

# STATEMENT OF SCOPE

## Department of Corrections

**Rule No.:** Chapter DOC 346

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**Relating to:** Secure detention for juveniles

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**Rule Type:** Permanent

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### 1. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to review the entire ch. DOC 346 and make changes to reflect updates to the physical plant and operational standards, eliminate outdated provisions, clarify language, and reorganize the rule. The objective of the proposed rule is also to bring ch. DOC 346 into conformance with the changes made to ch. 938, Wis. Stats., by 2015 WI Act 55 and to review the rule for necessary changes in light of the amendment to s. 938.34 (3) (f) 1., Stats., which lengthens the maximum period of time that a juvenile may be held in a juvenile detention facility from 30 days to 365 days.

Moreover, ch. DOC 346 contains a note directing the Department of Corrections to act as follows: “This chapter applies to the Department of Corrections and the Department of Children and Families according to their respective responsibilities as designated in ch. 938, Stat., until such time as each of the departments can adopt separate rules.” The Department of Corrections is proposing to review and make changes to ch. DOC 346 consistent with ch. 938, Stat. and the note in ch. DOC 346.

### 2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapter DOC 346 establishes minimum standards for juvenile detention facilities and juvenile portions of county jails consistent with the Juvenile Justice and Delinquency Prevention Act based on a 30-day limitation for a juvenile being housed in a facility. In light of the amendment to s. 938.34(3)(f)1., Stats., which significantly lengthens the maximum period of time that a juvenile may be held in a juvenile detention facility to 365 days, the department needs to review the minimum standards established under ch. DOC 346 to determine whether amendment is appropriate.

There are no alternative means to address the need for revisions as discussed above. Presently, there are no DOC policies related to this, thus the department is not proposing new changes. The alternative to this is to do nothing.

### 3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

**Section 227.11 (2):** Rule-making authority is expressly conferred on an agency 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 the 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.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

**Section 301.36(1), (2), (3), (4), (6) and (8):** (1) General Authority. The department shall investigate and supervise all of the state prisons under s. 302.01, all juvenile correctional facilities, all secured residential care centers for children and youth, and all juvenile detention facilities and familiarize itself with all of the circumstances affecting their management and usefulness.

(2) Prisons. The department shall visit all places in which persons convicted or suspected of crime are confined, and ascertain their arrangement for the separation of the hardened criminals from juvenile offenders and person suspected of crime or detained as witnesses; collect statistics concerning the inmates, their treatment, employment and reformation; and collect information of other facts and considerations affecting their increase or decrease of crime.

(3) Inspections. The department shall inquire into the methods of treatment, instruction, government and management of inmates of the institutions mentioned in this section; the conduct of their trustees, managers, directors, superintendents and other officers and employees; the condition of the buildings, grounds and all other property pertaining to the institutions, and all other matters pertaining to their usefulness and management; and recommend to the officers in charge such changes and additional provisions as it deems proper.

(4) Frequency of Inspections. The department shall inspect and investigate each institution at least annually and, when directed by the governor, it shall conduct a special investigation into an institution's management, or anything connected with its management, and report to the governor the testimony taken, the facts found and conclusions drawn.

(6) Opportunity to Inspect. All trustees, managers, directors, superintendents and other officers or employees of the institutions shall at all times afford to every member of the department and its agents, unrestrained facility for inspection of and free access to all parts of the buildings and grounds and to all books and papers of the institutions; and shall give, either verbally or in writing, such information as the department requires. Any person who violated this subsection shall forfeit not less than \$10 nor more than \$100.

(8) Statistics to be Furnished. Wherever the department is required to collect statistics, the person or agency shall furnish the required statistics on request.

**Section 301.37(1), (2), (3) and (5):** (1) The department shall fix reasonable standards and regulations for the design, construction, repair, and maintenance of all houses of correction, reforestation camps maintained under s. 303.07, jails, as defined in s. 302.30, extensions of jails under s. 59.54(14)(g), rehabilitations facilities under s. 59.53(8), lockup facilities, as defined in s. 302.30, work camps under s. 303.10, Huber facilities under s. 303.09, and after consulting with the department of children and families, all juvenile detention facilities, with respect to their adequacy and fitness for the needs which they are to serve.

(2) The selection and purchase of the site, and the plans, specifications and erection of buildings, for the institutions is subject to the review and approval of the department. Department review shall include review of the proposed program to be carried out by the institution.

(3) Before any such building is occupied, and at least annually thereafter, the department shall inspect each institution with respect to safety, sanitation, adequacy and fitness, report to the authorities conducting the institution any deficiency found and order the necessary work to correct it or a new building. If within 6 months thereafter the work is not commenced, or not completed within a reasonable period thereafter, to the satisfaction of the department, the department shall suspend the allowance of state aid for, and prohibit the use of, the building until the order is complied with.

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

**Section 938.22(1)(a), (2)(a) and (b):** (1) Establishment and Policies. (a) Subject to s. 48.66(1)(b), the county board of supervisors of a county may establish a juvenile detention facility in accordance with ss. 301.36 and 301.37 or the county boards of supervisors for 2 or more counties may jointly establish a juvenile detention facility in accordance with ss. 46.20, 301.36 and 301.37...

(2) Plans and Requirements. (a) Counties shall submit plans for a juvenile detention facility or juvenile portion of the county jail to the department of corrections and submit plans for a shelter care facility to the department of children and families...The applicable department shall review the submitted plans. A county or private entity may not implement a plan unless the applicable department has approved the plan. The department of corrections shall promulgate rules establishing minimum requirements for the approval and operation of juvenile detention facilities and the juvenile portion of county jails. The plans and rules shall be designed to protect the health, safety, and welfare of the juveniles placed in those facilities.

(b) If the department approves, a juvenile detention facility or a holdover room may be located in a public building in which there is a jail or other facility for the detention of adults if the juvenile detention facility or holdover room is physically segregated from the jail or other facility so that juveniles may enter the juvenile detention facility or holdover room without passing through areas where adults are confined and juveniles detained in the juvenile detention facility or holdover room cannot communicate with or view adults confined in the jail or other facility.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The Department estimates that it will take approximately 300 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

**5. List with description of all entities that may be affected by the proposed rule:**

This rule affects juveniles, county entities, including county juvenile facilities (juvenile detention facilities and juvenile portions of a county jail) and 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:**

Wisconsin opted to come into compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP), 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 Office of Juvenile Justice and Delinquency Prevention approved Wisconsin's Revised Jail Removal Plan. This plan permitted an exception to the JJDP provision prohibiting collocation of juveniles in adult jails. In order to come into compliance with the JJDP and the Wisconsin Jail Removal Plan, the Department of Corrections revised chapter DOC 346, Wis. Adm. Code, which governs juvenile detention facilities, in 1992, 1994, and 2010.

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

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

The JJDPA 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)).

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

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

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Department Head or Authorized Signature

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Date Submitted