



CENTRAL OFFICE

April 19, 2013

Legislative Reference Library  
645 State Office Building  
100 Constitution Avenue  
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules Amendments of the Department of Corrections  
Governing Adult Detention Facilities; Revisor's ID Number 4018

Dear Librarian:

The Minnesota Department of Corrections intends to adopt rules amendments to the rules governing Adult Detention Facilities. We plan to publish a Dual Notice of Intent to Adopt Rules in the April 29, 2013, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-361-7153.

Sincerely,

Greg Croucher  
Minnesota Department of Corrections  
Inspection and Enforcement Unit

Enclosure: Statement of Need and Reasonableness

## **Minnesota Department of Corrections**

### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Amendment to Rules Governing Jail (*Adult Detention*) Facilities, *Minnesota Rules*, chapter 2911**

### **INTRODUCTION**

In 1976 the State Legislature approved legislation which mandated that the Commissioner of Corrections (hereinafter “Commissioner”) promulgate rules establishing minimum standards for local secure correctional facilities (jails). These jail rules (standards) were officially adopted on May 1, 1978. These rules were revised three years later with the revisions becoming effective November 2, 1981. The previous rule chapter 2910 was revised in 1997 with those amendments adopted and effective March 15, 1999.

It has since been determined that several rules and definitions are in need of revision, and up to date language changes need to be added to the current Chapter 2911 rules. These are the major reasons behind this current amendment process which began in 2007.

In 2007 the director of the Minnesota Department of Corrections Inspection and Enforcement Unit formed the Chapter 2911 Rule Revision Committee, in consultation with the Minnesota State Sheriffs’ Association (hereinafter “MSA”), the Association of Minnesota Counties, and other impacted parties. This committee was comprised of jail administrators, sheriffs, county commissioners, other supervisory and administrative jail staff, a sub-committee of jail nurses, food service providers, a representative from the Minnesota Office of the Revisor, and department staff that service as detention facility inspectors. The group first met on January 24, 2007, and concluded its deliberations on August 6, 2008. The committee submitted recommendations to the department which were then worked into the amendment format, reviewed and accepted by the Commissioner.

*Minnesota Rules*, chapter 2911, Jail Facilities (proposed revision to title “Adult Detention Facilities”) is comprised of nine major areas: definitions, capacity, variances; personnel standards; staff training; staff deployment, job descriptions, work assignments, post orders, policies and procedures; records and reports; inmate welfare; food service; security; and environmental-personal health and sanitation. The review committees were tasked with improving the overall structure of the rules by including additional definitions, updating and clarifying rules, and a reorganization of the rules to allow for such things as: all training rules in one section, inmate hygiene removed from medical section and placed into inmate welfare section, updated language for inmate classification, and current medical practices to name a few.

## **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact the Minnesota Department of Corrections, Inspection and Enforcement Unit at 1450 Energy Park Drive, Suite 200, St. Paul, MN 55108, phone (651) 361-7146 or fax (651) 642-0314. TTY users may call the Minnesota Relay Service at (800) 627-3529.

## **STATUTORY AUTHORITY**

The department's statutory authority to adopt the amendment to these rules is set forth in Minnesota Statutes section 241.021, subdivision 1, which provides:

**“Correctional facilities; inspection; licensing.**(a) Except as provided in paragraph (b), the commissioner of corrections shall inspect and license all correctional facilities throughout the state, whether public or private, established and operated for the detention and confinement of persons detained or confined therein according to law except to the extent that they are inspected or licensed by other state regulating agencies. The commissioner shall promulgate pursuant to chapter 14, rules establishing minimum standards for these facilities with respect to their management, operation, physical condition, and the security, safety, health, treatment, and discipline of persons detained or confined therein....(f) As used in this subdivision, "correctional facility" means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.”

Under this statute, the department had the necessary statutory authority to adopt the proposed rules and thereby amend those rules. All sources of statutory authority were adopted and effective prior to January 1, 1996 and therefore Minnesota Statutes, section 14.125, does not apply. See Minnesota Laws 1995, Chapter 233, article 2, section 58.

## **REGULATORY ANALYSIS**

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then give the agency's response.

The committee believes the proposed rule amendments are the most reasonable approach to operating Minnesota county correctional facilities. In many cases the amendments are reasonable simply because they establish, in rule, procedures which are already in practice and which have proved reasonable through experience. In some cases they are reasonable because they make better use of existing resources, and in other cases they incorporate in rule new findings and/or state-of-the-art technology which did not exist ten years ago. In some cases, they also reflect the reality of legislation and/or evolving case law which requires these amendments be made. Finally, in some cases, they eliminate previous rule language and, by reference, address an area covered by other state rules or labor/management agreements.

**“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

The classes of persons who will be most affected by the amendments are county boards; sheriffs; jail staffs including administrators, program personnel, nurses, and correctional officers; Community Corrections Act administrators; and food service providers. Organizationally, the MSA and the Association of Minnesota Counties (two groups which include most of the persons listed above) are most affected by these amendments. Those less directly affected include architects and construction managers dealing with detention facility design and construction; inmates; fire marshals; and building code officials. Of more than 100 facilities, county boards will provide funding.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

The probable costs to the agency and other agencies are expected to be minimal. For the DOC, costs should be limited to administrative matters such as refining inspection instruments, printing amended rules, and training DOC detention facility inspectors. The DOC Inspection and Enforcement Unit will dedicate the staff time and effort necessary in training those affected by the rules. This will be accomplished using existing resources.

