

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 708

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6/10
DATE FOR REVIEW 6/23
DATE DUE 6/30

Adopted w/a hearing X
Adopted w/o a hearing _____
Temporary rule _____

Approved 6/30 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 6/30

✓ Rule as Adopted

✓ Rule as Proposed — + Amendments to Rules as Prop. 5/28/81

? Order Adopting see my comment

✓ Notice of Intent to Solicit Outside Opinion 1.19.81

✓ Order for rulemaking
4.21.81 Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency see my comment

✓ Affidavit of Mailing Notice of rulemaking
3.20.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
3.16.81 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
✓ 5.13.81 Approving H.E.'s Report
✓ 6.8.81 Approving agency action

? Agency's Findings of Fact not submitted but see Mclaegan Memo 5/28 "Amendments to Proposed Rules....

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

? Affidavit of Mailing Notice of Submission to Attorney General)

? Notice of Submission to the Attorney General see my comment

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JACK G. YOUNG
Commissioner of Corrections

DATE: June 30, 1981

ATTN : James N. Bradford
Assistant Attorney General

FROM : H. Theodore Grindal
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Adoption of Rules of the Department of Corrections Governing Minimum Standards for Juvenile Residential Facilities

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

HTG:rjg

Enc.

cc: Susan Robertson
Duane Harves

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

TO : Attorney General

DATE: June 9, 1981

FROM : John McLagam, Director
Standards Development Unit

PHONE: 296-6041

SUBJECT:

Included please find a copy of the June 5,1981 report to Duane Harris from John L. Lunde outlining three citations in the rule. His report has a typographical error in that b of that report should sight §2.551C instead of §2.511C. The citations have been noted and the two copies of the rule showing the changes is included with this memo.

CORR-81-003-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Corrections Governing Juvenile Residential Facilities.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examniner, on Tuesday, April 21, 1981, at 9:30 a.m. in the Minnesota State Capitol, Room 123, St. Paul, Minnesota, pursuant to an Order for Hearing dated March 2, 1981. This is a rulemaking proceeding conducted pursuant to Minn. Stat. Ch. 15, to determine whether the Department of Corrections has authority to adopt the rules proposed and whether they are necessary and reasonable and may be adopted.

Appearing on behalf of the Minnesota Department of Corrections (hereinafter the "Department") were Bruce W. McManus, Assistant Commissioner; John McLagan, Director, Standards Development Unit; Dennis Falenschek, Director, Inspection and Enforcement Division; Ken Merz, an inspector in the Standards and Development Unit; Corena Rollins, Secretary in the Standards Development Unit, and her predecessor, Brenda Stiles.

Excluding Departmental staff, four persons appeared at the hearing which continued throughout the morning and until all persons present had had an opportunity to be heard. Subsequent to the close of the hearing but before the expiration of the 20-day comment period ordered by the Hearing Examiner, one public comment and one Departmental comment were submitted to the Hearing Examiner and made a part of the record.

The Commissioner of the Minnesota Department of Corrections must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Commissioner does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Commissioner elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines

that the defects have been corrected, then the Commissioner shall submit the rule to the Attorney General for review of form and legality. If the Commissioner makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Commissioner submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On March 3, 1981, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.

The Department did not file a statement of the number of persons expected to attend the hearing and the estimated length of its presentation as required by 9 MCAR § 2.102 D. Instead, it filed a list of the names of its personnel and others solicited to appear at the hearing on its behalf. The purpose of requiring an agency to state the number of persons it expects to attend a hearing and the estimated length of time necessary for the presentation of its evidence is merely to assist the Hearing Examiner in determining the appropriateness of the hearing facilities and location, the length of time his services will be necessary and whether a court reporter or a tape recording is appropriate and the number of tapes, hand-outs and other materials he should bring to a hearing. The Department's failure to provide that information in this case is a technical departure from the rules of the Office of Administrative Hearings which was not made in bad faith and which did not prejudice the public. That defect does not, therefore, invalidate this proceeding. Technical defects in rule-making proceedings which are made in good faith and which do not prejudice the rights of the public should not invalidate administrative rule-making proceedings, especially where, as here, the defect relates particularly to procedures adopted for the convenience of the Hearing Examiner and is not based on a statutory requirement. City of Minneapolis v. Wurtele, 291 N.W.2d 386, 391 (Minn. 1979).

2. On Monday, March 16, 1981, more than 30 days prior to hearing, a Notice of Hearing and a copy of the proposed rules were published at 5 State Register 1436-1454.

3. On March 20, 1981, more than 30 days prior to hearing, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On March 25, 1981, more than 25 days prior to hearing, the Department filed the following documents:

(a) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(b) The Statement of Need and Reasonableness.

The Notice of Hearing as mailed was previously submitted to the Office of Administrative Hearings on March 23, 1981. Likewise, the names of Departmental personnel to represent the Agency at the hearing, together with the names of other witnesses solicited by it to appear on its behalf were previously filed on March 3, 1981. The documents which were not filed prior to hearing as required by 9 MCAR § 2.105 were the Agency's certification that its mailing list was accurate and complete and a copy of the State Register containing the proposed rule. At the request of the Hearing Examiner, these documents, including a copy of the State Register containing the Department's Notice of Intent to Solicit Outside Opinion, published at 5 State Register 1148 on January 19, 1981, were filed with the Hearing Examiner on April 23, 1981 and marked as posthearing exhibits 14-16. The Department's failure to file the Certificate and a copy of the State Register in which the proposed rule was published constitute technical irregularities which did not prejudice or adversely affect any rights of the public. Consequently, under the rationale expressed by the Supreme Court in Wurtele, supra, the Department's failure is not substantial, and since it was not made in bad faith, it does not affect the validity of this proceeding. No public comments received by the Department following its published Notice of Intent to Solicit Outside Opinion were filed with the Hearing Examiner because no public comments were received by the Department (Posthearing Exhibit 17).

The timely-filed documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through May 11, 1981 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. On April 20, 1981, the Hearing Examiner assigned to hear this matter was changed. Notice of the reassignment was given to the public at the time of the hearing and all correspondence was appropriately rerouted.

Statutory Authority

7. As authority for the adoption of the rules proposed, the Department cited Minn. Stat. § 241.021 (1980) which provides in part as follows:

> Subdivision 1. Supervision over correctional institutions. (1) 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. He shall promulgate pursuant to Chapter 15, 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. Commencing September 1, 1980, no individual, corporation, partnership, voluntary association or other private organization legally responsible for the operation of a correctional facility may operate the facility unless licensed by the Commissioner of Corrections.

* * *

(5) 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.

This legislation generally provides authority for the adoption of rules proposed in this proceeding by the Department and unless specifically noted otherwise in this Report, the proposed rules are authorized thereunder.

Rule Provisions

8. The rules proposed, codified as 11 MCAR §§ 2.551-2.595, pertain to residential facilities for juveniles. They are, in many respects, identical with current rules applicable to secure juvenile detention facilities and adult correctional facilities, lockups and jails which are respectively codified as 11 MCAR § 2.501 et seq. and 11 MCAR § 2.100 et seq. The rules have been reviewed with this similarity in mind and the desirability for consistency among the various rules.[1]

There was virtually no public comment on the rules. Consequently, this Report will not address those rules which are adequately supported in the Department's Statement of Need and Reasonableness (hereinafter the "Statement").[2] Instead, the Report will deal with amendments proposed by the Department at the hearing and issues of statutory authority, need and reasonableness found to be of substantial importance.

9. 11 MCAR § 2.551 A. necessarily and reasonably reiterates the Commissioner's authority to adopt the rules proposed and states the facilities to which they apply. Part B. of that section provides for the annual inspection of licensed facilities consistent with that mandated in Minn. Stat. § 241.021, subd. 1(1). Part C. provides that license revocation shall be undertaken pursuant to § 241.021, which pertains to revocation proceedings. This latter provision is necessary and reasonable; however, the customary form of citation is not followed in the rule; consequently, it is suggested that the citation appearing at the very end of Part C. be amended to read "Minn. Stat. § 241.021, subd. 1(4)." Similarly, the citation in Part A. and Part B. should be changed to "Minn. Stat. § 241.021, subd. 1(1)." so amended p.1.

10. While "conditional licenses" are authorized in Part D. infra, Section 2.551 does not authorize regular unconditional licenses or provide for their duration. This is a serious omission which must be corrected. The whole pur-

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[1] The rules proposed are so closely parallel to those pertaining to secure juvenile detention facilities the Department should consider the extent to which both could be combined into one rule sometime in the future.

[2] The Department's Statement of Need and Reasonableness is a 43-page document which repeatedly cites other publications and documents in support of the rules proposed. Although those documents and publications were filed with the Office of Administrative Hearings and were available for public inspection, the use of extensive citations to other materials is not favored. The Statement, under 9 MCAR § 2.104, may contain citations to economic or scientific manuals or treatises to be relied on at the hearing, but extensive use of such citations does make it difficult for interested parties to prepare for hearing. Better practice is to quote from pertinent publications in the Statement itself so that the Statement is as complete as possible standing on its own.

pose of the rules is to license qualifying facilities and impose minimum standards for them. In order to make the law administered by the Department specific as required by Minn. Stat. § 15.0411, subd. 3, the rules must describe when licenses will be issued and their duration, if any. The failure of the proposed rule to make such a provision constitutes a substantive violation of law which must be remedied before the rules may be adopted.

To correct this defect, it is suggested that the language of 11 MCAR § 2.509 D., pertaining to secure juvenile detention facilities, licensed under the same laws, be adopted. It provides as follows:

> Issuance of license. A license shall be granted . . . if the facility is in substantial conformance with rules stated herein or is making satisfactory progress towards substantial conformance and if the interests and well-being of children and youth received therein are protected. The license shall remain in force one year unless sooner revoked.

so adopted p.1

Such a definition, which may need to be adjusted for duration and to cover individuals, corporations, partnerships, voluntary associations or other private organizations who qualify for licensure, is consistent with § 241.021, subd. 1(1), which provides in part as follows:

> . . . The commissioner shall grant a license to any facility found to conform to minimum standards or to any facility which, in his judgment, is making satisfactory progress toward substantial conformity and the interests and well-being of the persons detained or confined therein are protected. . . .

11. 11 MCAR § 2.551 D., pertaining to conditional licenses, provides as follows:

> The commissioner shall issue a conditional license for a period of one (1) year. The conditional license shall describe those conditions needed to achieve substantial compliance.

In its Statement regarding this provision, the Department stated (p. 1-2) as follows:

> D. is needed to provide for: 1) an initial period under which a facility will operate provisionally, prior to the granting of a license; so that the Department has an opportunity to deny or grant a license, based on observation of the actual performance of a juvenile residential facility; and a juvenile residential facility has an opportunity to come into substantial compliance with these rules, and 2) the rule provides for a provisional license when a facility does not substantially meet licensing requirements, as an opportunity to come into compliance or as a prelude to revocation if substantial compliance is not accomplished in the time provided.

As authority for this part, the Department cited the Public Welfare Licensing Act, Minn. Stat. § 245.801 (1978), which specifically authorizes provisional licenses, and Minn. Stat. § 241.021, subd. 1(1) (1978), which previously authorized the Department to issue provisional licenses authorizing the operation of correctional facilities on a temporary basis. However, that latter statute was amended by Minn. Laws 1980, Chapter 417, § 1, at which time the Department's authority to issue provisional licenses was repealed. In its place, Chapter 417 required the Commissioner to grant licenses to any correctional facilities found to conform to minimum standards adopted by the Department or to any correctional facility found to be making satisfactory progress towards substantial conformity where the interests and well-being of the persons confined were protected. Since the Public Welfare Licensing law specifically provides for provisional licenses, and since that authority was repealed with

respect to the Department, it is concluded that the Commissioner no longer has authority to issue provisional licenses. The inclusion, therefore, of Part B. constitutes a substantive violation of the provisions of Minn. Stat. § 15.0412, subd. 1, which requires state agencies to adopt rules only pursuant to delegated authority. In this case, the specific delegated authority was withdrawn from the Department of Corrections and it must be concluded therefore that that authority no longer exists. To correct this defect, the provision for conditional licenses must be deleted.

It is noted that rules pertaining to secure juvenile detention facilities adopted under the very same statutory authority, do not provide for temporary licenses and no reasons were stated by the Department why the two types of facilities should be treated differently insofar as licensing is concerned. Deletion of the conditional license provision does not hamper the Department's ability to deal with those facilities who do not comply or who fail to make satisfactory progress toward substantial compliance with the Department's rules because the Department can, pursuant to § 241.021, subd. 1(4), order that deficiencies be remedied within a reasonable period of time and may, where such an Order is not complied with, either proceed with revocation or, at the request of the appropriate officials, and supported by a written schedule for compliance, grant an extension of the period of time initially ordered for compliance so long as that extension does not exceed one year.

12. Section 2.551 contains no standards implementing the statutory grounds for licensure. That is, while the statute requires conformity with minimum standards, or "satisfactory progress toward substantial conformity" where the "interests and well-being of the persons detained or confined therein are protected", the rules have no standards pertaining to what constitutes satisfactory progress or when the "interests and well-being of residents are protected." Minn. Stat. § 15.0411, subd. 3 (1980), defining a "rule", makes it clear that rules are to "make specific the law enforced or administered" by the Agency.

The extent to which agencies must adopt rules elaborating upon the general criteria imposed by statutes is a complex one. In 1965, Professor Cooper stated, in choosing between rulemaking and adjudication, as follows:

> In many cases, agencies have a choice (except as limited by judicial restraints or by statutory mandates) whether to proceed by general rulemaking or by ad hoc, case-to-case adjudication.
>
> * * *
>
> To a large degree, agencies may choose which course to pursue. While the question has been but seldom considered by the state courts, there is no reason to believe that they would not subscribe to the statement of the United States Supreme Court that ". . . . the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency [citing SEC v. Chenery Corp., 332 U.S. 194 (1947)].

1 F. Cooper, State Administrative Law, p. 177 and 180 (1965). In Chenery, however, the Supreme Court also stated (page 202):

> Since the Commission, unlike a court, does have the ability to make new law prospectively through the exercise of its rulemaking powers, it has less reason to rely upon ad hoc adjudication to formulate new standards of conduct within the framework of [pertinent legislation]. The function of filling in the interstices

> of pertinent legislation, should be performed, as much as possible, through this quasi-legislative promulgation of rules to be applied in the future.

In summing up, Cooper stated the general rule as follows:

> When an agency faces the alternative of proceeding by rulemaking or by adjudication, the process of rulemaking should be utilized except in cases where there is a danger that its utilization will frustrate the effective accomplishment of the agency's functions.

Cooper, supra, p. 181-182. Cooper did note, however, that where an agency does not have sufficient experience with a particular problem to justify taking a specific and firm position, or where a problem is so specialized and varying in nature as to be impossible of capture within the boundaries of the general rule, specific rules may not be adopted. Professor Davis has alsonoted that standards cannot always be adopted, but where they can, they should be. He further stated:

> Courts may require administrators to articulate the standards that guide their discretion. The development of that idea may seem a hundred years from now to be one of the most important turns American law has ever taken, because it is a major way of improving the quality of justice by controlling discretionary power. K. Davis, Administrative Law of the Seventies, § 2.00-6, p. 27, and § 2.00 et seq. (1976)

The adoption of standards is mandated by Minn. Stat. § 15.0411, subd. 3 (1980), following the position taken by both Cooper and Davis.

13. With respect to the statutory standard involved in this case, it is concluded that the very newness of the standard, itself, and the lack of any experience in implementing it, coupled with the great variety of factual situations which could arise in implementing it, justifies the Department's failure, here, to specify by rule more specifically those conditions which constitute "making satisfactory progress towards substantial conformity" and "the interests and well-being of the persons detained or confined therein are protected." It is also noted that rules pertaining to the licensure of secure juvenile detention facilities adopting language identical to that contained in Minn. Stat. § 241.021, without further elaboration, were adopted by the Department, approved after hearing by the Attorney General, and have been formally adopted. (See, OAH Docket No. CORR-81-001-PE). For all these reasons, it is concluded that the failure to specify further standards for the licensure of juvenile residential facilities is not prohibited by law. Similarly, the failure of the rules to specify the essential elements of the requisite application forms and other information that must be submitted by a potential licensee, or the time limits contemplated for eventual conformity are not fatal since the concern over time limits will vary a great deal with the type of non-conformity involved. However, as the Department gains experience in this area, specific standards should be adopted.

14. Section 2.553 G. (should be .551) contains a severability clause. The Department's Statement indicates that this provision is needed to advise local units of government and others that the validity of the rules will not be jeopardized if one is found inoperative. The severability of laws is governed by Minn. Stat. § 645.20 (1980). It provides as follows:

> Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable.

> If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void ones; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

This provision is controlling upon the construction of rules which are also laws by virtue of Minn. Stat. § 15.0413, subd. 1 (1980). Consequently, the Department is bound by the legislative language of severability and proposed Part G., which describes severability differently is, to that extent, unauthorized and a substantive violation of Minn. Stat. § 15.0412, subd. 1. To correct this defect, Part G. must be deleted. If the Department wishes it may amend Part G. to provide: "The provisions of these rules are severable." Such language is more consistent with Minnesota law and may be used.

deleted & amended p. 2

15. Section 2.554 pertains to variances and the emergency suspension of the rules involved. Part A., dealing with variances, enables the Commissioner to grant a variance if it is found that:

> 1. To require a particular juvenile residential facility to comply strictly with one or more of the provisions will result in undue hardship;
>
> 2. The juvenile residential facility is otherwise in compliance with said standards and their general purpose and intent.

Minn. Stat. § 15.0412, subd. 1a, added by Minn. Laws 1980, Ch. 615, § 3, provides as follows:

> Unless otherwise provided by law, an agency may grant a variance to a rule. Before an agency grants a variance, it shall have promulgated rules setting forth procedures and standards by which variances shall be granted and denied. An agency receiving a request for a variance shall set forth in writing its reasons for granting or denying the variance. This subdivision shall not constitute authority for an agency to grant variances to statutory standards.

Pursuant to Minn. Laws 1980, Ch. 615, § 63, the provisions of § 3 are effective on August 1, 1981. That section further provides, however, that any variance to a rule granted by an agency prior to the effective date of § 3 is valid notwithstanding the fact that the agency had not promulgated a rule governing the granting the variances at the time the variance was granted.

Since the Department is adopting a variance rule, however, it should comply with subdivision 1a. Comparing subdivision 1a to the language adopted reveals some problems.

Minnesota law requires the adoption of standards for the granting and denial of variances. The proposed rule permits variances (from provisions) for "undue hardship" where the facility otherwise is in compliance with the rules (standards). The words "undue hardship" are not further defined and their meaning is not clear. Apparently, it relates to financial considerations, but when those financial factors must be "undue", is not further specified. While identical language was adopted after approval by the Attorney General in 11 MCAR § 2.512 pertaining to secure juvenile detention facilities, the "undue hardship" standard may not be sufficient and the Department should consider further clarification. In Soglin v. Kauffman, 418 F.2d 163 (7th Cir. 1969), the Court of Appeals held that regulations of the University of Wisconsin Board

see definition added p. 7.

of Regents permitting the expulsion of students for "misconduct" constituted an inadequate standard which was void for vagueness. With that case in mind, it is suggested that the Department clarify the meaning of the words "undue hardship". Also, the rule should make it clear that the statutory standard for licensure cannot be waived.

16. Where the interests and well-being of residents are jeopardized, the rule should require some surrogate steps be taken by the facility if a variance is granted so that those interests are adequately protected. Furthermore, the procedure for the granting or denying of variances should be made in writing to be consistent with state law. To do these things, it is suggested that the rule be amended to read as follows:

> A. Variances of specific rule. The granting of a variance under this section shall not constitute a precedent for any other juvenile residential facility. The granting and denial of all variances shall be in writing and made within 30 days of the request for a variance. Such variances will be granted by the commissioner if, in the licensing procedure or enforcement of the standards in these rules:
>
> 1. To require a particular juvenile residential facility to strictly comply with one or more of the provisions will result in undue hardship; or jeopardize the health, safety, security, detention, or well-being of the residents or facility staff;
>
> 2. The juvenile residential facility is otherwise in substantial conformity with the standards contained in these rules or making satisfactory progress toward substantial conformity;
>
> 3. Granting of the variance will not preclude the facility from making satisfactory progress towards substantial conformity with the rules;
>
> 4. The granting of the variance will not leave the interests and well-being of the residents unprotected; and
>
> 5. The facility will take such surrogate action as is necessary or available to comply with the general purpose of the standards to the fullest extent possible.

Such an amendment is consistent with state law requiring the agency's answer to a request for variances be set forth in writing and makes it clear that general statutory standards may not be waived. It would not amount to a substantial change for purposes of 9 MCAR § 2.111.

Section 2.554 A.2., as proposed, is ambiguous. It can be read to mean that variances are not available to facilities which are not in total compliance with the rules, except the rule for which a variance is sought, or it can be read to mean that variances are available as long as the facility is otherwise in substantial conformity with the rules or making satisfactory progress toward substantial conformity. It is presumed the Department intended the latter test to be aplicable and the suggested change in Part A.2. was made for that reason. Part A.1. was altered so that rule suspensions in emergencies would be treated as a variance request if of a duration of more than seven days, as is discussed below.

17. Section 2.554 B. pertains to the emergency suspension of rules by the administrator of a facility. The suspension can apply only to rules directly affected by the emergency as defined in § 2.559 I., and the facility administrator must notify the department within 72 hours of the suspension of a rule,

and no suspension may exceed seven days without the approval of the Commissioner of Corrections.

The language proposed is identical to that previously adopted for different types of institutions in 11 MCAR § 2.103 B. and in 11 MCAR § 2.512 B. While the rule in its current form has been previously approved on two separate occasions, there are some difficult delegation issues involved and the Department should take great care to scrutinize the language used and the standards employed for determining when rules are inoperative. It is believed that the rule would be more proper if rule suspensions occurred automatically upon the declaration of an emergency and if it read as follows:

> B. Emergencies. During an emergency as defined in these rules and as declared by a facility administrator, those rules directly affected by the emergency and which, if not suspended, would adversely affect the health, security, safety, detention or well-being of the persons detained or confined in juvenile residential facilities or the facility staff shall be inoperative when an emergency is declared by the administrator.
>
> 1. The facility administrator shall notify the Department of Corrections in writing within 72 hours of any emergency which resulted in the suspension of any rule.
>
> 2. No suspension of rules because of an emergency declared by a facility administrator may exceed seven days unless the administrator obtains the approval of the Commissioner of Corrections for a variance to the rules and such a variance is necessary for the protection of the health, security, safety, detention or well-being of the staff or the persons detained or confined in the institution where the emergency exists.

So amended p.3

18. 11 MCAR § 2.559 pertains to the definitions applicable for purposes of the rules. None of the definitions were subject to any adverse comment and the definitions, themselves, are either identical to or substantially the same as definitions previously adopted by the Department in 11 MCAR § 2.101 A. and in 11 MCAR § 2.505. For these reasons, and based on the Department's Statement, the Hearing Examiner finds the definitions to be necessary and reasonable. However, some comments are in order.

Part F., which defines "controlled substance", should cite Minn. Stat. § 152.02 (1980), and the reference to Ch. 152 should be deleted since it is duplicitous and improper.

deleted p.5.

Part I., defining "emergency" should substitute the words "such as" with "arising from" and should delete the words "on staff" after the word "assault" because any assaults, whether on staff or on other residents, could cause an emergency situation. In addition, to be consistent with 11 MCAR § 2.505 J., the words "medical emergency, or other similar occurrences" could be added to the end of the definition.

deletion + addition p.5

Part L., defining "inspection" would sound better if the words "and their relationship to meeting rules", was replaced with "made to determine the facility's compliance with these rules."

Part S., defining "substantially conform" is identical with 11 MCAR § 2.505 V., and 11 MCAR § 2.101 A.32. in the percentage of compliance required of facilities with mandatory and non-mandatory standards. Basically, the rules require a facility to reach a 100% compliance with mandatory standards, and only 70% compliance with other standards in the rule. Why these particular percentages were adopted was not addressed by the Department but they were not ob-

jected to by any members of the public. The percentages, themselves, raise numerous questions. If, for instance, a facility decides to disregard 30% of the non-mandatory rules adopted by the Department, there is apparently no mechanism for enforcing those non-mandatory standards. Thus, each facility can, if it desires, reject 30% of those non-mandatory rules which it desires to ignore. This is a peculiar and unique situation and it is suggested that the Department reconsider, in future rulemaking hearings, whether 70% compliance is adequate. If facilities can ignore 30% of the non-mandatory requirements, and there are many of them, the need for those requirements in the first instance is somewhat questionable. Why have rules at all if the Department does not intend that facilities make a bona fide effort to comply with them? To obtain licensure, a facility need to make only satisfactory progress toward 70% compliance with non-mandatory standards. It would appear that if these rules are necessary and reasonable, or desirable, compliance with non-mandatory standards should be much greater than 70%. If not, the Department should reexamine its rules and delete those it determines that compliance with should be discretionary. The purpose of rules is to enforce or require compliance and not to permit facilities or those regulated to ignore portions of rules they wish to ignore because they are not mandatory. However, since the scheme for 70% compliance has been approved in previous rulemaking hearings, and those rules have been finally adopted, it is found to be necessary and reasonable in spite of their questionable necessity.

19. Section 2.567 D.2.f., pertaining to relief staff, provides that they "shall" perform specified ancillary functions. Why this provision should be in the mandatory language of "shall" was not specified and it appears that this rule was intended to be merely permissive. Consequently, it is recommended that the word "shall" be replaced with the word "may".

no change p. 9 but see "Amdts to Prop. Rule"

20. Section 2.575 F. contains the mandatory requirement that a facility adopt an affirmative action program and make it part of the policy manual. This section is not authorized and is outside the authority of the Commissioner to adopt. Matters of affirmative action, equal employment opportunity, and illegal discrimination are committed to the Minnesota Department of Human Rights and are implemented by various federal agencies. Nowhere in § 241.021, subd. 1(1), is authority to impose affirmative action obligations on facilities, and the proposed Part F. is, therefore, outside the scope of the Commissioner's authority. As such, the part, as written, constitutes a substantive violation of Minn. Stat. § 15.0412, subd. 1, which permits agencies to adopt rules only pursuant to authority delegated by law. To correct this defect, the section must be deleted or rewritten to read as follows:

deleted See p. 15

> Any affirmative action program adopted by the facility shall be made a part of the policy manual.

As redrafted, affirmative action programs required to be adopted by appropriate Federal and State authorities would be required to be made a part of the policy manual, but a facility would not be required to adopt an affirmative action program unless required by other law. It is noted that the rules adopted by the Department for secure juvenile detention facilities do not contain this requirement of an affirmative action plan.

21. Section 2.579 B.3. provides that residents' records shall be preserved as required by law. The section as written violates § 15.0411, subd. 3, re-

quiring that all rules be specific. As such, it constitutes a substantive violation of law for purposes of Chapter 15. Furthermore, the rule is in violation of Minn. Stat. § 15.0412, subd. 1, because it is in excess of the Commissioner's authority. Authority delegated to the Commissioner does not authorize the adoption of rules for the enforcement of the laws and rules of other departments or agencies of the State but merely authorizes the adoption of rules necessary for the Commissioner to perform his reviews. Consequently, Part B.3. constitutes a substantive violation of law. To correct ths defect, this section should be deleted or the time period during which these records must be preserved to enable the Commissioner to perform his statutory obligations should be set forth.

deleted see p. 17

It should be pointed out here that governmental records of all types may be destroyed only with the approval of the Public Records Disposition Panel created under Minn. Stat. § 138.17 (1980) which has adopted a records retention schedule that must be followed. That Schedule is available from the Records Management Division of the Department of Administration.

22. Section 2.583 K.2.b. and 3.a. together provide that each facility plan must include a system of due process which has been reviewed and approved by an appropriate legal advisor and that disciplinary segregation shall be used "only with due process procedures". It would be preferable for the Department under Subpart 2.b. to specify what due process requirements are minimally required by the rules, and it is recommended that the Department consider minimal due process protections which should be included in the rule instead of leaving that determination to the facility's legal advisor, who may not even be an attorney. In addition, Subpart 3.a. is ambiguous. It is unknown whether disciplinary segregation shall be used "only with due process procedures" approved by an appropriate legal advisor under 2a or apart from the due process system approved by the legal advisor by other laws or court decisions. This should be clarified.

So specified see p. 23

23. With respect to the same section, 2,583, it is noted that Part K.5.c. contains an ambiguous internal citation to the rules. It cites "M.5.a.(2) or M.5.a(3)", but the section and part referenced is unknown. Section 2.583, itself, contains no Part M., consequently, the citation must be completed to reference the section and part involved.

corrected p. 25.

24. Section 2.583 N.12.f. imposes certain obligations on a facility when a resident's death occurs. That section itself contains no requirement that the facility notify the parents or guardian of the resident's death (that requirement appears elsewhere) or the time limits when the various notifications must occur. It is recommended that the rule be amended to clearly provide that, when a resident's death occurs, the parents or guardian of the resident be notified immediately upon the discovery of the death. In addition, it is suggested that the language of Subpart f.(3) be amended to provide "personal belongings of the deceased resident shall be preserved for the resident's parents or legal guardian". In addition, with respect to Subpart f.(4), the section is unauthorized and a substantive violation of Minn. Stat. § 15.0412, subd. 1, requiring agencies only to adopt rules pursuant to delegated authority because the Commissioner has no authority, himself, to require that facilities retain records of deceased residents other than for the time periods he, himself, establishes. This defect can be cured by specifying a time limit during

relettered as "L"

So amended p. 34

deleted see p. 34.

which the facility must retain the records of a deceased resident as determined necessary for the Commissioner to perform his delegated responsibilities.

25. The other rules proposed for adoption, and all those not previously discussed, were not objected to by any members of the public during the course of this proceeding and are consistent with other rules previously adopted for different kinds of facilities and they are found to be necessary and reasonable and authorized in their entirety.

Hearing Amendments

26. At the hearing, the Department proposed several technical amendments to the rules as originally published. The Department proposes to amend 11 MCAR § 2.559 D. defining "child care worker" by deleting the word "with" whch was out of place. It also proposes to amend 11 MCAR § 2.567 D.2.i. by deleting the language originally proposed in its entirety and by substituting it with other language specifying the continuing education program required for residents. The amendment was made to make the Department's rules consistent with those of the Department of Education and is necessary and reasonable. As amended, the Subpart reads as follows:

> i. There shall be a comprehensive and continuous education program for residents which shall be certified by the Minnesota Department of Education and includes [sic], at a minimum: (Mandatory)
>
> (1) Developmental education
> (2) Remedial education
> (3) Special education
> (4) Multi-cultural education
> (5) Bilingual education where population profiles indicate this need
> (6) Tutorial services.

The Department also proposes to amend § 2.583 K.1.c. by deleting the word "plan" in the last sentence and substituting it with the word "administrator". This is a mere correction of a typographical error and is necessary and reasonable. Also to be amended is § 2.583 N. by changing it to Part L. This is also a necessary and reasonable typograpical correction to put the section in proper alphabetical order. Section 2.583 L.7. (formerly N.7.) is to be amended by deleting the heading words "and telephone." This also is a necessary and reasonable amendment. Section 2.583 N.1.d. (to be codified as L.1.d.) is to be amended by deleting the word "county" and substituting it with the words "governing authority." Section 2.591 K., K.1., and K.2. are to be amended by adding the words "or licensed psychologist" to Part K.and the words "psychologist or a" to K.1; by deleting the words "(preferably a psychiatrist)" in Part K.1. and by adding the words "If a licensed psychologist or a" to K.2. and deleting the words "Emergency Hospitalization of Mentally Ill and Mentally Deficient Persons" from that Subpart. These are necessary and reasonable amendments. Section 2.595 L.9. is amended by deleting the third word "or" because it was out of place and inappropriate there and § 2.595 M.2. and M.3. are to be amended by deleting Part M.2. because it was superfluous, and changing M.3. to part M.2. to read as follows:

> 2. Multi-occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.

This is a necessary and reasonable amendment which eliminates redundant language.

None of the proposed changes involve a substantial change for purposes of 9 MCAR § 2.111.

27. At the hearing, the Department also proposed to amend 11 MCAR § 2.567 D.2.h.(1) to change the ratio of staff to residents during waking hours from one staff person to ten residents to one staff persons for each 12 residents. This was the only provision subject to public comment. Stephen J. Dornbach, Superintendent of Boys Totem Town in St. Paul, felt that the ratio of staff to residents should be at least one to ten, and that the higher ratio permitted by the Department's amendment was inappropriate. The Department proposed the amendment because some facilities have, at the present time, difficulty in acquiring sufficient funds to pay the cost of a one to ten ratio and that they might be forced to shut down if the one to ten ratio were adopted. Consequently, since the rules are intended only as "minimum" standards, and since some facilities have, in the past, operated efficiently and fulfilled their designated purposes with a ratio of one to twelve, the Department felt the one to twelve ratio should be adopted. It is concluded that a one to twelve ratio is necessary and reasonable and that this amendment, like the others proposed by the Department, do not constitute substantial changes for purposes of 9 MCAR § 2.111.

Based on the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Department gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule, except as noted at Finding 4, but that the omissions that occurred were insubstantial.

3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Findings 10, 11, 14, 20, 21 and 24.

4. That the Department has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980).

5. That the amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusion 3 as noted at Findings 10, 11, 14, 20, 21 and 24.

7. That due to Conclusion 3, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 13th day of May, 1981.

JON L. LUNDE
Hearing Examiner

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik , being first duly sworn, deposes and says that on the 19th day of May , 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner, CORR-81-003-JL upon Bruce W. McManus, Assistant Commissioner, Department of Corrections, by handing to and leaving the same with John McLagan, Director, Standards Development Unit of the Department

Eileen A. Gaiovnik

Subscribed and sworn to before me
this 19th day of May , 1981.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

MAY 20 1981

RECEIVED
JUN 4 1981
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE ADOPTION OF RULES OF THE DEPARTMENT OF CORRECTIONS GOVERNING MINIMUM STANDARDS FOR JUVENILE RESIDENTIAL FACILITIES

ORDER ADOPTING RULES

The above entitled matter came on for hearing before the Hearing Examiner, Jon L. Lunde, State of Minnesota on the 21st day of April, 1981 at 9:30 a.m., and after proper notice required by Minn. Stat. § 15.0412, Subd. 4, was served upon all persons, associations and other interested groups registered with the Department of Corrections for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files, and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules and the reasonableness thereof.

Now, therefore, it is ordered that these rules identified as Minimum Standards for Secure Juvenile Detention Facilities are adopted this 1st day of June, 1981, pursuant to authority vested in me by Minn. Stat. § 241.021, Subd. 1. (1980).

