental health, crisis intervention, medications, health screening at the time of admission, and use of restraints and control devices.
39. Requires that the second staff person on duty must be an officer, not an administrative or clerical person.
40. Clarifies that the facility is responsible for providing medical and mental health care and emergency dental care while a juvenile is in custody.
41. Clarifies that health screening must occur at the time of admission, that the health screening form must be developed in conjunction with health care professionals, and the health screening form must be designed to obtain information each juvenile's medical, mental, and dental condition, current medications, medical illnesses or disabilities, mental illnesses, developmental disabilities, substance abuse problems, and suicide risk.
42. Clarifies that the facility must have policies and procedures for the referral of a juvenile to appropriate health care professionals or to agencies which provide health care or counseling at the time of admission and during the period of detention.
43. Requires that a facility include a policy and procedure on the issue of delivery of medications.
44. Permits a facility to create a policy for the supervised self-administration of insulin injections.
45. Requires TB testing for juveniles who are held beyond one week if prescribed by a health care professional.
46. Clarifies that medical records are to be accessible only by designated staff in accordance with state and federal laws.
47. Permits a juvenile to abstain from eating foods which violate the juvenile's religion and requires the facility to substitute from other available food from the menu served at the meal as long as the substitution is nutritious and meets generally accepted nutritional standards.
48. Requires a facility to develop policies and procedures for the disposal of unauthorized property (for example, contraband).
49. Moved the requirements concerning mattresses and pillows to a new section, Clothing and Linen. Removed the requirement that a mattress be at least 3 inches thick to reflect changing technology and materials.
50. Prohibits audio monitoring of professional visits.
51. Permits the superintendent to authorize persons in addition to family, clergy, mental health professionals, social workers, and lawyers to visit a juvenile.
52. Removes provision that contact visiting is permitted based on the security needs and physical plans of the facility.
53. Amends the listing of religious texts to include "other religious text upon request under s. 301.33, Stats."

54. Clarifies language regarding the observation of juveniles. Removed the provision requiring physical inspection of areas occupied by juveniles every 60 minutes. Imposed the following requirements: officers must physically observe each juvenile as follows: juveniles in behavioral segregation, discipline and control, suicide watch or other special needs status at least every 15 minutes; juveniles in receiving cells or holding rooms at least every 15 minutes; juveniles in general population or administrative segregation at least every 30 minutes. Clarifies that closed circuit television is not a substitution for physical observation by an officer.
55. Creates requirement for facilities to develop policies and procedures relating to searches (juveniles, staff, visitors, volunteers, and property).
56. Changed the word "penalties" to "sanctions" to describe the actions a facility can take against a juvenile who violates a facility rule.
57. Modified the time for review of a rule violation and resulting restrictions of a juvenile's privileges. Under the current rule, supervisory staff was to immediately review the rule violation and restriction, unless the violation occurred after 8:00 p.m., in which case the review had to occur within 12 hours. The revised rule provides that a supervisor must review the rule violation and restriction of privileges within 24 hours.
58. Clarifies that a juvenile must be provided a disciplinary hearing if the juvenile is given cell confinement of 6 hours or more as a disciplinary measure.
59. Clarifies that a juvenile can waive the right to a disciplinary hearing.
60. Clarifies that a juvenile may appeal the decision of a hearing examiner to the superintendent within 24 hours of receipt of the decision.
61. Creates a requirement that the superintendent shall issue a written decision within 24 hours after receiving a juvenile's appeal from the hearing examiner's decision.
62. Amends the list of restraints and control devices to include restraint chairs.
63. Creates a requirement for staff to examine restraints and control devices to assure proper use and operation. Prohibits the use of defective restraints or control devices.
64. Creates a subchapter which addresses the use of juvenile portions of a county jail.
65. Clarifies that juveniles may only be admitted to a juvenile portion of a county jail for limited periods of time.
66. During the final review of the chapter, the Department became aware that it had inadvertently omitted the requirement that juvenile portions of a county jail are subject to the physical requirement for adult jails under ch. DOC 350. Under the current rule, s. DOC 346.36 (9), existing juvenile portions of a county jail are required to meet the standards established under ch. DOC 350. Had this been an intended change, it would have been noted in this listing since this would have been considered a significant change. The omission was not intended. In the final draft form of the new rule the Department has created s. DOC 346.53, which restates the current rule requirement.

