

Clearinghouse Rule 98-193

STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

I, Jon E. Litscher, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rule, relating to the holding in municipal lockup facilities juveniles who are alleged to have committed a delinquent act, was duly approved and adopted by the Department on May 12, 1999.

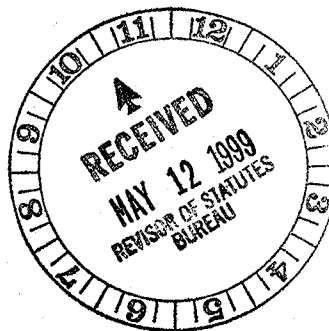
I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections,
149 E. Wilson Street in the City of
Madison, this 12th day of May, 1999.

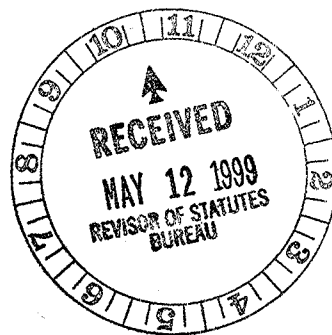
SEAL



Jon E. Litscher
Secretary



7-1-99
98-193



**ORDER OF THE
DEPARTMENT OF CORRECTIONS
RENUMBERING, AMENDING AND CREATING RULES
CLEARINGHOUSE RULE 98-193**

An Order to renumber and amend DOC 349.01, to create DOC 349.01(2) and (3) and DOC 349.03(1m), (4m), (10m), and (14m), to renumber DOC 349.04(1), to number and amend DOC 349.04(2) and DOC 349.16(1)(c), to create DOC 349.16(1)(c) and DOC 349.21 (title), (2), (3), (4), and (5), relating to the holding in municipal lockup facilities juveniles who are alleged to have committed a juvenile act.

Analysis Prepared by the Department of Corrections

1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may be used to hold juveniles if the juveniles are alleged to have committed a delinquent act and if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for a period not to exceed six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility.

This order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding in lockup facilities juveniles who are alleged to have committed a delinquent act. Specifically, the rule:

1. Adopts the statutory definitions of adult and juvenile.
2. Defines the terms "delinquent act" and "secure custody status".
3. Establishes the purpose and authority of establishing minimum standards for the holding of juveniles in municipal lockup facilities.
4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.
5. Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.

6. Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.
7. Provides that the lockup facility administrator may authorize the holding of juveniles only if the department has approved the facility to hold juveniles.
8. Provides that the lockup administrator may authorize the holding of juveniles only if the administrator has developed and implemented policies and procedures to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.
9. Requires that the lockup administrator may authorize the holding of juveniles only if the administrator has developed and implemented policies and procedures to maintain juvenile records in a confidential manner and to keep juvenile records separate from adult records, in accordance with s. 938.396, Stats.
10. Provides that the lockup administrator may authorize the holding of juveniles who are alleged to have committed a delinquent act for investigative purposes.
11. Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals. If the juvenile is exhibiting behavioral or mental problems, such as mental disturbance, suicidal tendency, or being under the influence of drugs or alcohol, the observations shall be at least once every 15 minutes at irregular intervals. The rule also requires the facility to document the observations.

Statutory Authority

Section 938.209(2m), Stats.

RULE

SECTION 1. DOC 349.01 is renumbered DOC 349.01(1), and as renumbered is amended to read:

DOC 349.01 Purpose and authority. (1) The purpose of this chapter is to establish minimum standards for the design, construction and security of municipal lockup facilities, for maintaining sanitary and safe conditions in lockups and for the development of ~~inmate~~ written program standards for municipal lockup facilities relating to holding inmates and juveniles who are alleged to have committed a delinquent act. ~~The rules are promulgated under the authority of ss. 227.11(2)(a), 301.03(5), 301.37, and 302.365, Stats.~~

SECTION 2. DOC 349.01(2) and (3) are created to read:

DOC 349.01(2) The purpose of this chapter as it applies to juveniles is to protect the health, safety and welfare of juveniles held in municipal lockup facilities, and to ensure compliance with 42 USC 5601 to 5761 and 28 CFR Part 31.

(3) This chapter is promulgated under the authority of ss. 227.11(2)(a), 301.03(5), 301.36, 301.37, 302.365, and 938.209(2m), Stats.