Jack G. Young
Commissioner of Corrections

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HEARINGS

STATEMENT OF COMPLIANCE WITH

RULE MAKING PROCEDURES

I, James N. Bradford, an Assistant Attorney General, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

James N. Bradford
Assistant Attorney General

Dated: June 3, 1981

Agency Exh. No. 1
File No. CORR-81-003-JL
Date 4-21-81

STATEMENT OF NEED AND REASONABLENESS

FOR

JUVENILE RESIDENTIAL FACILITIES

February 27, 1981

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.551 INTRODUCTION

rationale: A. is needed to clarify the statutory basis for the development of the proposed rules.

evidence: Minn. Stat. § 241.021, Subds. 1, 2 and 3.

rationale: B. is needed to indicate to those affected by proposed rules that all inspections by the Department will be conducted in accordance with proposed rules. It also is needed to clarify the statutory basis for inspections and the fact that statutes require that all areas of the facility and all records related to the care, protection and custody of residents shall be open for inspection by the Department at all times.

evidence: Minn. Stat. § 241.021, Subds. 1, 2 and 3.

Minn. Stat. §§ 641.26 and 642.10.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, pp. 294-295.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, chapter 3.

The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities.

rationale: C. is needed to advise local units of government and facility administrators of the process of revocation of a facility's license and the involvement of an appropriate district court in such process.

evidence: Minn. Stat. § 241.021, Subds. 1, 2 and 3.

Minn. Stat. §§ 641.26 and 642.10.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, pp. 294-295.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, chapter 3.

The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities.

rationale: D. is needed to provide for: 1) an initial period under which a facility willoperate provisionally, prior to the granting of a license; so that the Department has an opportunity to deny or grant a

license, based on observation of the actual performance of a juvenile residential facility; and the juvenile residential facility has an opportunity to come into substantial compliance with these rules, and 2) the rule provides for a provisional license when a facility does not substantially meet licensing requirements, as an opportunity to come into compliance or as a prelude to revocation if substantial compliance is not accomplished in the time provided.

evidence: Mississippi Department of Public Welfare, Standards For Child Caring Institutions (1977), p. 1.

Virginia Department of Welfare, Minimum Standards For Licensed Child Care Institutions (1977), p. 5.

Public Welfare Licensing Act, Minn. Stat. § 245.801 (1978).

Minn. Stat. § 241.021, Subd. 1, Subd sec. 1 (1978).

rationale: E. is needed to set forth intended use restrictions. The rule is designed to prevent a facility from operating at a classification for which it has not been approved.

evidence: Minn. Stat. § 241.021, Subds. 1, 2 and 3.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, pp. 294-295.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, chapter 3.

The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities.

Minn. Stat. §§ 641.26 and 642.10.

rationale: F. is needed to ensure that juveniles admitted to the facility are aware of the facility's licensing status.

evidence: Minn. Stat. § 241.021, Subds. 1, 2 and 3.

Minn. Stat. §§ 641.26 and 642.10.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, pp. 294-295.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, chapter 3.

The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities.

rationale: G. is needed to advise local units of government and facility administrators that the validity of remaining rules shall not be jeopardized

if one proposed rule is found inoperative. The proposed rule is intended to ensure that all proposed rules are not jeopardized by findings related to specific proposed rules.

evidence: Minn. Stat. § 241.021, Subds. 1, 2 and 3.

Minn. Stat. §§ 641.26 and 642.10.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, pp. 294-295.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, chapter 3.

The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities.

rationale: A. is to prevent undue hardship and to provide flexibility of the rules.

evidence: Minnesota Department of Public Welfare, Standards For Group Homes And Licensing Procedures, 12 MCAR § 2.008, part J (1), (1969).

rationale: B. is needed to provide an approved vehicle by which any rule may be suspended under emergency conditions. The Department is fully aware of the unusual, unique and difficult circumstances that facility operators are on occassion confronted with in the operation of facilities governed by these proposed rules. Notification of the Commissioner in such instances and approval for extended suspension of a rule is needed to ensure against arbitrary, capricious and unreasonable rule suspension.

evidence: The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities, Rules 1011 and 1012, p. 148.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, section 2, pp. 2-3.

Letter to North East Regional Corrections Center Director Dan Lawrence, dated October 1, 1979.

Minnesota Code of Agency Rules, Department of Corrections, 1978 edition, Rule 2.103, sections A and B.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.559 JUVENILE RESIDENTIAL FACILITY DEFINITIONS

rationale: Definitions are necessary in clarifying the terms used in the proposed rules. It is imperative that all concerned individuals, operators and agencies clearly understand the meaning of the terms and are in agreement with them.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.567 PERSONNEL STANDARDS

rationale: A. Physical examinations should be required to ensure the medical health and ability of staff to perform effectively. Policy should not preclude the hiring of handicapped persons who meet basic health requirements for available positions.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8071, p. 14.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9073, p. 15.

rationale: B.1. All job qualifications and hiring policies should be examined with the assistance of equal employment specialists from outside the agency. Employment qualifications should be demonstrably related to the skills required to perform the work. Tests should not be culturally biased. To permit selection from a larger pool of applicants, artificial barriers to employment should be removed.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8068, p. 13.

rationale: B.2., 3., and 4. are needed to ensure that employees hired are qualified to perform the duties required in a particular job. Such requirements need to be non-discriminatory to meet constitutional and legal requirements and need to set forth basic requirements and disqualifying characteristics in order that all potential applicants are equally advised of same.

evidence: The National Sheriffs' Association, 1974 handbook on Jail Administration, pp. 28-33.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8077, p. 15; 8068-8098, pp. 13-19; and 8070, p. 14.

rationale: C. Responsible personnel practices require regular employee evaluations.

evidence: U.S. Bureau of Prisons Jail Operations and Jail Management Courses, pp. 41-50.

The National Sheriffs' Association, 1974 handbook on Jail Administration, pp. 20-21 and 35-36.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8091, 8092 and 8094, p. 18.

rationale: D.1. A staffing plan is needed to ensure that each facility is staffed with enough employees to perform all duties and discharge all responsibilities.

evidence The National Sheriffs' Association, 1974 handbook on Jail Administration, pp. 16-18.

U.S. Bureau of Prisons, Jail Management Course, Book 2.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8075, p. 15 and 8088, p. 17.

rationale: D.2.a. is needed to identify primary responsibility for the overall operation of the facility as well as to determine where decision making authority for the facility rests.

evidence: Minnesota Code of Agency Rules, Department of Corrections, 1980 edition, Adult Halfway Houses, Rule 2.408, standard H., p. 10.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9009, p. 3.

rationale: D.2.b. and c. are needed to ensure that statutory provisions for staff presence are met, that there is a clearly identified person in charge of the facility at all times and that the facility is never left in the care of a staff person not capable of responding to an emergency.

evidence: Minnesota Code of Agency Rules, Department of Corrections, 1978 edition, Rule 2.104, standards E.2.a.(1) and E.2.b., p. 11.

Advisory Task Force Sub-committee recommendation.

rationale: D.2.d. is necessary to comply with statutory requirements and protect the residents' right to privacy.

evidence: American Bar Association Resource Center on Correctional Law and Legal Services, and American Correctional Association, January 1974 publication, Legal Responsibility and Authority of Correctional Officers, p. 26.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8150, p. 31; 8281, p. 57; and 8289, p. 58.

rationale: D.2.e., f., and g. are needed to ensure that such services are provided as necessary without jeopardizing the efficiency of operations.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8105, p. 21.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9109, p. 22.

rationale: D.2.h.(1) and (2) and D.2.i. are needed to ensure that sufficient staff are available so that juveniles are not left unsupervised at any time.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8281, p. 57; 8357, p. 72; 8406, p. 82; 8410-8413, pp. 83-84; and 8304, p. 61.

Advisory Task Force Sub-committee recommendation.

rationale: D.2.j. Recreation should be supervised and organized by staff members trained in recreation or a related field, and there should be one recreation worker for each fifteen (15) juveniles during recreation periods.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9420, p. 85.

rationale: D.2.k.(1) Assignment of a senior staff member to supervise the volunteer program will help ensure that the citizens who volunteer their time will receive guidance, support and the resources they need.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8406.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9480, p. 98.

rationale: D.2.k.(2) All volunteers should be registered with the parent agency for insurance purposes. An identification card should be kept at the facility for each volunteer. This card ensures proper identification and should include a photograph, address, telephone number at which the volunteer can be reached and other job-related information. One-time volunteers may require only the approval of the facility administrator

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8410, p. 83.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9484, p. 98.

rationale: D.2.k.(3) The facility should develop written policies and procedures specifying that volunteers respect all facility policies.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8411, p. 83.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9485, p. 98.

rationale: D.2.k.(4) Volunteers should not perform professional services without proper certification, examination or license, ir required. It is suggested that volunteers offering professional services be required to cite their credentials and/or certificate status in their initial application. Tutoring or sponsorship of a craft or hobby program is not considered a professional service. This procedure will enable appropriate use of professional services and satisfy state requirements.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8412, p. 83.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9486, p. 99.

rationale: D.2.k.(5) The administrator should balance the benefits of volunteer participation with the potential risks. Where volunteer activity can be shown to threaten the order and security of the facility or the safety

of the volunteer, such activity should be limited or discontinued until the problem is resolved.

evidence: The American Co-rectional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8413, p. 84.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9487, p. 99.

rationale: D.2.1. Social services can assist residents with family and personal problems through supportive guidance and professional assistance. Some of these services may be provided through contractual arrangements with community agencies. A counseling program that is coordinated with the overall facility rehabilitation program can be effective in resolving personal and interpersonal problems. Although staff members should encourage participation, it is critical that the decision to participate in a counseling program should be made by the resident.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9437, p. 88.

Advisory Task Force Sub-committee recommendation.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.571 STAFF TRAINING (PRE-SERVICE AND IN-SERVICE)

rationale: The National Sheriffs' Association 1970 Manual on Jail Administration, p. 8 states that "Of all the essentials for the operation of a jail, none is more important than personnel. The most securely constructed jails and prisons have not prevented escapes by way of the front door and over a 30 foot guarded wall, because of deficiencies in numbers and the quality of the guard force."

"The climate of the jail can be depressive, detrimental to constructive rescocialization programs and contributory to recidivism. It can also be conducive to good morale, good discipline and a desire for self-improvement. Either condition is a result of the attitude and efficiency of the jail personnel, all the way down the chain of command."

"The need for a competent staff, dictates the need for personnel management practices that will aid in job satisfaction, more efficient job performance and the operation of the jail in accordance with acceptable standards."

It is the contention of the Department of Corrections that the above comments are equally applicable to juvenile residential facilities.

Also, the Department of Corrections cites a quotation from the American Bar Association Resource Center on Correctional Law and Legal Services and American Correctional Association, January 1974 publication, Legal Responsibility and Authority of Correctional Officers, which on page 2 states, "...proper training is essential for the protection of all concerned. This should include a general understanding of the rights and responsibilities of those confined as well as the rights and responsibilities of correctional staff. Line officers should also understand why correctional administrators adopt rules which limit their power and redefine operating policies. In many instances, this is done at the direction of the court or to avoid time-consuming litigation."

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8099-8115, pp. 19-23.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standards 9107, p. 21; 9110-9112, pp. 22-23; 9115, p. 23; 9118, p. 24.

The National Sheriffs' Association, 1970 Manual on Jail Administration, pp. 12-13.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.575 STAFF DEPLOYMENT, JOB DESCRIPTIONS, WORK ASSIGNMENTS, POST ORDERS, POLICIES AND PROCEDURES

rationale: A. - E. and H. are needed to ensure that each employee is familiar with what he is supposed to do and that he has the qualifications to successfully complete assigned responsibilities. Proposed rules are also necessary to ensure operational consistency, communications and accountability. The availability of policy and procedure manuals, personnel policies and standards are all needed to ensure that employees unfamiliar with same or who have not has regular refresher training courses are not forced to rely on their own recollection or judgement which may prove in error upon review. A public information plan is needed to ensure that confidentiality concerns and legal requirements as well as critical security information is not inadvertently made available to the public.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8073-8074, pp. 14-15.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9019, p. 5.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter 3.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapters I-IV.

The U.S. Bureau of Prisons, Jail Operations and Jail Management Courses.

rationale: F. An affirmative action program ensures that all persons are able to compete equally for entry into and promotion within the facility. This program should be designed to seek out qualified minority personnel and women and encourage their participation in the staff development program of the facility.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8076, p. 15.

rationale: G. The facility grievance procedure should specify the process an employee can use when a grievance exists. The procedure, which has been adopted by the agency's governing authority, should include, at a minimum, how a grievance is presented; the hearing body for the grievance; and, appeal provisions.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8093, p. 18.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.579 RECORDS AND REPORTS

rationale: The need for Records and Reports has been, in the past, due to the fact that the Department of Corrections is required to inspect and assess conditions in such facilities. As a function of that process, adequate documentation is necessary to the Department's ability to carry out the responsibility of the Commissioner of Corrections. Furthermore, the Department is under an obligation to investigate complaints made by residents as referred to it, either directly to the Department of Corrections from the resident, sent to it through the Attorney General's Office and a number of other offices that deal with a number of the concerns mentioned under the section of Records. As examples: food service, medical and dental records, etc. To properly facilitate investigation of such complaints, it is incumbent that documentation be maintained to assist in that process and also to document that in fact the facility has met their legal obligations with respect to same.

Similarly, records of budget requests and work orders are especially important in the investigation of physical plant conditions. If physical plant conditions of an unsanitary, unsafe or insecure condition are found by the inspector, for the purpose of facilitating correction, it is extremely important that the Department be able to establish whether or not the facility administrator has submitted a request for repair. If so, has a local governing body taken appropriate action. If the facility administrator has not submitted such request, it would be unreasonable to expect that the governing body take action with respect to such need. Additionally, such records act as documentation where the responsibility for failure to affect improvement lies. More specifically, in the event that the Department of Corrections finds it necessary to initiate action to revoke a facility's license it should be noted very clearly and specifically where the responsibility for failure to rectify the given condition falls. In summary, the rule is very specifically designed for the safety of both facility administrator and the local governing board.

evidence: The U.S. Bureau of Prisons, Jail Management Courses, Book 1, pp. 36-38.

The U.S. Bureau of Prisons, Jail Operations, Book 2, pp. 51-52 and Book 4, pp. 77-78.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 56.

American Bar Association Resource Center on Correctional Law and Legal Services and American Correctional Association, January 1974 publication, Legal Responsibility and Authority of Correctional Officers, p. 2.

It is the Department's contention that statements contained in such documents are equally applicable to juvenile residential facilities.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8130-8144, pp. 26-30.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standards 9139, p. 29; and 9142-9143, pp. 29-30.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.583 RESIDENT WELFARE

rationale: A.1. The facility needs a clear understanding of its mission within the total system. Diversification of facilities is required to meet the needs of young offenders in the entire correctional system. In any jurisdiction, regardless of size, and even in a single facility, it is possible to have diversified programming. Such programming could include a receiving and diagnostic unit, separation of new admissions, a separate unit for special offenders, a pre-release unti, etc. Diversification provides opportunities for program development, effective management, experimentation and innovation. Also, it permits the facilities within the system flexibility in making resident assignments and in promoting training and transferring staff when necessary.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9007, p. 2.

Advisory Task Force Sub-committee recommendation.

rationale: A.2. is needed to ensure that every youth sent to a juvenile residential facility will receive individualized service from a significant other on staff.

evidence: Advisory Task Force Sub-committee recommendation.

rationale: A.3. Social services can assist residents with family and personal problems through supportive guidance and professional assistance. Some of these services may be provided through contractual arrangements with community agencies.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9433, p. 87.

rationale: A.4. Since youth are sent to the facility for care, treatment and rehabilitation, it is felt to be important that this facility make staff available at all times and not just at those times convenient to staff.

evidence: Advisory Task Force Sub-committee recommendation.

rationale: A.5.a. The reception period is important in determining resident attitudes about confinement. Policies and procedures should be designed to assist new residents during this difficult period.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9447, p.90.

rationale: A.5.b. The intake form constitutes the first document in the resident's comulative case record. This document may be duplicated and used for review by the classification committee and the unit management team. It is an essential tool for the development of a program for the resident.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9449, p. 90.

rationale: A.5.c. The agency's intake information form should include the basic data necessary to facilitate a continuous program for the resident. The information on the initial intake form is preliminary and can be expanded to meet the needs of individual agencies. In the case of a public agency, a case file may serve as the equivalent of the initial intake information form.

evidence: The American Correctional Association, April 1978 edition, Juvenile Community Residential Services, standard 6092, p. 18.

rationale: B.1. - 2. In addition to Minnesota statutory requirements mandating separation of males and females, separation requirements are needed to ensure that reasonable care has been taken to assign juveniles to appropriate living areas within the facility in order to achieve maximum compatibility and safety within each resident living area.

Due to the fact that juvenile residential facilities house both male and female juveniles and that both sexes may be in need of specialized program services such as drug dependency counseling or routine services such as educational provisions, provisions for coeducational programs are needed to ensure the availability of such programs to both sex residents without the unwarranted necessity of duplication of such programs.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8347, p. 70.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, p. 31.

rationale: C. is needed to ensure that due process considerations in the event of disciplinary actions have been met.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8187, p. 37; and 8314-8328, pp. 63-66.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 22, states that every jail must have a system for maintaining inmate discipline which is consistent with constitutional requirements for due process.

"The first step towards such a system is to compile a clear and comprehensive set of rules which explain the required standards of conduct, define behavior which would be in violation of the rules and indicate the penalty for proven violations."

The Department of Corrections contends that the above statements are equally applicable to a juvenile residential facility.

While items such as personal hygiene items, visiting, correspondence, etc., may not appear on the surface to be directly related to due process, they are areas in which resident rights have been established and recognized. Consequently, there is a need to provide equal protection to such rights to individuals for similar circumstances. The

development of rules and regulations which are uniformly distributed and enforced is needed as a basis for protection of due process and resident constitutional rights.

rationale: D. and E. An individual plan being done within thirty days is a legal requirement of law. This assures that the youth is aware of the planning being done with and for him. It also requires key planners to get together and plan for youth who are detained.

evidence: Minn. Stat. § 257.071.

rationale: F. The facility should have a written description of its program for preparing the juvenile for release to community supervision. This release plan should be developed for each resident as soon as possible after admission and should encompass the personalized classification program outlined for the juvenile. It should focus on the juvenile's ultimate return to the community.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9465, p. 94.

rationale: G. Community resources can enhance the institutions' vocational training programs considerably. Resources such as trade councils, employer and employee associations, federally funded projects, e.g., Job Corps, and private community action groups can help plan, fund and coordinate the institution's vocational training programs. They also may provide referrals for on-the-job training and community release, and may assist in the facility's job placement program for soon-to-be released residents.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9408, p. 82.

rationale: H. State law requires parents or legal guardians to be involved in the development of the placement plan for the youth in out-of-home placements and encourage them to sign a document which outlines the plan for the youth. This rule is designed to assure parental or guardian rights are protected and facilitated in this process.

evidence: Minn. Stat. § 257.071 (1978).

rationale: I. A grievance procedure is an administrative means for the expression and resolution of resident problems. The facility's grievance mechanism should include: provisions for written responses to all grievances, including the reasons for the decision; provision for response within a prescribed, reasonable time limit, with special provisions for responding to emergencies; provision for advisory review of grievances; provision for participation by staff and residents in the design and operation of the grievance procedure; provision for access by all residents, with guarantees against reprisal; applicability over a broad range of issues; and means for resolving questions of jurisdiction.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9336, p. 68.

rationale: J. The release process should ensure that all matters relating to the facility are completed. If the juvenile is to be released to his or her family, the person accepting the juvenile should be identified, or an unescorted release must be verified. If released to another agency, everyone involved should understand what is to occur with respect to timing, expectations, forwarding of records and the person who will complete the transfer. Parents also must be notified.

evidence: The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9466, p. 94.

Advisory Task Force Sub-committee recommendation.

rationale: K. Administrative Segregation and Resident Discipline. Separate rules and a separate definition have been developed for administrative segregation to ensure that the facility administrator clearly distinguishes between disciplinary and non-disciplinary issues. Additionally, such rules are intended to provide facility administrators with recognized discretion to deal with unusual circumstances inherent in administrative segregation but also are intended to ensure that administrative segregation is not used in an arbitrary, capricious or unreasonable manner.

The Department's position with respect to the utilization of restraints as specified in rules 2.583 M.6.a.(2) and (3) is that the utilization of restraints under such conditions constitutes a last alternative in dealing with a resident. Consequently, staff must be trained in the proper utilization of proper restraint equipment and the utilization of restraints must be documented and capable of being defended should the resident file a suit or a complaint on misuse of restraining equipment. We recognize the fact that residents as a routine security practice are moved from one jurisdiction to another and consequently, the utilization of restraining equipment in the transport of residents need not be documented. However, on medical grounds by direction of the consulting or attending physician or psychologist or when restraints are used as indicated under 6.a.(3), when all other methods of control fail, we feel it incumbent and consistent with judicial decisions concerning due process that such instances be documented.

evidence: American Bar Association Resource Center on Correctional Law and Legal Services and American Correctional Association, January 1974 publication, Legal Responsibility and Authority of Correctional Officers, chapter 11.

The National Advisory Committee on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.12, pp. 51-53.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, pp. 59-70.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8393, p. 59; and 8328-8342, pp. 66-69.

Although support of evidence references may not recommend proposed prisoner discipline rules in precisely the same language or be as

specific with respect to a specific rule, the proposed rules have been developed after thoughtful consideration of overwhelming support for protection of residents from abuses under the guise of discipline.

rationale: L. is needed to ensure against resident idleness, a failure to meet the legal rights of residents and to ensure the constructive scheduling of resident time. The need and support for the constructive scheduling of time is recognized by virtually every creditable agency involved in promulgation of standards.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8349-8368, pp. 71-74.

rationale: L.1. concerning religious services and counseling are needed to ensure that first amendment rights of the United States Constitution concerning freedom of religion are protected.

evidence: American Bar Association Resource Center on Correctional Law and Legal Services and American Correctional Association, January 1974 publication, Legal Responsibility and Authority of Correctional Officers, pp. 14-16.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.16, pp. 63-65.

The National Advisory Commission on Criminal Justice Standards and Goals, August 1975 publication, Jointly Recommended Revisions of the Commission's Standards and Goals on Corrections, prepared by Association of State Correctional Administrators and American Association of Wardens and Superintendents, pp. 7-8.

The National Sheriffs' Association, 1974 handbook on Inamtes'Legal Rights, pp. 40-41.

Survey of United States Implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, prepared by the ABA Commission on Correctional Facilities and Services, December 1974, p. 29.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8320, p. 73.

rationale: L.2. Proposed rules concerning library services are needed to ensure residents have access to leisure reading materials, an opportunity to pursue educational pursuits and that residents rights of access to legal materials are provided for.

evidence: American Bar Association Resource Center on Correctional Law and Legal Services and American Correctional Association, January 1974 publication, Legal Responsibility and Authority of Correctional Officers, p. 21, #12.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 33-34 and 44-45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, pp. 28-29.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8361, p. 73.

rationale: L.3. Proposed rules governing work assignments of residents confined in these facilities are needed to ensure that residents are medically capable of performing assigned tasks and are not required to perform tasks that are the responsibility of staff.

evidence: The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities, p. 142.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8366-8368, p. 74.

rationale: L.4. Rules concerning exercise and recreation are needed to ensure that residents are afforded an opportunity to meet basic physical and mental health needs.

evidence: The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 13 and p. 16.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8323, p. 65.

rationale: L.5. In addition to proposed rules for exercise and recreation proposed rules for leisure services are needed to assist the resident in learning constructive ways to make use of leisure time. Constructive use of leisure time can be of considerable benefit in helping the resident make a successful adjustment in the community.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8358, p. 72.

rationale: L.6. is needed to meet recognized constitutional and statutory rights of residents as well as to establish uniformity of basic visiting provisions for residents on a statewide basis.

evidence: The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 42-43.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, p. 302, item #3.

The National Advisory Commission on Criminal Justice Standards and Goals, August 1975 publication, Jointly Recommended Revisions of the Commission's Standards and Goals on Corrections, prepared by Association of State Correctional Administrators and American Association of Wardens and Superintendents, standard 9.7, p. 18.

Minn. Stat. § 260.171 (1974), section 11, as amended by Laws of 1976, ch. 318.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8349, p. 71; and 8377-8381, pp. 76-77.

rationale: L.7. An established plan for the handling of resident correspondence inclusive of those areas covered by rules is needed to ensure that resident's legal rights with respect to correspondence are met and that contraband control for the maintenance of security is exercised.

evidence: American Bar Association Resource Center on Correctional Law and Legal Services and American Correctional Association, January 1974 publication, Legal Responsibility and Authority of Correctional Officers, chapter 7.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 43, 31 and 32.

The National Sheriffs' Association, 1970 Manual on Jail Administration, pp. 56-59.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, pp. 66-68.

The National Advisory Commission on Criminal Justice Standards and Goals, August 1975 publication, Jointly Recommended Revisions of the Commission's Standards and Goals on Corrections, prepared by Association of Wardens and Superintendents, standard 2.17, p. 9.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8348, p. 70; 8369-8376, pp. 74-76; and 8382, p. 77.

rationale: L. 8. - 11. Proposed rules are needed to ensure that the sanitation of the facility is protected from the spread of lice or other agents of disease. For this reason, there is a need to ensure the cleanliness of residents clothing at the time of admission, to ensure against disease transmission, and to afford the facility staff with ample time to thoroughly search clothing for articles of contraband.

Residents often are confined with little clothing in their possession and with limited funds or resources available to provide clothing. For these reasons, there is a need to ensure the availability of facility clothing to such residents to ensure that their personal clothing is laundered at regular intervals and that they have clothing appropriate to the season when confined for extended periods of time.

Provisions requiring regular exchange of clothing, bedding and linens are needed to ensure that such items are laundered at intervals consistent with State Department of Health recommendations.

Proper storage, identification, inventory and security for residents excess personal clothing is needed to ensure that clothing receipts at time of release are consistent with those at the time of admission.

evidence: Jail Standards and Procedures, effective July 1, 1975, State of Kansas, section 42-43.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 15, item #3.

Survey of the United States Implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, prepared by the ABA Commission on Correctional Facilities and Services, December 1974, pp. 19 and 30.

The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities, pp. 166-167.

Standards - Jails - Lockups - Houses of Correction Rehabilitation Camps, Revised January 1975, p. 16A. 53.37 and B. 1-6.

The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail, chapter 2.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, p. 26, item I.; September 12, 1974, pp. 14-15.

The U.S. Bureau of Prisons, Jail Management, Book 1, pp. 17-25.

The American Bar Association Commission on Correctional Facilities and Services, August 1974 publication, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities, p. 151, item #1025.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, p. 13, section 20, item 2; and pp. 8-9.

A copy of Corrections form Corr. 390 is on file with the Hearing Examiner.

rationale: L.12.a. - d. Proposed rules are needed to ensure that employees of such facilities, "particularly supervisors, on all shifts are familiar with steps to be taken in such situations. Emergency plans are required by law in most jurisdictions."

evidence: The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, p. 71.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 44.

The American Correctional Association, February 1979 edition, Manual of Standards for Juvenile Detention Facilities and Services, standards 8195-96, p. 39; and 8199 p. 40.

rationale: L.12.e. Proposed rules concerning special occurrences are needed to ensure that the Department is made aware of such incidents in order that inquiries concerning such incidents can be effectively handled by the Department, that the Department is informed in the event of complaints or litigation, that the Department may assess such situations and assist where appropriate in the prevention of similar such incidents and that where staff have contributed to such incidents such knowledge may be used to the benefit of other facilities. Special occurrences listed are generally recognized as being of a serious and special nature by

practitioners in the field of juvenile residential facilities operations.

evidence: Jail Standards and Procedures, effective July 1, 1975, State of Kansas, pp. 8-9.

Regulations of the Minnesota State Board of Health for Cosntruction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, p. 15, item (H).

A copy of Corrections form Corr. 390 is on file with the Hearing Examiner.

rationale: L.12.f. Resident deaths are highly unusual and likely to attract public attention. Additionally, they may result in litigation. For these reasons, special care and attention must be given to compliance with all pertinent laws and scrupulous attention must be given to the documentation of such incidents.

evidence: Minnesota Department of Corrections Rules governing Secure Juvenile Detention Facilities, 11 MCAR § 2.527, I.9.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.587 FOOD SERVICE

rationale: A. Proposed rules are needed to ensure that food service concerns inclusive of nutrition, quantity and variety, sanitary preparation and temperature are addressed by facility administrators and food personnel.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39, and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: B. and C. Rules are needed to ensure that State of Minnesota Health Department requirements are met. A copy of Minnesota State Board of Health Regulations, 7 MCAR §§ 1.161-1.170, which has been adopted by reference by the Department of Corrections, is on file with the Hearing Examiner.

evidence: The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: D. The proposed rule concerning frequency of meals is needed to ensure that meals are scheduled at regular intervals and that the time between an evening meal and a breakfast do not exceed recommendations of the State Department of Health.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: E. The proposed rule on therapeutic diets is needed to ensure that residents under medical care with prescribed diets receive same.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: F. Written policy and procedures should provide for special diets as approved by the chaplain or facility administrator.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8265, p. 54.

rationale: G. The proposed rule concerning the use of food in discipline is needed to ensure against the possibility of litigation resulting from deprivation of food as punishment. Increasingly, judicial decisions have considered the use of food in discipline with respect to possible findings of cruel and unusual punishment.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: H. Provisions for staff supervision of meal serving are needed for sanitary reasons and to eliminate the possibility of favoritism being exercised by residents.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: I. Provisions for menu records are needed to document nutritional needs, therapeutic diets and to act as evidence in the event of resident complaints or litigation concerning food services.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 24-29 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: J. This rule is necessary to ensure that residents' rights to a nutritionally adequate diet are met.

evidence: Advisory Task Force Sub-committee recommendation.

rationale: K. The rule concerning a hot meal minimum is needed to ensure that residents are provided with a minimum of one hot meal per day.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: L. It is felt that a management system should be capable of isolating the cost per meal per resident.

evidence: Minnesota Code of Agency Rules, Department of Corrections, 1978 edition, Rule 2.109, L.12.a.

Advisory Task Force Sub-committee recommendation.

rationale: M. Proposed rules concerning canteen are needed to provide residents

with an opportunity to purchase snacks and convenience items which are not normally available or supplied by the facility. The canteen is viewed as an addition to, not a substitute for, a good food program.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: N. Proposed rules concerning containers and food storage are needed to ensure that foods are stored in accordance with Department of Health recommendations concerning temperature and storage provisions.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

rationale: 0. Proposed rules concerning transport of food are needed to ensure sanitation of food during transporting and to ensure that food temperatures are maintained at desired levels during such transport.

evidence: The National Sheriffs' Association, 1974 handbook on Food Service in Jails.

The National Sheriffs' Association, 1974 handbook on Jail Administration, chapter XIX.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, pp. 55-56.

Regulations of the Minnesota State Board of Health for Construction, Equipment, Maintenance and Operation of Supervised Living Facilities, September 12, 1974, pp. 9-10, MHD 395.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, p. 14.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 13-15 and 37.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, pp. 34-39 and 49.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, item #5, p. 303.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8259-8280, pp. 53-56.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.591 SECURITY

rationale: A. Proposed rules requiring the development of policies and procedures are needed to ensure that reasonable and prudent precautions are taken to ensure that the primary objective of the facility to protect the public by securely detaining persons who present a danger to the community or to themselves is met.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8281-8313, pp. 57-63.

rationale: B. Proposed rules concerning admissions are needed to ensure against contraband entry into the facility, disease transmission by lice, and are needed to ensure that residents receive prompt medical attention where appropriate. Additionally, personal property inventories are needed to ensure against litigation at the time of the release.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8281-8313, pp. 57-63.

rationale: C. Proposed rules concerning releases are needed to ensure that the release of resident property is documented, that residents are clothed appropriate to the season and have been afforded an opportunity to arrange transportation prior to release.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8281-8313, pp. 57-63.

rationale: D. Proposed rules concerning contraband control searches are needed to ensure against contraband entry into the facility, that security equipment is in proper working order and that security policies and procedures are not being violated.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8281-8313, pp. 57-63.

rationale: E. and F. Proposed rules concerning locks and keys and dangerous materials are needed to ensure the safety of residents, the staff and the public. Locks and keys must be in proper working order and secured to prevent against escape or to prevent against a resident being trapped in an area with inoperable locks in the event of fire. Firearms used by law enforcement personnel must be secured outside of resident living areas to ensure against residents having the possibility of securing same. Tools are a critical contraband item and can be used as weapons or instruments to effect an escape. Consequently, their use must be controlled. Hazardous substances must be controlled to ensure that such materials are not used for purposes other than their intended use. As an example, aerosol containers can be highly flammable.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8281-8313, pp. 57-63.

rationale: G. Proposed rules are needed for count procedures to ensure that all residents confined to the facility are present or accounted for and that such residents are not in need of medical assistance or involved in breaches of security.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standards 8281-8313, pp. 57-63.