F. Summary of and Comparison with Existing or Proposed Federal Regulations that are intended to address the activities to be regulated by the proposed rule

Wisconsin opted to come into compliance with the federal Juvenile Justice and Delinquency Act (JJJPA), 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 1990 the federal Office of Juvenile Justice and Delinquency Prevention approved Wisconsin's Revised Jail Removal Plan. This plan permitted an exception to the JJJPA provision prohibiting co-location of juveniles in adult jails. In order to come into compliance with the JJJPA and the Wisconsin Jail Removal Plan, the Department of Corrections revised chapter DOC 346, Wis. Adm. Code, which governs juvenile detention facilities, in 1992 and 1994. The level of compliance with the JJJPA may affect the level of funding available to Wisconsin.

In general the JJDPDA and its regulations 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. The JJDPDA permits the transfer or placement of adjudicated delinquents to or 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 JJDPDA also regulates co-located facilities, that is, adult and juvenile facilities which are in the same building complex. The JJDPDA requires sight and sound separation of juveniles and adults through architectural or procedural means. (42 USC 5633 (a) (11), (12), and (13))

The JJDPDA 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))

G. Comparison of similar rules in adjacent states (Illinois, Iowa, Michigan, Minnesota)

1. Illinois

The Illinois Department of Corrections oversees county juvenile detention facilities. The standards are found in Title 20: Corrections, Criminal Justice, and Law Enforcement; Chapter 1: Department of Corrections; Subchapter f: County Standards; Part 702, County Juvenile Detention Standards.

The WI DOC and the IL DOC have similar minimum standards for juvenile detention facilities, including staff training, reporting requirements, strip searches, admission and release procedures, clothing, personal hygiene and grooming, food service, sanitation, classification, fire safety, discipline, mail, telephone, visiting, programs (recreations, religion, etc.), and design and construction of new or substantially remodeled facilities.

Like Wisconsin, Illinois requires that a superintendent be appointed to oversee the facility. However, Illinois also requires that an assistant superintendent be appointed in facilities with a rated capacity of 25 or more. Illinois also requires that there be 3 persons on duty per shift, Wisconsin requires only two.

Illinois requires an initial orientation conducted by a caseworker or supervisor which is not required by Wisconsin. Illinois prohibits newly admitted juveniles from being placed in isolation pending a routine medical examination by a health care professional or as a cooling off period.

Illinois requires 70 square foot for single cells, while Wisconsin requires 54 square feet. For multiple occupation cells or rooms Illinois maintains the 70 square foot requirement, regardless of the number of occupants. Illinois requires 30 square feet per juvenile living space per cluster of cells. Wisconsin requires 35 square feet per juvenile based on the rated capacity of the adjacent cells.

Illinois requires that all juveniles who are held for more than 7 days be given a medical screening by a health care professional. This appears to be in addition to the intake screening.

Illinois requires outdoor recreations space of 200 square feet per occupant with a minimum size of 3,000 square feet.

Illinois has established minimum standards. In addition, in the rules, Illinois provides further recommendations with regard to specific areas. The Illinois requirements may be waived for existing facilities.

2. Iowa

The Iowa Department of Corrections does not oversee county juvenile detention facilities or establish standards. The Iowa Department of Human Services performs those functions. The standards are found in IAC Human Services Title XII (Licensing and Approved Standards) Chapter 105 (County and Multi-county Juvenile Detention Homes and County and Multi-county Juvenile Shelter Care Homes).

The WI DOC and IA Department of Human Services have similar minimum standards for juvenile detention facilities, including written policy and procedure manual, intake procedures, educational and other daily programming, recreation, health care, restraints, cell confinement, juvenile facility handbook, and clothing.