Costs to other agencies should be minimal or non-existent. Those agencies have been extensively consulted during the revision process. The Department of Public Safety Fire Marshal’s office, the Department of Administration Building Code Division, and the MDH were active participants in drafting the rule amendments. Representatives of public health nurses contract nurses were involved in the committee as a whole, as well as a sub-committee, as were private service providers, such as food service vendors.

There are currently no revenues generated as a result of this rule. Since these amendments would not change this, they would have no anticipated effect on state revenues.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

There are no less costly or less intrusive methods of achieving the purpose of these rules. One of the objectives of these amendments is to make the existing rules less intrusive and less costly. This will be accomplished in part by deleting portions of the rules, such as issues related to fire and life safety, food service, and health, all of which are more appropriately addressed by other agencies.

Beyond that, the revision committee considered evolving case law related to standards of decency and determined that the remaining rules were only included if they were needed to ensure that one or more of the four goals (1. protecting the public, 2. ensuring institutional safety, 3. providing needed services, and 4. providing program opportunities) was met. These goals correspond to the legislative intent of MS §241.021, Licensing and Supervision of Institutions and Facilities, Subdivision 1(1)-(5).

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

An alternative to amending the rules would have been to use the American Correctional Association (ACA) accreditation process. With legislative approval, this might have removed the state from the rule making process and assessment of compliance with rules. However, it is unlikely that the legislature would have approved this alternative for two major reasons. First, this process would have been more costly to those affected by the rules. Each jurisdiction would have been required to pay both a fee for initial accreditation and fees for reaccreditation. Second, the 2011 review committee members concluded that some ACA standards were either unattainable or unrealistic, while others were not sufficiently stringent. The review committee members believe that amended rules can better achieve the appropriate balance.

**“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”**

The probable costs of complying with the proposed rule amendments are non-existent for most identifiable categories of affected parties. Consequently, only those sections in which the amendments are likely to have any fiscal impact are discussed below. If a section is not listed, it is either because it contained no substantive changes, because the amendment had no cost impact, or because the amendments reduced the costs to the DOC and those affected by that amendment.

**2911.0300 INTENDED USE AND NONCOMFORMANCE WITH RULES.** Subpart 4(e) sets forth a level V sanction or facility closure through sunset authorization. The fiscal impact may be significant if the county decides to build a new facility. There would also be a cost in that the county would need to transport and board inmates at other facilities. Costs are difficult to predict as more information would be required and would vary by facility size and amount of inmates. However, the cost of operating a facility that has not been given an authority to operate by the DOC has fiscal implications as well.

**2911.0350 EXISTING BED CAPACITY.** This rule was eliminated in the 2011 proposed rule revision. It formerly allowed for cells in facilities built before 1978 to have four inmates in a 64 square foot cell. Only two inmates would be allowed to occupy cells of the same size now. There could be a fiscal impact for facilities that still have these size/type of cells and that have been using them to house four inmates. The approved capacity of the facility would decrease and depending on how many inmates were in the facility and whether boarding out of inmates was required. The average per diem to board inmates at other facilities averages between \$50-60 per day, per inmate. Although per diem costs will accrue to a jurisdiction that uses other DOC-approved facilities when over capacity issues arise, these costs are appropriate to the overall intent of the rules and are reasonable for enforcing the rules.

**2911.0900 STAFFING REQUIREMENTS.** Subpart 7 requires an assistant jail administrator for facilities that exceed 60 inmates. The majority of county jails in Minnesota with a capacity above 60 inmates already have at least one assistant jail administrator; however, some facilities do not. There would be a cost associated with the hiring of this position. The exact fiscal impact is not

known as it will vary by county depending on factors such as: salary, benefits, duties, county policies, and union contracts.

There is a potential for a significant fiscal impact on some counties with the revision of 2911.0900 subparts 12 and elimination of subpart 13. Subpart 12 requires facilities with a population exceeding five inmates with one jailer/dispatcher as sole supervision to be assisted on duty by another custody staff. This could have a fiscal impact on small counties that use one jailer/dispatcher as sole supervision of a facility. The fiscal impact for an additional staff member would vary depending on the county, and their respective salary and fringe benefits. In reviewing current average daily populations, the department has determined that seven facilities could potentially be affected and only two facilities would require an additional staff member based on these criteria.

The department is repealing subpart 13 which allowed facilities to operate at a one to 25 staff to inmate ratio on the overnight shift when all inmates are secured in their cells. Subpart 12 becomes the applicable standard on all shifts. In reviewing current average daily populations, the department has determined that this repeal could potentially impact 11 facilities with populations ranging between 16 and 30. Currently, only one facility operates an overnight shift with a sole jailer/dispatcher. This particular facility would be impacted by this change.

Several factors including increased liability, workload, well-being checks, suicide watches, amount of time prior to booking procedures, and response to facility emergencies were considered by the revision committees in regard to reducing the number of inmates that could be adequately and appropriately supervised by a single staff person who is also responsible for 911/dispatch. Those reasons are contained in the rule by rule analysis found in this document.

**2911.1000 to 2911.1700 STAFF TRAINING.** There will be minimal increased training costs associated with the proposed amendments in these sections, but the revision committee believes these are fully justified as an important measure to reduce the amount and costs of litigation which has resulted from incompletely trained staff. A highly trained staff is needed to meet the basic objectives of correctional facilities. Several facilities are already meeting the amended requirements on a regular basis, in which case there would be no additional fiscal impact.