STATEMENT OF NEED AND REASONABLENESS

CORR. 2.595 ENVIRONMENTAL-PERSONAL HEALTH AND SANITATION

rationale: A. Proposed rules concerning availability of medical and dental resources are needed to ensure that in the event emergency medical, dental or ambulance services are needed, they are available. Examination of residents in need of medical care is a recognized right of residents and cannot be neglected. Additionally, annual inspections by local health officials or designated physicians are needed to ensure maintenance of sanitation and health conditions and availability of consultation concerning same.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37, and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, ktems K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12,

1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: B. The proposed rule concerning examination by physician, registered nurse or licensed practical nurse is needed to assure that the health status of the juvenile is known and recorded.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37, and 9.7. p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: C. The proposed rule concerning sick call is needed to ensure residents the opportunity to report and receive appropriate medical services for illness or injury.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: D. Proposed rules concerning posting of available resources are needed to ensure that all employees are informed of such resources and can readily identify which resource is available at a certain time of day and do not have to search a phone book or other source for the telephone numbers of such resources.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37; and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: E. Proposed rules concerning hospitalization of a resident are needed to ensure resident access to local hospital facilities when needed and to ensure that proper security coverage of hospitalized residents is provided as deemed necessary by the facility administrator and hospital administrator.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37 and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: F. Proposed rules concerning first aid are needed to ensure that child care workers are trained in emergency first aid procedures and that first aid supplies are available and replenished on a regular basis.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37; and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: G. The maintenance of medical and dental records is necessary to document all complaints of illness, medical attention received and to advise all staff of a resident's medical or dental needs and their responsibilities for care with respect to same. Medical and dental records are also needed to ensure against litigation.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37; and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59; 2.6, p. 2; and 9.7, p. 18.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: H. Proposed rules concerning preventive health services are needed to ensure that residents are advised and required to maintain personal hygiene and are provided with regular opportunities for bathing, showering and personal hygiene items. Delousing of residents is needed on occasion to protect against disease transmission. Medical consultation and approval of delousing procedures is needed to ensure that such procedures are used only when appropriate and are effective when used.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37; and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: I. Proposed rules concerning delivery, supervision and control of medicine are needed to ensure that residents in need of prescription medications receive same in a manner which is consistent with security needs and minimizes the possibility of drug abuse by the recipient. The proposed rules have been developed in consultation with the State Department of Health and are inclusive of recommendations received from the State Pharmacy Board.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37; and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal

Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I; pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation Safety and Hygiene section and Health Care Services section.

rationale: J. Proposed rules concerning the isolation for contagious disease are needed to ensure that residents placed in isolation for a suspected contagious disease receive prompt medical attention and are not unreasonably deprived of privileges as a result of placement in isolation. Isolation for contagious disease is not a disciplinary action and consequently the individual's privileges and rights must be maintained to the greatest extent possible under the circumstances.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons, Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37; and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59; 2.6, p. 2; and 9.7, p. 18.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: K. Rules are needed to ensure that residents deemed mentally ill receive prompt medical assessment and that if at all possible such residents be placed in a facility more appropriate to the care of the resident.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37; and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59; 2.6, p. 2; and 9.7, p. 18.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3, p. 32.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: L. Proposed rules are needed to ensure that a primary responsibility of the facility to maintain high standards of cleanliness and sanitation is met. Similarly, keeping the facility in a good state of repair is necessary to ensure against unnecessary deterioration of buildings and equipment, safety hazards and breaches of security.

To ensure that housekeeping, sanitation and plant maintenance needs are met, daily inspections of the facility by staff are needed so that problems can be readily identified and acted upon.

Proposed rules concerning budgets and work requests are needed to ensure that local governing bodies such as county boards, city councils or similar such bodies responsible for the facility are fully apprised of housekeeping, sanitation and maintenance needs as they develop and can make decisions concerning such needs after consideration of factual presentation of needs and available finances.

Documentation of budget and work requests is needed to affix responsibility for failure to correct housekeeping, sanitation or maintenance needs. In the event of litigation, it is deemed important and necessary that the facility administrator and governing body clearly show that they have identified needs and acted on same consistent with their knowledge of needs, responsibilities and authority to effect improvements.

Proposed rules concerning insect and rodent control are needed to ensure against disease transmission by same. Licensed pest control operators are necessary to ensure that selection of equipment and procedures assure the most effective application of poisons, dusts, sprays and traps.

evidence: The National Sheriffs' Association, 1974 handbook on Sanitation in the Jail.

U.S. Bureau of Prisons Jail Management Course, Book 1, pp. 33 and 35; Jail Management Course, Book 5, pp. 18-19; and Jail Management Course, Book 2, p. 1.

The National Advisory Commission on Criminal Justice Standards and Goals, 1973 publication, Corrections, standard 2.6, pp. 36-37; and 9.7, p. 18.

The American Correctional Association, 1969 edition of Manual of Correctional Standards, section 9, pp. 58-59; 2.6, p. 2; and 9.7, p. 18.

The National Sheriffs' Association, 1970 Manual on Jail Administration, chapter XX.

The National Sheriffs' Association, 1974 handbook on Inmates' Legal Rights, pp. 14-15.

The National Sheriffs' Association, 1974 handbook on Jail Administration, p. 45.

The National Sheriffs' Association, 1974 handbook on Jail Programs, chapter 3.

The National Sheriffs' Association, 1974 handbook on Jail Security, Classification and Discipline, chapter 3.

Jail Standards and Procedures, effective July 1, 1975, State of Kansas, sections 38-41.

Jail Standards and Guidelines for Operation of Local Correctional Facilities, September 1, 1973, State of Oregon, items K., L., M., p. 26; B., pp. 27-28; A-I, pp. 40-46.

Standards Jails - Lockups - Houses of Correction Rehabilitation Camps, revised January 1975, pp. 13-16.

Regulations of the Minnesota State Board of Health for Construction, Equipment and Operation of Supervised Living Facilities, September 12, 1974, MHD 396-398.

The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, Sanitation, Safety and Hygiene section and Health Care Services section.

rationale: M. Rooms of sufficient size enable juveniles to personalize living space. Since youth have access to a day room or lounge and other programs and activities throughout the facility, these measurements for sleeping areas are considered sufficient.

evidence: The American Correctional Association, February 1979 edition, Juvenile Detention Facilities and Services, standard 8162, p. 33.

The American Correctional Association, March 1979 edition, Juvenile Training Schools and Services, standard 9169, p. 35.

Advisory Task Force Sub-committee recommendation.

CORR-81-003-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Corrections Governing Juvenile Residential Facilities.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: May 18th, 1981.

DUANE R. HARVES
Chief Hearing Examiner

CORR-81-003-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE ADOPTION OF RULES OF THE DEPARTMENT OF CORRECTIONS GOVERNING MINIMUM STANDARDS FOR JUVENILE RESIDENTIAL FACILITIES

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 21, 1981, before Jon L. Lunde, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Corrections and;

WHEREAS, the Department of Corrections has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Department of Corrections has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Order, the Department of Corrections has the responsibility of submitting the complete hearing record and the rules as adopted by the Department of Corrections to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: June 8, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

Office Memorandum

TO : DUANE R. HARVES
Chief Hearing Examiner

DATE: 6/5/81

FROM : JON L. LUNDE JLL
Hearing Examiner

PHONE: 6-5938

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Minnesota Department of Corrections Governing Juvenile Residential Facilities. Docket No. CORP-81-003-JL.

I have reviewed the Order Adopting Rules and a copy of the Rules as Adopted and find that they comply with the recommendations and requirements of your Report. The changes made in the rules do not constitute substantial changes for purposes of 9 MCAR § 2.111.

Three citations in the rules were not corrected but John McLagon has indicated to me that the necessary changes will be made. At his request, I have indicated what changes are necessary on his memo to me dated May 28, 1981. Those amendments are as follows:

a. Change the cite found in § 2.551 A. to read: "§ 241.021, subd. 1(1) . . . ." p. 1

b. Change the cite in § 2.511 C. to read: "§ 241.021, subd. 1(4)." p. 1

c. Change the cites in § 2.583 K.5.c. to read: "K.5a(2) or 2.583 K.5.a.(3) . . . ." p. 25

These changes must be made in the adopted rules.

JLL:sw

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STATE OF MINNESOTA

Agency Exh. No. 16 (Post hearing)
File No. CORR-81-003-JL
Date 4-23-81



VOLUME 5, NUMBER 29

January 19, 1981

Pages 1127-1154

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
30	Monday Jan 12	Monday Jan 19	Monday Jan 26
31	Monday Jan 19	Monday Jan 26	Monday Feb 2
32	Monday Jan 26	Monday Feb 2	Monday Feb 9
33	Monday Feb 2	Monday Feb 9	Monday Feb 16

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Albert H. Quie
Governor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Stephen A. Ordahl
Director
State Register and
Public Documents Division

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Paul Hoffman, Robin PanLener
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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

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Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

State Board of Education (State Board for Vocational Education) Department of Education Vocational-Technical Division

Proposed Adoption, Amendment, and Repeal of Rules Governing the Distribution of Post-Secondary Vocational Education Aids

Notice of Intent to Adopt, Amend, and Repeal Rules without Further Public Hearing

Notice is hereby given that the State Board of Education (State Board for Vocational Education) proposes to adopt, amend, and repeal the above captioned rules, without further public hearing, pursuant to Laws of 1980, ch. 615 § 7 (Minn. Stat. § 15.0412, subd. 4h).

These proposed rules govern the distribution of post-secondary vocational education aids. These rules were presented at a public hearing held on August 5, 1980. After the public hearing and before these proposed rules were considered for adoption by the State Board of Education (State Board for Vocational Education), the State Department of Education found an error in the rules which had been presented at the August 5, 1980, public hearing. The error was that the rule governing area vocational-technical institute tuition and fees, 5 MCAR § 1.0104 F., was identified as being repealed. 5 MCAR § 1.0104 F. is not proposed to be repealed. 5 MCAR § 1.0104 F. is proposed to be amended as set forth herewith. The State Board of Education (State Board for Vocational Education) also proposes to adopt 5 MCAR §§ 1.01041-1.01047, except that the State Board of Education (State Board for Vocational Education) has deleted the proposed rule § 1.01045 post-secondary vocational support services aid at this time, and repeal 5 MCAR §§ 1.0105 and 1.0107 as set forth herewith. These rules are substantially the same as presented at the public hearing of August 5, 1980, with some changes made to reflect comments made as a result of that hearing.

All interested persons may submit written comment or data on these proposed rules, within 30 days of the publication of these proposed rules in the State Register, to:

Robert M. Madson, Director
Post-Secondary Vocational Education
541 Capitol Square Building
St. Paul, Minnesota 55101
Telephone: 612-296-3387

No further public hearing will be held unless seven or more persons make a written request for hearing within the 30 day comment period to the above named person.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike~~ ~~outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike~~ ~~outs~~ indicate deletions from proposed rule language.

The proposed rules may be modified if the modifications are supported by the data and views submitted. A statement of need and reasonableness is available without charge by making a written or telephone request to the above named person.

Any person who desires to be informed when these proposed rules are submitted to the Attorney General for approval may do so by writing or calling the above named person.

Howard B. Casmey
Commissioner of Education

Rules as Proposed

Chapter Six: Post-Secondary Vocational-Technical Education (all new material)

5 MCAR § 1.01041 Definition. The term allocation or preliminary allocation means the level of funding recommended to the State Board for Vocational Education by the Division of Vocational-Technical Education.

5 MCAR § 1.01042 Instructional aid. Instructional aid shall be allocated to the area vocational-technical institutes in accordance with the formula prescribed in Minn. Stat. § 124.5621.

5 MCAR § 1.01043 Post-secondary vocational supply aid.

A. Post-secondary vocational supply aid shall be allocated to each AVTI for those items of expenditure enumerated in Minn. Stat. § 124.5622, subd. 4.

B. Supply aid allocation.

1. The Division of Vocational-Technical Education shall review each instructional and support services program budget submitted by the AVTI. The budget shall be reviewed and approved, modified or reduced giving consideration to the following factors:

a. The historical average of per student supply costs for the program.

b. The average per student cost of supplies for all similar programs in all AVTIs offering such programs.

c. Continued operation of the physical plant.

2. The Division of Vocational-Technical Education shall annually establish inflationary factors which will govern increases in the various categories of supplies. These inflationary factors will be a two year forecast from the base year which is the fiscal year immediately preceding the deadline for the submission of budgets to the Division of Vocational-Technical Education by the AVTIs. The Division of Vocational-Technical Education shall obtain estimates of cost for the types of items most commonly purchased by the AVTIs over the two year span of time in determining the inflationary factors from the State Economist, Department of Finance.

a. Separate factors shall be established to determine allowable increases for petroleum related supplies and non-petroleum related supplies.

(1) For petroleum related supplies, the following indexes shall be utilized:

(a) Wholesale price index—refined petroleum products.

(b) Wholesale price index—rubber and plastic products.

(2) For non-petroleum related supplies, the following indexes shall be utilized:

(a) Wholesale price index—lumber and wood products.

(b) Wholesale price index—chemicals and allied products.

(c) Wholesale price index—metals and metal products.

b. These inflationary factors shall be transmitted to the AVTIs not less than 90 days prior to the deadline by which the AVTIs must submit budget requests to the Division of Vocational-Technical Education.

3. Each school board which has established an AVTI shall implement policies to recover the cost of supplies purchased for resale to students and the public.

a. For instructional programs in the food service area, such rates of recovery shall be established in consultation with the Division of Vocational-Technical Education. Each food service instructional program will be compared to similar programs offered in other AVTIs to annually adjust the rate of recovery by considering the following factors:

(1) To provide maximum instructional benefits to students.

(2) To minimize the net cost to the program.

b. For all other instructional programs, the rate of cost recovery shall ensure that the total revenue from the resale of supplies shall not be less than the cost of acquisition of supplies purchased for resale.

4. Each AVTI that submits a program budget wherein the increased cost of supplies exceeds the two year forecast of inflationary factors established in B.2. above shall justify such increases in writing. This justification shall be submitted to the Division of Vocational-Technical Education with the budget requests to receive consideration.

5. In the event that the total request for supply aid for an individual AVTI does not exceed the base year expenditure plus the inflationary factors established in B.2. above, the Division of Vocational-Technical Education shall give preliminary approval to the request subject to the later necessity of prorated reductions applied to all AVTIs subject to the following:

a. When the total requests for supply aid are equal to or less than 105 percent of the funds appropriated for this purpose, each AVTI shall have their request reduced by an equal percentage so that the allocations make maximum use of but do not exceed the funds appropriated for this purpose.

b. When the total requests by all AVTIs for supply aid exceed 105 percent of the funds appropriated for this purpose, an AVTI which requests supply aid in excess of its base year expenditures as adjusted by the inflationary factors established in B.2. above may have its request reduced to an amount equal to the base year amount. This reduction shall be accomplished on a program by program basis by the Division of Vocational-Technical Education in consultation with the AVTI Director. In effecting such reductions, consideration shall be given to the factors enumerated in B.1.a.-c. above.

5 MCAR § 1.01044 Post-secondary vocational capital expenditure aid.

A. Post-secondary vocational capital expenditure aid shall be allocated to each AVTI for those items of expenditure enumerated in Minn. Stat. § 124.5624, subd. 3.

B. Capital equipment aid allocation.

1. Each AVTI shall establish an order of priority for its capital aid requests. In establishing the order of priority, the AVTI shall give consideration to the enhancement of the safety of the students and staff and the replacement of technologically obsolete and/or worn out equipment.

2. All requests for the purchase of equipment which have a unit cost of $1,000 or more shall be justified in writing as a part of the documentation supporting the program budget request. The Division of Vocational-Technical Education shall review such requests giving consideration to the needs of the program as compared to similar programs offered in other AVTIs.

3. All projected capital expenditures which have a unit cost of $4,000 or more are subject to approval by the Commissioner of Education prior to purchase. This includes remodeling and site improvement projects with a cost of $4,000 to $50,000. These items shall be included in the appropriate program budget. Such approval shall be sought and given separately from the budget review in accordance with Minn. Stat. § 124.5624, subd. 5 (Supp. 1979).

a. These requests shall have the specific authorization of the school board which governs the AVTI.

b. The Division of Vocational-Technical Education shall review and approve, modify or reduce the request giving consideration to the following factors:

(1) The historical pattern of capital and/or equipment expenditures for that AVTI.

(2) A comparison with similar programs offered in other AVTIs.

(3) Current practices for facilities or types of equipment utilized in industry.

C. Preliminary allocations of post-secondary vocational capital expenditure aid for items not exceeding a unit cost of $50,000.

1. When the total requests for capital expenditure aid are equal to or less than 105 percent of the funds appropriated for this purpose, each AVTI's request shall be reduced by an equal percentage so that the allocations make maximum use of but do not exceed the funds appropriated for this purpose.

2. If the total request for capital expenditure aid exceeds 105 percent of the funds appropriated for this purpose, each AVTI's budgets shall be reviewed by the Division of Vocational-Technical Education. The Division of Vocational-Technical Education shall contact the Director of the AVTI for the purpose of effecting reductions in the request giving consideration to the factors set forth in B.1.-3. above prior to the scheduled budget review with the Division of Vocational-Technical Education. The AVTI Director shall be notified in writing as to the amount of the reduction.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

D. Remodeling and construction requests. Requests for remodeling or construction with an estimated cost in excess of $50,000 but not exceeding $150,000 are subject to prior approval by the State Board for Vocational Education in accordance with Minn. Stat. § 121.912 (Supp. 1979).

1. The State Board for Vocational Education shall review such requests giving consideration to the following factors:

a. The specific authorization of the request by the school board which governs the AVTI.

b. The remodeling or construction of facilities requested will provide adequate space for existing programs presently housed within district buildings or as a replacement for unsuitable rented space.

c. Construction requests for facilities identified in b. above shall be reviewed giving consideration to:

(1) A comparison with the facilities for similar programs offered in other AVTIs on a per student basis.

(2) Requirement to meet Occupational Safety and Health Act standards.

2. The State Board for Vocational Education shall review and approve, modify or reduce any requests for remodeling or construction and shall allocate available funds to meet the most critical needs as determined through the review of the factors set forth in D.1.a.-c. above.

5 MCAR § 1.01046 Final allocations shall be made by the State Board for Vocational Education pursuant to Minn. Stat. § 124.561, subd. 3a (Supp. 1979).

5 MCAR § 1.01047 Local responsibility and authority for fund expenditures. Following the final approval of all budget categories, the school board governing an AVTI has the responsibility and authority for expenditure of these categorized aids within the legal constraints of the appropriate statutes.

Amendments as Proposed

5 MCAR § 1.0104 ~~Foundation aid.~~ Tuition and fees.

~~A. A school district operating an area vocational-technical institute shall be eligible to receive post-secondary vocational foundation aid for all students attending approved post-secondary vocational-technical programs.~~

~~B. Average daily membership estimates shall be included in the annual budget request. These estimates shall be derived from uniform student accounting reports and that shall be the basis for beginning foundation aid payments. Adjustments to estimated average daily membership shall be reported by each AVTI to the Division of Vocational-Technical Education by the first of September, December, March and June.~~

~~C. Changes in estimates as authorized in Minn. Stat. § 124.11 shall be approved by the Commissioner of Education before payment is authorized by the department.~~

~~D. Final adjustment data shall be submitted by August 15 of each year.~~

~~E. Only days in which school is open and students are under the supervision and guidance of teachers and for educational purposes are eligible for foundation aid. Snow days are not to be counted.~~

~~F. Tuition and fees.~~

A. ~~1.~~ Deductible fees shall include all charges that are uniformly assessed all students. Charges for materials or equipment that become the property of the student shall not be considered a fee.

B. ~~2.~~ No tuition shall be charged to handicapped/disadvantaged students for the additional hours of instruction received beyond the approved program length as established by Minn. Stat. § 124.562, subd. 2, as amended by Laws of 1979, ch. 334, art. V, § 10.

C. ~~3.~~ Students shall have their tuition prorated for less than or more than the regular instructional schedule. Tuition shall be prorated for part-time or extended-time programs, for quarters more or less than 60 days and for programs utilizing individual instruction. Daily tuition shall be prorated by dividing the quarterly tuition by 60, (the standard number of days in the quarter), and rounded downward to the nearest cent. Hourly tuition shall be prorated by dividing the daily rate by 6, (the standard number of hours in a school day), and rounded downward to the nearest cent. This formula for prorating tuition shall apply to resident and nonresident tuition.

D. ~~4.~~ Collection of tuition shall be on the basis of four periods per year as determined by the local calendar. No single period shall exceed 65 school days. Tuition may not be demanded more than 15 consecutive school days in advance of the time period but a student may pay in advance. Tuition may be delayed only upon initial application for tuition subsidy in any given year or guaranteed receipt from an agency.

E. ~~5.~~ A late penalty may be charged not to exceed $10.00 per period established pursuant to ~~F. 4.~~ D. of this rule. Penalty payments shall be deducted from foundation aid. The penalty assessment period is the period of time between the date tuition was demanded and the commencement of classes.

~~6. The total amount of tuition deducted from foundation aid shall be calculated on the total number of ADM's in the fiscal year. This calculation shall be made at the time of the final foundation aid adjustment, with tuition deficits being charged to local funds. Tuition loss due to deferment during student application for tuition subsidy shall not be deducted from foundation aid. Students shall not apply for a tuition subsidy more than once during a collection period.~~

~~7. Students on internships shall pay tuition for the time period claimed for foundation aid. Daily hours shall not exceed six unless the students are fully supervised under personnel provided by the institute.~~

F. ~~8.~~ Each district shall have an attendance policy. Students who notify the school of their withdrawal shall be dropped from the roll upon date of notification. Students absent for 15 consecutive school days shall be classified as withdrawn.

G. ~~9.~~ Students in continuous enrollment programs may be maintained on the roll for a vacation or a personal leave not to exceed 15 consecutive school days.

H. ~~G.~~ Upon prior approval of the Commissioner of Education, a district may add additional hours for membership not to exceed ten percent of the approved hours of the program for disadvantaged or handicapped students. Handicapped students are those who are mentally retarded, hard of hearing, deaf, speech impaired, visually impaired, orthopedically impaired, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational educational program without special education assistance or who require a modified vocational education program. Disadvantaged students are those who have academic or economic handicaps and who require special services and assistance in order to enable them to succeed in vocational education programs.

I. ~~H.~~ Unless otherwise exempt from tuition, students who begin during the quarter shall pay tuition as of the date of entry based upon the prorated formula established in 5 MCAR § 1.0104 ~~F. 3.~~ c. For such students the 15 day refund established by Minn. Stat. § 124.565, subd. 3, as amended by Laws of 1979, ch. 334, art. V, § 20 shall commence with the date of scheduled entry.

~~5 MCAR § 1.0105 Capital expenditure aid.~~

~~A. Districts shall be eligible for capital expenditure aid when foundation aid, tuition, and fees, are insufficient to provide for capital purchases.~~

~~B. All equipment not approved in the budget review, purchases at a cost in excess of $4,000.00 must be preapproved by the commissioner of education.~~

~~C. All equipment shall be accounted for by the standard inventory control system.~~

~~D. Repairs on facility, equipment, or improvement of grounds that exceed $4,000.00 and not included in the budget review shall be included in B. for approval.~~

~~5 MCAR § 1.0107 Categorical aid.~~ ~~Categorical aid shall be allocated on the following criteria for districts operating high cost programs which require expenditures in excess of funding available through foundation aid and capital expenditure aid:~~

~~A. Preservation of the present plant and equipment.~~

~~B. Development of programs for emerging business and industry.~~

~~C. Unique programs designed to serve special populations.~~

~~D. Educational services for special populations.~~

~~E. High operating costs.~~

~~F. Rules and regulations imposed by other regulatory bodies which may affect the student teacher ratio as well as operating equipment costs.~~

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Pollution Control Agency

Adopted Amendments and Renumbering of WPC 14, 15, 24 and 25, and Adopted Repeal of WPC 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 23, 26, 29, 31 and 32

The amendments to WPC 14, WPC 15, WPC 24, and WPC 25 (6 MCAR §§ 4.8014, 4.8015, 4.8024, and 4.8025) and the repeal of WPC 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 23, 26, 29, 31 and 32 proposed and published at *State Register*, Volume 4, Number 34, pp. 1330-1392, February 25, 1980, (4 S.R. 1330) are adopted with the following changes:

6 MCAR § 4.8014 B. Water use classifications—all intrastate waters of the state. Based on considerations of best usage in the interest of the public and in conformance with the requirements of the applicable statutes, the intrastate waters of the state shall be grouped into one or more of the following classes:

B.7. Limited resource value waters. This class includes surface waters of the state which are of limited value as a water resource and where water quantities are intermittent or less than one (1) cubic feet per second at the once in ten year, seven day low flow as defined in section C.7. These waters shall be protected so as to allow secondary body contact use, to preserve the groundwater for use as a potable water supply, and to protect aesthetic qualities of the water. It is the intent of the agency that very few waters be classified as limited resource value waters. In conjunction with those factors listed in Minn. Stat. § 115.44, subd. 2 and subd. 3 (1978), the agency, in cooperation and agreement with the Department of Natural Resources with respect to determination of fisheries values and potential, shall determine the extent to which the waters of the state demonstrate the conditions set forth below:

C. General standards applicable to all intrastate waters of the state.

C.5. Means for expediting mixing and dispersion of sewage, industrial waste, or other waste effluents in the receiving intrastate waters are to be provided so far as practicable when deemed necessary by the agency to maintain the quality of the receiving intrastate waters in accordance with applicable standards. Mixing zones be established by the agency on an individual basis, with primary consideration being given to the following guidelines: (a) mixing zones in rivers should permit an acceptable passageway for the movement of fish; (b) the total mixing zone or zones at any transect of the stream should contain no more than 25% of the cross-sectional area and/or volume of flow of the stream, and should not extend over more than 50% of the width; (c) mixing zone characteristics shall not be lethal to aquatic organisms; (d) for contaminants other than heat, the 96 hour median tolerance limit for indigenous fish and fish food organisms should not be exceeded at any point in the mixing zone; (e) mixing zones should be as small as possible, and not intersect spawning or nursery areas, migratory routes, water intakes, nor mouths of rivers; and (f) overlapping of mixing zones should be minimized and measures taken to prevent adverse synergistic effects. This provision shall also apply in cases where a Class 7 water is tributary to a Class 2 water.

C.6.

Substance or Characteristic	Limit Concentration or Range*
5-Day Biochemical Oxygen Demand*	25 milligra~~n~~ms per liter
Fecal coliform group organisms***	200 organisms per 100 milliliters ~~(May 1 through October 31)~~

. . .

***Disinfection of wastewater effluents to reduce the levels of fecal coliform organisms to the stated value is required from ~~May~~ March 1 through October 31 (Class 2 waters) and May 1 through October 31 (Class 7 waters) except that where the effluent is discharged 25 miles or less upstream of a water intake supplying a potable water system, the reduction to the stated value is required year around. The stated value is not to be exceeded in any calendar month as determined by the logarithmic mean of a

minimum of five samples, nor shall more than 10% of all samples taken during any calendar month individually exceed 400 organisms per 100 milliliters. The application of the fecal coliform group organism standards shall be limited to sewage or other effluents containing admixtures of sewage and shall not apply to industrial wastes except where the presence of sewage, fecal coliform organisms or viable pathogenic organisms in such wastes is known or reasonably certain. Analysis of samples for fecal coliform group organisms by either the multiple tube fermentation or the membrane filter techniques is acceptable.

C.8.

Item*	Limits**

. . .

**If a discharger is required by the Director to implement a pretreatment program for the control of toxic pollutants from industrial contributors and the program has not yet been implemented, the discharger's effluent limitation for total suspended solids shall be 5 mg/l until such time as the program has been implemented.

C.16. Limited resource value waters.

a. For point source discharges to surface waters classified as limited resource value waters pursuant to section B.7. of this rule and 6 MCAR § 4.8024 the agency shall require treatment facilities which will provide effluents conforming to the following limitations:*

Substance or Characteristic	Limiting Concentration
5-day Biochemical oxygen Demand	15 milligrams per liter**

b. The agency ~~may~~ shall allow treatment works to be constructed and/or operated to produce effluents to limited resource value waters at levels up to those stated in C.6. of this rule provided that it is demonstrated that the water quality standards for limited resource value waters will be maintained during all periods of discharge from the treatment facilities.

d. The classification of surface waters as limited resource value waters pursuant to section B.7. of this rule and 6 MCAR § 4.8024 shall not supersede, alter or replace the classification and designation of such waters as public waters pursuant to applicable provisions and requirements of Minn. Stat. ch. 105.

C.17. No person who is in compliance with the terms and conditions of its permit issued pursuant to 6 MCAR § 4.8036 shall be deemed in violation of any water quality standard in this rule for which a corresponding effluent limitation is established in the permit. However, exceedances of the water quality standards in a receiving water shall constitute grounds for modification of a permit(s) for any discharger(s) to the receiving water who is (are) causing or contributing to the exceedances. 6 MCAR § 4.8036 shall govern the modification of any such permit.

C.18. For the purpose of establishing effluent limitations to meet the ammonia water quality standard, a statistic which estimates the central value (such as the mean or median) for ambient pH and temperature of the receiving water for the critical months shall be used.

D.2. Fisheries and recreation.

Class A.

Substance or Characteristic	Limit or Range
. . .	. . .
Dissolved Oxygen	Not less than 7 milligrams per liter at all times (instantaneous minimum concentration).***
. . .	. . .

*All effluent limitations specified in section C.6. shall also be applicable to dischargers to Class 7 waters, provided that unspecified toxic or corrosive substances shall be limited to the extent necessary to protect the designated uses of the receiving water or affected downstream waters.

**As measured by the arithmetic mean of all samples taken during any calendar month.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Cyanides (CN)	~~0.2~~ 0.02 milligrams per liter
. . .	
Fecal coliform organisms	200 organisms per 100 milliliters as a logarithmic mean measured in not less than five samples in any calendar month, nor shall more than 10% of all samples taken during any calendar month individually exceed 400 organisms per 100 milliliters. (Applies only between ~~May~~ March 1 and October 31).
. . .	
Total Residual Chlorine**	~~0.003~~ 0.005 milligrams per liter

* . . .

$$\text{~~f~~} = \left[\frac{\text{~~1~~}}{\text{~~10}^{(\text{~~pK}_a - \text{pH})} + \text{~~1~~}} \right] \text{~~x 100~~}$$

$$f = \left[\frac{1}{10^{(pK_a - pH)} + 1} \right] \times 100$$

. . .

**Applies to conditions of continuous exposure where continuous exposure refers to chlorinated effluents which are discharged for more than a total of two hours in any 24 hour period.

***This dissolved oxygen standard shall be construed to require compliance with the standard 50 percent of the days at which the flow of the receiving water is equal to the lowest weekly flow with a once in ten year recurrence interval (7Q10).

Class B. . . .

Substance or Characteristic	Limit or Range
Dissolved Oxygen	Not less than 5 milligrams per liter at all times (instantaneous minimum concentration).***
. . .	
Fecal coliform organisms	200 organisms per 100 milliliters as a logarithmic mean measured in not less than five samples in any calendar month, nor shall more than 10% of all samples taken during any calendar month individually exceed ~~400~~ 2000 organisms per 100 milliliters. (Applies only between ~~May~~ March 1 and October 31).
. . .	
Total Residual Chlorine**	~~0.003~~ 0.005 milligrams per liter

Class C. . . .

Substance or Characteristic	Limit or Range
. . .	
Dissolved Oxygen	Not less than 5 milligrams per liter at all times (instantaneous minimum concentration).***
. . .	

***See dissolved oxygen footnote for Class 2A waters.

Fecal coliform organisms	200 organisms per 100 milliliters as a logarithmic mean measured in not less than five samples in any calendar month, nor shall more than 10% of all samples taken during any calendar month individually exceed ~~400~~ 2000 organisms per 100 milliliters. (Applies only between ~~May~~ March 1 and October 31).
	. . .
Total Residual Chlorine**	~~0.003~~ 0.005 milligrams per liter

7. Limited resource value waters. . . .

Substance or Characteristic	Limit or Range
	. . .
Dissolved Oxygen	At concentrations which will avoid odors, or putrid conditions in the receiving water ~~provided that the concentration shall be not less than 1 milligram per liter at all times (instantaneous mini-mum concentration in order to avoid these conditions unless lower concentrations can be shown to avoid these conditions on a site specific basis~~ or at concentrations at not less than 1 mg/1 (daily average) provided that measurable concentrations are present at all times.
	. . .

6 MCAR § 4.8015 B. Water use classifications—all interstate waters of the state. Based on considerations of best usage in the interest of the public and in conformance with the requirements of the applicable statutes, the interstate waters of the state shall be grouped into one or more of the following classes.

B.7. Limited resource value waters. This class includes surface waters of the state which are of limited value as a water resource and where water quantities are intermittent or less than one (1) cubic feet per second at the once in ten year, seven day low flow as defined in section C.7. These waters shall be protected so as to allow secondary body contact use, to preserve the groundwater for use as a potable water supply, and to protect aesthetic qualities of the water. It is the intent of the agency that very few waters be classified as limited resource value waters. In conjunction with those factors listed in Minn. Stat. § 115.44, subd. 2 and subd. 3 (1978), the agency, in cooperation and agreement with the Department of Natural Resources with respect to determination of fisheries values and potential, shall determine the extent to which the waters of the state demonstrate the conditions set forth below:

C. General standards applicable to all interstate waters of the state.

C.5. Means for expediting mixing and dispersion of sewage, industrial waste, or other waste effluents in the receiving interstate waters are to be provided so far as practicable when deemed necessary by the agency to maintain the quality of the receiving interstate waters in accordance with applicable standards. Mixing zones be established by the agency on an individual basis, with primary consideration being given to the following guidelines: (a) mixing zones in rivers should permit an acceptable passageway for the movement of fish; (b) the total mixing zone or zones at any transect of the stream should contain no more than 25% of the crossectional area and/or volume of flow of the stream, and should not extend over more than 50% of the width; (c) mixing zone characteristics shall not be lethal to aquatic organisms; (d) for contaminants other than heat, the 96 hour median tolerance limit for indigenous fish and fish food organisms should not be exceeded at any point in the mixing zone, (e) mixing zones should be as small as possible, and not intersect spawning or nursery areas, migratory routes, water intakes, nor mouths of rivers; and (f) overlapping of mixing zones should be minimized and measures taken to prevent adverse synergistic effects. This provision shall also apply in cases where a Class 7 water is tributary to a Class 2 water.

C.6. . . .

Substance or Characteristic	Limit Concentration or Range*
5-Day Biochemical Oxygen Demand*	25 milligra~~n~~ms per liter

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Fecal coliform group organisms***	200 organisms per 100 milliliters ~~(May 1 through October 31)~~

. . .

***Disinfection of wastewater effluents to reduce the levels of fecal coliform organisms to the stated value is required from ~~May~~ March 1 through October 31 (Class 2 waters) and May 1 through October 31 (Class 7 waters) except that where the effluent is discharged 25 miles or less upstream of a water intake supplying a potable water system, the reduction to the stated value is required year around. The stated value is not to be exceeded in any calendar month as determined by the logarithmic mean of a minimum of five samples, nor shall more than 10% of all samples taken during any calendar month individually exceed 400 organisms per 100 milliliters. The application of the fecal coliform group organism standards shall be limited to sewage or other effluents containing admixtures of sewage and shall not apply to industrial wastes except where the presence of sewage, fecal coliform organisms or viable pathogenic organisms in such wastes is known or reasonably certain. Analysis of samples for fecal coliform group organisms by either the multiple tube fermentation or the membrane filter techniques is acceptable.

C.8. . . .

Item*	Limits**

. . .

**If a discharger is required by the Director to implement a pretreatment program for the control of toxic pollutants from industrial contributors and the program has not yet been implemented, the discharger's effluent limitation for total suspended solids shall be 5 mg/1 until such time as the program has been implemented.

C.16. Limited resource value waters.

a. For point source discharges to surface waters classified as limited resource value waters pursuant to section B.7. of this rule and 6 MCAR § 4.8025 the agency shall require treatment facilities which will provide effluents conforming to the following limitations:*

Substance or Characteristic	Limiting Concentration
5-day Biochemical oxygen Demand	15 milligrams per liter**

b. The agency ~~may~~ shall allow treatment works to be constructed and/or operated to produce effluents to limited resource value waters at levels up to those stated in C.6. of this rule provided that it is demonstrated that the water quality standards for limited resource value waters will be maintained during all periods of discharge from the treatment facilities.

d. The classification of surface waters as limited resource value waters pursuant to section B.7. of this rule and 6 MCAR § 4.8025 shall not supercede, alter or replace the classification and designation of such waters as public waters pursuant to applicable provisions and requirements of Minn. Stat. ch. 105.