Iowa provides that adequate storage be provided for each juvenile in their sleeping room. (Wisconsin provides for storage of juvenile personal property but does not require that the storage be in the cell.) Iowa provides a minimum of 60 square feet/child for multiple occupancy and 80 square feet/child for single occupancy rooms. (Wisconsin provides 70 square feet for double cells, 54 square feet for single cells and 70 square feet of combined sleeping and day room square feet per juvenile for dormitories.) In addition, Iowa provides for single and double cells but does not provide for dormitories.

Iowa provides more detail regarding employment standards and records and the maintenance of those records. Iowa requires that there be a minimum of two staff members for six or more juveniles. (Wisconsin requires two staff members are on duty at all times and the ratio is a minimum of one staff member to 15 juveniles.) Iowa requires visual observation of juveniles every half hour. (Wisconsin has a similar requirement. However, Wisconsin also requires an every 15 minute check for juveniles in higher security level.)

Iowa does not address some issues which the Wisconsin standards do, specifically suicide prevention, mental health care, mail, telephone, access to religion, searches, classification plan and visitation.

Iowa addresses some issues which the Wisconsin standards do not, specifically, child abuse or mistreatment. Iowa also has a broader, more specific provision addressing documentation of the juvenile case file.

3. Michigan

The Michigan Department of Corrections does not oversee county juvenile detention facilities or establish standards for those facilities. The MI Department of Consumer and Industry Services, Division of Child Welfare Licensing performs those functions. The standards are found in MI Rule 400.10101, et seq.

The WI DOC and MI Department of Consumer and Industry Services have similar minimum standards for juvenile detention facilities, including reporting hospitalization and injury or death of a juvenile, clothing, personal hygiene, nutrition, discipline, cell confinement, bedding and linen, construction, variances, training, mail (regular and privileged), visitation, religious programming, resident records and admission information, construction plans review and approval.

The WI Department of Commerce rules address with specificity fire detection standards.

There are differences between the standards in the following areas: staffing (WI ratio is 1:15, the MI ratio is 1:8; WI establishes dimensions and standards for single, double occupancy cells and dormitories (3 juveniles or more), MI has established dimensions and standards for single occupancy and multi-occupancy (WI provides for single cells to be a minimum of 54 sq. ft., double cells minimum of 70 sq. ft., and dormitories minimum of 70 sq. ft. combined day room and sleeping space; MI 70 sq. ft. single cell; 45 square feet in multi-resident sleeping rooms); grievance procedure; use of cell confinement for discipline purposes (WI up to 6 hours before administrator approval, MI up to 72 hours before supervisory approval); restraints (WI requires facilities to establish policies and procedures, MI has provided specific standards); inspection and approval required before occupancy;

4. Minnesota

The Minnesota Department of Corrections establishes minimum standards and inspects county juvenile detention facilities. The standards are found at Minnesota Rules, Chapter 2960.

The WI DOC and MN Department of Corrections have similar minimum standards for juvenile detention facilities, including admission criteria, property, intake screening, rules, discipline and due process, religious services, exercise and recreation, education, health and hygiene, food service, clothing, bedding, laundry, visitation, mail, staff training, staffing plan, staffing plan, and a classification plan.

There are differences between the Wisconsin and Minnesota standards: Minnesota requires a staffing ratio of one staff member to 12 juveniles when the juveniles are awake and one staff member to 25 juveniles when the juveniles are asleep. (Wisconsin requires a staffing ratio of 1 staff to 15 juveniles. Wisconsin does not differentiate between juveniles who are awake or asleep.) Minnesota requires that facilities with more than 24 juveniles have a full time program director.

Minnesota has established several different types of secure facilities: 24 temporary hold over facility, 8 day temporary hold over facility, and a juvenile detention facility. (Wisconsin only has juvenile detention facilities.) Depending on the facility, some of the requirements and standards differ. For example, staff training for a MN 8 day facility is 24 hours annually, but for a juvenile detention facility the training is 40 hours. (Wisconsin requires 24 hours of training for facility staff. Under the proposed rule, Wisconsin will specify 8 hours of the 24 hours required training shall address the care and custody of juveniles, suicide prevention, mental health, crisis intervention, medication, and use of restraints and control devices.)