**2911.3800 to 2911.4800 FOOD SERVICE.** Most changes in this section have no fiscal impact, but rather represent current knowledge about nutritional requirements as well as food service standards that have evolved in case law in such areas as religious or medical dietary needs. Those amendments which have fiscal implications are as follows:

- **2911.4200 THERAPEUTIC DIETS**, has been expanded to further clarify the requirements. The cost for the Dietitian to approve different special diets should be minimal.
- **2911.4300 RELIGIOUS DIETS**, requires that diets adhering to religious dietary laws be provided. Food services providers have indicated that this requirement can be met with little or no fiscal impact by use of food “substitutes” such as those set forth in Minnesota Rule 2911.3900, subpart 9.

**“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”**

While the probable cost for could be large for a few counties, the need to assure public safety and a timely response to the safe and efficient operation of a facility, as well as emergency circumstances more than justifies these costs. The cost of not adopting these standards could be greater. Prior to May 1978, only guidelines existed in this area. Since these did not have the force and effect of law, compliance was poor. Approximately 38 facilities statewide were condemnable. Compliance is now good, but it is likely that compliance would decrease if the rules were not adopted. Additionally, without the rules the DOC could not meet the legislative intent of Minnesota Statute § 241.021. Consequently, these proposed rule amendments are crafted to meet what is required by law, rather than also what might be desired. This approach by the DOC and the 2911 review committee makes the best use of increasingly limited fiscal resources, and these amendments are the alternative which best addresses this distinction between required and desired.

**“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

There are no differences between these proposed rule amendments and existing federal regulations. The statutory intent of Minnesota during the past twenty years has consistently been to comply with federal regulations. These amendments also take into consideration federal regulations such as the Juvenile Justice Delinquency Prevention Act. They have been crafted with a goal of assisting facility administrators in reducing their liability for violation of federal regulations. They have also been crafted with attention to judicial decisions that have formed the basis for “evolving standards of decency” and case law regarding minimal standards for correctional facilities.

**“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule”**

The changes that regulated parties must make under the proposed rule amendments are meant to replace outdated rule language and have been crafted with the goal of helping local correctional facilities operate in compliance with existing state and federal regulations. There are no specific federal and state laws on the operation of local correctional facilities; therefore the specifics in these rules primarily comprise the only regulatory impact. The American Correctional Association (ACA) has published standards (best practices) for operation of local correctional facilities and the Minnesota Department of Corrections complies with these standards; however, the department no longer seeks accreditation under them. The ACA standards are broader and therefore do not conflict with the proposed amendments. For these reasons, there should be no cumulative effect on the regulated parties.

## **PERFORMANCE-BASED RULES**

The proposed amendment to the rules governing Adult Detention Facilities are performance based in that the amended rule provides for a clear delineation of mandatory standards for compliance from those that are essential. For example, the amended rule provides a decrease in the amount of inmates that can be supervised by a sole jailer/dispatcher. The current rule allows for a 1 to 15 inmate to staff ratio. The amended rule decreases that ratio to 1 to 5. This change was made to improve security and facility operations as well as the welfare of both staff members and

inmates. Dispatch duties have grown over the years and have become a bigger responsibility. Additionally, back-up resource assistance was found to be non-existent in some smaller counties as there was no 24/7 Sheriff Department of local police coverage. Custody staff members, Sheriffs, and Jail Administrators agreed that there was a chance that well-being checks would be delayed if a serious emergency call was received. Also, if the sole staff member working became incapacitated, there would be no way to know this in a timely manner. Serious questions arose about how outside responders would access the jail to attend to this person. Another concern is the amount of time a new arrest would sit in a holding cell prior to booking which could be up to 8 hours.

Another example is the improvements and updated language in regards to inmate classification. The antiquated terms minimum, medium, and maximum security have been replaced by minimum-security, general population, special management, and special needs inmates. Additionally expanded definitions have been added or provided to clarify these inmate classifications. Facilities have been using these terms in regular use for several years but did not have definitions or a rule that reflected them.

The amended rule clearly defines when a facility will be deemed to be in substantial compliance. Flexibility in the rule remains in that adult detention facilities are provided guidance on standards that are considered essential to compliant operation.

**ADDITIONAL NOTICE**

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an April 9, 2013 letter by Administrative Law Judge James LaFave.

Our Notice Plan includes distributing a copy of the proposed amendments to the rule, this SONAR, and the Dual Notice to the facilities impacted by the staffing requirements and to the entities listed below. The cover letter will request the organizations disseminate the information to their membership.

Minnesota Sheriffs’ Association c/o Jim Franklin 1951 Woodlane Drive, Suite 200 Woodbury, MN55125	Association of Minnesota Counties c/o Ryan Erdmann 125 Charles Avenue St. Paul, MN 55103-2108	American Correctional Health Services Association – Minnesota Chapter 6540 – 50 <sup>th</sup> Street N Oakdale, MN 55128-1708
Julie Savat, Clay County Jail Minnesota Sheriffs’ First District Jail Administrators Association 915 9th Avenue N. Moorhead, MN 56560	Debora Zauhar, Carlton County Jail Minnesota Sheriffs’ Second District Jail Administrators Association 317 Walnut Street, PO BOX 530 Carlton, MN 55718	Patrick O’Malley, Wright County Jail Minnesota Sheriffs’ Fourth District Metro Jail Administrators Association 3800 Braddock Avenue NE Buffalo, MN 55313
Monette Berkevich, Nobles County Jail Minnesota Sheriffs’ Fifth District Jail Administrators Association 1530 Airport Road, SUITE 100 Worthington, MN 56187	Jodi Bushey, Rice County Jail Minnesota Sheriffs’ Sixth District Jail Administrators Association 118 NW Third Street, PO BOX 158 Faribault, MN 55021	West Central Jail Administrators Association 213 1st Ave SE Little Falls, MN 56345-1468
MN Association of Jail Programs & Services Miranda Neuwirth, President Crow Wing County Sheriff’s Office 304 Laurel St.	MN Association of Community Corrections Act Counties (MACCAC) 125 Charles Avenue St. Paul, MN 55103	Minnesota Nurses Association 345 Randolph Avenue, Suite 200, St. Paul, MN 55102



