

**STATEMENT OF SCOPE  
DEPARTMENT OF CORRECTIONS**

This revised statement of scope modifies, Statement of Scope #091-13, which was approved by the Governor on July 19, 2013, and published in Register No. 692, on August 14, 2013.

**Rule Number:**

**Relating to:** Amending Chapter DOC 328, relating to adult field supervision.

**Rule Type:** Permanent

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

The objective of the rule is to review the entire chapter to reflect changes in the law and changes in the operations and practices of the department as they affect adult field supervision, and to achieve the following:

- Review the current rule for changes necessitated by the repeal of 2009 Act 28 by 2011 Act 38.
- Review the current rule to bring it into compliance with the Federal standards addressing the federal Prison Rape Elimination Act (PREA) of 2003 (42 U.S.C. chapter 147 (ss. 15601-09) (2004)).
- Review the current rule for changes necessitated by 2013 Act 196, Short Term Sanctions.
- Review the current rule for changes necessitated by 2015 Act 355, Restitution owed to Victims of Crime.
- Review the current rule to address current methods of electronic supervision.
- Review the current rule for changes necessitated by 2015 Act 55.

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

The current rule chapter provides for the department's supervision of persons on probation, parole, and extended supervision. The department needs to review the current rule for changes necessitated by the repeal of the sentencing reforms under 2009 Wis. Act 28 by 2011 Wis. Act 38.

For example, at minimum, the department has identified that at least s. DOC 328.17 will need to be updated.

The current rule does not address the requirements imposed under the new federal standards implementing the Prison Rape Elimination Act (PREA) of 2003 (42 U.S.C. chapter 147 (ss. 15601-09) (2004)). The new standards go into effect on August 20, 2013.

Expand current language regarding Short Term Sanctions to incorporate eligibility of probationers and parolees.

The current rule does not address changes to the collection of restitution and court ordered obligations provided under 2015 Act 355, potentially necessitating changes to DOC 328.08.

The current rule does not reflect the department's use of monitoring and tracking technology; therefore, the department has identified a potential amendment to DOC 328.04.

2015 Act 55 directed the department to impose a fee on those requesting an Interstate Transfer of supervision, therefore the department has identified potential amendments to section DOC 328.14. 2015 Act 55 amended statutory language regarding supervision fees, therefore the department will review for potential amendments to DOC 328.07.

There is no alternative means to address the need for revisions as discussed above.

### 3. STATUTORY AUTHORITY.

**Section 227.11 (2) (a) – (c):** Rule –making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

**Section 301.03 (3):** Administer parole, extended supervision, and probation matters, except that the decision to grant or deny parole to inmates shall be made by the parole commission and the decision to revoke probation, extended supervision, or parole in cases in which there is no waiver of the right to a hearing shall be made by the division of hearings and appeals in the department of administration. The secretary may grant special action parole releases under s. 304.02. The department shall promulgate rules establishing a drug testing program for probationers, parolees and persons placed on extended supervision. The rules shall provide for assessment of fees upon probationers, parolees and person placed on extended supervision to partially offset the costs of the program.

**Section 301.03 (3m):** Monitor compliance with deferred prosecution agreements under s. 971.39.

**Section 301.03 (7m):** Supervise criminal defendants accepted into the custody of the department under s. 969.02 (3) (a) or 969.03 (1) (a). The department shall charge the county that is prosecuting the defendant a fee for providing this supervision. The department shall set the fee by rule.

**Section 302.11 (8):** The department may promulgate rules under ch. 227 establishing guidelines and criteria for the exercise of discretion under this section [mandatory release].

**Section 302.113 (10):** The department may promulgate rules establishing guidelines and criteria for the exercise of discretion under this section [release to extended supervision for felony offenders not serving life sentences].

**Section 302.114 (10):** The department may promulgate rules establishing guidelines and criteria for the exercise of discretion under this section [petition for release and release to extended supervision for felony offenders serving life sentences].

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

**Section 302.31 (5) and (6):** The county jail may be used for any of the following purposes:

....

(5) The detention of persons participating in the intensive sanctions program.

(6) The temporary detention of persons in the custody of the department.

**Section 939.615 (5) (a):** A person placed on lifetime supervision under this section [lifetime supervision of serious sex offenders] is subject to the control of the department under conditions set by the court and regulations established by the department that are necessary to protect the public and promote the rehabilitation of the person placed on lifetime supervision.