C.17. No person who is in compliance with the terms and conditions of its permit issued pursuant to 6 MCAR § 4.8036 shall be deemed in violation of any water quality standard in this rule for which a corresponding effluent limitation is established in the permit. However, exceedances of the water quality standards in a receiving water shall constitute grounds for modification of a permit(s) for any discharger(s) to the receiving water who is (are) causing or contributing to the exceedances. 6 MCAR § 4.8036 shall govern the modification of any such permit.

C.18. For the purpose of establishing effluent limitations to meet the ammonia water quality standard, a statistic which estimates the central value (such as the mean or median) for ambient pH and temperature of the receiving water for the critical months shall be used.

D.2. Fisheries and recreation.

Class A. . . .

Substance or Characteristic	Limit or Range

. . .

*All effluent limitations specified in section C.6. shall also be applicable to dischargers to Class 7 waters, provided that unspecified toxic or corrosive substances shall be limited to the extent necessary to protect the designated uses of the receiving water or affected downstream waters.

**As measured by the arithmetic mean of all samples taken during any calendar month.

***See dissolved oxygen footnote for Class 2A waters.

Dissolved Oxygen	Not less than 7 milligrams per liter at all times (instantaneous) minimum concentration).***
	. . .
Cyanides (CN)	~~0.2~~ 0.02 milligrams per liter
	. . .
Fecal coliform organisms	200 organisms per 100 milliliters as a logarithmic mean measured in not less than five samples in any calendar month, nor shall more than 10% of all samples taken during any calendar month individually exceed 400 organisms per 100 milliliters. (Applies only between ~~May~~ March 1 and October 31).
	. . .
Total Residual Chlorine**	~~0.003~~ 0.005 milligrams per liter

* . . .

$$t = \left[\frac{1}{10^{(pK_a - pH)} + 1} \right] \times 100$$

$$t = \left[\frac{1}{10^{(pK_a - pH)} + 1} \right] \times 100$$

where:

. . .

~~$pK_a = \frac{0.0901821}{T} + 2729.92,$~~ ~~dissociation constant for ammonia~~

$pK_a = \frac{0.0901821}{T} + 2729.92,$ dissociation constant for ammonia

. . .

**Applies to conditions of continuous exposure where continuous exposure refers to chlorinated effluents which are discharged for more than a total of two hours in any 24 hour period.

***This dissolved oxygen standard shall be construed to require compliance with the standard 50 percent of the days at which the flow of the receiving water is equal to the lowest weekly flow with a once in ten year recurrence interval (7Q10).

Class B. . . .

Substance or Characteristic	Limit or Range
	. . .
Dissolved Oxygen****	Not less than 5 milligrams per liter at all times (instantaneous minimum concentration).*****

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Fecal coliform organisms	200 organisms per 100 milliliters as a logarithmic mean measured in not less than five samples in any calendar month, nor shall more than 10% of all samples taken during any calendar month individually exceed ~~400~~ 2000 organisms per 100 milliliters. (Applies only between ~~May~~ March 1 and October 31).

. . .

Total Residual Chlorine**	~~0.003~~ 0.005 milligrams per liter

Class C. . . .

Substance or Characteristic	Limit or Range
Dissolved Oxygen****	Not less than 5 milligrams per liter at all times (instantaneous minimum concentration).*****

. . .

Fecal coliform organisms	200 organisms per 100 milliliters as a logarithmic mean measured in not less than five samples in any calendar month, nor shall more than 10% of all samples taken during any calendar month individually exceed ~~400~~ 2000 organisms per 100 milliliters. (Applies only between ~~May~~ March 1 and October 31).

. . .

Total Residual Chlorine**	~~0.003~~ 0.005 milligrams per liter

D.7. Limited resource value waters. . . .

Substance or Characteristic	Limit or Range

. . .

Dissolved Oxygen	At concentrations which will avoid odors, or putrid conditions in the receiving water ~~provided that the concentration shall be not less than 1 milligram per liter at all times (instantaneous mini-mum concentration in order to avoid these conditions unless lower concentrations can be shown to avoid these conditions on a site specific basis~~ or at concentrations at not less than 1 mg/l (daily average) provided that measurable concentrations are present at all times.

. . .

6 MCAR § 4.8024 B. All known present uses and/or uses which may be made of the waters in the future are included. In addition to the classification given below, all of the waters named herein are also included in classes ~~2C,~~ 3C, 4A and B, 5, and 6, where such uses are possible~~, provided that waters specifically classified as limited resource value shall only be included in the following additional classes: 3C, 4A, 4B, 5 and 6~~. All other waters not specifically named herein shall be classified as 2B, 2C, 3B, 3C, 4A and B, 5 and 6. Where specific criteria are common to two or more listed classes the more restrictive value shall apply. For additional information refer to 6 MCAR § 4.8014, Criteria for the classification of the intrastate waters of the state and the establishment of standards of quality and purity.

Supplement 1
Class 7 Limited Resource Value Waters

. . .

~~Bad~~ Red River of the North Basin

. . .

****This standard shall apply to all interstate waters of the state except for the reach of the Mississippi River from the outlet of the Metro wastewater treatment works in St. Paul (River Mile 835) to Lock and Dam No. 2 at Hastings (River Mile 815). For this reach of the Mississippi River the standard shall be not less than 5 milligrams per liter from April 1 through November 30, and not less than 4 milligrams per liter at other times.

*****See dissolved oxygen footnote for Class 2A waters.

~~Unnamed Ditch~~ County Ditch No. 63 Near Hutchinson West Lynn Co-op Creamery	T116 R30 S19,20,21,28,33
. . .	
Mississippi-Sauk Rivers Watershed (No. 19)	
. . .	
*Two Rivers, South Branch Albany	T125 R31 ~~S13~~,21,22,23,~~24~~
. . .	
Unnamed Creek Albertville	T121 R23 S30 T121 R24 S25,~~26~~,36
. . .	
Unnamed Creek Eden Valley ~~Rumland~~ Ruhland Feeds	T121 R31 S2 T122 R31 S35
. . .	
Yellow Medicine River Watershed (No. 24)	
. . .	
*Boiling Springs Creek (County Ditch No. 1 ~~8~~ B) Echo	T113 R38 S5,8 T114 R37 S19,30 T114 R38 S25,26,27,32,33,34
. . .	
County Ditch No. 12 (Rice Creek) Belview	T113 R36 ~~S4,5~~,7,8,18,19 T113 R37 S15,21,22,23,24
. . .	
Des Moines River Watershed (No. 38)	
*Okebena Creek Worthington	T102 R38 S6,7 T102 R39 S7,8,9,10,11,12,14,15,16,18
Worthington Lagoons and Allied Mills	T102 R40 S13 ~~T103 R38 S21,22,28,29,30,31~~
. . .	
Rock River Watershed (No. 39)	
~~Judicial Ditch No. 6 Worthington Campbell Soup Co.~~	~~T101 R40 S2 T102 R40 S25,26,35~~
. . .	
Unnamed Ditch Lake Benton	T109 R45 S17,19,20

****This standard shall apply to all interstate waters of the state except for the reach of the Mississippi River from the outlet of the Metro wastewater treatment works in St. Paul (River Mile 835) to Lock and Dam No. 2 at Hastings (River Mile 815). For this reach of the Mississippi River the standard shall be not less than 5 milligrams per liter from April 1 through November 30, and not less than 4 milligrams per liter at other times.

*****See dissolved oxygen footnote for Class 2A waters.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

SUPREME COURT

Decisions Filed Friday, January 2, 1981

Compiled by John McCarthy, Clerk

50977/366 Arlene Lizotte, Gregory Paul Lizotte and David Michael Lizotte, minors, by Roger Lizotte, their natural uncle and guardian ad litem, Appellant, vs. Clay County ex rel. Clay County Department of Social Services, Paul Asplin, State of Minnesota, Commissioner of the Department of Public Welfare, Amicus Curiae. Clay County.

If the facts of this case do not present a justiciable issue, this court will not render an advisory opinion.

Affirmed. Todd, J.

Decision Filed Monday, January 5, 1981

51966/Sp. State of Minnesota, Appellant, vs. Harlan Edwin Schroeder, Jr. Wabasha County.

Pretrial appeal by state in criminal case from order dismissing prosecution for want of probable cause is dismissed as being from a nonappealable order; state's remedy is to reissue the complaint.

Appeal dismissed. Sheran, C. J.

Decision Filed Tuesday, January 6, 1981

51701/Sp. In the Matter of the Welfare of Tony Joe Jackson, a.k.a. Tony Joe Martin. Ramsey County.

Juvenile court did not clearly err in its findings or abuse its discretion in determining that public safety would be endangered by keeping appellant-juvenile in juvenile court system, and accordingly the juvenile court's decision to grant the motion pursuant to Minn. Stat. § 260.125 (1978) to refer juvenile for adult prosecution is affirmed.

Affirmed. Sheran, C. J.

Decisions Filed Friday, January 9, 1981

50884/347 Herdes Koons, as guardian of Stacy Koons, Appellant, vs. National Family Insurance Company, St. Paul Property and Liability Insurance Company. Mahnomen County.

Stacking of no-fault insurance benefits is not permitted when such benefits are provided by policies that are applicable on different levels of statutory priority.

Affirmed. Yetka, J. Took no part, Simonett, J.

51136/Sp. Dean Sprenger, et al., Appellants, vs. Sol J. Jacobs, et al. Hennepin County.

Dismissed. Amdahl, J.

50703/363 Kenneth E. Anacker and Janyce R. Anacker, husband and wife, et al, Appellants, vs. County of Cottonwood, et al. Cottonwood County.

A plan designed to equalize assessments of agricultural land across a county formulated by a county assessor primarily through a sales ratio study was not proven to violate Minn. Stat. § 273.11 (1980), the uniformity clause of the state constitution, or the equal protection clause of the federal constitution.

Affirmed. Simonett, J.

51388/Sp. City of Fergus Falls vs. Timothy Raymond Sporre, petitioner, Appellant. Otter Tail County.

Held, prosecution of defendant for careless driving was barred by the prohibition in Minn. Stat. § 609.035 (1978) against serialized prosecution of multiple offenses arising from a unitary course of conduct.

Reversed. Simonett, J.

50475/385 In the Matter of the Application for the Disbarment of Warren Henry Johnson, an Attorney at Law of the State of Minnesota. Supreme Court.

Order of Disbarment deferred conditionally. Per Curiam.

50493/Sp. Cynthia A. Conat, et al, vs. Leo J. Provost, Jr., Appellant, Raymond Lee Nelson. Koochiching County.

The provision of Minn. Stat. § 65B.51 (1978), which requires the deduction of future economic loss benefits from a tort recovery is unenforceable under *Haugen v. Town of Waltham*, 292 N.W. 2d 737 (Minn. 1980).

Affirmed in part, reversed in part. Scott, J.

50650/Sp. State of Minnesota vs. George G. Chamberlain, Appellant. Hennepin County.

Evidence of defendant's guilt of several sexual offenses against different victims was sufficient.

Trial court did not clearly abuse its discretion in denying motion to prohibit impeachment of defendant with a prior felony conviction if he testified.

Trial court did not err in denying motion by defendant to prohibit prosecutor from using four counts instead of two to allege commission of criminal sexual conduct third and fourth (penetration and contact) against same victim where there were alternative provisions and theories upon which the prosecutor properly intended to rely in proving both criminal sexual conduct third and fourth.

Defendant convicted of two counts of criminal sexual conduct fourth for same criminal act is entitled to vacation of one of the two convictions.

Affirmed in part, vacated in part. Scott, J.

51402/Sp. Joyce Slater, Appellant, vs. Lowell Baker. Hennepin County.

Under Rule 801(d)(1)(B), Minn. R. Evid., we hold that the trial court erred in refusing to permit plaintiff to introduce the testimony of four witnesses who allegedly heard the plaintiff make prior consistent statements, when such testimony was offered to refute the defendant's claim that the plaintiff's testimony was a fabrication.

Reversed. Scott, J.

50865/Sp. State of Minnesota vs. George Michael Bazoff, Appellant. Anoka County.

Evidence of defendant's guilt was legally sufficient to sustain defendant's conviction of welfare fraud.

Defendant, by failing to object to trial court's cautionary instructions on other-crime evidence or a statement on the relevance of this evidence in the prosecutor's closing argument, is deemed to have forfeited his right to have the adequacy of the instructions or the propriety of the statement considered on appeal.

Affirmed. Wahl, J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Economic Security
Program and Management Support

Notice of Request for Proposals for Conducting Employer Seminars

Agency Name and Address

Minnesota Department of Economic Security, 390 North Robert Street, St. Paul, Minnesota 55101.

Contact Person

Richard Naymark, Public Information and Education, Minnesota Department of Economic Security, 390 North Robert Street, St. Paul, Minnesota 55101. Telephone 612/296-2369.

Complete Description of Project and Tasks

The vendor will be expected to plan, execute, and evaluate 14 outstate employer seminars, during which employers are encouraged to use services and hire job seekers from the Comprehensive Employment and Training Act. The vendor must have capabilities to: coordinate planning of each meeting, work with committees, arrange facilities, handle advertisement and

promotion, secure speakers, moderate the meetings, evaluate results, and prepare follow-up publicity. (Materials to be presented during the meetings already have been prepared.)

This Request for Proposal does not obligate the state to complete the project, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

Cost Estimate

$9,990 (including travel expenses)

Length of Contract

February 1, 1981, to September 30, 1981

Final Submission Date for Proposals

Detailed requests for proposal are available from the contact person. All proposals must be received by 4:30 p.m., January 30, 1981.

State Board of Investment

Notice of Request for Proposals for An Evaluation of the State Board's Investment Program and Recommendations for Future Investment Techniques

The State Board of Investment is requesting proposals from independent investment advisory firms for the purpose of selecting a consultant to analyze the nature and effectiveness of the investment management system relating to funds managed by the state (presently, approximately $4.3 billion) and to suggest ways in which future investment performance may be improved.

This procurement is undertaken by the state board pursuant to the provisions of Minnesota Statutes § 16.098. The state board shall select the consultant whose proposal and oral presentation, if requested, demonstrate clear capability to best fulfill the purposes of the RFP in a cost effective manner. The state board reserves the right to accept or reject proposals in whole or in part and to negotiate separately as necessary to serve the best interests of the state.

All interested vendors shall contact the person named below by letter or telephone to request a copy of the Request for Proposal.

Carolyn Peabody, Chairperson
SBI Evaluation Committee
Room 180, State Office Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-2309

All proposals must be submitted to the address listed below on or before 4:30 p.m., February 16, 1981. NO PROPOSALS RECEIVED AFTER THAT DATE WILL BE CONSIDERED.

Jonathan P. White, Executive Director
State Board of Investment
Room 105, MEA Building
55 Sherburne Avenue
Saint Paul, Minnesota 55155

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Administration Data Privacy Division

Notice of Approval of An Application for Temporary Classification for Statewide Applicability

The Commissioner of Administration hereby gives notice that on December 31, 1980, he approved, for the use of all clerks of court, sheriff's offices and local police departments in the State of Minnesota, a "confidential" classification for the following:

All government data on individuals which is collected, created, received or maintained pursuant to the Domestic Abuse Act (Minn. Stat. § 518B.01), until such time as a temporary court order made pursuant to subdivisions 5 or 7 of the Act is executed and/or served upon the data subject who is the respondent to the action.

The commissioner's ruling was in response to an application for temporary classification for this data which was submitted by the County of Anoka, Minnesota, and which the commissioner considered for statewide applicability under the authority vested in him by Minnesota Statutes, § 15.1642, as amended by Chapter 603, Laws of Minnesota, 1980.

This temporary classification is effective immediately. Therefore, this data must be administered as "confidential" data as of December 31, 1980. Pursuant to Minn. Stat. § 15.1642, subd. 3, this decision together with the complete record relating to the application has been submitted to the Attorney General for review as to form and legality.

This temporary classification will expire 18 months after the date of its approval, or upon statutory classification by the legislature, whichever is earlier. If the legislature has not acted to statutorily classify this data as private before this classification expires, the data must then be administered as public data. Questions on this matter may be directed to the Data Privacy Division, 200 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

Department of Commerce Insurance Division

Meeting Notices

Minnesota Comprehensive Health Association
Actuarial Committee
Tuesday, January 20, 1981
1:30 p.m.
NWNL Reinsurance Company
100 North 7 Street
Minneapolis, Minnesota, and

Board of Directors
Tuesday, January 27, 1981
11:00 a.m.
Northwestern National Life Insurance Company
20 Washington Avenue South
Minneapolis, Minnesota

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the office of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, Telephone (612)-296-2202.

Department of Corrections

Notice of Intent to Solicit Outside Opinion Regarding Repeal of 11 MCAR §§ 2.100-2.112 and Promulgation of Rules Governing Adult Detention Facilities and Juvenile Residential Facilities

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Minn. Stat. § 15.0412, Subd. 4, (1980), that the Minnesota Department of Corrections is considering repealing Minnesota Code of Agency Rules 2.100 through 2.112.

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Minn. Stat. § 15.0412, Subd. 6, (1980), that the Minnesota Department of Corrections is soliciting outside opinion relating to the adoption of rules for the operation and management of adult detention facilities in the State of Minnesota.

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Minn. Stat. § 15.0412, Subd. 6, (1980), that the Minnesota Department of Corrections is soliciting outside opinion on rules which would regulate the operation and management of juvenile residential facilities.

The Department of Corrections is seeking information and comments from all interested persons or groups concerning the project matter of these proposed rules. All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements should be addressed to:

John McLagan
Minnesota Department of Corrections
Suite 430, Metro Square Building
St. Paul, Minnesota 55101

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-6041, and in person at the above address.

All statements of information and comments must be received by February 10, 1981. Any materials submitted shall be reviewed and considered by the Department of Corrections during the preparation of the proposed rules. Any written material received by the agency shall become a part of the hearing record in the event rules governing these subjects are promulgated.

January 12, 1981

Jack G. Young
Commissioner of Corrections

Department of Education
Vocational-Technical Education Division

Notice of Hearing

This is to announce that a hearing will be held on Tuesday, February 10, 1981, at 9:00 a.m. in Room 716 of the Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101, on the recommended Fiscal Year 1981 area vocational-technical institute aid distribution levels pursuant to Minn. Stat. § 124.561, subd. 3.

Office of the Governor
Statewide Health Coordinating Council

Nominations Solicited

Notice is hereby given that nominations are being accepted by the Governor to fill expired terms of members on the Statewide Health Coordinating Council (SHCC). The council has been established and operates according to provisions of the National Health Planning and Resources Development Act, Minnesota Executive Order No. 79-26 and the SHCC Operating Procedures. The Governor appoints members to the SHCC.

The SHCC is composed of 35 members representing both consumers and providers of health care. A majority of the members must be consumers. Twenty-one of the council members are representatives of the state's seven health systems agencies (HSAs). Each HSA is represented by three members, two of whom are consumers of health care and one who is a provider of health care. Appointments to these positions are made by the Governor from nominees from each HSA.

There are 13 at-large members who are selected by the Governor to represent varied other interests in Minnesota. One represents the Veterans Administration facilities in the state.

This announcement is for at-large nominees to SHCC. The four vacancies are:

1. Ann Duff, City of Woodland, Consumer
2. Patricia O'Day, St. Paul, Consumer
3. John Milton, St. Paul, Consumer
4. Phillip Little, St. Paul, Provider

Application forms to make nominations for at-large vacancies on the SHCC may be obtained from the Governor's Office, 130 State Capitol, St. Paul, Minnesota 55155, (612) 296-4030. Application deadline is February 27, 1981.

Minnesota Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association, will hold a meeting on Friday, January 23, 1981, at 9 a.m. in the office of the association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

Department of Transportation

Petition of the City of St. Paul for A Variance from State Aid Standards for Bridge Width

Notice is hereby given that the City Council of the City of Saint Paul has made a written request to the Commissioner of Transportation for a variance from minimum design standards for bridge width along Forest Street between Bush Avenue and Wells Street over the Chicago Northwestern and Burlington Northern RRYS.

The request is for a variance from 14 MCAR § 1.5032, H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum roadway width of 32 feet instead of 46 feet and still maintain two parallel parking lanes and two traffic lanes.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the State Register, the variance can be granted only after a contested case hearing has been held on the request.

January 12, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of South St. Paul for A Variance from State Aid Standards for Parallel Parking

Notice is hereby given that the City Council of the City of South St. Paul has made a written request to the Commissioner of Transportation for a variance from minimum design standards for parallel parking along 3rd Avenue South between 3rd Street and 6th Street.

The request is for a variance from 14 MCAR § 1.5032, H.1.c., Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978) as amended, so as to permit a minimum roadway width of 36 feet with parallel parking permitted on both sides of the street instead of just one side of the street and still maintain two traffic lanes.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transporation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the State Register, the variance can be granted only after a contested case hearing has been held on the request.

January 12, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of Virginia for a Variance from State Aid Standards for Diagonal Parking

Notice is hereby given that the City Council of the City of Virginia has made a written request to the Commissioner of Transportation for a variance from minimum design standards for diagonal parking along Chestnut Street between 2nd Avenue and 6th Avenue West.

The request is for a variance from 14 MCAR § 1.5032, H.4.a., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 60 feet with diagonal parking permitted on both sides of the street and still maintain two traffic lanes.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the State Register, the variance can be granted only after a contested case hearing has been held on the request.

January 12, 1981.

Richard P. Braun
Commissioner of Transportation

Water Planning Board

Notice of Meeting

Notice is hereby given that the Water Planning Board will hold a meeting on Thursday, January 22, 1981 in Room D, Veterans Service Building, 20 W. 12th Street and Columbus Avenue, beginning at 9:30 a.m. An agenda for the meeting may be obtained one week prior to the meeting by contacting the undersigned at 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Thomas Kalitowski
Chairman

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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Attention of: _____

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

Minnesota Reports—Old editions available at $8.25 each plus tax. These are Supreme Court decisions. Recent volumes are available at the Supreme Court, Office of Court Administrator, 317E Capitol, St. Paul, MN 55155. Volumes available are 312 and previous numbers.

RECEIVED
APR 23 1981
ADMINISTRATIVE HEARINGS

RECEIVED
APR 23 1981
ADMINISTRATIVE HEARINGS

Agency Exh. No. 15
File No. CORR-81-003-JL (Post hearing)
Date 4-23-81

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA DEPARTMENT OF CORRECTIONS GOVERNING JUVENILE RESIDENTIAL FACILITIES.

CERTIFICATE

I hereby certify that the mailing list used for the above titled hearing constituted the accurate and complete list of persons, associations and other interested groups who, as of 9:00 a.m. this 20th day of March, 1981, have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with the Minnesota Department of Corrections for the purpose of receiving notice of the proposed adopted rules by the Department of Corrections.

Ruth A Kraemer

Date: 4/21/81

Agency Exh. No. 8
File No. CORR-81-003-JL
Date 4-21-81

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA DEPARTMENT OF CORRECTIONS GOVERNING JUVENILE RESIDENTIAL FACILITIES.

AFFIDAVIT OF MAILING

Brenda G. Stiles, being first duly sworn, deposes and says:

That on the 20th day of March, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, to all persons maintained on a list who have registered with the Department of Corrections for the purpose of receiving a notice of rule hearings.

Subscribed and sworn to before me on this 20th day of March, 1981.

Brenda G. Stiles

MARILYN HELMES
WASHINGTON COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES AUG. 23, 1986

Robert Buchanan, Group Pres.
Correctional Services Group
4149 Pennsylvania Ave. So.
Suite 3 South
Kansas City, MO 64111

Executive Secretary
MN Board of Pharmacy
717 Delaware St. SE,Room 351
Minneapolis, MN 55414

Virginia Watkins
MN Social Service Assoc.
P.O. Box 1348
Minnetonka, MN 55343

Bill Phillips
Phillips Legislative Service
459 Rice St.
St. Paul, MN 55103

Gene L. Johannes, Ex. Dir.
MN Chiropractic Assoc.
2353 Rice Street, Suite 170
St. Paul, MN 55113

Jean Moorhead
YWCA
1130 Nicollet Ave.
Minneapolis, MN 55403

Thomas M. Polt, Attorney
Polt Law Offices
McCarthy Bldg.
Eyota, MN 55934

Harriet Hartung, Ex. Sec.
MN Board of Psychology
717 Delaware St. SE,Room 343
Minneapolis, MN 55414

Erma Tiesberg
Government Relations Dept.
United Way of Mpls. Area
404 S. 8th St.
Minneapolis, MN 55404

Marylee Fithian, Ex. Dir.
Oden & Associates
905 Park Ave. So.
Minneapolis, Mn. 55404

M.S. Schumacher, News Asst.
Minneapolis Tribune
425 Portland Ave.
Minneapolis, MN 55488

Lou Miller, Director
Devel. Disab. Planning Off.
200 Capitol Square Bldg.
St. Paul, MN 55101

Roy O. Waters, MA, ACSW
NW Mental Health Center, Inc.
P.O. Box 603
Crookston, MN 56716

Bonnie Bannanno
Room 300
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St. Paul, MN 55104

Helen C. Tyler, Asst. Dir.
School Social Work Services
254 Upton Ave. So.
Minneapolis, MN 55405

Susan P. Robertson. Exec.Dir.
Room 430
State Office Building
St. Paul, MN 55155

Cristine Boswell/Sharon
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Minneapolis, MN 55404

Bruce Rowe, Administrator
Community Health Services Bd.
325 Lake Ave. So.,Suite 604
Duluth, MN 55802

Charles Schaffer
MN Dept. of Economic Dev.
Hanover Bldg.
St. Paul, MN 55101

Richard C. Buske
MN Dept. of Economic Dev.
Hanover Bldg.
St. Paul, MN 55101

Kent E. Eklund
MN Dept. of Economic Dev.
Hanover Bldg.
St. Paul, MN 55101

Bernice Fields
Ombudsman for Corrections
Room 101, Nalpak Bldg.
St. Paul, MN 55101

James Shipman, Exec. Dir.
Assn. of Minnesota Counties
2305 Ford Parkway
St. Paul, MN 55116

Judith M. Anderson
Comm. Health & Soc. Srv. Dept
4th Floor, Courthouse
Anoka, MN 55303

Janice M. Devens, Director
Human Service Agency
Wright County Courthouse
Buffalo, MN 55313

Beverly Balos
Director of Advocacy
414 S. 8th Street
Minneapolis, MN 55404

Peter S. Popovich
Professional Assoc.
314 Minnesota Bldg.
St. Paul, MN 55101

Margaret Sandberg
Office of Community Devel.
MN Dept. of Health
717 Delaware St. SE
Minneapolis, MN 55440

James Baxter, Coor. Mgmt.
Mpls. & Hennepin County
Mental Health Clinic
619 S. 5th St.
Minneapolis, MN 55415

William Gatten
2608 - 17th Ave. So.
Minneapolis, MN 55407

Edward Clark, #26043
Box 55
Stillwater, MN 55082

Lynn R. Gruber, Director
Dept. of Medical Serv. & Res
MN Medical Association
Suite 400, 2221 Univer. Av.
Minneapolis, MN 55414

Gil Wilkins
Region 10 Develop. Commissio
301 Marquette Bank
Rochester, MN 55901

Government Center Library
C-2359 Government Center
300 South 6th Street
Minneapolis, MN 55487
c/o Julie Setnosky

John L. Doman, Director
St. Cloud Children's Home
1726 - 7th Ave. So.
St. Cloud, MN 56301

Kristin Larson
2215 W. 21st St.
Minneapolis, MN 55405

Robert Gibbs
8307 W. 31st St., #212
St. Louis Park, MN 55426

Allyson Ashley, ACSW
Executive Director
Southwestern Mental Health Ctr.
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Regina Larson
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St. Paul, MN 55104

Miller A. Friesen, Director
Range Mental Health Center
624 S. 13th St.
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Alan Ingram, Executive Director
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Minnesota Chapter
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St. Paul, MN 55102

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St. Paul, MN 55102

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Minneapolis, MN 55405

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Lorraine De Millo
1414 13th Ave. E.
Hibbing, MN 55746

Minnesota Prisoner's Union
Ramer Bldg.
111 Franklin Ave. E.
Minneapolis, MN 55404

ADVISORY TASK FORCE MEMBERS

Mrs. Diane Ahrens
Ramsey County Commissioner
Room 316, City Hall
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St. Paul, MN 55102

Lee Blenkush
Port of Olmsted
2112 E. Center St.
Rochester, MN 55901

James Brown
Bremer House
855 W. Seventh
St. Paul, MN 55102

Major David Chase
Harborlight
706 1st Ave. N.
Minneapolis, MN 55403

Richard DeBeau-Melting
MN Sheriff's Boys Ranches
Rt. 1, Box 297
Isanti, MN 55040

Burt Galaway
School of Social Development
University of Minnesota
Duluth, MN 55812

Honorable Judge Lorette
Stearns County Courthouse
St. Cloud, MN 56301

William Nelson, Director
Volunteers of America
2825 E. Lake St.
Minneapolis, MN 55406

Chris Peterson
Ramsey County Juvenile Center
480 St. Peter St.
St. Paul, MN 55102

Mrs. Carole Smith
MCA Executive Secretary
784 Kenwood Lane
St. Paul, MN 55117

Wayne Wendel
Community Corrections
210 S. 2nd Ave.
Long Prairie, MN 56347

JUVENILE RESIDENTIAL SUB-TASK FORCE MEMBERS

Jerry O'Rourke, Supt.
State Training School
Box 45
Red Wing, MN 55066

Walt Odegaard, Supt.
Thistledew Camp
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Togo, MN 55788

Jerry Soma, Director
Anoka County Juvenile Center
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Circle Pines, MN 55014

Reis Hall, Director
NW Reg. Juvenile Training Center
"B" Wing - Birch Hall
Bemidji State College
Bemidji, MN 56601

Gary Dosser, Director
Arrowhead Regional Juvenile Ctr.
1918 Arlington Ave.
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Paul Engebretson, Director
W Central Reg. Juv. Detenion Ctr
Clay County Law Enf. Center
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Dennis Hanson, Director
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Markville, MN 55048

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MN Sheriff's Girls Villa
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Austin MN 55912

Harvey Akerson, Supt.
Minnesota Home School
Boc C
Sauk Centre, MN 56378

COMMISSIONER'S CABINET

Jack G. Young, Commissioner
MN Department of Corrections
430 Metro Square Bldg.
St. Paul, MN 55101

Bruce McManus, Asst. Commissic
MN Department of Corrections
430 Metro Square Bldg.
St. Paul, MN 55101

Donald Tomsche, Assistant
to the Commissioner
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Orville Pung
Deputy Commissioner
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MN Department of Corrections
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Dan O'Brian, Director
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STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA DEPARTMENT OF CORRECTIONS GOVERNING JUVENILE RESIDENTIAL FACILITIES.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the State Capitol, Room 123, St. Paul, Minnesota, 55155, on April 21, 1981 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All representatives of associations or other interested groups and all interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules, captioned above, by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted by mail without personally appearing at the hearing to Peter Erickson, Examiner at Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, telephone 612/296-8118. It is requested that at least three (3) copies be furnished. In addition, it is suggested to save time and avoid duplication, that those persons, organizations or associations having common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered with and become a part of the record. The conduct of the hearing will be governed by Minn. Stat. §§ 15.0411 -- 15.0417 and 15.052 and by 9 MCAR §§ 2.101 -- 2.113. All statements and questions about procedures may be directed to the Hearing Examiner.

Written material may be submitted and recorded in the hearing record for five (5) working days after the public hearing ends, or for a longer period not

to exceed twenty (20) calendar days if ordered by the Hearing Examiner.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notifications by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Minn. Stat. § 241.021 (1976), as amended by Laws of 1978, ch. 778, effective September 1, 1979, provides that the Commissioner of Corrections shall promulgate rules establishing minimum standards for 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 the law except to the extent that they are inspected or licensed by other State regulating agencies. The rules which follow are intended to fulfill that requirement for all juvenile residential facilities. The purpose of these standards is to facilitate the implementation of rules in accordance with Minn. Stat. § 241.021,

and to provide a framework for inspection and licensing of juvenile residential facilities.

Under Minn. Stat. § 10A.01, Subd. 11, as amended by Laws of Minnesota 1978, ch. 463, § 11, a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute:

"Lobbyist" means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials.

"Lobbyist" does not include any:

(a) Public official or employee of the State or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a State board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which

he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding his how travel expenses in any year in communicating with public officials.

Questions regarding only lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, 435 Park Street, St. Paul, Minnesota, 55155, telephone 612/296-5615.

Commissioner of Corrections

Date: March 2, 1981

STATE OF MINNESOTA

DEPARTMENT OF CORRECTIONS

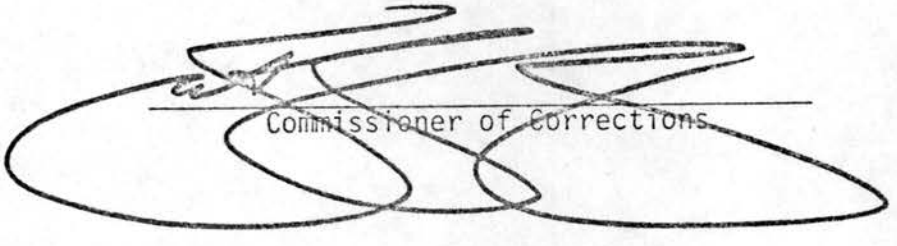
IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA DEPARTMENT OF CORRECTIONS GOVERNING JUVENILE RESIDENTIAL FACILITIES.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the State Capitol, Room 123, St. Paul, Minnesota, 55155, on April 21, 1981 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Department of Corrections for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.