Brainerd, MN 56401

Minnesota Board of Public Defense  
331 Second Ave. S Suite #900  
Minneapolis, MN 55401

First District Chief Public Defender  
District Management Office  
919 Vermillion Street, Suite 200  
Hastings, MN 55033

Second Judicial District Chief Public  
Defender  
District Management Office  
101 E. Fifth St., Suite 1808  
St. Paul, MN 55101

Third Judicial District Chief Public  
Defender District Management Office  
400 South Broadway, Suite 204  
Rochester, MN 55904

Fourth Judicial District Chief Public  
Defender  
District Management Office  
701 Fourth Avenue South, Suite 1400  
Minneapolis, MN 55415

Fifth Judicial District Chief Public  
Defender  
District Management Office  
12 Civic Center Plaza, Suite 2070  
PO Box 1059  
Mankato, MN 56002

Sixth Judicial District Chief Public  
Defender  
District Management Office  
1400 Alworth Building  
306 West Superior Street  
Duluth, MN 55802

Seventh Judicial District Chief Public  
Defender – District Management Office  
816 West St. Germain Street, Suite 410  
St. Cloud, MN 56301

Eighth Judicial District Chief Public  
Defender District Management Office  
432 SW Litchfield Avenue  
Willmar, MN 56201

Ninth Judicial District Chief Public  
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District Management Office  
619 Beltrami Avenue NW, Suite 240  
Bemidji, MN 56601

Tenth Judicial District Chief Public  
Defender  
District Management Office  
433 Jackson Street, Suite 120  
Anoka, MN 55303

Minnesota State Fire Marshal's Office  
445 Minnesota St., Ste. 145  
St. Paul, MN 55101-5145

Minnesota Department of Health  
Environmental Health Division  
625 Robert Street N  
P.O. Box 64975  
St. Paul, MN 55164-0975

Minnesota Department of Health  
Infectious Disease Epidemiology,  
Prevention and Control (IDEPC)  
625 Robert Street N  
P.O. Box 64975  
St. Paul, MN 55164-0975

Minnesota Department of Health  
Compliance Monitoring Division  
P.O. Box 64900  
St. Paul, MN 55164-0975

Minnesota Department of Labor and  
Industry  
Building Codes and Licensing  
Jerry Norman- Building Plan Supervisor  
443 Lafayette Road North  
Saint Paul, MN 55155

MN Chiefs of Police Association  
1951 Woodland Drive  
Woodbury, MN 55125

In addition, we will post the Notice of Intent to Adopt, the SONAR, and the amended rules on the department's rulemaking page at: <http://www.doc.state.mn.us/publications/rules/default.htm>

We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

### **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Department consulted with Minnesota Management and Budget (MMB), by sending MMB copies of the documents that were sent to the Governor's Office for review and approval on the same day we sent them to the Governor's office. The documents included: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by Minnesota Statutes, section 14.128, subdivision 1, the department has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The department has determined that they do not because these rules deal primarily with individual facility standards. All inspections and local requirements are determined by the local entities and the amended rules do not weigh in on those requirements.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

As required by Minnesota Statutes, section 14.127, the department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The department has determined that the cost of complying with the proposed rules in the first year after the rules take effect should not exceed \$25,000 for any small business or small city. The department has made this determination based on the probable cost of complying with the proposed rule, as described in the Regulatory Analysis section of this document. The department asked the group representatives whether these would be costs to them in implementing these rules revisions. The representatives indicated that the costs should be minimal. The department concurs with the analysis.

## **RULE-BY-RULE ANALYSIS**

**2911.0100 DEFINITIONS.** The chapter 2911 review committee found that definitions need to be included for several new terms that are used in common practice in most facilities. Since the committee recommended the addition of certain terms, the definitions section needs to be amended to reflect those additions, and changes. Assistant jail administrator, discretionary overrides, general population, non-discretionary overrides, overrides, segregation area, and special-management area were all added and defined. Several definitions were revised and expanded. These are needed to add clarity and assist facility administrators and county units of government in understanding distinctions between terms used throughout the chapter 2911.

Assistant jail administrators are common in medium to large facilities. This definition replaces the previous definition for administrative staff assistant which was interpreted as a clerical position. In reality, this staff person is an assistant to the facility administrator in managing and operating the facility.

Overrides, both non-discretionary and discretionary are used commonly in objective jail classification. These terms were previously not defined and show a trend towards more thorough classification of inmates. General population is now defined and takes the place of what was formerly known as medium-security inmates. Jail operations and separation have shown a trend towards a general inmate population which is a combination of medium-risk inmates, and those re-classified, or appropriately given an override from minimum-security or special-management status. Definitions of segregation area and special-management area were added to clarify these terms as housing areas, not just as a classification status. Other existing terms had their definitions expanded to include more current language, and statutory changes. These changes had minimal effect to the definitions of: subpart 5 alternative sentence; subpart 10 cellblock or housing unit; subpart 16 class VI facility; subpart 19 commissioner; subpart 20 contraband; subpart 40 health care personnel; subpart 43 indigent; subpart 48 intermittent sentence; subpart 49 life safety code.

