

**STATEMENT OF SCOPE
DEPARTMENT OF CORRECTIONS**

Rule Number: Chapter DOC 328

Relating to: Short-term sanctions and contracting for supervision of individuals

Rule Type: Permanent

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

The objective of this rulemaking is to review the provisions related to defining and evaluating violation consequences and the provisions related to training and skill development for probation and parole agents and to update these provisions accordingly to reflect changes in operations and practices of the Department. Additionally, the objective of this rulemaking is to implement provisions related to contracting with vendors for the supervision of certain individuals.

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

The Department is responsible for providing a just, humane and efficient program of rehabilitation of offenders, to coordinate and integrate programs with other social services and to develop, support and maintain professional community programs and placements. As part of that responsibility, the Department implements short-term sanctions for offenders on community supervision for disciplinary purposes when there is an alleged violation of a rule or condition of supervision and evaluates the sanctions imposed. There is a need to update the current rule to reflect changes regarding short-term sanctions.

Furthermore, as part of the Department's responsibility to administer probation, parole and extended supervision, the Department provides training and skill development to probation and parole agents. There is a need to update the current rule to reflect changes regarding training and skill development for probation and parole agents.

Lastly, as part of the Department's responsibility to administer probation, parole and extended supervision, the Department may contract with vendors for the supervision or for any component of the supervision of probationers, parolees and persons on extended supervision who are under minimum supervision or administrative supervision and sets requirements for fees, collections, reporting and verification requirements for these vendors. There is a need to update the current rule to reflect changes regarding these contract requirements.

The alternative to this proposed rulemaking is not amending the provisions of this rule which would result in the department continuing to have outdated policies and a rule which needs reform.

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): The Department shall 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 not 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 to do all of the following:

(a) Develop a system of short-term sanctions for violations of conditions of parole, probation, extended supervision, and deferred prosecution agreements that sets forth a list of sanctions to be imposed for the most common violations.

(b) Ensure that the system of short-term sanctions developed under par. (a) does all of the following:

1. Takes into account the objective to be accomplished by imposing the sanction, considers the level of intensity necessary to achieve the objective, and considers the extent to which sanction imposition is likely to accomplish the objective.
2. Takes into account the goals of protecting the public, correcting the offender's behavior, and holding the offender accountable.
3. Determines when revocation is the required response to the violation.
4. Provides flexibility in imposing sanctions but also provides offenders with clear and immediate consequences for violations.
5. Provides examples of high, medium, and low-level sanctions and what factors to consider when determining which level of sanction to apply.

6. Determines how to reward offenders for compliance with conditions of parole, of probation, of extended supervision, or of the agreement.
7. Ensures that efforts to minimize the impact on an offender's employment are made when applying sanctions.
8. Ensures that efforts to minimize the impact on an offender's family are made when applying the sanctions.

(c) Perform reviews of sanctions imposed under the system to assess disparities among sanctions, to evaluate the effectiveness of sanctions, and to monitor the impact of sanctions on the number and type of revocations for violations.

Section 301.08(1)(c)5: The department shall promulgate rules for fees, collections, reporting and verification regarding probationers, parolees and persons on extended supervision supervised by a vendor who contracts with the department under subd. 2. and shall promulgate rules defining "administrative supervision" and "minimum supervision".

Section 301.08(2)(em)6: The department, in consultation with the department of health services and the department of children and families, shall promulgate rules to implement this paragraph including all of the following:

(a) Requiring that contracts for rate-based services under this subsection allow a provider to retain from any surplus revenue up to 5 percent of the total revenue received under the contract, or a different percentage rate determined by the department. The percentage rate established under this subd. 6.a. shall apply uniformly to all rate-based service contracts under this paragraph.

(b) Establishing a procedure for reviewing rate-based service contracts to determine whether a contract complies with the provisions of this paragraph.

Section 301.068(5): The department shall provide to probation, extended supervision, and parole agents training and skill development in reducing offenders' risk of reoffending and intervention techniques and shall by rule set forth requirements for the training and skill development. The department shall develop policies to guide probation, extended supervision, and parole agents in the supervision and revocation of offenders on probation, extended supervision, and parole and develop practices regarding alternatives to revocation of probation, extended supervision, or parole. To the extent practicable, the department shall incorporate the practices into the system developed under s. 301.03(3)(a).

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 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.

Rule revisions will primarily affect persons on community supervision, potential vendors and DOC 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.

No federal regulations are affected or have an effect on the proposed changes.

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

Rule changes will likely have no economic impact on DOC or on small businesses.

CONTACT PERSON:

Caitlin Washburn, Office of Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Ave, P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5020,
DOCAdministrativeRulesCommittee@wisconsin.gov.