Commissioner of Corrections

Date: March 2, 1981

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STATE REGISTER

STATE OF MINNESOTA

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Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
38	Monday Mar 9	Monday Mar 16	Monday Mar 23
39	Monday Mar 16	Monday Mar 23	Monday Mar 30
40	Monday Mar 23	Monday Mar 30	Monday Apr 6
41	Monday Mar 30	Monday Apr 6	Monday Apr 13

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

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EXECUTIVE ORDERS

Executive Order No. 81-1

Providing for the Delegation of Authority and Assignment of Duties to the Department of Economic Development

I, ALBERT H. QUIE, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

WHEREAS, it is the policy of the state to promote conditions under which communities and their locally elected government officials can fully develop, and conserve, their physical, economic and human resources; and

WHEREAS, it is the policy of the state to provide for a system of responsible and efficient local governance; and

WHEREAS, it is in the best interest of the state and its local citizens for there to be an agency of state government which can serve to facilitate more effective cooperation between the business community and local governments in all matters of economic development, community development, and state-local intergovernmental relations; and

WHEREAS, a merger of the program and activities of the Office of Local and Urban Affairs and the programs and activities of the Department of Economic Development would serve to achieve more effective and efficient cooperation between the state and its communities and local governments; and

WHEREAS, the reorganized Department of Economic Development will coordinate state-local relations, monitor and analyze the impact of state programs and policies on communities and local governments, and assist communities to identify and achieve the community and economic development objectives; and

WHEREAS, various federal statutes and rules provide to the Governor the opportunity to assign certain functions to a state department or agency; and

WHEREAS, the proper administration of the federal Land and Water Conservation Fund Act of 1965 (P.L. 88-578) requires the assignment of specific duties to various state agencies.

NOW, THEREFORE, I Order:

1. That pursuant to U.S. Office of Management and Budget Circular A-95 and U.S.

Department of Treasury Circular 1082, the Department of Economic Development is designated as the agency responsible for administering the *State Clearinghouse* and the *State Information Reception Agency*. The Department of Economic Development shall enter into an agreement with the State Planning Agency for review and comment of federal grant applications by state agencies and state plans.

2. That pursuant to P.L. 93-423, as amended, the Public Works and Economic Development Act of 1965, Section 302(a), the Department of Economic Development is designated as the agency to conduct a program of state economic development planning.

3. That pursuant to Section 701 of the Housing Act of 1954, as amended, the Department of Economic Development is designated as the agency to receive funds and to use these funds to conduct eligible planning activities and to make grants from these funds to units of local government, regional development commissions and the Metropolitan Council.

4. That pursuant to Title I, Section 107(a) of the Housing and Community Development Act of 1977, the Department of Economic Development is designated as the agency to conduct a program of technical assistance to units of local government.

5. That pursuant to P.L. 92-419, Section 306(a)(11), the Department of Economic Development in cooperation with the Governor's Rural Development Council is designated as the agency to conduct a program of rural development planning.

6. That the power in Minn. Laws of 1965, ch. 810, § 21, subd. 4, for the administration of the portion of the funds available from the federal Land and Water Conservation Fund Act of 1965 (P.L. 88-578) made available to local units of government are hereby assigned to the Department of Economic Development and that department shall have the following responsibilities thereunder:

a. Approval of all project proposals, project agreements, billings, final progress reports and correspondence pertinent to local units of government; provided, the Department of Natural Resources is furnished a copy of all approved project agreements.

b. The maintenance of project records including fiscal records for local units of government projects.

c. Final and compliance inspections and audits of local units of government on all projects.

d. Establishment of rules, regulations and procedures pertinent to administering the fund to local units of government subject to the approval of the State Liaison Officer.

7. That duties of the Office of Local and Urban Affairs and the State Planning Agency set forth in Minn. Stat. § 4.11, subd. 7; § 4.12, subds. 2(6), (8), as they relate to local levels of government; subds. 3, 4, 5; § 4.16, subds. 4, 5 (1980), are hereby transferred to the Department of Economic Development.

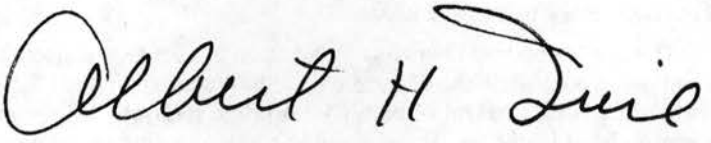
8. That the Commissioner of the Department of Economic Development is delegated such authority under Minn. Stat. § 4.13 (1980) as necessary to carry out duties and responsibilities hereby delegated to the Department of Economic Development.

9. To the extent inconsistent herewith, prior Executive Orders pertaining to the duties and responsibilities of the Office of Local and Urban Affairs, State Planning Agency, and Department of Economic Development are hereby rescinded.

Pursuant to Minn. Stat. § 4.035 (1980), this order shall become effective fifteen (15) days after its publication in the *State Register* and filing with the Secretary of State and shall remain

in effect until it is rescinded by proper authority or it expires in accordance with Minn. Stat. § 4.035 (1980).

IN TESTIMONY WHEREOF, I have hereunto set my hand this 19th day of February, 1981.



PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Economic Security

Proposed Amendments to Rule Governing the Minnesota Youth Employment Act

Notice of Intent to Amend Rules without A Public Hearing

The Minnesota Department of Economic Security hereby gives notice that it intends to adopt certain changes in the rule governing procedures under the Minnesota Youth Employment Act, Minnesota Statutes §§ 268.34-268.36. The department has determined that these changes will be non-controversial and has chosen to proceed without a public hearing pursuant to the provisions of Minnesota Statutes § 15.0412, subdivision 4(h). However, should seven or more persons submit a written request for a public hearing in the manner set forth below, the department will hold a public hearing on its proposed changes. Written requests for a public hearing must be submitted to Lawrence W. Cheetham, State Youth Services Supervisor, Minnesota Department of Economic Security, Room 528, 390 North Robert Street, Saint Paul, Minnesota 55101, within thirty (30) days of the date of publication in the *State Register*.

The proposed changes to the rule clarify the criteria for participation in the Section E(1) Regular Program and Section E(2) Postsecondary Program. The clarified criteria of economically disadvantaged is more precise and definitive than the current poverty guideline and further conforms with the Federal Comprehensive Employment and Training Act. This will result in a more efficient administration of the Act by program operators.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The second proposed change in the rule is a change in the language to determine certification for the postsecondary part of the program (Section E (2)). The current rule specifies certification for the postsecondary portion of the program as individuals who are at least 18 years of age and who are certified by the department as intending to enroll or are enrolled in a postsecondary institution. The proposed change adds to that definition "or a high school graduate." This change would allow high school graduates under 18 years of age who are intending to enroll in a postsecondary educational institution to participate in the postsecondary part of the program.

The third proposed change is an addition to part G. (reallocation procedures). The addition would be known as G.3. This addition would allow the department to shift funds from one CETA prime sponsor to another during the course of the program with the mutual consent of both CETA prime sponsors. The proposed addition would allow a more efficient use of the funds appropriated under the Act and would result in an increased number of youth obtaining employment.

Amendments as Proposed

8 MCAR § 4.0010 Summer Youth Employment.

A. Purpose. This rule adopted pursuant to Laws of 1977, ch. 254, § 3, is designed to establish a procedure for the allocation of funds under the Youth Employment Act of 1977, Laws of 1977, ch. 254, and to establish contracting, operating, and invoicing procedures to be utilized in the expenditure of said funds.

B. Definition of terms. The following terms used in this rule shall have the meaning given them:

1. "Act" means the Youth Employment Act of 1977, Laws of 1977, ch. 254.

2. "Commissioner" means the Commissioner of the Minnesota Department of Economic Security.

3. "Contract" means an agreement entered into between a prime sponsor or a political subdivision or a nonprofit organization and the commissioner for the operation of a youth employment program under the Act.

4. "Department" means the Minnesota Department of Economic Security.

5. "Prime sponsor" means a unit of government, combination of units of government, a rural concentrated employment grantee, or an Indian reservation, which has entered into a grant with the United States Department of Labor to provide comprehensive manpower services under the Federal Comprehensive Employment and Training Act of 1973. (P.L. 93-203)

6. "Program employer" means an organization which employs a person or persons under the program established by the Act.

7. "Subcontract" means an agreement entered into between a prime sponsor and a political subdivision and/or nonprofit organization for the operation of a youth employment program under the Act.

C. Allocation of funds. The commissioner shall allocate funds available under the Act as follows:

1. Allocations to counties.

a. Fifty percent (50.0%) of the funds available under the Act, shall be allocated to counties on the basis of each county's share of the estimated youth population of the state which is 14 through 21 years of age.

b. Fifty percent (50.0%) of the funds available under the Act, shall be allocated to counties according to each county's share of the estimated youth population of the state which is 14 through 21 years of age, adjusted for:

(1) Historic summer unemployment rates in the county as evidenced by official labor force estimates for the months of June, July and August for the most recent three-year period for which such data is available.

(2) The county's proportion of families below the poverty level as evidenced by 1970 U. S. Census figures as adjusted by reference to more recent population surveys, provided that such reference to more recent population surveys shall be made only if such data is available for all counties in the state.

(3) Estimates of postsecondary school enrollment in the county as evidenced by validated statistics from the Minnesota Higher Education Coordinating Board or, in their absence, by the most recent U. S. Census data.

c. The method of allocation to counties expressed mathematically shall be as follows:

$$A_{ci} = \frac{0.5(YP_{ci})}{YPs} + \frac{0.5F(YPA_{ci})\quad (U_{ci})\ (P_{ci})}{\sum_{i=1}^{n} (YPA_{ci})\quad (U_{ci})\ (P_{ci})}$$

where: 1. A_{ci} = allocation to the ith county

2. F. = funds available under the Act

3. YP_{ci} = youth population 14 through 21 years of age in the ith county, determined by interpolation for the current year from projections of the state demographer

4. PYs = same as 3, above for the state

5. YPA_{ci} = youth population as in 3, above, but adjusted for postsecondary school enrollment as referenced in 8 MCAR § C.1.b.(3)

6. U_{ci} = most recent three year average of official labor force unemployment rates for the months of June, July, and August for the ith county

7. P_{ci} = percent of all families with income below the poverty level in the ith county as evidenced by the 1970 Census or more recent population surveys as referenced in 8 MCAR § C.1.b.(2)

2. Allocation to cities and Indian reservations. After the commissioner has made an allocation to each county, each county's allocation shall be divided as follows:

a. Each city within the county which has a total population of 2,500 or more shall receive that portion of the county's allocation which is proportionate to the population of the city as compared to the total population of the county as evidenced by the most recent U. S. Bureau of Census estimates. Each Indian reservation within the county shall receive that portion of the county's allocation which is proportionate to the population of the Indian reservation as compared to the total population of the county as evidenced by 1970 U. S. Census figures.

b. The remainder of the county allocation, that part which is not allocated to cities and Indian reservations under 8 MCAR § 4.0010 C.2.a., shall be allocated to the county as a whole.

D. Contracting procedures. Each prime sponsor will be offered a contract for the amount of funds allocated to its area. Upon the offer of a contract, each prime sponsor may exercise the following options:

1. Sign the contract for the entire amount of the allocation and directly administer the program.

2. Sign the contract for the entire amount of the allocation and subcontract the operation of the program to political subdivisions and/or nonprofit organizations within the prime sponsor's jurisdiction.

3. Designate all or a part of the allocation to be directly used by a state agency, political subdivision or a nonprofit organization.

4. Decline the offer of the contract. In such a case, the commissioner shall offer to contract directly with the cities, Indian reservations and counties in the prime sponsor's area.

E. Operations procedures.

1. Regular program. Youth who are at least 14 years of age but less than 22 years of age at the time they are to begin employment under the program established by the Act are eligible for program employment. Approximately fifty percent of the youth hired should be from families ~~whose annual incomes~~ which meet ~~do not exceed~~ the ~~poverty guidelines~~ criteria for economically disadvantaged as established by the Employment and Training Administration of the U.S. Department of Labor. However, in the event there are insufficient eligible youth from economically disadvantaged families ~~below the poverty level~~ available for employment to meet this goal within an area under the jurisdiction of a prime sponsor which has received an allocation under 8 MCAR § 4.0010 C., and the prime sponsor certifies such insufficiency to the department and the department concurs, such ~~poverty level~~ criteria shall be waived with respect to the funds allocated to such area. Hreinafter, this portion of the program is referred to as the "regular program."

2. Postsecondary program. Notwithstanding 8 MCAR § 4.0010 E.1., at least 33-1/3 percent of the funds allocated to the prime sponsor area are to be used to hire youth who are at least 18 years of age, or a high school graduate, but less than 22 years of age who are certified by the department as intending to enroll or are enrolled in a postsecondary educational institution. Approximately fifty percent of the youth hired should be from families ~~whose annual incomes~~ which meet ~~do not exceed~~ the ~~poverty guidelines~~ criteria for economically disadvantaged as established by the Employment and Training Administration of the U. S. Department of Labor. However, in the event there are insufficient eligible youth from economically disadvantaged families ~~below the poverty level~~ available for employment to meet this goal within

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

an area under the jurisdiction of a prime sponsor which has received an allocation under 8 MCAR § 4.0010 C., and the prime sponsor certifies such insufficiency to the department and the department concurs, such ~~poverty level~~ criteria shall be waived with respect to the funds allocated to such area. Hereinafter, this portion of the program is referred to as the "postsecondary program." A partial waiver from this part may be obtained in accordance with the procedures set forth in 8 MCAR § 4.0010 G.

3. To obtain eligible youth, program employers must place a job order with the department and may employ only those youth referred by the department.

4. Eligible youth (not designated as supervisors) shall be paid the federal minimum wage for a period not to exceed 40 hours per calendar week and for not more than 12 weeks.

5. Program employers, at their discretion, may designate one eligible youth as supervisor for every ten youth in its employ under the Act. Program employers who employ at least five but less than ten youth may designate one youth as a supervisor. Youth designated as supervisors shall be paid the Federal minimum wage plus twenty-five cents (25¢) per hour for up to 40 hours per week for a period not exceeding 12 weeks.

6. Upon signing a contract or subcontract program employers may begin employing eligible youth referred by the department; however, no youth may be employed while attending school as a full-time student. No youth may be employed beyond September 30th of each calendar year.

F. Invoicing. The department shall reimburse contractors for wages paid to eligible youth, employer's contributions to FICA paid in behalf of such youth and Workers' Compensation insurance costs for such youth. Invoices and specific procedures for reimbursement will be furnished to program employers by the department.

G. Reallocation procedures.

1. Funds may be reallocated within a county or between a county and a city or between counties under the following circumstances:

a. The city or county originally allocated the funds according to the formula in 8 MCAR § 4.0010 C. refuses the funds.

b. The city or county originally allocated the funds gives its permission for those funds to be used in another city or county.

c. The prime sponsors may reallocate up to the equivalent of one full-time slot or position not to exceed $1,000 between any subdivision above for the purpose of simplified administration of the program.

2. Prime sponsors may shift funds from the postsecondary portion of their program to the regular portion of their program provided that they certify in writing to the Department that they are unable to obtain sufficient youth who meet the criteria set forth in 8 MCAR § 4.0010 F.e.2., and the department concurs.

3. During the period of the contract, the department may shift funds from one prime sponsor to another prime sponsor with the mutual consent of both prime sponsors if the prime sponsor releasing the funds certifies that such funds are surplus and unlikely to be used within his area by the end of the contract period and the prime sponsor receiving the funds certifies such funds are likely to be used before the end of the contract period.

Department of Corrections

Proposed Rules Governing Juvenile Residential Facilities

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Capitol, Room 123, St. Paul, Minnesota, 55155, on April 21, 1981 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All representatives of associations or other interested groups and all interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules, captioned above, by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted by mail without personally appearing at the hearing to Peter Erickson, Examiner at Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, telephone (612) 296-8118. It is requested that at least three (3) copies be furnished. In addition, it is suggested to save time and avoid duplication, that those persons,

organizations or associations having common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered with and become a part of the record. The conduct of the hearing will be governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.113. All statements and questions about procedures may be directed to the hearing examiner.

Written material may be submitted and recorded in the hearing record for five (5) working days after the public hearing ends, or for a longer period not to exceed twenty (20) calendar days if ordered by the Hearing Examiner.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notifications by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Minn. Stat. § 241.021 (1976), as amended by Laws of 1978, ch. 778, effective September 1, 1979, provides that the Commissioner of Corrections shall promulgate rules establishing minimum standards for 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 the law except to the extent that they are inspected or licensed by other State regulating agencies. The rules which follow are intended to fulfill that requirement for all juvenile residential facilities. The purpose of these standards is to facilitate the implementation of rules in accordance with Minn. Stat. § 241.021, and to provide a framework for inspection and licensing of juvenile residential facilities.

Under Minn. Stat. § 10A.01, subd. 11, as amended by Laws of Minnesota 1978, ch. 463, § 11, a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute:

"Lobbyist" means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials.

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding his own travel expenses in any year in communicating with public officials.

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Questions regarding only lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, 435 Park Street, St. Paul, Minnesota, 55155, telephone 612/296-5615.

March 2, 1981

Jack G. Young
Commissioner of Corrections

Rules as Proposed (all new material)

11 MCAR § 2.551 Introduction.

A. Section 1, Minn. Stat. § 241.021, subd. 1, as amended by Laws of 1978, ch. 778 provides that the Commissioner of Corrections promulgate rules establishing minimum standards for all correctional facilities throughout the state whether public or private, established and operated for the detention and confinement of a person detained or confined therein according to law except to the extent that they are inspected or licensed by other state regulating agencies. The rules which follow are minimum requirements for juvenile residential facilities.

B. Annual inspections. Juvenile residential facilities required to be licensed by Minn. Stat. § 241.021 will be inspected annually.

C. Revocation of license for non-conformance. Revocation of license proceedings shall be done in accordance with Minn. Stat. § 241.021, 1, (4).

D. Conditional license. The commissioner shall issue a conditional license for a period of one (1) year. The conditional license shall describe those conditions needed to achieve substantial compliance.

E. Intended use. A facility shall be used only for the classification for which it is licensed.

F. Posted license. The license(s) of each juvenile residential facility shall be conspicuously posted in an area where residents are admitted to the facility.

G. Severability. If any article, section, subsection, sentence, clause or phrase of these standards is for any reason held to be unconstitutional, contrary to statute, exceeding the authority of the Department of Corrections, or otherwise inoperative, such decision shall not affect the validity of the remaining portion of these rules.

11 MCAR § 2.554 Variance.

A. Variance of specific rule. The granting of a variance under this section shall not constitute a precedent for any other juvenile residential facility. The commissioner shall grant a variance if, in the licensing procedure or enforcement of the standards, the commissioner finds that:

1. To require a particular juvenile residential facility to comply strictly with one or more of the provisions will result in undue hardship;

2. The juvenile residential facility is otherwise in compliance with said standards and their general purpose and intent.

B. Emergency suspensions of rules. Nothing contained herein shall be construed to deny the power of any facility administrator to temporarily suspend any rule in the event of an emergency.

1. Only rules directly affected by the emergency shall be suspended.

2. The facility administrator shall notify the Department of Corrections in writing within seventy-two (72) hours of a suspension of any rule.

3. No suspension shall exceed seven (7) days without the approval of the Commissioner of Corrections.

11 MCAR § 2.559 Juvenile residential facility definitions.

A. "Administrative segregation" shall mean the status of physical separation of those juveniles who are determined to be prone to escape, prone to be assaultive or need protection from other juveniles.

B. "Approved capacity" shall mean the number of residents or occupants for which any room, unit, building, facility or combination thereof, was planned, designed and approved in compliance with these standards.

C. "Average daily population" shall mean the average number of residents (juveniles) residing daily during the last calendar year.

D. "Child care worker" shall mean those staff with whose primary duties are the day-to-day ongoing supervision of residents.

E. "Commissioner" shall mean the Commissioner of the Minnesota Department of Corrections.

F. "Controlled substance" shall mean a drug, substance or immediate precussor in Schedules I through V of Minn. Stat. § 152.02, ch. 152. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquor or tobacco.

G. "Department of Corrections" or "department" as used in these standards shall mean the Minnesota Department of Corrections.

H. "Disciplinary segregation" or "room restriction" shall mean that status assigned a juvenile as a consequence or means of control resulting from a violation of facility rules or statutes. Such status shall consist of confinement in a room or housing unit separate from others who are not on disciplinary segregation status.

I. "Emergency" shall mean any significant incident or disruption of normal facility procedures, policies, routines or activities such as fire, riot, natural disaster, suicide, or assault on staff.

J. "Facility administrator" shall mean the chief executive officer, superintendent, director or other individual who has been assigned, designated or delegated full time responsibility and authority for the administration and operation of a juvenile residential facility.

K. "Governing authority" shall mean the political body, political subdivision or the board of directors of a corporation.

L. "Inspection" shall mean an on-site assessment of existing conditions and their relationship to eeting rules.

M. "Juvenile residential facility" shall mean any private, city, county, city and county, or multiple county juvenile residential facility which constitutes a dispositional alternative available to the juvenile court under the provisions of Minn. Stat. § 260.185 having a residential component with the exception of group foster homes as defined in Department of Corrections rule 11 MCAR § 2.445 G.

N. "Legend drug" shall mean a drug which is required by federal law to bear the following statement: "Caution: Federal law prohibits dispensing without prescription."

O. "Medicine" shall mean any remedial agent that has the property of curing, preventing, treating or mitigating diseases, or that is used for that purpose. For the purpose of these rules, medicine shall include legend and non-legend drugs.

P. "Policy" shall mean a written statement declaring mission, purpose, and ideological position.

Q. "Procedure" shall mean a statement establishing the action plan to accomplish policy.

R. "Resident" shall mean any individual confined and residing in the juvenile residential facility.

S. "Substantially conform" shall mean a compliance rating of 100% on items labeled mandatory and a rating of 70% compliance on all other items in this rule.

T. "Variance" shall mean the waiver of a specific rule for a specific period of time.

11 MCAR § 2.567 Personnel.

A. Staff health. All personnel shall be screened for tuberculosis prior to employment. Such tests shall be of either the tuberculin skin test or the chest roentgenogram (x-ray). If a skin test is positive, a chest roentgenogram (x-ray) shall be required. Additional testing shall be required upon known exposure to tuberculosis. (Mandatory)

B. Recruitment.

1. The selection, appointment and promotion of facility personnel shall be based on assessed ability.

2. All child care workers shall be a minimum of 18 (eighteen) years of age.

3. Recruitment standards shall be reasonable and geared to reach the widest possible work force. They shall set forth the basic requirements of age, ability, preparatory experience, and physical condition.

4. A criminal record check shall be conducted on all new employees prior to employment. (Mandatory)

C. Employee evaluation. Each employee shall complete a probationary period and be evaluated during the probationary period before being permanently appointed. The evaluation shall be in writing, discussed with the employee and made a part of the employee's personnel record.

D. Staffing requirements.

1. Staffing plan. The facility administrator shall prepare and retain a staffing plan indicating the personnel assignments and duties.

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2. Minimum staff requirements.

a. Facility administrator. There shall be a single administrator or chief executive of each facility.

b. Person in charge. In the absence of the facility administrator, a staff person shall be designated as person in charge.

c. Staff presence. No person shall be housed in the facility without a staff person on duty, awake and alert at all times, and capable of responding to reasonable needs of residents. (Mandatory)

d. Sex of staff. Staff members shall not be placed in positions of responsibility for the supervision and welfare of residents of the opposite sex in circumstances that can be described as invasion of privacy, degrading or humiliating to the resident.

e. Back-up staff. Where staff of one sex are used as program resource with residents of the opposite sex, staff of the residents' same sex must be on duty, awake and alert in the facility.

f. Relief staff. Personnel shall perform ancillary functions such as transportation or court escort to the extent that security, supervision, program, and facility administration are not jeopardized by such activities.

g. Training for relief staff. Part-time and relief staff shall complete orientation training appropriate to assigned responsibilities. Such orientation shall be documented.

h. Child care workers, educational/vocational, social service and recreation staff ratio to residents shall be as follows:

(1) During waking hours, the ratio of staff to residents shall be one (1) staff to ten (10) residents. Staff who are not involved with the youth in direct service shall not be considered in this ratio. (Mandatory)

(2) During non-waking hours of youth, a combination of staff resources and physical plant resources shall provide a procedure for reporting incidents. This shall include a staff person present, awake and alert during these times. (Mandatory)

i. Educational/vocational staff and program shall be provided consistent with Minnesota Department of Education Rules 5 MCAR §§ 1.0120-1.0129. (Mandatory)

j. Recreation staff. Each facility shall have a minimum of one (1) staff person designated to develop, implement and coordinate recreational programs for the residents and act as a liaison between the facility and the community. Such person shall have training and/or experience appropriate to required responsibilities.

k. Volunteer coordinator.

(1) The facility administrator shall designate a person to coordinate volunteer services if volunteers are utilized by the facility.

(2) There shall be a system for registration and identification of volunteers.

(3) Volunteers shall agree in writing to abide by facility policies.

(4) Written policies shall specify that volunteers perform professional services only when certified or licensed to do so by appropriate professional organizations.

(5) Written policies and procedures shall provide that the administrator curtails, postpones or discontinues the services of a volunteer or volunteer organization when there are substantial reasons for doing so.

1. Social service staff (case management personnel). A minimum of one (1) staff person for every twenty-five (25) residents shall be designated responsible for the coordination of resident program plans.

11 MCAR § 2.571 Staff training (pre-service and in-service).

A. Training plan.

1. The facility administrator shall develop an orientation training plan for new employees and volunteers and make provisions for on-going in-service training of employees and volunteers.

2. Written in-service training plans shall be developed annually.

B. Pre-service orientation training.

1. Child care workers shall complete a minimum of forty (40) hours of pre-service orientation training prior to assuming full responsibility for supervising residents.

2. Written policies and procedures shall provide that full-time staff or volunteers who work in direct contact with residents shall receive a total of forty (40) additional hours of training during their first year of employment in the following areas:

a. Human relations and communication skills;

b. Crisis intervention;

c. Special needs of youth;

d. Problem-solving and guidance;

e. Facility's philosophy for handling troubled youth;

f. Resident rules and regulations;

g. Rights and responsibilities of residents;

h. Grievance and disciplinary procedures;

i. Security procedures;

j. Physical restraint procedures;

k. Supervision of residents;

l. Report writing;

m. Significant legal issues;

n. Interaction of elements of the juvenile justice system;

o. Relationships with other agencies;

p. Fire emergency procedures; and

q. First aid and life-sustaining functions.

C. In-service training. Child care workers, middle management and non-management professional personnel shall complete forty (40) hours of in-service training per year.

1. Management personnel and facility administrators shall complete forty (40) hours of training per year.

2. Personnel who work with residents, who are confined separately from the total population, shall receive specialized training in the problems people encounter who live in confinement.

3. Space and equipment required for training and staff development shall be provided.

11 MCAR § 2.575 Staff deployment, job description, work assignments, post orders, policies and procedures.

A. Job descriptions.

1. Each facility administrator shall develop written job descriptions for all position classifications and post assignments which define responsibilities, duties and qualifications.

2. The job descriptions shall be readily available to all employees with copies on file in the administrator's office.

B. Work assignments. Work assignments shall be consistent with qualifications as stated in job descriptions and the approved staffing plan of the facility.

C. Staff policies and procedures. The facility administrator shall develop written policies and procedures such as escape, fire, medical emergencies, admission, release, laundry, feeding, canteen, visiting, and security checks.

D. Policy and procedure manuals.

1. Policy manuals shall be available to all staff within the facility.

2. The policy and procedures manual shall be reviewed and updated annually.

E. Personnel policies. Written personnel policies shall be developed by the facility administrator and governing body which specify hours of work, vacations, illness, sick leave, holidays, retirement, employee health services, group insurance, evaluation procedures, promotions, personal hygiene practices, attire, conduct, and disciplinary actions, and shall be available to employees.

F. An affirmative action program shall be adopted by the facility's governing body and made a part of the policy manual. (Mandatory)

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G. The facility shall have a grievance procedure for employees.

H. The facility administrator shall develop a written plan for dissemination of information to the public, to government agencies, and to the media.

11 MCAR § 2.579 Records and reports.

A. Maintenance of records and reports. The following records, reports and statistics shall be maintained for a period of one (1) year following the last state inspection or longer if necessary to meet applicable statutory or local unit of government requirements:

1. Admission and release records; (Mandatory)
2. Resident personal property records;
3. Clothing, linen and laundry records;
4. Records of budget requests and work orders;
5. Special occurrence records;
6. Records of policies and procedures;
7. Employee personnel records;
8. Records of staff training;
9. Accounting records;
10. Food service records;
11. Daily log;
12. Programming records;
13. Medical and dental records; and
14. Disciplinary records.

B. Storage of records.

1. Space shall be provided for the safe storage of records.
2. Records shall be filed in an organized and retrievable manner.
3. Resident records shall be preserved as required by law.

C. Filing of records.

1. Records of released residents shall be filed in the facility for one (1) year following discharge.
2. Confidentiality of resident records and resident access to personal files shall be kept in conformity with state law. (Mandatory)
3. The contents of case records shall be organized according to an established format.
4. Case records shall be safeguarded from unauthorized and improper disclosure.

11 MCAR § 2.583 Resident welfare.

A. Facility program.

1. Program objectives. The facility administration shall prepare a written program description and a statement of objectives and goals.

2. Special staff assignment. Every client shall be assigned to a staff person to assure regular face to face contact. (Mandatory)

3. Social services. The facility administrator shall maintain a social service program, such as individual and group counseling, community services and family services. (Mandatory)

4. Counseling clients. Policies and procedures shall assure that a staff person is available to counsel clients upon request and during times of crisis.

5. Intake policies and procedures.

a. The facility shall have a written program description that describes the facility's goals and objectives, programs and services offered and the admission requirements.

b. Intake policies shall be organized in a form suitable for distribution to staff, residents, referral resources, funding agencies and the general public.

c. Intake form. The facility shall complete an intake form on each resident which shall include:

(1) Name;

(2) Address;

(3) Date of birth;

(4) Sex;

(5) Race or ethnic origin;

(6) Reason for referral;

(7) Whom to notify in case of emergency;

(8) Date information gathered;

(9) Name of referring agency or committing authority;

(10) Social history, where available;

(11) Special medical problems or needs;

(12) Personal physician, if applicable; and

(13) Legal status, including jurisdiction, length and conditions of placement.

B. Separation.

1. Separation of male and female juveniles shall provide complete separation of living and sanitation facilities. (Mandatory)

2. Facility administrators who schedule coeducational activities shall staff the activities consistent with personnel rules stated herein.

C. Information to residents.

1. Copies of rules shall be made available to all residents and include:

a. Rules governing conduct, disciplinary consequences and disciplinary procedures;

b. Procedures for obtaining personal hygiene and canteen items; and

c. Policies and procedures governing visiting, correspondence, bathing, laundry, clothing, bedding exchange and other operational procedures.

2. Each resident, within twenty-four (24) hours of admission (exclusive of weekends and holidays), shall be provided with a copy of the program information and activities available.

3. Rules as well as program information shall be read to those residents who are unable to read.

D. Individual program plan. A written program plan individualized for each resident shall be developed.

E. The resident's program plan shall be reviewed and revised as appropriate on a monthly basis or more often if appropriate.

F. Pre-release planning and follow-up programs shall be developed for each resident.

G. The facility program shall encourage and foster the development and use of community resources.

H. Individualized progress reports shall be made available to the parent or legal guardian upon request.

I. Written policies and procedures shall exist for resident grievances and appeal procedures.

J. Private facilities shall have written criteria defining the procedures for removal of a resident from the program.

K. Resident discipline.

1. Administrative segregation.

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a. The facility administrator shall develop and implement policies and procedures for administrative segregation.

b. Administrative segregation shall consist of separate and secure housing, but shall not involve any deprivation of amenities or privileges normally afforded other residents, except to the extent that the protection of the resident, staff or public justify the necessity of such deprivation.

c. Any resident placed on administrative segregation shall be reviewed by the facility administrator or a designee within eight (8) hours or whenever the original circumstances that placed him/her in such a status have been altered. Continuation or change of such status shall require documented approval of the facility plan or a designee.

2. Discipline plan. (Mandatory)

a. All facilities shall have a resident discipline plan, which explains the consequences or administrative sanctions for specific behaviors, omissions, the administrative process for handling major and minor violations and the right to internal review.

b. The facility plan shall include a system of due process which has been reviewed and approved by an appropriate legal advisor.

3. Disciplinary segregation (room restriction).

a. Disciplinary segregation shall be used only with due process procedures.

b. A resident placed in disciplinary segregation prior to a due process hearing shall have a due process hearing within twenty-four (24) hours of such segregation (exclusive of holidays and weekends) unless documented cause can be shown for delays. As examples:

(1) Resident request for delay;

(2) Logistically impossible as in the case of mass disturbances.

4. Other limitations on disciplinary actions.

a. Residents shall be issued clothing and bedding. Residents who persist in the destruction of bedding or clothing may be deprived of such articles. The decision to deprive residents of clothing and bedding shall be reviewed by the shift supervisor during each eight (8) hour period.

b. The delegation of authority to any resident or group of residents to exercise the right of punishment over any other resident or group of residents is prohibited.

c. No resident shall be deprived of the use of materials necessary to maintain an acceptable level of personal hygiene.

5. Policies and procedures shall govern the use of restraints.

a. Instruments of restraint shall not be used except:

(1) As a precaution against escape during a transfer;

(2) On medical grounds by direction of a consulting or attending physician or psychologist; or

(3) By order of the facility administrator or person in charge to prevent a resident from injuring self, others or damaging property.

b. Such instruments shall not be applied for any longer time than is necessary.

c. Each incident involving the use of restraints consistent with M.5.a.(2) or M.5.a.(3) shall be documented and placed on file.

d. Facility personnel authorized to use restraints shall receive training in the use of restraints. Evidence of such training shall be documented and on file.

N. Activities.

1. Each facility administrator shall develop and implement a written plan for the constructive scheduling of resident time. (Mandatory)

a. The facility administrator shall arrange with the clergy to conduct religious services and provide counseling if requested. (Mandatory)

b. No resident shall be required to attend religious services. (Mandatory)

c. Religious services shall be held in such a location that the residents who do not wish to participate do not have to. (Mandatory)

d. Any resident desiring to read the Bible or sacred book of another religion shall be provided a copy at the expense of the county. (Mandatory)

e. Attendance or lack of attendance at religious services shall not be considered a basis for any right or privilege within the facility. (Mandatory)

2. The facility administrator shall develop and implement a plan for library service to include:

a. Access to current leisure reading material; and

b. Textbooks necessary to complete a course of study.

c. Legal books and references requested by residents shall be provided upon request to the extent resources permit. The facility's governing body shall not be responsible for purchasing legal books and references.

3. Work assignments. The facility shall develop a policy and procedure on work to include:

a. Work activities such as maintaining own room and maintaining activity areas;

b. Not being required to perform personal duties for staff or maintain areas away from the facility;

c. Eligibility criteria for work activities;

d. Statement that care shall be taken not to require juveniles to perform work they cannot physically perform.

4. Exercise and recreation. Each facility administrator shall develop and implement a planned physical exercise and recreational activities schedule for all residents. Such a program shall include:

a. Regulations to protect the facility's security and the residents' welfare;

b. Provisions for a minimum of two (2) hours daily of organized and supervised physical exercise and recreational activities and leisure time activities, excluding time spent watching television, for all residents. Organized and supervised means pre-planned exercise or activities supervised by staff qualified to direct same;

c. Indoor space and equipment for active recreation; and

d. Space, equipment and supportive staff for outdoor recreational programming.