- H. Summary of the factual data and analytical methodologies that DOC used in support of its determination of the rule's fiscal effect on small businesses under s. 227.114, Stats.

This rule does not affect small businesses. The rule establishes minimum standards for county juvenile detention facilities.

- I. Any analysis and supporting documents that DOC used in support of DOC's determination of the proposed rule's effect on small businesses or that was used when the DOC prepared an economic impact report.

No economic impact report was required.

- J. Effect on small businesses

There is no expected effect on small businesses under s. 227.114, Stats.

K. Agency contact person (including email and telephone)

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections
3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707-7925
(608) 240-5049; FAX (608) 240-3306
Kathryn.Anderson@Wisconsin.gov

L. Place where comments are to be submitted and deadline for submission

Written comments on the proposed rule will be accepted and receive consideration if they are received by Friday, July 10, 2009. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

EFFECTIVE DATE: Following promulgation, the permanent rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro), Stats.

FISCAL ESTIMATE: See attached.

FINAL REGULATORY FLEXIBILITY ANALYSIS. The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

STATEMENT EXPLAINING THE NEED FOR THE PROPOSED RULE: The rule addresses three primary needs:

1. Repeal and recreate the DOC 346 to update, renumber and reorder for clarity;
2. Bring the rule into conformity with ch. 938, Juvenile Justice Code, Wis. Statutes; and
3. Bring the rule into conformity with the federal Juvenile Justice and Delinquency Prevention Act.

STATEMENT OF THE BASIS AND PURPOSE OF THE RULE INCLUDING HOW THE RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES

The Department of Corrections proposes to make modifications and additions to DOC 346 (Secure Detention for Juveniles) for the following purposes:

1. In 1996 the WI legislature created the Juvenile Justice Code (Chapter 938), which provided new direction in the ways juveniles would be managed in the juvenile justice system. DOC 346 was not changed at the time. The Department seeks to change DOC 346 to better reflect the changes in the law.
2. The Department of Corrections is authorized under s. 301.37, Statutes, to develop "reasonable standards and regulations" for facilities, including secure detention facilities. The last revision of the current rule was in 1994. Subsequent changes in the law and accepted correctional practices necessitate revisions to DOC 346, including new standards.

3. The Department is seeking revision of DOC 346, which not only reflects changes in law and correctional practice, but also clarifies existing standards. Since the last revision, it became apparent that clarification of many sections was necessary.
4. More details and a listing of significant changes can be found in the Plain Language Analysis Section of this document. (See pages 27 through 30.)

PUBLIC HEARINGS:

A. Two public hearings were held on the rule: June 26, 2009 in Stevens Point, WI and June 26, 2009 in Madison, WI. There was no formal testimony received at either of the public hearings.

B. List of persons who appeared or registered for or against the proposed rule at the public hearings:

In person:

Public Hearing held on June 26, 2009 in Stevens Point, WI

There were no appearances.

Public Hearing held on June 26, 2009 in Madison, WI

There were no appearances.

Persons who submitted written comments

Mary Pat McKinley, Juvenile Administrator, Washington County

Todd Winstrom, Staff Attorney, Disability Rights Wisconsin

C. Summary of written comments on the rule and DOC responses to those comments:

Mary Pat McKinley, Juvenile Administrator, Washington County

1. 2005 WI Act 293 changed the term "secure detention facilities to juvenile detention facilities." All references to "secure detention" need to be changed to "juvenile detention."

DOC Response: Accepted. However, the Act which made the change was 2005 WI Act 344.

2. Under DOC 346.04 (2) (c), sallyports are included in areas of the facility where there is to be no contact between juveniles and adult inmates....Washington County, after careful consideration, designed entrances off the sally port which immediately separate juveniles from adults. This design was done under the watchful eye of the local jail inspector. Yet, with the proposed revision, the facility could be in violation of this rule. I strongly encourage that sallyports be eliminated from this section.