**2911.0300 INTENDED USE AND NONCONFORMANCE WITH RULES.** There are six changes in this section. Most of the changes are significant as they will result in a decrease in the approved capacity of a few facilities. The first change is needed to simply to re-number and change the order of the subparts in this section.

The second change is significant and is needed to establish in rule what has been a common practice. The establishment of an additional level of sanction; which is labeled levelIV sanction, or sunset authorization level, allows for an alternative for the commissioner to use for noncompliance with mandatory and essential rules. It allows the commissioner to resolve deficiencies without using statutory sanctions or the administrative law process. Such an approach has been repeatedly successful in Minnesota over the last several years. It reduces adversarial relationships and avoids the costs of the statutory or administrative law routes.

The third change is also significant and is needed to eliminate the allowance for smaller square footage requirements in those facilities built before May 15, 1978. The practice of housing four inmates in a 64 square foot cell is a potentially un-safe and unsanitary practice. More than 30 years has passed since a facility was built under those specifications. Additionally, because of the elimination of the language that addresses facilities built prior to the date May 15, 1978, Design Capacity (Minnesota Rules, part 2911.0340) is revised to no longer have two subparts. This also affects Approved Capacity (Minnesota Rules, part 2911.0330, subpart 2) as letters B and E have been eliminated. Letter B referenced single occupancy cells built prior to May 15, 1978 allowing for 50 square feet of floor space per inmate. Single occupancy cells shall provide a minimum of 70 square feet per inmates as written in letter A of subpart 2. Letter E was removed as it was decided that the wording was redundant. Condemned facilities do not have any approved beds.

**2911.0400 VARIANCES.** Subparts 2 and 3 of this section have been combined into a single subpart, now titled Emergency Notification. Subpart 5 Work Stoppage and subpart 6 Mass Arrest were moved to a later section as they seemed to be more appropriate for the section on Emergencies and Unusual Occurrences (Minnesota Rules, part 2911.3700) as those events do not happen very often.

**2911.0600 through 2911.0900 PERSONNEL STANDARDS.** An amendment to part 2911.0600, Staff Recruitment, is the addition of wording to reflect current statutory language.

Several amendments are needed in the staffing requirements (Minnesota Rules, part 2911.0900) to clarify the intent of staffing plan requirements. Many of these changes are needed since ratios alone have become less valid indicators of staff requirements. The classification of inmates has become more sophisticated and facility design has evolved, with a result that, for example, one person may be able to handle several minimum security inmates while a lower ratio may be necessary for more serious offenders. With the types of offenders changing, with jails getting larger, with greater specialization, and with new facility designs, the committee agreed that these changes were needed to balance cost vs. utility considerations.

An amendment was needed to combine subparts 1 and 16. Both were titled Staffing Plan. Subpart 16 contained language specific to the need for an approved staffing analysis as well as a staffing

plan annually. The revised subpart 1, Staffing Plan and Staffing Analysis, encompasses the requirement for a staffing plan for all facilities, and a staffing analysis for those facilities with a design capacity above 60 inmates. It was found that the majority of staffing plans contained the elements found in a staffing analysis.

An amendment is needed in subpart 7, Assistant Jail Administrator, to reflect the need and clarify the definition of an assistant jail administrator. This position is not a clerical position. It is an administrative position that assists the jail administrator and is not responsible for inmate supervision. It was also found that the vast majority of jails above 60 inmates currently have at least one assistant jail administrator.

An amendment is needed in subpart 8, Staff Person in Charge, to clarify the requirement for designated staff person(s) in charge when administrative staff is not in the facility.

A small language amendment is needed in subpart 10, Supervision of Inmates of the Opposite Sex, to change the term “sex” to “gender” It was concluded that this was a more commonly used term.

An amendment is needed in subpart 12, Assistance for Dispatcher or Custody Staff Person. The ratio for a single custody staff or dispatcher was lowered from 15 to five. The overwhelming majority of the review committee felt that operating a jail and dispatch with one person was not a safe practice. Responsibilities in 911 call centers and dispatch centers have increased over the last several years. Additionally, the types of inmates coming into facilities have become more violent, chemically dependent, and mentally ill. One person trying to manage both functions is a potentially dangerous practice for both staff members and inmates. Further adding to this is the fact that some of the smaller jurisdictions do not have an adequate back-up resource plan. There is no local police, and the sheriff’s department does not have staff on 24 hours a day, 7 days a week. The closest back-up may be 20-30 miles away. Additionally, there was a concern with new arrests sitting in a holding cell up to eight hours prior to the booking procedure being started and completed.

Finally, an amendment is needed in subpart 14, Ratio of Custody Staff to Inmates. The intent of this amendment is to list the staff to inmate ratios that the Minnesota jails are already operating under. The committee felt it was important to add these ratios to the 2911 standards as it was not found in the current version. Staffing analysis and construction plan reviews use these ratios to determine preliminary staffing as well as final staffing numbers. These numbers reflect best practices. The review committee agreed that no more than 60 general population inmates in a direct-supervision housing unit could be adequately and safely supervised by one custody staff person.

**2911.1000 through 2911.1700, STAFF TRAINING.** The changes to Minnesota Rules, part 2911.1300, Custody Staff Training, have been recommended by the committee to more accurately reflect and organize common training practices, and terminology changes. These changes are also needed to strengthen pre-service orientation training requirements.