5. The administrator shall develop leisure time activities such as television, radio, table games, hobby craft items and library materials.

6. Visiting plan. The facility administrator shall develop resident visiting policies and procedures to include: (Mandatory)

a. Security rules;

b. Provisions for residents to meet with attorneys. Attorney visits shall not be monitored;

c. The numbers of visits for each resident and the number of visitors permitted for each visit;

d. Visiting schedule offering both evening and daytime hours on weekdays and weekends;

e. Visiting for members of the resident's immediate family, counsel, and clergyman and others who would be helpful in planning for the child;

f. A written statement of the administrators right and responsibility to deny a visit to a resident when he has reasonable grounds to believe the visit might endanger the security of the facility;

g. The denial of a visit shall be in writing with a copy being issued to the resident, the person attempting to visit and the resident file;

h. Visitors shall register names, addresses and relationships to resident;

i. No area used for resident visiting shall use audio monitoring equipment during visits;

j. Visits conducted in residents' living areas shall not conflict with the normal activities of residents not receiving visitors.

7. Correspondence and telephone. The facility administrator shall develop a policy for resident mail consistent with the legal rights of juveniles and the facility's security.

8. Juvenile clothing, bedding and laundry service.

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a. Each resident shall have neat and clean clothing appropriate to the season.

b. Clothing used to supplement residents' personal clothing shall be of a non-jail/non-uniform type.

c. Clothing exchanges shall occur minimally twice a week or more often as necessary.

d. Residents excess pesonal clothing shall be returned to designated family members or stored in a manner which prevents mildew and other damage.

e. Policies and procedures shall govern possession of personal property by each resident, inventory control and storage of excess property.

9. Linens and bedding.

a. Each resident admitted to the facility shall have the following articles made available:

(1) One bath towel;

(2) One clean, firm, fire-retardant mattress (polyurethane mattresses are prohibited);

(3) Two sheets or one sheet and a clean mattress cover;

(4) Sufficient clean blankets to provide comfort under existing temperature conditions;

(5) One pillow and one pillow case.

b. Clean linens shall be furnished once each week.

c. Bedding and linens which are worn out or unfit for further use shall not be used.

10. Removal of clothing and bedding. Policies and procedures should provide the guidelines for removing clothing and/or bedding from a resident if the behavior of the resident threatens the safety and/or security of the individual, others or the facility. A special occurrence report shall be completed and filed within the facility.

11. Laundry services.

a. Laundry services shall meet daily clothing, linen and bedding needs.

b. Care shall be taken to maintain separation of clean and soiled linens and clothing.

c. Residents' personal clothing and other non-linen items shall be laundered in accordance with appropriate washing procedures for the various fabrics.

12. Emergencies and special occurrences.

a. Emergency plan. The facility administrator shall develop a written disaster plan. The plan shall include: (Mandatory)

(1) Location of alarms and fire fighting equipment;

(2) Emergency drill policy;

(3) Specific assignments and tasks for personnel;

(4) Persons and emergency departments to be notified;

(5) Procedure for evacuation of all persons;

(6) Arrangements for temporary confinement of residents.

b. The plan shall be developed for the facility and with the assistance and advice of the local fire and/or rescue authority (Civil Defense).

c. Copies of the disaster plan containing basic emergency procedures shall be available at a central staff station.

d. All employees shall review emergency procedures every six (6) months. Evidence of such review shall be documented.

e. All incidents of a serious nature which endanger the lives or physical welfare of staff or residents shall be formally reported to the Department of Corrections within ten (10) days.

(1) Incidents of a serious nature shall include:

(a) Death;

(b) Serious injury or illness (accidental, self or other inflicted, incurred subsequent to placement);

(c) Fire causing serious damage;

(d) Riot;

(e) Assaults requiring medical care;

(f) Other serious disturbances;

(g) Occurrences of infectious diseases and disposition; and

(h) Escape (applicable to secure facilities).

(2) Special occurrences shall be reported on forms provided by the Minnesota Department of Corrections.

(3) In the event of serious illness, accident or imminent death, the resident's family or others who maintain a close relationship with him/her shall be notified.

f. When a resident's death occurs:

(1) The date, time and circumstances of the resident's death shall be recorded;

(2) The coroner's office shall be notified;

(3) Personal belongings shall be handled in a responsible legal manner; and

(4) Records of a deceased resident shall be retained for a period of time in accordance with law.

11 MCAR § 2.587 Food service.

A. General requirements.

1. The goals of food service in each facility shall be to provide food and beverages to residents that are nutritionally adequate; palatable; produced in a manner to prevent foodborne illness; of adequate quantity and variety; served at appropriate temperatures; and, prepared by methods which conserve nutritional value.

2. The designated food service supervisor shall be trained in food service operations prior to assuming this responsibility.

B. Food handling practices.

1. Food service shall be in accordance with the Minnesota Department of Health Rules 7 MCAR §§ 1.161-1.170. (Mandatory)

2. Food catered to a facility shall be obtained from a source licensed by the Minnesota Department of Health or other authorized agency and transported, handled and served in a manner consistent with 7 MCAR §§ 1.161-1.170. (Mandatory)

C. Dietary service. Nutritional needs of residents shall be met in accordance with the following dietary allowances: (Mandatory)

1. Meat or protein group. Two (2) or more servings per day. A serving within this group is defined as:

a. 2-3 ounces cooked, lean, edible meat

b. 2 medium eggs

c. 4 tablespoons peanut butter

d. 1 cup dry beans

2. Milk group. Two (2) servings per day. A serving is defined as:

a. 1 cup of milk

b. 1 ounce of cheese

c. ½ cup cottage cheese

3. Cereal and bread group. Four (4) or more servings per day. A serving is defined as:

a. ½ to 1 slice of bread

b. ½ to ¾ cup cereal

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c. ½ to ¾ cup rice

d. ½ to ¾ cup of pasta

4. Fruit and vegetable group. Four (4) or more servings per day. A serving is defined as:

a. ½ cup potatoes

b. ½ cup cooked vegetables

c. 4 pieces raw vegetables

d. ½ cup fruit

e. 1 cup citrus juice

D. There shall not be more than fourteen (14) hours between a substantial evening meal and breakfast. At least three (3) meals shall be made available at regular times during each twenty-four (24) hour period.

E. Any facility housing residents in need of medically prescribed therapeutic diets shall have documentary evidence that such diets are provided for as ordered by the attending physician.

F. The food service plan of the facility shall provide special diets required to meet the medical and religious needs of the residents.

G. Food shall not be withheld as punishment for unacceptable behavior. (Mandatory)

H. Meals shall be served under supervision of staff.

I. Records of menus and of foods purchased shall be retained for one (1) year.

J. Menus shall be planned and posted one (1) week in advance and reviewed regularly by a nutritionist or dietician.

K. A minimum of two (2) hot meals shall be provided each day.

L. Food management policies and procedures shall include a food expenditure cost accounting system designed to isolate cost per meal per resident.

M. Canteen services shall be available to residents on a twice per week basis. Facilities which do not operate a canteen shall implement a system whereby residents have the opportunity to purchase or obtain sundry items on a twice per week basis.

N. Food storage.

1. All food prepared in bulk shall be stored in seamless containers after opening the original container.

2. Dry milk and milk products after opening shall be stored in seamless, air-tight containers.

3. Storage of non-perishable food shall be stored off the floor on washable shelving in a ventilated room.

4. Food shall be protected from dust, flies, rodents, vermin, overhead leakage and other sources of contamination, and shall be placed away from areas with excessive heat.

5. All perishable food (fresh fruit and vegetables) and potentially hazardous food (meat and dairy products) shall be stored off the floor on washable, corrosion-resistant shelving under sanitary conditions, and at temperatures which will protect against spoilage.

6. Meat and dairy products shall be stored at forty (40) degrees Fahrenheit or below, and fruit and vegetables at fifty (50) degrees Fahrenheit or below. When stored together, the lower temperatures shall apply. Temperatures shall be monitored by an accurate thermometer.

7. The storage of detergents, cleaners, pesticides and other non-food items, including employees' personal items, shall be prohibited in food storage areas.

8. Returned portions of food and beverages from individual servings shall not be reused unless such food or beverage is served in a sealed wrapper or container which has not been unwrapped or opened.

9. Ice.

a. Ice shall be stored and handled in a sanitary manner.

b. Stored ice shall be kept in an enclosed container.

c. An ice scoop shall be stored separate from the ice to prevent the handle from contact with the ice.

O. Transport of food.

1. Food shall be covered during transport through non-dietary areas, but need not be covered when served in a contiguous dining area.

2. The food service system shall be capable of maintaining hot foods at one-hundred-fifty (150) degrees Fahrenheit or higher; cold food at forty (40) degrees Fahrenheit or lower.

3. A dumbwaiter or conveyor, used for the transport of soiled linen or soiled dishes, shall not be used for the transport of food.

11 MCAR § 2.591 Security.

A. Policies and procedures. Security policies and procedures shall be developed to cover the following:

1. Control and recovery of contraband;

2. Delivery and service procedure;

3. Prohibition on firearms and other weapons in resident areas;

4. Search and shake down procedures;

5. A system of accounting for the location of residents;

6. Riot prevention and control; and

7. Supervision of all residents outside the facility perimeter.

B. Admissions.

1. The intake procedure conducted by the admitting officer for all admissions shall provide for a thorough search of the resident and belongings. In the event of all new admissions, a shower (delousing if indicated), an assessment of health status and physical needs, an inventory of resident's property, properly recorded and signed by the owner as correct, and completion of an admission form shall be completed.

2. No juvenile shall be received by the staff of a facility until the arresting or escorting officer has produced proper credentials and/or until the proper documents have been completed identifying the purpose for placement. The arresting or escorting officer shall be required to sign his name and title on a form which is part of the intake and record.

3. All intake procedures shall be conducted in a manner and location that assures the personal privacy of the resident and the confidentiality of the transaction from unauthorized personnel.

C. Releases.

1. Upon release of a resident, the property of the resident, unless held for authorized investigation or litigation, shall be returned with a signed receipt acknowledging same.

2. Residents shall be permitted to make arrangements for transportation prior to release.

D. Contraband control searches.

1. Visitors who seek to enter a security area of the facility and refuse to submit to a search by a staff member of the same sex, shall be denied the privilege to visit if such procedures are established for the facility.

2. The facility shall be regularly inspected for contraband, evidence of breaches in security, and inoperable security equipment.

E. Locks and keys.

1. When not in use, all keys to locks shall be properly tagged and securely stored.

2. One (1) complete set of facility keys and locks shall be kept on hand for replacement purposes.

3. Keys and locks that serve a critical security purpose shall be easily identifiable and never issued except upon order of the facility administrator or person in charge, and in accordance with established procedure. (Mandatory)

4. No security keys and locks shall be made available to residents.

F. Dangerous material. Material dangerous to either security or safety shall be properly secured. (Mandatory)

G. Count procedure.

1. Each facility shall have a written policy and procedure governing counts.

2. Formal counts shall occur minimally every eight (8) hours and shall be logged.

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11 MCAR § 2.595 Environmental/personal health and sanitation.

A. Availability of medical and dental resources.

1. The facility shall have a licensed physician(s) or medical resources designated for the medical supervision, care and treatment of residents. (Mandatory)

2. The facility shall insure twenty-four (24) hour a day availability of consultation, advice and emergency medical service.

3. The local health authority shall be requested to inspect annually the facility with respect to sanitation and health conditions.

4. Each facility shall have emergency dental care available to residents.

5. Ambulance services shall be available on a twenty-four (24) hour a day basis. (Mandatory)

B. Physical examination.

1. Residents shall have a general medical history and physical examination or health assessment within thirty (30) days preceding admission or within (7) days after admission.

a. The medical report shall be filed in the resident's health file and shall include appropriate instructions for meeting special needs, such as diet or medications.

b. Registered nurses or licensed practical nurses performing health assessments shall have access to a consulting licensed physician.

c. Stimulants, tranquilizers, psychotropic drugs, and drugs requiring intramuscular administration shall be prescribed only by a physician. (Mandatory)

2. Policies and procedures for medical care shall exist for the following:

a. Obtaining medical consent;

b. Receiving screening;

c. Collecting health appraisal data;

d. Medical services;

e. Dental services;

f. Emergency medical and dental services;

g. First aid;

h. Notifying next of kin or legal guardian in case of serious illness, injury or death;

i. Providing chronic care;

j. Convalescent care;

k. Medical preventive maintenance;

l. Screening, referral and care of mentally ill and retarded residents;

m. Making staff aware of special medical problems;

n. Implementing the special medical program;

o. Immunizing, where possible;

p. Delousing procedures;

q. Providing detoxification procedures;

r. Providing pharmaceuticals;

s. Special medical programs; and

t. Follow-up medical referral after discharge.

3. Receiving screening shall be part of the intake process. Areas to be assessed include:

a. Possibility of pregnancy;

b. Possibility of venereal disease;

c. Current illnesses and health problems;

d. Medications taken and special health requirements;

e. Status of immunizations;

f. Screening of other health problems designated by the responsible physician;

g. Behavioral observation, including state of consciousness and mental status;

h. Notation of body deformities, trauma markings, bruises, lesions, ease of movement, and/or jaundice; and

i. Conditions of skin and body orifices, including rashes and infestations.

C. Sick call. The facility shall provide space, staff, and a procedure for daily sick call.

D. Posting of available resources. A listing and telephone numbers of the medical, dental and ambulance resources and telephone numbers shall be posted at the facility's primary staff station.

E. Hospitalization of a resident.

1. Each facility administrator shall insure the availability of hospital services for residents.

2. When a resident requires hospitalization, he/she shall be supervised on a twenty-four (24) hour per day basis unless the following conditions have been satisfied:

a. The resident has been deemed not in need of custody supervision; or

b. The resident is medically incapacitated in the opinion of the attending physician.

F. First aid.

1. Child care workers responsible for the supervision, safety and well-being of residents shall be trained in basic first aid procedures and have a current first aid certificate (renewed every three years).

2. Facilities shall have a minimum of one (1) first aid kit which is approved by the physician located at the facility's control center or primary staff station.

3. The first aid kit shall be inspected regularly by a designated staff person to assess the need for replenishment of supplies. Such inspection shall be documented.

4. One person on duty per shift shall have training in receiving screening, basic life support, cardiopulmonary resuscitation (CPR), and recognition of symptoms of the illness most common to the facility.

G. Medical and dental records.

1. The facility shall record complaints of illness or injury by residents. The facility response shall be documented.

2. Medical and dental records shall be maintained on each resident.

H. Personal hygiene.

1. Each resident shall be permitted daily bathing or showering.

2. Residents shall receive provisions for obtaining personal hygiene items at facility expense i.e., soap, sanitary pads, toothbrush and toothpaste.

3. There shall be hair care services available to residents.

4. Reach living unit provides, at a minimum:

a. One (1) toilet for every five (5) residents;

b. One (1) washbasin for every five (5) residents;

c. One (1) shower for every five (5) residents; and

d. A bathtub in the facility available to all residents.

I. Delivery, supervision and control of medicines.

1. Delivery of medicine shall be conducted only by licensed medical or nursing personnel or by facility staff members who have been trained in the delivery of medications.

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2. The delivery of legend drugs by unlicensed staff shall be under the direction of a consulting physician.

3. The facility administrator shall develop plans and procedures for the secure storage, delivery, supervision and control of medicine. Such plans and procedures shall include:

a. Storage.

(1) All medicines shall be kept in a secure storage place.

(2) Medicine requiring refrigeration shall be stored in a secure refrigerator.

(3) Residents shall not be allowed in any room used for the storage of medicine without direct staff supervision.

(4) Only staff authorized to deliver medicine shall have access to keys for medicine storage areas.

(5) Stock supplies of legend (prescription-type) drugs shall not be maintained. (Mandatory)

(6) Prescribed medicine shall be kept in its original container, bearing the original label.

(7) Poisons and medicine intended for external use shall be clearly marked and shall be stored separate from medicine intended for internal use.

b. Delivery, control and recording of legend drugs.

(1) Diabetics with permission of the attending physician shall be permitted to self-administer insulin injections.

(2) Other medicine administered by injection shall be given only by a physician, registered nurse, or licensed practical nurse. (Mandatory)

(3) Unless ordered otherwise by the attending physician, medicine delivered to residents shall be self-administered under staff supervision.

(4) Procedures shall be developed for the positive identification of the recipient of all medicine.

(5) Prescribed medicine shall be delivered in accordance with the physician's instructions at the correct time and in the prescribed dose.

(6) No resident, while receiving legend drugs, shall receive any non-legend drug without the approval of the attending physician. (Mandatory)

(7) Adverse reactions to drugs shall be reported at once to the attending physician and an explanation shall be made in the resident's record. (Mandatory)

(8) Resident refusal of prescribed medicine shall be reported to the attending physician and an explanation shall be made in the resident's record.

(9) No resident shall be deprived of medicine as prescribed due to penalty or staff retaliation. (Mandatory)

(10) A physician shall be contacted prior to the next prescribed medicine dosage time for instructions on all newly admitted residents who are either in possession of prescribed medicine or indicate a need for such. (Mandatory)

c. Recording of legend drugs entering the facility. Records of receipt, the quantity of such drugs, and of the disposition of all legend drugs shall be maintained in sufficient detail to enable an accurate accounting at any time.

4. If authorized by the attending physician, prescribed medicine belonging to a resident shall be given to them when released or to appropriate authorities when transferred. This shall be recorded in the resident's record.

5. Unused portions of prescribed medicine shall be destroyed by incineration or by flushing into the sewer system. (Mandatory)

a. Such destruction shall be performed by the facility administrator or a designee and witnessed by a staff member.

b. A notation of the destruction shall be made in the resident's record and shall include the name and quantity of the drug destroyed and shall be signed by the facility administrator or a designee and staff witness.

6. Unused portions of controlled substances shall be handled by contacting the Minnesota Board of Pharmacy. (Mandatory)

7. Methadone programs shall not be made available unless in compliance with all existing laws and regulations governing such programs. (Mandatory)

8. Written policy shall prohibit the facility administrator from conducting medical or pharmaceutical testing for experimental or research purposes.

9. If medical services are delivered in the facility or through contract services, space, equipment, supplies and materials shall be provided.

J. Isolation for contagious disease.

1. Residents who are suspected of having a contagious disease shall be detained in isolation for only that period of time necessary to obtain advice and consultation from a physician.

2. Continuation of such isolation shall be determined by the attending physician.

3. A resident placed in isolation for medical reasons shall not be deprived of any more privileges, rights or amenities than shall be consistent with his/her classification prior to such assignment except to the extent that such privileges, rights or amenities would endanger the health of staff, other residents, or the public.

K. Mentally ill residents. Screening and referral for care shall be provided to mentally ill or retarded juveniles. The physician shall provide a written list of symptoms or behavior indicative of mental illness and retardation for staff training and shall designate specific referral sources.

1. If the facility administrator or designee determines a resident to be mentally ill, a licensed physician's opinion (preferably a psychiatrist) shall be secured as soon as possible, but not more than eight (8) hours after such determination.

2. A licensed physician's opinion is supportive of the facility administrator or designee, and if practical and feasible, such resident shall be transferred to a medical facility designated by the county and approved by the State Department of Health for diagnosis, treatment and evaluation of such suspected mental illness pursuant to Minn. Stat. § 253A.04, Emergency Hospitalization of Mentally Ill and Mentally Deficient Persons. (Mandatory)

L. Housekeeping, sanitation, plant maintenance.

1. The physical plant shall meet all standards required by the State Building Code, State Fire Marshal and the State Health Department. (Mandatory)

2. General requirement. The entire facility inclusive of every building, structure or enclosure utilized by the facility—walls, floors, ceiling, registers, fixtures, equipment and furnishings shall be kept in good repair.

3. Established plan. The person responsible for plant maintenance, housekeeping and sanitation shall develop and implement a written plan with identified policies and procedures for same.

4. Inspections. The facility administrator shall develop and implement a written plan for the daily inspection of the facility with respect to housekeeping, sanitation, and plant maintenance. Such inspections shall be recorded.

5. The facility administration shall have available to it the services of a qualified fire and safety officer who reviews all fire and safety policies and procedures at least annually.

6. Written policies and procedures shall specify the facility's fire prevention regulations and practices to ensure the safety of staff, residents and visitors. These include provision for an adequate fire protection service, a system of quarterly fire inspection and testing of equipment, an annual inspection by local or state fire officials, and availability of fire hoses or extinguishers at appropriate locations throughout the facility. (Mandatory)

7. There shall be an automatic fire alarm and heat and smoke detection system approved by the state fire marshal or recognized state authority, and tested on a regular basis. (Mandatory)

8. Work requests.

a. The facility administrator shall develop policies and procedures designed to detect and correct building and equipment deterioration, safety hazards and unsanitary conditions.

b. Such policies and procedures shall include:

(1) A requirement that the facility staff report unsanitary and unsafe conditions as well as physical plant and equipment repairs and replacement needs;

(2) A process whereby work requests are prioritized and filed with the governing body by the facility administrator in an expedient manner;

(3) A records system allowing for review of budget and work requests, expenditures, dates and actions pursuant to detection of need, submission of work orders and completion of requests.

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9. Insect and rodent control. Any condition or in the facility conducive to harborage or breeding of insects, rodents, or other vermin shall be eliminated immediately. (Mandatory)

M. Sleeping rooms.

1. Single occupancy sleeping rooms shall have a minimum of seventy (70) square feet of floor space per person.
2. Double occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.
3. Multi occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Board of Animal Health

Adopted Amendments to Rules 3 MCAR § 2.044 The Establishment and Operation of Public Stockyards and LSB 66 Slaughter Cattle and Slaughter Swine Identification

The rules proposed and published at *State Register*, Volume 5, Number 18, pp. 691-696, November 3, 1980 (5 S.R. 691) are now adopted with the following amendments:

Amendments as Adopted

3 MCAR § 2.044 E.3.a. Swine sold for slaughter shall be identified to the herd of origin as required in ~~LSB 66~~ 3 MCAR § 2.066 Slaughter cattle and slaughter swine identification.

3 MCAR § 2.066 C. Each agent or agency failing to comply with the provisions of this ~~regulation~~ rule is in violation of the rule Minn. Stat. § 35.70 ~~and the penalties invoked as provided in Minn. Stat. ch. 35, § 35.70 (1978)~~.

Office of the Attorney General

Adopted Rules Governing Procedures for the Review of Rules and Petitions for Rulemaking, and the Repeal of Rules Relating to Basic and Supervisory Training of Peace Officers in the State of Minnesota and the Reimbursement Program of the Minnesota Peace Officer Training Board (AttyGen 201-218), Rulemaking Procedures (Non-Contested Cases) (AttyGen 301-325), and Model Rules for Contested Cases (AttyGen 401-425)

The rules proposed and published at *State Register*, Volume 5, Number 25, pp 1006-1018, December 22, 1980 (5 S.R. 1006) are adopted with the following amendments:

Rules as Adopted.

Chapters 2-4: AttyGen 201-425 [Repealed.]

Chapter 2: Rule review procedures.

1 MCAR § 1.202 B. Order Adopting. (For recommended format, see Exhibit H-1). ~~The original and three~~ Two copies of the Order Adopting the rule shall be submitted.

1. The Order Adopting shall indicate the time and place of the hearing and shall recite that proper notice was given, that all persons were given the opportunity to be heard, and that the rule adopted is needed and reasonable based on the record and applicable statutes. ~~The Order Adopting shall be separate from the Findings of Fact and Conclusions.~~

H. Affidavit of Mailing Notice of Hearing. (For recommended format, see Exhibit F.) The Affidavit of Mailing shall establish that the person executing the Affidavit served a copy of the Notice of Hearing on all persons and associations listed on the mailing list maintained by the agency ~~by depositing in the United States mail a copy of the Notice of Hearing, properly enveloped, with postage prepaid~~ pursuant to Minn. Stat. § 15.0412, and that such service was effected as required therein. The Affidavit of the person mailing the Notice of Hearing shall be ~~N~~notarized.

P. Statement of Need and Reasonableness. ~~If the agency acts pursuant to a Petition for Adoption, Suspension, Amendment, or Repeal of a Rule (see Minn. Stat. § 15.0415) that sets forth the reasons that support a finding of need for and reasonableness of the rule, the Petition may be substituted for the Statement of Need and Reasonableness.~~

1 MCAR § 1.203 B. Order Adopting. (For recommended format, see Exhibit H-2.) ~~The original and three~~ Two copies of the Order Adopting the rule shall be submitted.

1. The Order Adopting shall recite that proper Notice was given, that all persons were given the opportunity to submit comment on the proposed rule, that seven or more persons did not request a hearing, and that the rule adopted is needed and reasonable. ~~The Order Adopting the rule shall be separate from the Findings of Fact and Conclusions.~~

H. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing. (For recommended format, see Exhibit F.) The Affidavit of Mailing shall establish that the person executing the Affidavit served a copy of the Notice of Intent to Adopt a Rule Without Public Hearing on all persons and associations listed on the mailing list maintained by the agency pursuant to Minn. Stat. § 15.0412~~, subd. 4 by depositing in the United States mail a copy of the Notice properly enveloped, with postage prepaid~~ and that such service was effected as required therein. The Affidavit of the person mailing the Notice shall be notarized.

1 MCAR § 1.204 B. Order Adopting. (For recommended format, see Exhibit H-3.) ~~The original and three~~ Two copies of the Order Adopting the rule shall be submitted.

1. The Order Adopting shall recite that proper notice was given and that all persons were given the opportunity to submit comment on the proposed rule. ~~The Order Adopting the rule shall be separate from the Findings of Fact and conclusions.~~

1 MCAR § 1.205 ~~A.~~ Failure to submit the required documents shall cause a submission to be incomplete and shall terminate the Attorney General's review period. The Attorney General shall inform the agency of the missing documents; upon submission of the required documents, the period for review shall be that for an initial submission.

~~B. The documents required to be submitted to the Attorney General in 1 MCAR §§1.202-.204 shall be retained in the Attorney General's file, except for the original and two copies of the Rule as Adopted and Order Adopting the rule, and the record, including comments submitted to the agency.~~

1 MCAR § 1.206 A.1. Upon approval of a rule other than a temporary rule the Attorney General shall notify the agency in writing of the approval and shall file the rule promptly in the Office of the Secretary of State. The agency shall be responsible for effecting publication in the *State Register*. Effective July 1, 1981, the Attorney General shall file a rule with the Secretary of State only after the rule has been endorsed by the Revisor of Statutes.

B. Upon approval of a rule and completion of any additional duties with respect thereto, the Attorney General shall return to the agency an approved copy of the rule and the record, including comments submitted to the agency.

C.~~B.~~ [Relettered.]

D.~~C.~~2. The rule exceeds the statutory authority conferred or specifically required conditions of the authorizing statute have not been met.

5. The rule is unconstitutional~~, arbitrary,~~ or unreasonable.

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1 MCAR § 1.207 Exhibits.

Exhibit F

In the Matter of the Proposed Adoption of Rules of the State_____
Governing_____

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

_____, being first duly sworn deposes and says:

That on the _____ day of _____, 19__, at the City of St. Paul, County of Ramsey, State of Minnesota, _he served the attached Notice of [Hearing/Intent to Adopt Rules Without Public Hearing] by depositing in the [State of Minnesota Central Mail System for ~~first class~~ United States mailing (or) ~~in the~~ United States mail] at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State _____ for the purpose of receiving notice of the proposed adoption of rules by this _____.

_____

Subscribed and sworn to before me
this _____ day of _____, 19__.
_____

Exhibit J

In the Matter of the Proposed Adoption of Rules of the State _____
Governing _____

STATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, [Special Assistant Attorney General] _____, do hereby declare that I have examined the ~~proposed~~ rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

_____

[Special Assistant Attorney General]

Dated: _____

Exhibit K

In the Matter of the Proposed Adoption of Rules of the State_____
Governing_____

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

_____, being first duly sworn, deposes and says:

That on the _____ day of _____, 19__, in the City of St. Paul, County of Ramsey, State of Minnesota, _he served the attached Notice of Submission to the Attorney General by depositing in the [State of Minnesota Central Mail System for ~~first class~~ United States mailing (or) ~~in the~~ United States mail] at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

_____

Subscribed and sworn to before me
this _____ day of _____, 19__.
_____

Board of Dentistry

Adopted Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personal Services, Advertising and Classification, and Reorganizing of Existing Rules

The rules proposed and published at *State Register*, Volume 4, Number 46, pp. 1798, May 19, 1980 (4 S.R. 1978) are adopted with the following amendments:

Rules as Adopted

7 MCAR § 3.002 Definitions.

D. "Auxiliary" means a dental hygienist, registered dental assistant, assistant, and dental technician.

O. "Person" includes an individual, corporation, partnership, association or any other legal entity.

P. "Registered dental assistant" means an assistant registered by the Board pursuant to § 150A.06, subd. 2.a., of the Act.

Q. "Registrant" means a registered dental assistant.

R. "Registry" means the centralized recordkeeping service of the American Dental Association, Continuing Education Registry.

S. "Sponsor" means an organization approved by the board pursuant to 7 MCAR § 3.052 to offer CDE courses.

T. "Supervision" shall be defined in one of the following classifications:

7 MCAR § 3.004 Officers. The officers of the board shall consist of a president, a vice-president, and a secretary, as provided in § 150A.03, subd. 1, of the Act. Election of officers may be held at any regular or special meeting.

7 MCAR § 3.005 Fees.

B. Annual license or registration fees. Each dentist, dental hygienist and registered dental assistant shall submit with his annual license or registration renewal application a fee as established by the board not to exceed the following amounts:

1. Dentist—$38.00
2. Dental hygienist—$15.00
3. Registered dental assistant—$10.00

7 MCAR § 3.011 Applications to practice dentistry.

C. The applicant must furnish certification of having passed all parts of a national board examination as defined in 7 MCAR § 3.002 N.

E. 3. After successful completion of steps 1 and 2, the applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its substantial equivalent, as the board ~~may~~ shall approve, to determine whether the applicant has the clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry.

4. Only after successful completion of steps 1, 2, and 3 will the board certify the applicant's eligibility to take a national board examination as defined in 7 MCAR § 3.002 N.

5. Only upon completion of the first four steps may the applicant make application to the board to take the examination for licensure.

G. The applicant shall furnish a testimonial of good professional character from an authorized representative of the dental school from which the applicant graduated and a certification by the secretary of the Board of Dental Examiners of the state or Canadian Province in which he is licensed. Provided, however, the board may in its discretion and for good cause waive the certification of good professional character by an authorized representative of the dental school.

7 MCAR § 3.012 Application to practice dental hygiene.

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B. Applicants must furnish certification that they have passed the National Board Examination as defined in 7 MCAR § 3.002 N.

F. The applicant shall furnish evidence of good professional character satisfactory to the board and certification from the Board of Dental Examiners in the state or Canadian Province in which he is already licensed.

7 MCAR § 3.013 Application for registration as a registered dental assistant.

B. The applicant shall furnish a certified copy or its equivalent of a diploma or certificate of satisfactory completion of a training program approved by the Commission on Accreditation or other program which, in the judgment of the board, is equivalent. If the curriculum of the training program does not include training in the expanded duties specified in 7 MCAR § 3.032A, applicant must successfully complete a course in these functions which has been approved by the board.

7 MCAR § 3.014 Application for licensure by credentials.

Any person, who is already a licensed dentist or dental hygienist in another state or Canadian Province desiring to be licensed to practice dentistry or dental hygiene in Minnesota, must present to the board an application and credentials, as prescribed by the Act. The application shall conform to the following rules of the board:

A. The applicant shall complete an application and credential verification questionnaire on forms furnished by the board.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry, or dental hygiene, whichever the case may be, which has been accredited by the Commission on Accreditation.

C. An applicant for licensure as a dentist must have been in active practice in another state or Canadian Province for at least three years immediately preceding application, United States governmental service may be included, and submit at least three references from other dentists. The application must include a physician's statement attesting to the applicant's physical and mental condition.

D. An applicant for licensure as a dental hygienist must have been in active practice in another state or Canadian Province for at least one year immediately preceding application, and must submit at least two character references from dentists and two references from practicing hygienists.

E. Each applicant must submit with the application a fee as prescribed in 7 MCAR § 3.005 C.

F. For identification purposes, the applicant shall furnish one notarized unmounted passport-type photograph, 3″ × 3″, taken not more than six (6) months before the date of application.

G. An applicant must appear before the board for a personal interview to determine the applicant's fitness to practice dentistry or dental hygiene pursuant to § 150A.06, subd. 4.

H. An applicant shall successfully complete an examination designed to test knowledge of Minnesota laws relating to the practice of dentistry and the rules of the board.

7 MCAR § 3.015 Requirements for all applicants.

A. Every applicant shall provide evidence of having fulfilled all the requirements of the Act.

C. Incomplete applications shall be returned to the applicant with the tendered fee, together with a statement setting forth the reason for such rejection.

D. Nothing contained in these rules shall be construed to limit the board's authority to seek from an applicant such other information pertinent to the character, education, and experience of the applicant insofar as it relates to the applicant's ability to practice as a licensee or registrant as the board may deem necessary in order to pass on the applicant's qualification.

7 MCAR § 3.016 Expiration of license and registration and renewal thereof.

Each dentist, dental hygienist and each registered dental assistant shall submit an application for renewal of his license or registration together with the necessary fee no later than December 31, of the year preceding that for which the license or registration renewal is requested. The application form shall provide a place for the renewal applicant's signature and shall solicit information to include but not be limited to the applicant's office address or addresses, the number of his license or registration certificate, whether such licensee or registrant has been engaged during the year preceding the year for which renewal is sought in the active practice of dentistry or dental hygiene or has worked as a registered dental assistant, and if so, whether within or without the state, and such other information which may be reasonably requested by the board.

7 MCAR §§ 3.017-3.020 [Reserved for future use.]

7 MCAR § 3.021 Written examination procedures: dentists, dental hygienists, and registered dental assistants.

F. Notes, textbooks or other information data shall not be brought to the examination rooms.

7 MCAR § 3.025 Scope of written examination, dental hygienists.

B. At the discretion of the board, any dental hygienist duly licensed to practice as such in another state which has and maintains laws regulating the practice of dental hygiene by dental hygienists, equivalent to this state's, who is of good professional character and is desirous of licensure in this state and presents a certificate from the examining board of the state in which the applicant is licensed so certifying, may be exempted from taking a National Board examination provided the applicant has been licensed for five or more years.