DOC Response: There is no change to the existing rule. The requirement expects that facilities will avoid contact through operational means.

Todd Winstrom, Staff Attorney, Disability Rights Wisconsin

1. **DRW's general comments** focused primarily on the sections of DOC 346 that set standards for 1) health and mental health care and 2) discipline, control, isolation, use of force and restraint.

The proposed rule incorporates, without significant or substantial alteration the standards set by the existing rule. It merits noting and comment that, in contrast to the standards required in areas such as “Physical Plant,” which are substantive and detailed in their requirements, the standards for health and mental health care, discipline, control, isolation, use of force and restraint set few substantive requirements and rely largely upon mandating facilities to have “policies and procedures,” without specifying even minimally acceptable requirements for those policies. Wisconsin’s standards in these areas fall far short of minimum legal and constitutional standards and generally accepted professional standards.

DOC Response: The Department agrees that its physical plant standards are more specific than those established for health and mental health care. Under section 301.37 (1), Stats., the Department is authorized to “fix reasonable standards and regulations for the design, construction, repair, and maintenance” of county detention facilities “with respect to their adequacy and fitness for the needs which they are to serve.” In addition, under section 301.37 (2), the Department is authorized to review and approve the “selection and purchase of the site, and the plans, specifications and erection” of county detention facilities. Finally, under section 301.37 (3), the Department is authorized to inspect each facility at least annually “with respect to safety, sanitation, adequacy and fitness.” Under section 301.36 (3), Stats., the Department is required to conduct inspections regarding “the methods of treatment, instruction, government and management of inmates ...; the conduct of [the facilities’] trustees, managers, directors, superintendents, and other officers and employees; the condition of the buildings, grounds and all other property pertaining to the [facilities], 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.” In light of these sections, very specific standards have been developed over time to address the construction requirements for juvenile detention facilities.

In chapter 302, Stats., there are a number of sections which address the provision of health care (mental and physical) to inmates in county facilities. (See sections 302.38, 302.381, 302.383, and 302.384, Stats.) Under each of these provisions it is the sheriff or appropriate county official that is named as the person responsible for providing “appropriate care and treatment” to the inmate. Section 302.365, Stats., authorizes the Department to promulgate rules to establish program standards for county facilities. However, in each subsection which addresses the areas in which these standards are to be established, including health care (mental and physical), there is a statutory limitation imposed. Specifically, the Department’s rules shall establish functional objectives “but may not require jails or house of correction to use only one particular method to meet the objectives.” In addition, for crisis intervention services the required standard is limited to an assurance that emergency services are available.

The Department has worked with and continues to work with the counties to ensure appropriate care and treatment is provided to inmates in county facilities. Given the statutory and pragmatic limitations, the Department does not require counties to provide a different level of care from the statutory standard. The Department has required counties to set forward with specificity in their operations manual a wide variety of required provided services, including health care.

2. DRW comments on specific issues, namely, (A) Standards for Health and Mental Health Care and (B) Standards for Discipline, Control, Isolation, Use of Force and Restraint:

- A. Standards for Health and Mental Health Care. DRW raised concerns about several areas of the proposed rules, specifically, (1) responsible health care authority, (2) intake health screening, (3) intake mental health and suicide risk screening, (4) full health assessment, (5) access to on-site physician and nurse services, (6) mental health services, and (7) medications and medication administration.

DOC Response:

1. Responsible health care authority.

DRW requests that the Department impose the National Commission on Correctional Health Care (NCCHC) standard that requires a responsible health authority be on-site accountable for health care services.

The Department does not agree that NCCHC standard should be imposed on counties as part of its rule. The NCCHC is a corrections accrediting organization which has established standards on a wide variety of correctional health care issues. However, jurisdictions seek accreditation of facilities on a voluntary basis. The accreditation process is lengthy and costly.

Under proposed DOC 346.23 (3) (a), (c), and (d), the juvenile detention facility must in its operational plan provide for policies and procedures which designate the staff who has authority to make health care decisions, identify the health care professionals who provide emergency and other health care services, and refer juveniles to those health care professionals as appropriate.