The second amendment in this section was to move training requirements found in the environmental-personal health and sanitation section (current part 2911.6100, Training). No

wording changes were made to this section except for the title of the section is now named Medical Training for Custody Staff. This change was made to keep all of the training elements together rather than spread out through different sections of the rule.

The last amendment to this section is to make a training plan mandatory. In its current form the training plan language is in an essential rule. It was recommended that all facilities have a training plan, and that this rule be mandatory. It is important to have an organized, documented means of tracking and implementing training for liability purposes.

**2911.1800 through 2911.2000, STAFF DEPLOYMENT, JOB DESCRIPTIONS, WORK ASSIGNMENTS, POST ORDERS, POLICIES AND PROCEDURES (now titled STAFF DEPLOYMENT, JOB DESCRIPTIONS, POLICIES AND PROCEDURES).** The proposed amendments in this section involve both deletions and additions. The deletions are needed to eliminate the terms post orders and work assignments, as these requirements are covered in different areas of the rules.

The significant addition to this section is the requirement of having a policy and procedure manual that is available electronically. Changes and revisions to policy and procedure manuals are done many times throughout the year. The ability to send these changes electronically rather than through the mail or as a three-ring binder has lessened the use of paper, and the need for storage areas of these manuals. This change has also improved the efficiency and time for review and response on policy changes.

**2911.2100 through 2911.2400 RECORDS AND REPORTS.** The sole amendment in this section is a change in the wording in part 2911.2400, Detention Information System Requirements. Facilities are responsible for reporting on persons detained or incarcerated.

Through new technology this is most often done automatically once per day. In smaller facilities this is done manually by a designated staff person. It was recommended by the committee that the wording “in a timely and accurate manner” be changed to “in an accurate manner daily,” as this is the common practice. Additionally, accurate and timely data on persons detained or incarcerated in facilities governed by these rules has become increasingly vital to local and state policy makers.

**2911.2500 through 2911.3700 INMATE WELFARE.** There are several amendments to these parts, most of which are needed to clarify the current rule intent and establish standards. There is a need to expand initial classification criteria to include pertinent inmate history information. Additional criteria have been added to both part 2911.2500 Separation of Inmates, and part 2911.2600 Classification of Inmates. The additions to separation of inmates were necessary because of the new terms: special management and general population referenced earlier in the revised rule.

The additions to classification of inmates reflect a more comprehensive set of criteria that would now include: severity of current charges or convictions, institutional disciplinary history, and serious offense history. These additions were recommended to add in the objective classification of inmates and to help ensure that inmates were separated by gaining more information of past behavior and offenses.

There is also a need for a change because of changes in resources, such as language lines available over the telephone. As well as changes in state demographics that show an increasing percentage of non-English speaking inmates, but not necessarily inmates that speak Spanish. This change to part 2911.2700, subpart 1, would require facilities to have procedures in place to address the needs of non-English speaking inmates.

The section on preventive health services (part 2911.6300, subparts 1 through 4) was moved from the medical section of the current rule to the section on inmate welfare. This section is now titled Inmate Hygiene (part 2911.2750). It was recommended that this change be made as these requirements are more appropriate to this section.

There was a recommendation to change the term “Use of Force” to “Response to Resistance” (part 2911.3300). There is a trend throughout the country, as well as a recommendation from the National Institute of Corrections, to make this change as these terms are indicative of the policies and procedures necessary to control or modify the behavior of an inmate(s). The other change to part 2911.3300 was made to update the language and address changes in technology and control devices.

One minor amendment is needed to make part 2911.2900, Grievance Procedure, a mandatory rule. A legal opinion was received that mirrored this recommendation.

In part 2911.3100, subpart 2, Inmate Activities, a recommendation was made to change the language from “community religious consultant” to “community religious resource” as these volunteers were not technically consultants. The other amendment to this rule part was to eliminate the requirement to have sacred books available at the cost of the facility. Some religions were found to have books that were difficult to find, or were cost prohibitive to purchase.

Additionally part 2911.3100, subpart 5, Substance Abuse Programs, was slightly amended to reflect the need to “provide services” for inmate chemical dependency issues, not to necessarily address the problem itself, which has a more comprehensive treatment implication. Two amendments are needed in part 2911.3100, subpart 7, Recreation Plan. The first is to change the requirement for inmates in segregation to have at least one hour out of their cells per day 7 days a week, instead of 5 days a week. It was found that all facilities were operating under this practice already. The second change was to relax the requirement to have segregation inmates use the same recreational facilities’ as general population inmates. In medium to large facilities this would sometimes not be operationally safe or feasible. The majority of inmates on segregation status would not have recreation privileges. Additionally proper inmate separation would be difficult to maintain as these inmates could not be mixed with other groups of inmates. Scheduling an area for one inmate, compared to a group of inmates, was found to not be a good or efficient use of resources.

There is a significant change to part 2911.3200, Inmate Visitation. In the current rule letter I prohibits the audio monitoring of any area used for inmate visitation. Several variances have been given to facilities with the implementation of video visitation systems. The information that may be gathered from non-professional visits has proven invaluable to help maintain the safety and

security of the facility. Policies and procedures shall be in place to limit which types of visits may be audio monitored. Additionally, inmates are made aware of this possibility similar to phone calls. This change would also eliminate the need to variance the current rule at each facility.