7 MCAR § 3.031 Assistants. Assistants may:

A. Retract a patient's cheek, tongue or other parts of tissue during a dental operation; assist with the placement or removal of a rubber dam and accessories used for its placement and retention; as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created or accumulated during the course of treatment being rendered by a licensed dentist during or after operative procedures by the dentist by use of vacuum devices, compressed air, mouthwash and water; ~~monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia;~~ provide any assistance, including the placement of articles and topical medication in a patient's oral cavity in response to a specific direction to do so by a licensed dentist who is then and there actually engaged in performing a dental operation as defined in the Act and who is then actually in a position to give personal supervision to the rendition of such assistance. In addition, assistants may aid dental hygienists and registered assistants in the performance of their duties as defined in 7 MCAR § 3.032 B. and 7 MCAR § 3.034.

7 MCAR § 3.032 Registered dental assistants.

A. 2. Take impressions for study casts and opposing casts.

4. Place and remove rubber dam.

6. Perform mechanical polishing to clinical crowns only and not to include any instrumentation. Prior examination for calculus and instrumentation must be done by the dentist or hygienist.

9. Place and remove periodontal packs.

11. Monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia.

B. A dental assistant, who by virtue of academic achievement which is equal to or greater than that of a registered assistant and is currently qualified in Minnesota in related health profession may, at the board's discretion, be permitted to take dental radiographs after successful completion of an approved course. Such permission shall not be granted until such dental assistant shall have filed with the board an application for permission, along with proof of successful completion of such course.

7 MCAR § 3.033 [Repealed.] ~~(This deleted material is moved to 7 MCAR § 3.046B.)~~

7 MCAR § 3.034 Dental hygienists. Dental hygienists may perform:

~~G. Adminster local anesthesia after successful completion of a course approved by the Board.~~

G.~~H.~~ Procedures A., B., C., D., and F. may be carried out under the general supervision of a dentist. Examination and diagnosis must be accomplished only by a dentist.

7 MCAR § 3.044 Names. Any name which incorporates the use of the name of a state, city or other political subdivision in whole or in part or which connotes unusual or superior dental ability, or which is likely to create a false or unjustified expectation of favorable results shall be in violation of § 150A.11, subd. 1, of the Act and Minn. Stat. § 319A.07.

NOTE: The amendment to this rule is effective July 1, 1981, the effective date of Minn. Stat. § 150A.11. Prior to that date, the text of the current rule will apply.

7 MCAR § 3.045 Professional advertising.

A. A person shall not, on behalf of himself, a partner, associate or any other dentist affiliated with him through a corporation or association, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim.

1. A false, fraudulent, misleading or deceptive statement or claim is one which:

a. Contains a misrepresentation of fact;

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b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;

c. Is self-laudatory or is intended or is likely to create false or unjustified expectations of favorable results;

d. Implies unusual or superior dental ability;

e. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

B. A person shall not compensate or give anything of value to a representative of the press, radio, television, or other communicative medium in anticipation of or in return for professional publicity unless the fact of compensation is made known in such publicity.

C. A person shall not directly or indirectly offer, give, receive, or agree to receive any fee or other consideration to or from a third party for referral of a patient in connection with the performance of professional services.

D. Fees may be advertised for routine services only.

1. A routine service is defined as one which is performed frequently in the dentist's practice; is usually provided at a set fee; is provided with little or no variance in technique; and includes all professionally recognized components within generally accepted standards. If the following routine dental services are advertised, they must adhere to these minimum standards (which are examples of the comprehensiveness required to satisfy the above definition):

a. Examination—a study by the dentists of all structures of the oral cavity, including the recording of the condition of all such structures and appropriate history thereof, including as a minimum the charting of caries, identification of periodontal disease and occlusal discrepancies, and the detection of oral abnormalities. If an examination fee is advertised, the same advertisement must include the following additional diagnostic procedures and their fees:

(1) Radiographs (x-rays)—x-rays of the oral structures to be used for purposes of diagnosis and which included either: 1) a panograph and four bitewings, or 2) intraoral full mouth review utilizing a minimum of fourteen periapical and four bitewing films. Any films must be adequate to provide a complete radiographic study.

(2) Diagnosis—a written opinion of items found in an examination.

(3) Treatment planning—a written itemized treatment recommendation and written itemized fee estimate provided to the patient.

b. Denture—either a full upper or full lower replacement of the natural dentition with artificial teeth. If the service advertised is for a denture which is partially prefabricated or is intended to be used as an emergency or temporary denture, such fact shall be fully set forth in the text of the advertisement. The fee shall include a reasonable period for readjustment.

c. Prophylaxis—the removal of calculus (tarter) and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing.

d. Extractions—this service is for the removal of non-impacted teeth and includes necessary x-rays, anesthesia, preoperative and post-operative care.

2. At the request of the board, the licensee, office or professional corporation shall bear the burden of proving that any advertised services are, in fact, "routine dental services" as defined.

3. Related services which may be required in conjunction with the advertised services, and for which additional fees will be charged, must be identified as such in the advertisement.

E. Advertising a range of fees for a given service is prohibited.

F. Advertised fees must be honored for those seeking the advertised services during the entire time period stated in the advertisement, whether or not the services are actually rendered in that time. If no time period is stated, the advertised fees shall be so honored for 30 days or until the next scheduled publication, whichever is later.

G. Any advertising must include the corporation, partnership, or individual dentist's (dentists') name and address.

H. Advertisements shall not:

1. Include descriptive words or phrases which are qualitative representations or comparative claims such as, but not limited to: painless, high quality, low prices and reasonable;

2. Include testimonials and endorsements; including but not limited to character references, statements of benefits from dental services received, or expressions of appreciation for dental services;

3. Include the use of celebrities;

4. Use dramatization or graphic illustrations to imply patient satisfaction;

5. Reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity;
6. After one year, include the name of any dentists formerly practicing at or associated with any advertised location;
7. Indicate or imply affiliation with any organization other than the dental practice being advertised.

I. Advertising of a practice in a dental specialty:

1. The following special areas of dentistry are recognized as suitable for the announcement of specialty dental practices:

Endodontics (Endodontist);

Oral and Maxillofacial Surgery (Oral Surgeon/Oral and Maxillofacial Surgeon);

Oral Pathology (Oral Pathologist);

Orthodontics (Orthodontist);

Pedodontics (Pedodontist);

Periodontics (Periodontist);

Prothodontics (Prosthodontist);

Public Health

a. Only licensed dentists who have successfully completed a post-doctoral course approved by the Commission on Accreditation in one of the specialty areas, or who announced a limitation of practice prior to 1967, or who have been approved by one of the following specialty examining boards, may announce specialty practice and may advertise as a specialist: American Board of Dental Public Health, American Board of Endodontics, American Board of Oral Surgery, American Board of Oral Pathology, American Board of Orthodontics, American Board of Pedodontics, American Board of Periodontology, and American Board of Prosthodontics.

b. 7 MCAR § 3.045 I.a. does not prohibit a dentist who does not meet the above education or experience criteria from restricting his practice to one or more specific areas of dentistry. Such individuals may not use the terms specialist, specialty, specializing, or limited to. The advertising must state that the services are being provided by a general dentist.

J. Failing to respond within 30 days to written communications from the Board of Dentistry or failure to make available to the board any relevant records with respect to an inquiry or complaint about the licensee's advertising practices shall constitute a violation of § 150A.08, subd. 1(5) of the Act and 7 MCAR § 3.045. The period of 30 days shall commence on the date when such communication was sent from the board by certified mail with return receipt requested to the address appearing in the last registration.

7 MCAR § 3.063 Corporation names. After July 1, 1981, ~~T~~the names of professional corporations shall be governed by Minn. Stat. § 319A.07 and 7 MCAR § 3.044.

NOTE: See footnote appended to 7 MCAR § 3.044.

Housing Finance Agency

Adopted Rules for Income Limits for the Home Improvement Loan Program

The rules proposed and published at *State Register*, Volume 5, Number 5, pp. 159-161, August 4, 1980 (5 S.R. 159) are adopted with the following amendments:

Rules as Adopted

12 MCAR § 3.002 O. "Persons and families of low and moderate income" means:

4. with respect to Home Improvement Loans pursuant to Chapter Six of these rules, those persons and families whose Adjusted Income does not exceed $18,000 or such lower amount as the agency may establish to assure that the interest on obligations of the agency will be exempt from federal income taxation.

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TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota

Tax Court

COUNTY OF RAMSEY

REGULAR DIVISION

Biaconi Construction Company, a Minnesota Corporation,

Appellant,

vs.

The Commissioner of Revenue,

Appellee.

In the matter of the appeal from the Commissioner's Order dated June 24, 1977 relating to Sales & Use Tax for the periods 1/1/69 thru 12/31/69, and 1/1/70 thru 12/31/70. Account No. 8248128.

Amount in dispute: $4,546.50

Docket No. 2461
Order dated February 27, 1981

The above matter was submitted to the Honorable Carl A. Jensen, Judge of the Minnesota Tax Court, on the basis of a Stipulation of Facts and briefs filed by the parties.

Richard D. Bunin of Edward M. Cohen & Associates, appeared for appellants.

Thomas K. Overton, Special Assistant Attorney General, appeared for appellee.

Both appearances were made only by the filing of briefs.

Issue

The issue is whether the word "road" as used in Minn. Stat. § 297A.25, subd. 1(h) includes both public and private roads or is limited to public roads.

Decision

The word "road" as used in Minn. Stat. § 297A.25, subd. 1(h) is interpreted to mean only public roads and the Order of the Commissioner assessing use taxes on materials used in private roads is affirmed.

From all the files, records and proceedings herein and from a Stipulation of Facts entered into by and between the parties hereto, the Court finds as follows:

Findings of Fact

1. Appellant is a construction company which constructs storm sewers.

2. In 1969 and 1970, Appellant was engaged in constructing a storm sewer located in a road on privately owned property.

3. Appellant purchased the storm sewer components for use in the construction and gave to the seller an exemption certificate and Appellant paid no sales or use tax thereon.

4. The road in which the storm sewer was constructed is a privately owned road and is not included in the exemption contained in Minn. Stat. § 297A.25, subd. 1(h) which exempts materials used in "road building".

5. The Department of Revenue audited Appellant and on August 7, 1973 the department submitted to Appellant schedules of additional taxes which the department proposed to assess.

6. Counsel for the taxpayer filed a protest dated August 20, 1973. By letter dated August 27, 1973, the department asked if a hearing was desired and no response was received.

7. On September 12, 1973 the matter was reviewed by the department and it was recommended that the proposed assessment be ordered.

8. A use tax including penalty and interest upon the purchase and use of the storm sewer components was assessed by Order dated September 21, 1973. No appeal was filed.

9. The department filed a Return with this Court on August 11, 1977 which included a copy of a "Memo to EMC:" from "REB" dated February 6, 1974. This was apparently a memo to Edward M. Cohen of Edward M. Cohen & Associates. The memo discusses the Order dated September 21, 1973 assessing the tax. The memo indicates that the writer of the memo had discussed the matter with Donald Harens an employee of the department. Among other things the memo stated the following:

"He also informed me, and I assume this is within your knowledge for purposes of verifying same, that in the District Court the taxpayer has the right to raise the same issues that he could have had the taxpayer appealed originally to the tax court."

"Regarding the penalty, Harens stated that we could write a letter requesting abatement of same because the taxpayer was confused and felt that his vendor was going to pay the tax. However, abatement will not be considered until the tax itself is paid."

"I have not had an opportunity to review the merits of our claim but I feel that the first question is to verify the representation that we do have the right in the District Court to raise our claim on the merits."

10. On November 7, 1975 the Commissioner of Revenue pursuant to Minn. Stat. § 297A.33, subd. 6 issued his warrant to the county sheriff for the taxes assessed.

11. The sheriff levied upon a portion of contract proceeds from a contract with the City of Fridley and remitted the amount owed to the Department of Revenue.

12. Appellant filed a claim for refund of the amount remitted. The claim was denied and this appeal taken.

13. This Court finds that the exemption from sales tax for materials used in "road building" contained in Minn. Stat. § 297A.25, subd. 1(h) applies only to materials used in public roads and does not apply to materials used in building private roads.

14. This Court finds that the appellant is not entitled to abatement of either the tax levied or the penalty levied.

Conclusions of Law

1. Minn. Stat. § 297A.25, subd. 1(h) exempting from sales tax materials used in "road building" applies only to materials used in public roads and does not apply to roads on private property.

2. The application for refund is denied.

Order for Judgment

The Order of the Commissioner of Revenue denying the application for refund is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

MINNESOTA TAX COURT
Carl A. Jensen, Judge

Memorandum

One of the issues raised by the appellant was whether or not the exemption from sales tax for materials used in road building as contained in Minn. Stat. § 297A.25, subd. 1(h) applies to materials used in the construction of private roads. After reviewing all of the materials contained in this proceeding, the Court concludes that "road" as used in this section means only public roads and does not apply to roads on privately owned property. Most of the definitions of road as used in this context appear to define road as meaning a public road and not a private road or driveway.

The Minnesota Supreme Court in *Camping and Education Foundation v. State*, 282 Minn. 245, 250, 164 N.W. 2d 369, 372 (1969) stated the following:

"One of the rules that is well established is that taxation is the rule and exemption is an exception in derogation of equal rights. Therefore, there is a presumption that all property is taxable. In consequence, the burden of proof is on the one seeking the exemption to establish that he is entitled to the exemption."

"Another long established rule is that exemption provisions are to be strictly construed."

In the Appellant's Notice of Appeal a claim was made that the manner of collection of the tax was in violation of Minnesota Statutes and of Appellant's rights to due process of law under both the State and Federal Constitutions. The Appellant did not argue this point in its brief so we will not discuss it further except to say that it does appear that the Appellant was given adequate notices of the intention to assess the taxes before the actual order of assessment was issued.

SUPREME COURT

Decisions Filed Friday, March 6, 1981

Compiled by John McCarthy, Clerk

50759/333 Robert P. Schwinn, Conservator of the Estate of Luellia S. Barnes, v. Robert T. Griffith. Carver County.

Auction sales of real estate are within the statute of frauds.

Under Minn. Stat. § 513.05 (1980), the statute of frauds governing sales of real estate, there must be a memorandum expressing the terms of sale subscribed by the vendor. In addition, if the memorandum is in the form of an offer, a written acceptance is required to satisfy the statute. If the memorandum evidences a completed oral agreement, the vendee must have accepted delivery of the writing to satisfy the statute. *Western Land Ass'n v. Banks*, 80 Minn. 317, 83 N.W. 192 (1900), is overruled to the extent that it holds that a vendor's signature alone is sufficient to satisfy the statute of frauds.

Under *Restatement of Contracts* § 212 (1932), an auctioneer acts as the agent for the buyer for the purpose of binding him to the contract of sale.

Reversed. Sheran, C. J.

50830/Sp. State of Minnesota, by Warren Spannaus, its Attorney General, v. Northwestern Bell Telephone Company, Appellant. Clay County.

The Minnesota Public Service Commission has jurisdiction under Minn. Stat. ch. 237 (1980) to regulate rates charged Minnesota residents by a telephone company for services received by such residents through telephone exchanges located in an adjoining state.

An action commenced by the attorney general to obtain restitution of overcharges made prior to issuance of an order by the Public Service Commission authorizing increased rates is not barred by Minn. Stat. §§ 237.25 and 237.26 (1980).

There is no statutory impediment to requiring a telephone company to refund to subscribers the amount by which rates charged them had been increased prior to issuance of an order by the Public Service Commission approving the increased rates.

A telephone company which filed a schedule of proposed rate increases but did not file a statement informing the Public Service Commission when such rates would go into effect was not authorized by Minn. Stat. § 237.075, subd. 1 (1980) to put them into effect 90 days after the filing of the schedule.

Affirmed. Otis, J.

50700/Sp. State of Minnesota v. Robert E. Scott, Appellant. Hennepin County.

Trial court did not clearly abuse its discretion in admitting, at defendant's trial on charges of criminal sexual conduct in the first degree and soliciting or inducing another to practice prostitution, evidence of defendant's commission of nearly identical prior crimes against a different victim 2 years earlier.

Trial court did not violate Minn. Stat. § 609.035 (1978) in sentencing defendant to consecutive prison terms for offense of criminal sexual conduct in the first degree and offense of soliciting or inducing another to practice prostitution.

Evidence of defendant's disposition for violent crimes was sufficient to justify finding by trial court that defendant is a "dangerous offender" under the Dangerous Offender Act.

Affirmed. Yetka, J.

51259/Sp. Edward C. Brown, Relator, v. Port of Sunnyside Club, Inc., Commissioner of Economic Security. Department of Economic Security.

When the evidence shows that relator's employment was terminated involuntarily and the Commissioner of the Department of Economic Security's contrary finding of a voluntary termination lacks evidentiary support, the commissioner's decision must be reversed.

Reversed. Yetka, J.

51686/Sp. Nancy L. Toomey, a Minor Child, by Violet Burtson, her Mother and Natural Guardian, and Violet Burtson, Individually, Appellants, v. Brian Krone, Defendant, Illinois Farmers Insurance Company. Anoka County.

An automobile insurance policy exclusion which precludes third-party liability coverage of a relative who is a resident of the same household, but owns his own vehicle, is not invalid.

Affirmed. Scott, J.

Decision Filed Wednesday, February 25, 1981

81-15/Sp. State of Minnesota, County of Hennepin, v. Kenneth Bellanger, Appellant. Hennepin County.

In a criminal case the trial court should not depart from the "presumptive sentence" established by the Sentencing Guidelines, unless it determines that mitigating or aggravating factors are present in the particular matter before it and that these circumstances are "substantial or compelling circumstances" justifying departure.

Sentence reduced. Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Economic Security Vocational Rehabilitation Division

Notice of Request for Proposals for Operation of An Interpreter Referral Service

The Minnesota Department of Economic Security, Division of Vocational Rehabilitation (DVR) is seeking proposals which will implement the Interpreter Referral Service provisions of the Hearing Impaired Services Act (HISA), Minn. Stat. § 256C.21-27 (1980). In addition to providing interpreter referral services statewide, the Interpreter Referral Service will provide technical assistance to Regional Service Centers for the Hearing Impaired where they are operational.

Additional specific information is available in the request for proposal. The division has estimated the cost of this service at $64,500 for twelve (12) months. Responses to this announcement must be received in the Administrative Office of DVR by 4:30 p.m. April 15, 1981 to be considered.

Request for proposal may be obtained by contacting:

Thomas L. Macy, Rehabilitation Specialist
Division of Vocational Rehabilitation
Third Floor Space Center
444 Lafayette Road
St. Paul, Minnesota 55101
Telephone: (612) 296-7869

Housing Finance Agency

Notice of Request for Proposals for Housing Inspections

The Minnesota Housing Finance Agency intends to engage the services of a single family housing inspector to make home improvement inspections throughout the state. The inspector must have his own automobile and be able to travel throughout all regions of the state. Travel expenses will be allowed in accordance with state requirements.

The number of inspections to be made are 250. All inspections must be completed by October 1, 1981. It is anticipated that approximately 50% of the inspections will be in Regions other than the 7 County Metro Area.

Proposals must be in writing and received by the Agency no later than NOON on April 10th, 1981.

Proposals should be addressed to Harold A. Prust, Manager, Technical Services, Minnesota Housing Finance Agency, 333 Sibley Street, St. Paul, Minnesota 55101. If there are questions, please call 612/296-9818.

Metropolitan Council of the Twin Cities Area

Request for Proposals for Environmental Impact Statement (EIS) for Sludge and Solid Waste Landfill Siting Process

The Metropolitan Council solicits a proposal for entering into a contract for the performance of preparing EISs on the candidate sites for landfilling sludge and solid waste and land-spreading sludge. The proposal should be submitted in 10 copies and mailed to the Metropolitan Council, Suite 300 Metro Square Bldg., St. Paul, Minn. 55101, Attention: Mr. Jack Frost, Contract Manager.

The council, by this RFP, does not promise to accept the lowest, or any other, proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any proposer, to reject any provisions in any proposal, to obtain new proposals, or to proceed to do the work otherwise. All proposals received in the council office no later than 4 p.m. on March 25, 1981 will be considered by the council; and in the event that a proposal is accepted, the council will notify the successful proposer in writing within 45 days following its consideration of the proposal.

Requests for copies of the RFP should be directed to Mr. James Frost at (612) 291-6519.

Minnesota State Retirement System

Notice of Availability of Actuarial Consultant Contract for the Two Year Period Ending June 30, 1983

The Minnesota State Retirement System intends to engage the services of an "approved actuary" as defined in Minn. Stat. § 352.01, subd. 15, to perform the actuarial valuations required by Minn. Stat. ch. 356; to prepare and submit the reports required therein; to provide consulting and advisory services to the management on technical, policy or administrative problems and to provide actuarial cost estimates of plan amendments as requested.

Estimated Cost: $85,000-$95,000

Contact Person: Paul L. Groschen, 529 Jackson St., St. Paul, Minnesota 55101, Telephone (612) 296-2761

Final submission date: April 17, 1981

Department of Natural Resources
Waters Division
Dam Safety Unit

Notice of Request for Proposals for Contractual Services for 1981 Dam Safety Inspections in the State of Minnesota under the National Dam Safety Act

Notice is hereby given to request proposals for engineering consultant contract services for the purposes of inspecting two "High Hazard" dams in Minnesota under the state and federal dam safety program.

The engineering consultant contractor will be required to provide a systematic inspection, evaluation and report on each of the (2) High Hazard dams listed below and selected for inspection in accordance with the Scope of Work defined in the state contract with the U.S. Corps of Engineers.

1. Lloyde Haxton (Rollingstone, Winona County)
2. Pleasant Valley Site No. 6 (Pleasant Valley Creek, Winona County)

All applicants must also file Form 255 and related submittals with the:

Department of Army
St. Paul District, U.S. Corps of Engineers
1135 U.S. Post Office & Custom House
St. Paul, Minnesota 55101

Contact Persons:

James F. Cooper
or Craig Regalia
Minnesota Department of Natural Resources
Division of Waters, Dam Safety Section
Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
Phone (612) 296-0510
(612) 296-0525

Estimated cost: Not to exceed $8,000 per dam inspection.

Submission deadline: 4:30 p.m., April 3, 1981.

Interested persons may submit proposal to the above state contact persons.

State Planning Agency
Developmental Disabilities Planning Office

Notice of Request for Proposals for Demonstration of Model Projects of Respite Care Services

The Developmental Disabilities Planning Office announces that it is seeking proposals from eligible public or private/nonprofit organizations with the interest and capacity to undertake the following task:

To provide respite care services for persons having a developmental disability with the financial support of a grant from the Developmental Disabilities Office of the State Planning Agency.

Funding for these projects is for a maximum of $150,000.00. The agency anticipates funding up to ten (10) projects for a one year period. Individual project grants will not exceed $25,000.00. Organizations receiving grants are to begin activity October 1, 1981.

The Request for Proposal guidelines to be used in the preparation of an application are available upon written request from the address listed below. Deadline for the receipt of applications is April 30, 1981 (whether post-marked or hand-carried). To obtain a Request for Proposal packet, please write to:

Respite Care RFP, Lew Miller
Developmental Disabilities Planning Office
State Planning Agency
200 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

State Planning Agency
Developmental Disabilities Planning Office

Notice of Request for Proposals for Regional Coordination, Technical Assistance, Information Projects Related to People with Developmental Disabilities

The Developmental Disabilities Planning Office announces that it is seeking proposals from Regional Development Commissions which had a Developmental Disabilities program in operation on October 1, 1980 with the interest and capacity to undertake the following task:

To conduct technical assistance, public information and coordination activities which whenever possible reflect regional concerns about the *Welsch vs. Noot Consent Decree* with the financial support of a grant from the Developmental Disabilities Office of the State Planning Agency.

Funding for these projects is for a maximum of $251,290.00. Individual projects will be funded at the same level as the program year which began October 1, 1980. Funding will be provided for one year. Subsequent funding is contingent upon selection of regional technical assistance, information and coordination as a priority by the Governor's Planning Council on

Developmental Disabilities; and successful performance relative to the work program established by the grant agreement as well as the availability of federal funds. Organizations receiving grants are to begin activity October 1, 1981.

The Request for Proposal guidelines to be used in the preparation of an application are available upon written request from the address listed below. Deadline for the receipt of applications is April 30, 1981 (whether post-marked or hand-carried). To obtain a Request for Proposal packet, please write to:

Regional Coordination RFP, RoseAnn Faber
Development Disabilities Planning Office
State Planning Agency
200 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce Insurance Division

Notice of Meeting

Minnesota Comprehensive Health Association
Finance Committee

Wednesday, April 8, 1981
1:30 p.m.
NWNL Reinsurance Company
100 North Seventh Street
Minneapolis, MN 55403

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the office of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone (612) 296-2202.

Minnesota Board on Aging

Notice of Procedures for Public Hearings

Notice is hereby given that the Minnesota Board on Aging will utilize the contested case procedures of Minn. Stat. §§ 15.041-15.052 (1980) and 9 MCAR §§ 2.201-2.299 to meet the requirements set out in 45 C.F.R. § 1321.51 for the provision of hearings to:

"(1) Any area agency when the State agency proposes to—

(i) Disapprove the area plan or plan amendment submitted by the area agency as specified in § 1321.83(b);

(ii) Withdraw the area agency's designation as provided in § 1321.85;

(2) Any applicant for designation as a planning and service area under § 1321.53 whose application is denied;

(3) Any nutrition project specified in § 1321.143(b)(1) which the area agency proposes to defund; . . ."

Any such agency or organization desiring a hearing must file a request pursuant to 45 C.F.R. § 1321.51(b).

A notice of intent to utilize these procedures was published in the *State Register* on 2/2/81. Written comments were invited by 3/5/81. No comments were received and the board will, therefore, utilize the contested case procedures as stated in the above notice. Minnesota Board on Aging, Suite 204, Metro Square Building, St. Paul, Minnesota 55101.

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Proposal of Rules Requiring Installation Permits for New or Modified Airports to Ensure Compliance with State Noise Standards

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is seeking information or opinions from sources outside the agency in preparing to promulgate new rules requiring the issuance of an installation permit prior to the commencement of construction of a new airport or commencement of modification of an existing airport. Such rules would prohibit issuance of a permit unless the new or modified airport will comply with State Noise Standards set forth in rule NPC 2, (6 MCAR § 4.2002). The promulgation of these rules is authorized by Minn. Stat. § 116.07, subd. 4 (1980), which permits the agency to adopt regulations and standards having the force and effect of law for the prevention, abatement or control of noise pollution. The statute provides that such regulations and standards may relate to any matter relevant to the prevention, abatement or control of noise pollution.

The agency requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written or oral statements of a technical nature should be directed to Dave Kelso at the address and telephone number listed below. Inquiries of a non-technical nature or which relate to the rulemaking process should be directed to Marge Borchard at the address and telephone number listed below. Oral comments and inquiries will be accepted by Mr. Kelso and Ms. Borchard during regular business hours over the telephone and in person at the agency offices, as follows:

Dave Kelso
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113
Telephone: (612) 296-7340

Marge Borchard
Public Information Office
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113
Telephone: (612) 296-7284

All statements of information and comment shall be accepted until Monday, April 6, 1981. Any written material received by the agency shall become a part of the record in the event that the rules are promulgated.

Dated this 6th day of March 1981.

Louis J. Breimhurst
Executive Director

Department of Public Welfare Support Services Bureau

Notice of Intent To Solicit Outside Opinion Concerning A Proposed Rule Relating to the Implementation of Minn. Stat. § 626.557 (1980), Reporting of Maltreatment of Vulnerable Adults

Notice is hereby given that the Minnesota Department of Public Welfare is drafting a proposed rule 12 MCAR § 2.010 (Reporting and Investigating Maltreatment of Vulnerable Adults in Facilities Licensed by the Minnesota Department of Public Welfare).

This rule will govern the reporting of suspected abuse and neglect of vulnerable adults in residential and nonresidential facilities licensed by the Minnesota Department of Public Welfare pursuant to Minn. Stat. §§ 245.781 through 245.812, the investigation and coordination of abuse and neglect reports, the development of standards for facility and individual abuse prevention plans and the enforcement of requirements through appropriate sanctions and/or penalties.

Authority for this rule is contained in Minn. Stat. § 626.557, subd. 16(b), (1980).

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

John Sauer
Division of Licensing
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-2852.

All statements of information and comment must be received by April 17, 1981.

Any written material received by the department shall become part of the hearing record.

STATE OF MINNESOTA

OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

ORDER FORM

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

Agency Exh. No. 3
File No. CORR-81-603-JL
Date 4-21-81

PROPOSED RULES GOVERNING JUVENILE RESIDENTIAL FACILITIES

All New Material

February 27, 1981

DEPARTMENT OF CORRECTIONS
266 Metro Square Building
7th & Robert Streets
St. Paul, MN 55101

John R. McLagan, Director
612/296-6041

11 MCAR § 2.551 Introduction.

A. Section 1, Minn. Stat. § 241.021, subd. 1, as amended by Laws of 1978, ch. 778 provides that the Commissioner of Corrections promulgate rules establishing minimum standards for all correctional facilities throughout the State whether public or private, established and operated for the detention and confinement of a person detained or confined therein according to law except to the extent that they are inspected or licensed by other State regulating agencies. The rules which follow are minimum requirements for juvenile residential facilities.

B. Annual inspections. Juvenile residential facilities required to be licensed by Minn. Stat. § 241.021 will be inspected annually.

C. Revocation of license for non-conformance. Revocation of license proceedings shall be done in accordance with M.S. 241.021, 1, (4).

D. Conditional license. The Commissioner shall issue a conditional license for a period of one (1) year. The conditional license shall describe those conditions needed to achieve substantial compliance.

E. Intended use. A facility shall be used only for the classification for which it is licensed.

F. Posted license. The license(s) of each juvenile residential facility shall be conspicuously posted in an area where residents are admitted to the facility.

G. Severability. If any article, section, subsection, sentence, clause or phrase of these standards is for any reason held to be unconstitutional, contrary to statute, exceeding the authority of the Department of Corrections, or otherwise inoperative, such decision shall not affect the validity of the remaining portion of these rules.

11 MCAR 2.554 Variance.

A. Variance of specific rule. The granting of a variance under this section shall not constitute a precedent for any other juvenile residential facility. The Commissioner shall grant a variance if, in the licensing procedure or enforcement of the standards, the Commissioner finds that:

1. To require a particular juvenile residential facility to comply strictly with one or more of the provisions will result in undue hardship;

2. The juvenile residential facility is otherwise in compliance with said standards and their general purpose and intent.

B. Emergency suspensions of rules. Nothing contained herein shall be construed to deny the power of any facility administrator to temporarily suspend any rule in the event of an emergency.

1. Only rules directly affected by the emergency shall be suspended.

2. The facility administrator shall notify the Department of Corrections in writing within seventy-two (72) hours of a suspension of any rule.

3. No suspension shall exceed seven (7) days without the approval of the Commissioner of Corrections.

11 MCAR § 2.559 Juvenile residential facility definitions.

A. "Administrative Segregation" shall mean the status of physical separation of those juveniles who are determined to be prone to escape, prone to be assaultive or need protection from other juveniles.

B. "Approved Capacity" shall mean the number of residents or occupants for which any room, unit, building, facility or combination thereof, was planned, designed and approved in compliance with these standards.

C. "Average Daily Population" shall mean the average number of

residents (juveniles) residing daily during the last calendar year.

D. "Child Care Worker" shall mean those staff with whose primary duties are the day-to-day ongoing supervision of residents.

E. "Commissioner" shall mean the Commissioner of the Minnesota Department of Corrections.

F. "Controlled Substance" shall mean a drug, substance or immediate precussor in Schedules I through V of Minn. Stat. § 152.02, ch. 152. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquor or tobacco.

G. "Department of Corrections" or "Department" as used in these standards shall mean the Minnesota Department of Corrections.

H. "Disciplinary Segregation" or "Room Restriction" shall mean that status assigned a juvenile as a consequence or means of control resulting from a violation of facility rules or statutes. Such status shall consist of confinement in a room or housing unit separate from others who are not on disciplinary segregation status.

I. "Emergency" shall mean any significant incident or disruption of normal facility procedures, policies, routines or activities such as fire, riot, natural disaster, suicide, or assault on staff.

J. "Facility Administrator" shall mean the chief executive officer, superintendent, director or other individual who has been assigned, designated or delegated full time responsibility and authority for the administration and operation of a juvenile residential facility.

K. "Governing Authority" shall mean the political body, political subdivision or the board of directors of a corporation.

L. "Inspection" shall mean an on-site assessment of existing conditions and their relationship to meeting rules.

M. "Juvenile Residential Facility" shall mean any private, city, county, city and county, or multiple county juvenile residential facility which constitutes a dispositional alternative available to the juvenile court under the provisions of Minn. Stat. § 260.185 having a residential component with the exception of group foster homes as defined in Department of Corrections 11 MCAR § 2.445, G.

N. "Legend Drug" shall mean a drug which is required by federal law to bear the following statement: "Caution: Federal law prohibits dispensing without prescription."

O. "Medicine" shall mean any remedial agent that has the property of curing, preventing, treating or mitigating diseases, or that is used for that purpose. For the purpose of these rules, medicine shall include legend and non-legend drugs.

P. "Policy" shall mean a written statement declaring mission, purpose, and ideological position.

Q. "Procedure" shall mean a statement establishing the action plan to accomplish policy.

R. "Resident" shall mean any individual confined and residing in the juvenile residential facility.

S. "Substantially Conform" shall mean a compliance rating of 100% on items labeled mandatory and a rating of 70% compliance on all other items in this rule.

T. "Variance" shall mean the waiver of a specific rule for a specific period of time.

11 MCAR § 2.567 Personnel.

A. Staff health. All personnel shall be screened for tuberculosis prior to employment. Such tests shall be of either the tuberculin skin test or the chest roentgenogram (x-ray). If a skin test is positive, a chest roentgenogram (x-ray) shall be required. Additional testing shall be required upon known exposure to tuberculosis. (Mandatory)

B. Recruitment.

1. The selection, appointment and promotion of facility personnel shall be based on assessed ability.

2. All child care workers shall be a minimum of 18 (eighteen) years of age.

3. Recruitment standards shall be reasonable and geared to reach the widest possible work force. They shall set forth the basic requirements of age, ability, preparatory experience, and physical condition.

4. A criminal record check shall be conducted on all new employees prior to employment. (Mandatory)

C. Employee evaluation. Each employee shall complete a probationary period and be evaluated during the probationary period before being permanently appointed. The evaluation shall be in writing, discussed with the employee and made a part of the employee's personnel record.

D. Staffing requirements.

1. Staffing plan. The facility administrator shall prepare and retain a staffing plan indicating the personnel assignments and duties.