**Section 961.47 (1):** Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state or of any county ordinance relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (b), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48. There may be only one discharge and dismissal under this section with respect to any person.

**Section 973.01 (2) (intro):** Structure of bifurcated sentences. A bifurcated sentence is a sentence that consists of a term of confinement in prison followed by a term of extended supervision under s. 302.113. The total length of a bifurcated sentence equals the length of the term of confinement in prison plus the length of the term of extended supervision. A order imposing a bifurcated sentence under this section shall comply with all of the following:

Section 973.10, Control and supervision of probationers: (1) Imposition of probation shall have the effect of placing the defendant in the custody of the department and shall subject the defendant to the control of the department under conditions set by the court and rules and regulations established by the department for the supervision of probationers, parolees and persons on extended supervision.

(1m) (a) The department may order that a probationer perform community service work for a public agency or a nonprofit charitable organization. An order may apply only if agreed to by the probationer and the organization or agency. The department shall ensure that the probationer is provided a written statement of the terms of the community service order and shall monitor the probationer's compliance with the community service order. Compliance with this subsection does not entitle a probationer to credit under s. 973.155.

(b) Any organization or agency acting in good faith to which a probationer is assigned under an order under this subsection has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the probationer. The department has immunity from any civil liability for acts or omissions by or impacting on the probationer regarding the assignment under this subsection.

(2) If a probationer violates the conditions of probation, the department of corrections may initiate a proceeding before the division of hearings and appeals in the department of administration. Unless waived by the probationer, a hearing examiner for the division shall conduct an administrative hearing and enter an order either revoking or not revoking probation. Upon request of either party, the administrator of the division shall review the order. If the probationer waives the final administrative hearing, the secretary of corrections shall enter an order either revoking or not revoking probation. If probation is revoked, the department shall:

(a) If the probationer has not already been sentenced, order the probationer brought before the court for sentence which shall then be imposed without further stay under s. 973.15; or

(b) If the probationer has already been sentenced, order the probationer to prison, and the term of the sentence shall begin on the date the probationer enters the prison.

(2g) Upon demand prior to a revocation hearing under sub. (2), the district attorney shall disclose to a defendant the existence of any audiovisual recording of an oral statement of a child under s. 908.08 which is within the possession, custody or control of the state and shall make reasonable arrangements for the defendant and defense counsel to view the statement. If, after compliance with this subsection, the state obtains possession, custody or control of such a statement, the district attorney shall promptly notify the defendant of that fact and make reasonable arrangements for the defendant and defense counsel to view the statement.

(2m) In any administrative hearing under sub. (2), the hearing examiner may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10).

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

(4) The division of hearings and appeals in the department of administration shall make either an electronic or stenographic record of all testimony at each probation revocation hearing. The division shall prepare a written transcript of the testimony only at the request of a judge who has granted a petition for judicial review of the revocation decision. Each hearing notice shall include notice of the provisions of this subsection and a statement that any person who wants a written transcript may record the hearing at his or her own expense.

#### **4. ESTIMATE OF AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OTHER RESOURCES NECESSARY TO DEVELOP THE RULE.**

The Department estimates that it will take approximately 200 hours to develop this rule, including drafting the rule, cost estimates, public hearings, and complying with rulemaking requirements.

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

This rule will affect persons on probation, parole, or extended supervision and department staff.

#### **6. SUMMARY AND PRELIMINARY COMPARISON WITH ANY EXISTING OR PROPOSED FEDERAL REGULATION THAT IS INTENDED TO ADDRESS THE ACTIVITIES TO BE REGULATED BY THE PROPOSED RULE.**

There are no federal regulations which address the issue of the supervision of persons on probation, parole or extended supervision in Wisconsin. However, federal standards addressing the Prison Rape Elimination Act (PREA) of 2003 (42 U.S.C. chapter 147 (ss. 15601-09) (2004)) include provisions which may affect the supervision of persons on community supervision. For example, the new federal standards impose confidentiality requirements for reporting incidents of sexual abuse or sexual harassment which are not included in the current rule.

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

The department anticipates that the proposed rule will have minimal to no economic impact statewide or locally.

#### **CONTACT PERSON:**

Katharine Ariss, Wisconsin Department of Corrections, 3099 East Washington Ave, P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5039, DOCAdministrativeRulesCommittee@wisconsin.gov.