SECTION 3. DOC 349.03(1m), (4m), and (10m) are created to read:

DOC 349.03(1m) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

DOC 349.03(4m) "Delinquent act" means an act which is committed by a juvenile who is 10 years of age or older and which is a violation of any state or federal criminal law, except as provided in ss. 938.17, 938.18, and 938.183, Stats., or which constitutes a contempt of court, as defined in 785.01(1), Stats., as specified in s. 938.355(6g), Stats.

DOC 349.03(10m) "Juvenile" means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "juvenile" does not include a person who has attained 17 years of age.

DOC 349.03(14m) "Secure custody status" means the status of a juvenile in a lockup facility, which begins when the juvenile is placed in a cell, holding room, or other locked or secure room within the lockup and which ends when the juvenile is released from custody or is removed from the secure portion of a police station.

SECTION 4. DOC 349.04(1) is renumbered to DOC 349.04.

SECTION 5. DOC 349.04(2) is renumbered DOC 349.21(1), and as renumbered is amended to read:

DOC 349.21(1) A lockup may not be used for the secure detention of juveniles ~~as defined under s. DOC 346.03(4)~~, except a lockup may be used to hold juveniles who are alleged to have committed a delinquent act.

SECTION 6. DOC 349.16(1)(c) is renumbered DOC 349.16(1)(d), and as renumbered is amended to read:

DOC 349.16(1)(d) Statement of the procedure for notification of inmates and juveniles of each policy under par. (b) and (c).

SECTION 7. DOC 349.16(1)(c) is created to read:

DOC 349.16(1)(c) Statement of policies and procedures for detention of juveniles who are alleged to have committed a delinquent act, consistent with s. DOC 349.21.

SECTION 8. DOC 349.21(title), (2), (3), (4), and (5) are created to read:

DOC 349.21 Detention of juveniles.

(2) A lockup administrator may authorize the holding of a juvenile who is alleged to have committed a delinquent act only if all of the following criteria are met:

(a) Except as provided in this section, the lockup facility meets the provisions of this chapter and has been approved by the department as a suitable place for holding juveniles in custody.

(b) The lockup administrator shall have developed and implemented policies and procedures which ensure sight and sound separation between juveniles and adult inmates in all areas of the lockup facility, including entrances, booking, intake, elevators, staircases, cells, holding rooms, and all other areas in which juveniles could have contact with adult inmates.

(c) The lockup administrator shall have established and implemented policies and procedures to ensure that juvenile records are maintained in a confidential manner and kept separate from adult inmate records in accordance with s. 938.396, Stats.

(3) The lockup administrator may only authorize that a juvenile who is alleged to have committed a delinquent act be placed in secure custody status for a period of time not to exceed 6 hours.

(4) The lockup administrator may only authorize that a juvenile who is alleged to have committed a delinquent act be placed in secure custody status for investigative purposes.

(5) Lockup facility staff shall physically observe each juvenile and document each observation. The observations shall be at irregular intervals in accordance with the following schedule:

(a) Every juvenile at least once every 20 minutes.

(b) Every juvenile exhibiting behavioral or mental problems, such as mental disturbance, suicidal tendency, or being under the influence of alcohol or drugs, at least once every 15 minutes.

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)(intro.), Stats.

WISCONSIN DEPARTMENT OF CORRECTIONS

Date: May 12, 1999

By: Jon E. Litscher
JON E. LITSCHER, Secretary

Seal:



Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

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May 12, 1999

Bruce Munson
Revisor of Statutes Bureau
131 West Wilson Street, Room 800
Madison, Wisconsin 53703-3222

Re: Clearinghouse Rule 98-0193, relating to the holding in municipal lockup facilities juveniles who are alleged to have committed a delinquent act

Dear Mr. Munson:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified and uncertified copy of the Order of the Department of Corrections promulgating Clearinghouse Rule 98-0193. Enclosed is also a computer disk which contains the rule.

If you have any questions, please contact Kathryn Anderson, Office of Legal Counsel, at (608) 266-9281.

Sincerely,

A handwritten signature in cursive script that reads "Jon E. Litscher".

Jon E. Litscher
Secretary

Enclosures