2. Intake health screening

DRW questions the scope of the required health screening form, the timeframe during which the screening is to take place, and the qualifications of the staff performing the screening. The Department proposal requires that the health screening form must be developed in conjunction with a health care professional. In addition, the screening must occur during the admission process. Finally, the form must be designed to obtain information concerning the juvenile's medical and dental condition, medical illnesses or other disabilities, mental illnesses, developmental disabilities, alcohol or other drug abuse problems and suicide risk. It should be noted that under DOC 346.24 (1) (a), the facility must establish policies and procedures to address the process by which security staff or health care professionals will verify and determine the necessity of medications brought in by juveniles or other persons for the juvenile.

The Department modified the rule proposal in response to the DRW recommendation to include current medications among the list of subjects covered in the screening process. In addition, the Department modified the rule proposal to include health screening as a required topic of training for staff.

3. Intake mental health and suicide risk screening

DRW questions the breadth of the issues screened for, the timeframe during which the screening is to take place, the qualifications of the staff performing the screening, the validity of the screening tool, and the adequacy of the facility's response to the results of the screening. The Department proposal requires that the health screening form must be developed in conjunction with a health care professional. In addition, the screening must occur during the admission process. The form must also be designed to obtain information concerning the juvenile's medical and dental condition, medical illnesses or other disabilities, mental illnesses, developmental disabilities, alcohol or other drug abuse problems and suicide risk. Finally, the operations manual must provide for the referral of juveniles to health care professionals or agencies which provide health care or counseling at the time of admission and throughout the period of incarceration.

4. Full health assessment

DRW suggests that each juvenile during the period of detention have a full health assessment completed by a health care professional. The Department has not included this provision in its rule proposal and will not follow this suggestion. Under DOC 346.23 (3) (d), (e), (f), and (g), a facility must establish policies and procedures for the provision of health

care, including referral to appropriate health care professionals, provision of non-emergency health care services, scheduling of routine health care, and procedures for requesting health care services. Also, under DOC 346.09 (5), the facility is responsible for providing each juvenile with a copy of the rules of the facility and the services and programs available in the facility.

5. Access to on-site physician and nurse services

DRW suggests that the Department should mandate the amount and time of access to on-site physician and nurse services, including a sick call. The Department's proposed rule provides for facilities to establish policies and procedures which address these issues, specifically, DOC 309.23 (3).

6. Mental health services

DRW suggests that the Department mandate required mental health services, the health care staff who will provide those services, including psychiatrists, and the responsive services for a juvenile who poses a risk of suicide. The Department's proposed rules provides for facilities to address those issues, specifically, DOC 309.23 (2) (c) and (3). In addition, the Department requires facilities to establish policies and procedures addressing suicide prevention and crises intervention. Those policies and procedures must address assessment of risk, housing, referral to a mental health professional, intervention, documentation, and training. See DOC 346.26 and 346.27.

7. Medications and medication administration

DRW suggests that the Department mandate that medications be administered only by health care professionals. In addition, DRW suggests that a timeframe be established for the verification and continuation of medications being used at the time of admission. The Department requires that facilities establish policies and procedures to address the issue of verification of medications brought into a facility by a juvenile or other persons for the juvenile. See DOC 346.24 (1) (a). In addition, the rule requires training of staff on the health screening process and medications.

B. Standards for Discipline, Control, Isolation, Use of Force and Restraint.

DRW suggests specific standards for inclusion in the proposed rule. While not articulated as suggested, the suggestions are contained in the proposed rule. For example, initial and annual training is required on the supervision and control of juveniles, use of restraints and control devices, and crisis intervention. See DOC 346.21.

D. Modifications made to the proposed rule as a result of the testimony received at public hearing or public comments made:

See DOC responses to the comments above.

LEGISLATIVE COUNCIL STAFF CLEARINGHOUSE REPORT

See attached.

RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS IN THE CLEARINGHOUSE REPORT

2. Form, Style and Placement in Administrative Code

Comments (a) through (j).

Response: Accepted.