There are three amendments to the part 2911.3300, Correspondence. The first is found in subpart 3, Inspection and Censorship. Letter B requires notification to inmates when incoming or outgoing correspondence is rejected. The amendment to this part is to clarify that the notification be in writing. This is the common practice found in correctional facilities and provides a means of documentation for tracking purposes. The second amendment, found under the same section eliminates the ombudsman for corrections from the list of officials. This position no longer exists. The third amendment is found in subpart 4, Money. Personal checks are not accepted in the majority of facilities, however signed cashiers are accepted. The wording in this rule part has been amended to reflect this change.

There are minor amendments in the wording of part 2911.3400, Telephone Access. These changes were recommended to help clarify that non-legal calls shall be made at the expense of the inmate and that these calls may be monitored and/or recorded.

The amendments to rule part 2911.3600, Clothing, Bedding, and Laundry Services, as well as part 2911.3650, Linens and Bedding, and part 2911.3675, Laundry Services, were necessary to eliminate some confusion and redundancy. These changes were also recommended to separate initial uniform and bedding issue, from linen exchange. These three rule parts have been re-titled with elements from other sections either moved or deleted. Rule part 2911.3600 is now titled Clothing and Bedding. Rule part 2911.3650 is now titled Inmate Uniform Issue and Bedding Allowance. Rule part 2911.3675 is now titled Laundry Services and Linen Exchange. The content of these three rule parts varies little from the current rules. The first amendment is a change to the wording to reflect operational trends for informing inmates about linen exchange through posted schedules, pictures, inmate handbooks, and orientation videos. This would take the place of the current requirement to document every linen exchange.

The second amendment is found in part 2911.3600, Clothing and Bedding, subpart 2, Excess Personal Clothing. This change is necessary as the current rule required facilities to either mail, or transport excess clothing and property to a family member of the inmate. This is neither a practical nor cost effective way to handle this inmate property. The common practice is to hold property for a designated amount of time during which the inmate shall try to make arrangements for its disposition.

The deletion from part 2911.3675 was recommended, as few facilities would be able to meet the standards that referenced the Nursing and Boarding Care Home operational rules. Those standards were not conducive or cost effective for a correctional facility.

There are minor amendments needed for part 2911.3700, Emergencies and Unusual Occurrences. These are needed to clarify which incidents are required to be submitted as special incidents to the DOC, as well as the manner in which they are submitted. There has historically been some confusion as to which level of inmate assaults would need to be reported and submitted to the DOC for review. The amendments to this section clarify this point.

Additionally, with advances in technology the need to mail or fax reports has changed to electronic submission. The wording “in a manner required by the DOC was made to reflect this change. Sexual misconduct was added to the list of reportable incidents, as this has long been a reportable incident, but was omitted from the current list.

The last amendment to this section was to move subpart 6, Work Stoppage and subpart 7, Mass Arrest in their entirety to this section. They were previously found in part 2911.0400, Variances. It was recommended by the committee that these standards be moved to the section on emergencies and unusual occurrences as they appeared more appropriate to this section of the rule.

**2911.3800 through 2911.4700 FOOD SERVICE.** The amendments in this section for the most part are needed to either expand or clarify what constitutes a serving of a certain food group. Additionally, terms were added to reflect the most current food service terms, portions, and percentages. These definitions have been developed and reviewed with state nutritionists and dietitians so that they fully comply with published nutritional requirements.

The other significant amendments are needed to expand the scope of part 2911.4200, Therapeutic Diets and more clearly define part 2911.4300, Religious Diets. These changes reflect best practices as well as the most common inmate needs found in jail settings. Added were subparts 1 through 4 to specifically address: medical diets, food-allergy diets, vegetarian diets, and pregnancy.

The final amendment in this section was a change to require all facilities to operate some level of canteen within the facility. It was found that all facilities, except for some Class I facilities, were maintaining and operating a canteen instead of sending staff members out to local stores to obtain these items. This practice potentially decreases the amount of contraband entering a facility, as well as making better use of staff time.

#### **2911.4900 through 2911.5700 SECURITY**

The amendments in this section are needed to clarify and tighten security standards. Other changes update the language and reflect words now defined in the proposed rule revision.

The first two amendments are found in part 2911.5000, Post Orders. Subparts 1 and 2 have been combined into one subpart titled, Post Orders and Accountability. This subpart was also amended to show a change in the requirement for how often post orders needed to be read, and signed by staff members. These changes were made to clarify the expectation of this rule. In smaller facilities the continual reading and signing of post orders that do not change very often is unnecessary. In medium to large facilities a more frequent review of post orders may be necessary as staff members are assigned to multiple posts and different areas, sometimes within one shift. Therefore, the requirement for this subpart will be to have staff members read, sign, and date all applicable post orders at least annually.

The final amendment to part 2911.5000, Post Orders, is found in subpart 3, Security Post Records. Wording has been added to clarify that jail records are maintained per county policy. This



question has come up quite often and affects the amount of storage space in a facility. These policies vary by county and are not determined by the rules.

The next amendment is found in part 2911.5100, Admissions, subpart 3, Orientation to Rules and Services. Obtaining orientation information was typically done at the time of booking, written in the inmate handbook, or facilitated by the programs staff. New technology has allowed for video and audio presentations of orientation rules and expectations. The current requirement is to have this information in a language the inmate can understand. The change would be to require facilities to have a method to receive orientation information in a manner the inmate can understand. This amendment may not always eliminate the need for information in another language.

There are minor wording amendments to part 2911.5400, Locks and Keys. Wording to reflect the changes in access devices is needed to reflect advances in technology. Key cards, scramble pads, card swipes and other approved devices are widely used in facilities for both entrance and exit. Therefore, the wording is amended to read, “keys or other approved access control devices.”