Comment (e), specifically regarding s. DOC 346.14 (2) (b) 6.: Finally, it appears that sub. (2) (b) 6. relates to a facility as a whole, rather than an individual cell, and should be moved to a different place in ch. DOC 346.

Response: Accepted. The Department revised the provision to clarify that the requirement applies to individual cells and to groups of cells.

4. Adequacy of References to Related Statutes, Rules and Forms

Comments (a) through (e).

Response: Accepted.

5. Clarity, Grammar, Punctuation and Use of Plain Language

Comments (a) through (c).

Response: Accepted.

Comment (d): The plain language analysis of the rule appears to be an exhaustive list of the substantive changes made in the rule as it lists 37 changes. However, there are some changes which appear to be substantive but are not included in this list. The following substantive changes should be included in the plain language analysis list of changes:

Response:

- (1) Accepted.
- (2) The Department removed the thickness requirement for mattresses in recognition of changing standards and materials.
- (3) Section Doc 346.14 (5) removes the purpose of holding cells, currently listed in s. DOC 346.36 (8). This appears to expand the purpose for which holding cells may be used.

The department removed the language since the definition of holding cell limits the purposes for which they can be used. There is no intended substantive change in the requirements or limitations. This is similar drafting to that used for receiving cells.

- (4) Accepted.
- (5) Accepted.
- (6) Accepted.
- (7) Accepted. The Department revised the section to clarify the timeframe for observation of juveniles in administrative segregation.
- (8) Accepted. The Department revised the section to clarify the requirement for a superintendent to issue a decision following an appeal by a juvenile of a disciplinary decision.

Comments (e) and (f):

Response: Accepted.

Comment (g): Section DOC 346.13 creates a new list of requirements relating to facility construction plans, including juvenile portions of jails. This section also removes, from current s. DOC 345.05, the reference to s. DOC 350.04, relating to construction plans for jails. The department should ensure that there is no conflict between s. DOC 346.13 and s. DOC 350.04.

Response: Accepted. The Department reinserted the requirement that juvenile portions of a county jail are required to meet construction standards under ch. DOC 350.

Comment (h):

Response: Accepted.

EXPLANATION OF ANY CHANGES THAT HAVE BEEN MADE TO THE PLAIN LANGUAGE ANALYSIS OR THE FISCAL ESTIMATE:

Changes to the Plain Language Analysis:

1. The Department added a definition of the term “unencumbered space” to clarify the space requirements for spaces occupied by juveniles. (See # 3.)
2. The Department has modified the provisions which prohibited persons who are 18 years of age or older from being in a juvenile detention facility (s. DOC 346.08 (2)) or a juvenile portion of a county jail (s. DOC 346.50 (3)). The provisions as revised permit persons who are 18 years of age or older to be held in a juvenile facility if they are subject only to juvenile court jurisdiction. The Department made this revision in light of the Wisconsin Supreme Court’s decision in *In Interest of Hezzie R.*, 219 Wis.2d 848, 580 N.W.2d 660 (1998). Based on the Supreme Court’s decision in *Hezzie R.*, there is sufficient question whether it is constitutionally permissible to hold in an adult jail a person who is 18 years of age or older and who is only under juvenile court jurisdiction. Also, under s. 28 C.F.R. §31.303 (d) (1) (v), a juvenile facility may not transfer a juvenile who has reached “the age of full criminal responsibility” to an adult facility without statutory direction or authorization. There are no Wisconsin statutory provisions authorizing the transfer to an adult jail of a juvenile who is 18 years or older and who remains under the jurisdiction of the juvenile court. (See # 14.)
3. During the final review of the chapter, the Department became aware that it had inadvertently omitted dormitories from the list of exclusions in the newly renumbered section on variances (s. DOC 346.07). Under the current rule (s. DOC 346.41), no variances may be given regarding the provisions of dormitories. The exclusion of dormitories from being subject to a variance was intended to continue. Had that not been the case, that change would have been noted in this listing since it is a significant change. The Department has in the final draft form of the new rule included dormitories in the list of exclusions under the variance section (s. DOC 346.07). (See # 11.)
4. Clarified that the 70 square foot minimum floor space in a day room is unencumbered space. (See #21.)
5. Added to the listing that holding rooms are not included in the rated capacity of the facility. (See # 22.)
6. Added to the listing that the rules apply to holding rooms outside the secure perimeter. (See # 24.)
7. Added to the listing that receiving cells are not included in the rated capacity of the facility. (See # 25.)