There are amendments to part 2911.5600, Security Equipment. These amendments were proposed to clarify current rules, eliminate unneeded terms, and add new wording to reflect advances in technology and control devices. Tactical advances in jail security have resulted in an increase to the amount of control devices that may be used in a response to resistance situation. This requires an amendment to the rule to add “impact devices and electronic control devices” to the list of items that are required to be controlled and inspected in letter A of subpart 1, Equipment.

There is an additional amendment to part 2911.5600, Security Equipment, in regards to weapons found under subpart 2. These amendments are needed to both clarify and strengthen the current rule. Letter B of this subpart has wording added to reflect the expectation that all weapons lockers have appropriate signage displayed that informs both staff and visitors that weapons are not allowed within the facility. The amendment under letter C is to clarify that unless there is a declared emergency no weapons are allowed within the secure perimeter of the facility.

Finally, amendments are needed in this section to strengthen requirements for checking on inmates by custody staff. Such changes are needed both because of suicide-related litigation in the past and because of the changing nature of the inmate population, which has become more dangerous. There are more felony offenders, a greater proportion with multiple problems, mentally ill inmates and more inmates who are predatory towards others. This is due in part to technological advances which allow less dangerous inmates to be followed through home monitoring and other techniques. Also, these changes are needed to incorporate the new knowledge regarding security procedures which has developed since the rules were last amended in 1999.

**2911.5800 through 2911.7100 (now titled MEDICAL AND HEALTH SERVICES).** The amendments in this section are needed to articulate that medical and dental resources shall be available in facilities. The first change is to have subpart 1 now be a mandatory standard. This is needed to ensure that all facilities have developed and implemented written policies and procedures to address the delivery of health care services, including medical, dental, and mental health services. It was found that most facilities have these policies in place already. Part

2911.5800, subpart 3, Health Care Policy Review, is also amended to make it a mandatory standard. This is needed because it was found that having a higher level of authority reviewing all medical policies annually allowed for the most up to date language as well as a resource for administrators to reference with questions or clarifications. There is a minor amendment to subpart 4, Emergency Health Care. This is needed to combine the elements of subpart 12 with letter B. The new language now reads “use of an emergency vehicle, available on a 24 hour basis.” New language was added to subpart 6, Medical Screening. Standardized questions to identify inmates with either active or latent tuberculosis have been included in initial medical screening for years. Having this information sooner rather than later is imperative to safe jail operation, thus the necessity to add this language.

A language change was made to amend the title of subpart 7 from “Health Care Appraisal” to “Health Care Follow-Up.” It was determined that inmates with potentially serious, and chronic conditions are seen and have their medical needs addressed well before 14 days of incarceration.

The changes proposed for part 2911.6000, First Aid, are done because some of the provisions in this section are better suited for other areas of the rule. Subpart 1, Training of Personnel was moved in its entirety to part 2911.1350, Medical Training for Custody Staff. Subpart 3, Medical and Dental Records, was incorporated into part 2911.6200, also titled Medical and Dental Records. This was needed to keep standards relating to medical records in the same area of the rule. Additionally, an amendment was needed to move part 2911.6100, Training, to part 2911.1350, Medical Training for Custody Staff. This standard which did not include any language amendments was also moved to keep all of the training standards in one area of the rules.

Part 2911.6300 was moved and re-named. Previously titled Preventive Health Services, it is now titled Inmate Hygiene (part 2911.2750) found in an earlier section of the rule under Inmate Welfare. This is needed as it was decided that this rule is not a medical standard, and it seemed more appropriate to that section of the rule.

Part 2911.6500, Storage, amendments are needed to clarify that a system is needed to account for medical sharps that are used in inmate areas, subpart 6. These sharps, stored on medication carts and stored in housing units require locked storage. There was some confusion as to which medical sharps had to be counted and accounted for daily, or prior to the end of each shift. Unused medical sharps that are stored in the medical unit and are considered inventory need not be accounted for daily.

The amendments to part 2911.6600, Delivery, are needed to clarify the current standards. Subpart 9, Adverse Reaction Reports, is revised to require custody staff only to inform the responsible health care personnel. Those staff would then be responsible for notifying both the prescribing physician and the responsible physician. It is not always feasible, depending on factors such as time of day and day of the week, to expect a health-trained custody staff person to be able to contact and notify both physicians.

Part 2911.6600, subpart 14, requires a minor amendment to change the title from Nonlegend to Non-prescription medication. This change was necessary to clarify the terminology used and maintain consistency with earlier changes in this revision.

There is a significant addition to part 2911.6600 to include the wording for the practice of allowing “keep on person” medications (subpart 15). This change was needed as many facilities operated with such policies and procedures under an annually renewed variance to the current rules. This change would eliminate the need for a variance.

There are two minor changes to part 2911.6800, Control. In subpart 2 the term “legend” has been changed to “prescription”. This is needed to maintain consistency of terms found in the rules. Subpart 3 is now titled Prescription Medication upon Transfer or Release. This change is needed to clarify the intent and need of this standard.

**2911.7200 through 2911.7600 (now titled ENVIRONMENTAL, SANITATION AND FIRE SAFETY).** This entire section was separated and re-named to separate it from the medical standards. The sole amendment to this section was to eliminate some of the wording under part 2911.7600, Waste Disposal. It was recommended that the wording in reference to an approved plan by the appropriate regulatory agency was not needed.

## **CONCLUSION**

Based on the foregoing, the proposed rule amendments are both needed and reasonable.