8. Changed the minimum floor space for receiving cells from 54 square feet to 35 square feet of unencumbered space to be consistent with regular cells under s. DOC 346.14 (2) (b). This change was not included in the original draft. (See # 26.)
9. Added to the listing that there is a requirement for natural lighting for cells and dormitories in accordance with the International Building Code, s. 1204 as adopted by the Department of Commerce under s. Comm 61.05 (1), Wis. Adm. Code. (See # 28.)
10. Clarified that training of security staff at the facilities had to include the subject of health screening at the time of admission. (See # 35 & 37.)
11. Added to the listing that orientation training must be given within the first 30 days of employment, instead of within the first 90 days of employment. (See # 37.)
12. Added to the listing that a facility is responsible for providing medical and mental health care and emergency dental care while a juvenile is in custody. (See # 40.)
13. Added to the listing that the health screening and care section was reorganized to more clearly address the admission process, including mental health screening, and to more clearly require facility policies and procedures to address referrals at the time of admission and during the period of detention. (See # 41 & 42.)
14. Included the requirement that a facility must develop policies and procedures to address the disposal of unauthorized property (for example, contraband or other property which might be received at the time of admission but reasonably cannot be maintained). This requirement to address the issue of the disposal of unauthorized property was not included in the original proposal. (See # 48.)
15. Added to the listing that the Department removed the requirement that mattresses need to be at least 3 inches thick to reflect changing equipment and technology. (See # 49.)
16. Retained the definition of family as it appears in the current rule by removing the phrase “other persons authorized by the superintendent.” Created a new provision in the visitation section (s. DOC 346.35) permitting the superintendent to authorize persons other than family, clergy, mental health professionals, social workers, and attorneys to visit a juvenile. The purpose of the initial change was to clarify the authority of the superintendent to authorize additional visitors as appropriate. The rule requires the superintendent to establish policies and procedures to address the issue. (See # 51.)
17. Changed the word “penalties” to “sanctions” to describe the actions which a facility can take against a juvenile who violates a rule. (See # 55.)
18. Added to the listing that the time for review of a rule violation and resulting restrictions on a juvenile’s privileges has been modified. The current rule requires supervisory staff to immediately review the rule violation and restriction unless the violation occurred after 8:00 p.m., in which case the review had to occur within 12 hours. The revised rule provides that a supervisor must review the rule violation and restriction of privileges within 24 hours. (See # 56.)
19. In reviewing the final draft, the Department became aware that the time frame for when a disciplinary hearing was required when cell confinement was the

- disciplinary sanction. The Department clarified that a disciplinary hearing is required when cell confinement is 6 hours or more. (See # 57.)
20. In reviewing the final draft, the Department became aware that the provision regarding the juvenile's right to appeal the disposition following a disciplinary hearing was unclear. Revised the section on a juvenile's appeal to the facility superintendent for review of a decision following a disciplinary hearing. (See # 59 & 60.)
 21. Added to the listing that the new rule requires staff to examine restraints and control devices to assure proper use and operation and prohibits the use of defective restraints or control devices. (See # 62.)
 22. During the final review of the chapter, the Department became aware that it had inadvertently omitted the requirement that juvenile portions of a county jail are subject to the physical requirement for adult jails under ch. DOC 350. Under the current rule, s. DOC 346.36 (9), existing juvenile portions of a county jail are required to meet the standards established under ch. DOC 350. Had this been an intended change, it would have been noted in this listing since this would have been considered a significant change. The omission was not intended. In the final draft form of the new rule the Department has created s. DOC 346.53, which restates the current rule requirement. (See # 65.)

Changes to the Fiscal Estimate:

There were no changes to the fiscal estimate.