2. Minimum staff requirements.

a. Facility administrator. There shall be a single administrator or chief executive of each facility.

b. Person in charge. In the absence of the facility administrator, a staff person shall be designated as person in charge.

c. Staff presence. No person shall be housed in the facility without a staff person on duty, awake and alert at all times, and capable of responding to reasonable needs of residents. (Mandatory)

d. Sex of staff. Staff members shall not be placed in positions of responsibility for the supervision and welfare of residents of the opposite sex in circumstances that can be described as invasion of privacy, degrading or humiliating to the resident.

e. Back-up staff. Where staff of one sex are used as program resource with residents of the opposite sex, staff of the residents' same sex must be on duty, awake and alert in the facility.

f. Relief staff. Personnel shall perform ancillary functions such as transportation or court escort to the extent that security, supervision, program, and facility administration are not jeopardized by such activities.

g. Training for relief staff. Part-time and relief staff shall complete orientation training appropriate to assigned responsibilities. Such orientation shall be documented.

h. Child care workers, educational/vocational, social service and recreation staff ratio to residents shall be as follows:

(1) During waking hours, the ratio of staff to residents shall be one (1) staff to ten (10) residents. Staff who are not involved with the youth in direct service shall not be considered in this ratio. (Mandatory)

(2) During non-waking hours of youth, a combination of staff resources and physical plant resources shall provide a procedure for reporting incidents. This shall include a staff person present, awake and alert during these times. (Mandatory)

i. Educational/vocational staff and program shall be provided consistent with Minnesota Department of Education Rules 5 MCAR 1.0120 - 1.0129. (Mandatory)

j. Recreation staff. Each facility shall have a minimum of one (1) staff person designated to develop, implement and coordinate recreational programs for the residents and act as a liaison between the facility and the community. Such person shall have training and/or experience appropriate to required responsibilities.

k. Volunteer coordinator.

(1) The facility administrator shall designate a person to coordinate volunteer services if volunteers are utilized by the facility.

(2) There shall be a system for registration and identification of volunteers.

(3) Volunteers shall agree in writing to abide by facility policies.

(4) Written policies shall specify that volunteers perform professional services only when certified or licensed to do so by appropriate professional organizations.

(5) Written policies and procedures shall provide that the administrator curtails, postpones or discontinues the services of a volunteer or volunteer organization when there are substantial reasons for doing so.

l. Social service staff (case management personnel). A minimum of one (1) staff person for every twenty-five (25) residents shall be designated responsible for the coordination of resident program plans.

11 MCAR § 2.571 Staff training (pre-service and in-service).

A. Training plan.

1. The facility administrator shall develop an orientation training plan for new employees and volunteers and make provisions for on-going in-service training of employees and volunteers.

2. Written in-service training plans shall be developed annually.

B. Pre-service orientation training.

1. Child care workers shall complete a minimum of forty (40) hours of pre-service orientation training prior to assuming full responsibility for supervising residents.

2. Written policies and procedures shall provide that full-time staff or volunteers who work in direct contact with residents shall receive a total of forty (40) additional hours of training during their first year of employment in the following areas:

a. Human relations and communication skills;

b. Crisis intervention;

c. Special needs of youth;

d. Problem-solving and guidance;

e. Facility's philosophy for handling troubled youth;

f. Resident rules and regulations;

g. Rights and responsibilities of residents;

h. Grievance and disciplinary procedures;

i. Security procedures;

j. Physical restraint procedures;

k. Supervision of residents;

l. Report writing;

m. Significant legal issues;

n. Interaction of elements of the juvenile justice system;

o. Relationships with other agencies;

p. Fire emergency procedures; and

q. First aid and life-sustaining functions.

C. In-service training. Child care workers, middle management and non-management professional personnel shall complete forty (40) hours of in-service training per year.

1. Management personnel and facility administrators shall complete forty (40) hours of training per year.

2. Personnel who work with residents, who are confined separately from the total population, shall receive specialized training in the problems people encounter who live in confinement.

3. Space and equipment required for training and staff development shall be provided.

11 MCAR § 2.575 Staff deployment, job description, work assignments, post orders, policies and procedures.

A. Job descriptions.

1. Each facility administrator shall develop written job descriptions for all position classifications and post assignments which define responsibilities, duties and qualifications.

2. The job descriptions shall be readily available to all employees with copies on file in the administrator's office.

B. Work assignments. Work assignments shall be consistent with

qualifications as stated in job descriptions and the approved staffing plan of the facility.

C. Staff policies and procedures. The facility administrator shall develop written policies and procedures such as escape, fire, medical emergencies, admission, release, laundry, feeding, canteen, visiting, and security checks.

D. Policy and procedure manuals.

1. Policy manuals shall be available to all staff within the facility.

2. The policy and procedures manual shall be reviewed and updated annually.

E. Personnel policies. Written personnel policies shall be developed by the facility administrator and governing body which specify hours of work, vacations, illness, sick leave, holidays, retirement, employee health services, group insurance, evaluation procedures, promotions, personal hygiene practices, attire, conduct, and disciplinary actions, and shall be available to employees.

F. An affirmative action program shall be adopted by the facility's governing body and made a part of the policy manual. (Mandatory)

G. The facility shall have a grievance procedure for employees.

H. The facility administrator shall develop a written plan for dissemination of information to the public, to government agencies, and to the media.

11 MCAR § 2.579 Records and reports.

A. Maintenance of records and reports. The following records, reports and statistics shall be maintained for a period of one (1) year following the last state inspection or longer if necessary to meet applicable statutory or local unit of government requirements:

1. Admission and release records; (Mandatory)

2. Resident personal property records;

3. Clothing, linen and laundry records;

4. Records of budget requests and work orders;

5. Special occurrence records;

6. Records of policies and procedures;

7. Employee personnel records;

8. Records of staff training;

9. Accounting records;

10. Food service records;

11. Daily log.

12. Programming records;

13. Medical and dental records; and

14. Disciplinary records.

B. Storage of records.

1. Space shall be provided for the safe storage of records.

2. Records shall be filed in an organized and retrievable manner.

3. Resident records shall be preserved as required by law.

C. Filing of records.

1. Records of released residents shall be filed in the facility for one (1) year following discharge.

2. Confidentiality of resident records and resident access to personal files shall be kept in conformity with state law. (Mandatory)

3. The contents of case records shall be organized according to an established format.

4. Case records shall be safeguarded from unauthorized and improper disclosure.

11 MCAR § 2.583 Resident welfare.

A. Facility program.

1. Program objectives. The facility administration shall prepare a written program description and a statement of objectives and goals.

2. Special staff assignment. Every client shall be assigned to a staff person to assure regular face to face contact. (Mandatory)

3. Social services. The facility administrator shall maintain a social services program, such as individual and group counseling, community services and family services. (Mandatory)

4. Counseling clients. Policies and procedures shall assure that a staff person is available to counsel clients upon request and during times of crisis.

5. Intake policies and procedures.

a. The facility shall have a written program description that describes the facility's goals and objectives, programs and services offered and the admission requirements.

b. Intake policies shall be organized in a form suitable for distribution to staff, residents, referral resources, funding agencies and the general public.

c. Intake form. The facility shall complete an intake form on each resident which shall include:

(1) Name;

(2) Address;

(3) Date of birth;

(4) Sex;

(5) Race or ethnic origin;

(6) Reason for referral;

(7) Whom to notify in case of emergency;

(8) Date information gathered;

(9) Name of referring agency or committing authority;

(10) Social history, where available;

(11) Special medical problems or needs;

(12) Personal physician, if applicable; and

(13) Legal status, including jurisdiction, length and conditions of placement.

B. Separation.

1. Separation of male and female juveniles shall provide complete separation of living and sanitation facilities. (Mandatory)

2. Facility administrators who schedule coeducational activities shall staff the activities consistent with personnel rules stated herein.

C. Information to residents.

1. Copies of rules shall be made available to all residents and include:

a. Rules governing conduct, disciplinary consequences and disciplinary procedures;

b. Procedures for obtaining personal hygiene and canteen items; and

c. Policies and procedures governing visiting, correspondence, bathing, laundry, clothing, bedding exchange and other operational procedures.

2. Each resident, within twenty-four (24) hours of admission (exclusive of weekends and holidays), shall be provided with a copy of the program information and activities available.

3. Rules as well as program information shall be read to those residents who are unable to read.

D. Individual program plan. A written program plan individualized for each resident shall be developed.

E. The resident's program plan shall be reviewed and revised as appropriate on a monthly basis or more often if appropriate.

F. Pre-release planning and follow-up programs shall be developed for each resident.

G. The facility program shall encourage and foster the development and use of community resources.

H. Individualized progress reports shall be made available to the parent or legal guardian upon request.

I. Written policies and procedures shall exist for resident grievances and appeal procedures.

J. Private facilities shall have written criteria defining the procedures for removal of a resident from the program.

K. Resident discipline.

1. Administrative segregation.

a. The facility administrator shall develop and implement policies and procedures for administrative segregation.

b. Administrative segregation shall consist of separate and secure housing, but shall not involve any deprivation of amenities or privileges normally afforded other residents, except to the extent that the protection of the resident, staff or public justify the necessity of such deprivation.

c. Any resident placed on administrative segregation shall be reviewed by the facility administrator or a designee within eight (8) hours or whenever the original circumstances that

placed him/her in such a status have been altered. Continuation or change of such status shall require documented approval of the facility plan or a designee.

2. Discipline plan. (Mandatory)

a. All facilities shall have a resident discipline plan, which explains the consequences or administrative sanctions for specific behaviors, omissions, the administrative process for handling major and minor violations and the right to internal review.

b. The facility plan shall include a system of due process which has been reviewed and approved by an appropriate legal advisor.

3. Disciplinary segregation (room restriction).

a. Disciplinary segregation shall be used only with due process procedures.

b. A resident placed in disciplinary segregation prior to a due process hearing shall have a due process hearing within twenty-four (24) hours of such segregation (exclusive of holidays and weekends) unless documented cause can be shown for delays. As examples:

(1) Resident request for delay;

(2) Logistically impossible as in the case of mass disturbances.

4. Other limitations on disciplinary actions.

a. Residents shall be issued clothing and bedding. Residents who persist in the destruction of bedding or clothing may be deprived of such articles. The decision to deprive residents of clothing and bedding shall be reviewed by the shift supervisor during each eight (8) hour period.

b. The delegation of authority to any resident or group of residents to exercise the right of punishment over any other resident or group of residents is prohibited.

c. No resident shall be deprived of the use of materials necessary to maintain an acceptable level of personal hygiene.

5. Policies and procedures shall govern the use of restraints.

a. Instruments of restraint shall not be used except:

(1) As a precaution against escape during a transfer;

(2) On medical grounds by direction of a consulting or

attending physician or psychologist; or

(3) By order of the facility administrator or person in charge to prevent a resident from injuring self, others or damaging property.

b. Such instruments shall not be applied for any longer time than is necessary.

c. Each incident involving the use of restraints consistent with M.5.a.(2) or M.5.a.(3) shall be documented and placed on file.

d. Facility personnel authorized to use restraints shall receive training in the use of restraints. Evidence of such training shall be documented and on file.

N. Activities.

1. Each facility administrator shall develop and implement a written plan for the constructive scheduling of resident time. (Mandatory)

a. The facility administrator shall arrange with the clergy to conduct religious services and provide counseling if requested. (Mandatory)

b. No resident shall be required to attend religious services. (Mandatory)

c. Religious services shall be held in such a location that the residents who do not wish to participate do not have to. (Mandatory)

d. Any resident desiring to read the Bible or sacred book of another religion shall be provided a copy at the expense of the county. (Mandatory)

e. Attendance or lack of attendance at religious services shall not be considered a basis for any right or privilege within the facility. (Mandatory)

2. The facility administrator shall develop and implement a plan for library service to include:

a. Access to current leisure reading material; and

b. Textbooks necessary to complete a course of study.

c. Legal books and references requested by residents shall be provided upon request to the extent resources permit. The facility's governing body shall not be responsible for purchasing legal books and references.

3. Work assignments. The facility shall develop a policy and procedure on work to include:

a. Work activities such as maintaining own room and maintaining activity areas;

b. Not being required to perform personal duties for staff or maintain areas away from the facility;

c. Eligibility criteria for work activities;

d. Statement that care shall be taken not to require juveniles to perform work they cannot physically perform.

4. Exercise and recreation. Each facility administrator shall develop and implement a planned physical exercise and recreational activities schedule for all residents. Such a program shall include:

a. Regulations to protect the facility's security and the residents' welfare;

b. Provisions for a minimum of two (2) hours daily of organized and supervised physical exercise and recreational activities and leisure time activities, excluding time spent watching television, for all residents. Organized and supervised means pre-planned exercise or activities supervised by staff qualified to direct same;

c. Indoor space and equipment for active recreation; and

d. Space, equipment and supportive staff for outdoor recreational programming.

5. The administrator shall develop leisure time activities such as television, radio, table games, hobby craft items and library materials.

6. Visiting plan. The facility administrator shall develop resident visiting policies and procedures to include: (Mandatory)

a. Security rules;

b. Provisions for residents to meet with attorneys. Attorney visits shall not be monitored;

c. The numbers of visits for each resident and the number of visitors permitted for each visit;

d. Visiting schedule offering both evening and daytime hours on weekdays and weekends;

e. Visiting for members of the resident's immediate family, counsel, and clergyman and others who would be helpful in planning for the child;

f. A written statement of the administrators right and responsibility to deny a visit to a resident when he has reasonable grounds to believe the visit might endanger the security of the facility;

g. The denial of a visit shall be in writing with a copy being issued to the resident, the person attempting to visit and the resident file;

h. Visitors shall register names, addresses and relationships to resident;

i. No area used for resident visiting shall use audio monitoring equipment during visits;

j. Visits conducted in residents' living areas shall not conflict with the normal activities of residents not receiving visitors.

7. Correspondence and telephone. The facility administrator shall develop a policy for resident mail consistent with the legal rights of juveniles and the facility's security.

8. Juvenile clothing, bedding and laundry services.

a. Each resident shall have neat and clean clothing appropriate to the season.

b. Clothing used to supplement residents' personal clothing shall be of a non-jail/non-uniform type.

c. Clothing exchanges shall occur minimally twice a week or more often as necessary.

d. Residents excess personal clothing shall be returned to designated family members or stored in a manner which prevents mildew and other damage.

e. Policies and procedures shall govern possession of personal property by each resident, inventory control and storage of excess property.

9. Linens and bedding.

a. Each resident admitted to the facility shall have the following articles made available:

(1) One bath towel;

(2) One clean, firm, fire-retardant mattress (polyurethane mattresses are prohibited);

(3) Two sheets or one sheet and a clean mattress cover;

(4) Sufficient clean blankets to provide comfort under existing temperature conditions;

(5) One pillow and one pillow case.

b. Clean linens shall be furnished once each week.

c. Bedding and linens which are worn out or unfit for further use shall not be used.

10. Removal of clothing and bedding. Policies and procedures should provide the guidelines for removing clothing and/or bedding from a resident if the behavior of the resident threatens the safety and/or security of the individual, others or the facility. A special occurrence report shall be completed and filed within the facility.

11. Laundry services.

a. Laundry services shall meet daily clothing, linen and bedding needs.

b. Care shall be taken to maintain separation of clean and soiled linens and clothing.

c. Residents' personal clothing and other non-linen items shall be laundered in accordance with appropriate washing procedures for the various fabrics.

12. Emergencies and special occurrences.

a. Emergency plan. The facility administrator shall develop a written disaster plan. The plan shall include: (Mandatory)

(1) Location of alarms and fire fighting equipment;

(2) Emergency drill policy;

(3) Specific assignments and tasks for personnel;

(4) Persons and emergency departments to be notified;

(5) Procedure for evacuation of all persons;

(6) Arrangements for temporary confinement of residents.

b. The plan shall be developed for the facility and with the assistance and advice of the local fire and/or rescue authority (Civil Defense).

c. Copies of the disaster plan containing basic emergency procedures shall be available at a central staff station.

d. All employees shall review emergency procedures every six (6) months. Evidence of such review shall be documented.

e. All incidents of a serious nature which endanger the lives or physical welfare of staff or residents shall be formally reported to the Department of Corrections within ten (10) days.

(1) Incidents of a serious nature shall include:

(a) Death;

(b) Serious injury or illness (accidental, self or other inflicted, incurred subsequent to placement);

(c) Fire causing serious damage;

(d) Riot;

(e) Assaults requiring medical care;

(f) Other serious disturbances;

(g) Occurrences of infectious diseases and disposition; and

(h) Escape (applicable to secure facilities).

(2) Special occurrences shall be reported on forms provided by the Minnesota Department of Corrections.

(3) In the event of serious illness, accident or imminent death, the resident's family or others who maintain a close relationship with him/her shall be notified.

f. When a resident's death occurs:

(1) The date, time and circumstances of the resident's death shall be recorded;

(2) The coroner's office shall be notified;

(3) Personal belongings shall be handled in a responsible legal manner; and

(4) Records of a deceased resident shall be retained for a period of time in accordance with law.

11 MCAR § 2.587 Food service.

A. General requirements.

1. The goals of food service in each facility shall be to provide food and beverages to residents that are nutritionally adequate; palatable; produced in a manner to prevent foodborne illness; of adequate quantity and variety; served at appropriate temperatures; and, prepared by methods which conserve nutritional value.

2. The designated food service supervisor shall be trained in food service operations prior to assuming this reponsibility.

B. Food handling practices.

1. Food service shall be in accordance with the Minnesota Department of Health Rules 7 MCAR §§ 1.161 -1.170. (Mandatory)

2. Food catered to a facility shall be obtained from a source licensed by the Minnesota Department of Health or other authorized agency and transported, handled and served in a manner consistent with 7 MCAR §§ 1.161-1.170. (Mandatory)

C. Dietary service. Nutritional needs of residents shall be met in accordance with the following dietary allowances: (Mandatory)

1. Meat or protein group. Two (2) or more servings per day. A serving within this group is defined as:

a. 2-3 ounces cooked, lean, edible meat

b. 2 medium eggs

c. 4 tablespoons peanut butter

d. 1 cup dry beans

2. Milk group. Two (2) servings per day. A serving is defined as:

a. 1 cup of milk

b. 1 ounce of cheese

c. 1/2 cup cottage cheese

3. Cereal and bread group. Four (4) or more servings per day. A serving is defined as:

a. 1/2 to 1 slice of bread

b. 1/2 to 3/4 cup cereal

c. 1/2 to 3/4 cup rice

d. 1/2 to 3/4 cup of pasta

4. Fruit and vegetable group. Four (4) or more servings per day. A serving is defined as:

a. 1/2 cup potatoes

b. 1/2 cup cooked vegetables

c. 4 pieces raw vegetables

d. 1/2 cup fruit

e. 1 cup citrus juice

D. There shall not be more than fourteen (14) hours between a substantial evening meal and breakfast. At least three (3) meals shall be made available at regular times during each twenty-four (24) hour period.

E. Any facility housing residents in need of medically prescribed therapeutic diets shall have documentary evidence that such diets are provided for as ordered by the attending physician.

F. The food service plan of the facility shall provide special diets required to meet the medical and religious needs of the residents.

G. Food shall not be withheld as punishment for unacceptable behavior. (Mandatory)

H. Meals shall be served under supervision of staff.

I. Records of menus and of foods purchased shall be retained for one (1) year.

J. Menus shall be planned and posted one (1) week in advance and reviewed regularly by a nutritionist or dietician.

K. A minimum of two (2) hot meals shall be provided each day.

L. Food management policies and procedures shall include a food expenditure cost accounting system designed to isolate cost per meal per resident.

M. Canteen services shall be available to residents on a twice per week basis. Facilities which do not operate a canteen shall implement a system whereby residents have the opportunity to purchase or obtain sundry items on a twice per week basis.

N. Food storage.

1. All food prepared in bulk shall be stored in seamless containers after opening the original container.

2. Dry milk and milk products after opening shall be stored in seamless, air-tight containers.

3. Storage of non-perishable food shall be stored off the floor on washable shelving in a ventilated room.

4. Food shall be protected from dust, flies, rodents, vermin, overhead leakage and other sources of contamination, and shall be placed away from areas with excessive heat.

5. All perishable food (fresh fruit and vegetables) and potentially hazardous food (meat and dairy products) shall be stored off the floor on washable, corrosion-resistant shelving under sanitary conditions, and at temperatures which will protect against spoilage.

6. Meat and dairy products shall be stored at forty (40) degrees Fahrenheit or below, and fruit and vegetables at fifty (50) degrees Fahrenheit or below. When stored together, the lower temperatures shall apply. Temperatures shall be monitored by an accurate thermometer.

7. The storage of detergents, cleaners, pesticides and other non-food items, including employees' personal items, shall be prohibited in food storage areas.

8. Returned portions of food and beverages from individual servings shall not be reused unless such food or beverage is served in a sealed wrapper or container which has not been unwrapped or opened.

9. Ice.

a. Ice shall be stored and handled in a sanitary manner.

b. Stored ice shall be kept in an enclosed container.

c. An ice scoop shall be stored separate from the ice to prevent the handle from contact with the ice.

O. Transport of food.

1. Food shall be covered during transport through non-dietary areas, but need not be covered when served in a contiguous dining area.

2. The food service system shall be capable of maintaining hot foods at one-hundred-fifty (150) degrees Fahrenheit or higher; cold food at forty (40) degrees Fahrenheit or lower.

3. A dumbwaiter or conveyor, used for the transport of soiled linen or soiled dishes, shall not be used for the transport of food.

11 MCAR § 2.591 Security.

A. Policies and procedures. Security policies and procedures shall be developed to cover the following:

1. Control and recovery of contraband;

2. Delivery and service procedure;

3. Prohibition on firearms and other weapons in resident areas;

4. Search and shake down procedures;

5. A system of accounting for the location of residents;

6. Riot prevention and control; and

7. Supervision of all residents outside the facility perimeter.

B. Admissions.

1. The intake procedure conducted by the admitting officer for all admissions shall provide for a thorough search of the resident and belongings. In the event of all new admissions, a shower (delousing if indicated), an assessment of health status and physical needs, an inventory of resident's property, properly recorded and signed by the owner as correct, and completion of an admission form shall be completed.

2. No juvenile shall be received by the staff of a facility until the arresting or escorting officer has produced proper credentials and/or until the proper documents have been completed identifying the purpose for placement. The arresting or escorting officer shall be required to sign his name and title on a form which is part of the intake and record.

3. All intake procedures shall be conducted in a manner and location that assures the personal privacy of the resident and the confidentiality of the transaction from unauthorized personnel.

C. Releases.

1. Upon release of a resident, the property of the resident, unless held for authorized investigation or litigation, shall be returned with a signed receipt acknowledging same.

2. Residents shall be permitted to make arrangements for transporation prior to release.

D. Contraband control searches.

1. Visitors who seek to enter a security area of the facility and refuse to submit to a search by a staff member of the same sex, shall be denied the privilege to visit if such procedures are established for the facility.

2. The facility shall be regularly inspected for contraband, evidence of breaches in security, and inoperable security equipment.

E. Locks and keys.

1. When not in use, all keys to locks shall be properly tagged and securely stored.

2. One (1) complete set of facility keys and locks shall be kept on hand for replacement purposes.

3. Keys and locks that serve a critical security purpose shall be easily identifiable and never issued except upon order of the facility administrator or person in charge, and in accordance with established procedure. (Mandatory)

4. No security keys and locks shall be made available to residents.

F. Dangerous Material. Material dangerous to either security or safety shall be properly secured. (Mandatory)

G. Count procedure.

1. Each facility shall have a written policy and procedure governing counts.

2. Formal counts shall occur minimally every eight (8) hours and shall be logged.

11 MCAR § 2.595 Environmental/personal health and sanitation.

A. Availability of medical and dental resources.

1. The facility shall have a licensed physician(s) or medical

resources designated for the medical supervision, care and treatment of residents. (Mandatory)

2. The facility shall insure twenty-four (24) hour a day availability of consultation, advice and emergency medical service.

3. The local health authority shall be requested to inspect annually the facility with respect to sanitatation and health conditions.

4. Each facility shall have emergency dental care available to residents.

5. Ambulance services shall be available on a twenty-four (24) hour a day basis. (Mandatory)

B. Physical examination.

1. Residents shall have a general medical history and physical examination or health assessment within thirty (30) days preceding admission or within (7) days after admission.

a. The medical report shall be filed in the resident's health file and shall include appropriate instructions for meeting special needs, such as diet or medications.

b. Registered nurses or licensed practical nurses per-

forming health assessments shall have access to a consulting licensed physician.

c. Stimulants, tranquilizers, psychotropic drugs, and drugs requiring intramuscular administration shall be prescribed only by a physician. (Mandatory)

2. Policies and procedures for medical care shall exist for the following:

a. Obtaining medical consent;

b. Receiving screening;

c. Collecting health appraisal data;

d. Medical services;

e. Dental services;

f. Emergency medical and dental services;

g. First aid;

h. Notifying next of kin or legal guardian in case of serious illness, injury or death;

i. Providing chronic care;

j. Convalescent care;

k. Medical preventive maintenance;

l. Screening, referral and care of mentally ill and retarded residents;

m. Making staff aware of special medical problems;

n. Implementing the special medical program;

o. Immunizing, where possible;

p. Delousing procedures;

q. Providing detoxification procedures;

r. Providing pharmaceuticals;

s. Special medical programs; and

t. Follow-up medical referral after discharge.

3. Receiving screening shall be part of the intake process. Areas to be assessed include:

a. Possibility of pregnancy;

b. Possibility of venereal disease;

c. Current illnesses and health problems;

d. Medications taken and special health requirements;

e. Status of immunizations;

f. Screening of other health problems designated by the responsible physician;

g. Behavioral observation, including state of consciousness and mental status;

h. Notation of body deformities, trauma markings, bruises, lesions, ease of movement, and/or jaundice; and

i. Condition of skin and body orifices, including rashes and infestations.

C. Sick call. The facility shall provide space, staff, and a procedure for daily sick call.

D. Posting of available resources. A listing and telephone numbers of the medical, dental and ambulance resources and telephone numbers shall be posted at the facility's primary staff station.

E. Hospitalization of a resident.

1. Each facility administrator shall insure the availability of hospital services for residents.

2. When a resident requires hospitalization, he/she shall be supervised on a twenty-four (24) hour per day basis unless the following conditions have been satisfied:

a. The resident has been deemed not in need of custody supervision; or

b. The resident is medically incapacitated in the opinion of the attending physician.

F. First aid.

1. Child care workers responsible for the supervision, safety and well-being of residents shall be trained in basic first aid procedures and have a current first aid certificate (renewed every three years).

2. Facilities shall have a minimum of one (1) first aid kit

which is approved by the physician located at the facility's control center or primary staff station.

3. The first aid kit shall be inspected regularly by a designated staff person to assess the need for replenishment of supplies. Such inspection shall be documented.

4. One person on duty per shift shall have training in receiving screening, basic life support, cardiopulmonary resuscitation (CPR), and recognition of symptoms of the illness most common to the facility.

G. Medical and dental records.

1. The facility shall record complaints of illness or injury by residents. The facility response shall be documented.

2. Medical and dental records shall be maintained on each resident.

H. Personal hygiene.

1. Each resident shall be permitted daily bathing or showering.

2. Residents shall receive provisions for obtaining personal hygiene items at facility expense i.e., soap, sanitary pads, toothbrush and toothpaste.

3. There shall be hair care services available to residents.

4. Each living unit provides, at a minimum:

a. One (1) toilet for every five (5) residents;

b. One (1) washbasin for every five (5) residents;

c. One (1) shower for every five (5) residents; and

d. A bathtub in the facility available to all residents.

I. Delivery, supervision and control of medicines.

1. Delivery of medicine shall be conducted only by licensed medical or nursing personnel or by facility staff members who have been trained in the delivery of medications.

2. The delivery of legend drugs by unlicensed staff shall be under the direction of a consulting physician.

3. The facility administrator, shall develop plans and procedures for the secure storage, delivery, supervision and control of medicine. Such plans and procedures shall include:

a. Storage.

(1) All medicines shall be kept in a secure storage place.

(2) Medicine requiring refrigeration shall be stored in a secure refrigerator.

(3) Residents shall not be allowed in any room used for the storage of medicine without direct staff supervision.

(4) Only staff authorized to deliver medicine shall have access to keys for medicine storage areas.

(5) Stock supplies of legend (prescription-type) drugs shall not be maintained. (Mandatory)

(6) Prescribed medicine shall be kept in its original container, bearing the original label.

(7) Poisons and medicine intended for external use shall be clearly marked and shall be stored separate from medicine intended for internal use.

b. Delivery, control and recording of legend drugs.

(1) Diabetics with permission of the attending physician shall be permitted to self-administer insulin injections.

(2) Other medicine administered by injection shall be given only by a physician, registered nurse, or licensed practical nurse. (Mandatory)

(3) Unless ordered otherwise by the attending physician, medicine delivered to residents shall be self-administered under staff supervision.

(4) Procedures shall be developed for the positive identification of the recipient of all medicine.

(5) Prescribed medicine shall be delivered in accordance with the physician's instructions at the correct time and in the prescribed dose.

(6) No resident, while receiving legend drugs, shall receive any non-legend drug without the approval of the attending physician. (Mandatory)

(7) Adverse reactions to drugs shall be reported at once to the attending physician and an explanation shall be made in the resident's record. (Mandatory)

(8) Resident refusal of prescribed medicine shall be reported to the attending physician and an explanation shall be made in the resident's record.

(9) No resident shall be deprived of medicine as prescribed due to penalty or staff retaliation. (Mandatory)

(10) A physician shall be contacted prior to the next prescribed medicine dosage time for instructions on all newly admitted residents who are either in possession of prescribed medicine or indicate a need for such. (Mandatory)

c. Recording of legend drugs entering the facility. Records of receipt, the quantity of such drugs, and of the disposition of all legend drugs shall be maintained in sufficient detail to enable an accurate accounting at any time.

4. If authorized by the attending physician, prescribed medicine belonging to a resident shall be given to them when released or to appropriate authorities when transferred. This shall be recorded in the resident's record.

5. Unused portions of prescribed medicine shall be destroyed by incineration or by flushing into the sewer system. (Mandatory)

a. Such destruction shall be performed by the facility administrator or a designee and witnessed by a staff member.

b. A notation of the destruction shall be made in the resident's record and shall include the name and quantity of the drug

destroyed and shall be signed by the facility administrator or a designee and staff witness.

6. Unused portions of controlled substances shall be handled by contacting the Minnesota Board of Pharmacy. (Mandatory)

7. Methadone programs shall not be made available unless in compliance with all existing laws and regulations governing such programs. (Mandatory)

8. Written policy shall prohibit the facility administrator from conducting medical or pharmaceutical testing for experimental or research purposes.

9. If medical services are delivered in the facility or through contract services, space, equipment, supplies and materials shall be provided.

J. Isolation for contagious disease.

1. Residents who are suspected of having a contagious disease shall be detained in isolation for only that period of time necessary to obtain advice and consultation from a physician.

2. Continuation of such isolation shall be determined by the attending physician.

3. A resident placed in isolation for medical reasons shall not be deprived of any more privileges, rights or amenities than shall be consistent with his/her classification prior to such assignment except to the extent that such privileges, rights or amenities would endanger the health of staff, other residents, or the public.

K. Mentally ill residents. Screening and referral for care shall be provided to mentally ill or retarded juveniles. The physician shall provide a written list of symptoms or behavior indicative of mental illness and retardation for staff training and shall designate specific referral sources.

1. If the facility administrator or designee determines a resident to be mentally ill, a licensed physician's opinion (preferably a psychiatrist) shall be secured as soon as possible, but not more than eight (8) hours after such determination.

2. A licensed physician's opinion is supportive of the facility administrator or designee, and if practical and feasible, such resident shall be transferred to a medical facility designated by the county and approved by the State Department of Health for diagnosis, treatment and evaluation of such suspected mental illness pursuant to Minn. Stat. § 253A.04, Emergency Hospitalization of Mentally Ill and Mentally Deficient Persons. (Mandatory)

L. Housekeeping, sanitation, plant maintenance.

1. The physical plant shall meet all standards required by the State Building Code, State Fire Marshal and the State Health Department. (Mandatory)

2. General requirement. The entire facility inclusive of every building, structure or enclosure utilized by the facility - walls, floors, ceiling, registers, fixtures, equipment and furnishings shall be kept in good repair.

3. Established plan. The person responsible for plant maintenance, housekeeping and sanitation shall develop and implement a written plan with identified policies and procedures for same.

4. Inspections. The facility administrator shall develop and implement a written plan for the daily inspection of the facility with respect to housekeeping, sanitation, and plant maintenance. Such inspections shall be recorded.

5. The facility administration shall have available to it the services of a qualified fire and safety officer who reviews all fire and safety policies and procedures at least annually.

6. Written policies and procedures shall specify the facility's fire prevention regulations and practices to ensure the safety of staff, residents and visitors. These include provision

for an adequate fire protection service, a system of quarterly fire inspection and testing of equipment, an annual inspection by local or state fire officials, and availability of fire hoses or extinquishers at appropriate locations throughout the facility. (Mandatory)

7. There shall be an automatic fire alarm and heat and smoke detection system approved by the state fire marshal or recognized state authority, and tested on a regular basis. (Mandatory)

8. Work requests.

a. The facility administrator shall develop policies and procedures designed to detect and correct building and equipment deterioration, safety hazards and unsanitary conditions.

b. Such policies and procedures shall include:

(1) A requirment that the facility staff report unsanitary and unsafe conditions as well as physical plant and equipment repairs and replacement needs;

(2) A process whereby work requests are prioritized and filed with the governing body by the facility administrator in an expedient manner;

(3) A records system allowing for review of budget and

work requests, expenditures, dates and actions pursuant to detection of need, submission of work orders and completion of requests.

9. Insect and rodent control. Any condition or in the facility conducive to harborage or breeding of insects, rodents, or other vermin shall be eliminated immediately. (Mandatory)

M. Sleeping rooms.

1. Single occupancy sleeping rooms shall have a minimum of seventy (70) square feet of floor space per person.

2. Double occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.

3. Multi occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.

RULES GOVERNING
JUVENILE RESIDENTIAL FACILITIES

JUNE 9, 1981

All New Material

DEPARTMENT OF CORRECTIONS
266 Metro Square Building
7th & Robert Streets
St. Paul, MN 55101

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11 MCAR § 2.551 Introduction.

A. Minn. Stat. § 241.021, subd. 1 (1), as amended by Laws of 1978, ch. 778, provides that the Commissioner of Corrections promulgate rules establishing minimum standards for all correctional facilities throughout the State, whether public or private, established and operated for the detention and confinement of a person detained or confined therein according to law except to the extent that they are inspected or licensed by other State regulating agencies. The rules which follow are minimum requirements for juvenile residential facilities.

B. Annual inspections. Juvenile residential facilities required to be licensed by Minn. Stat. § 241.021, subd. 1 (1), will be inspected annually.

C. Revocation of license for non-conformance. Revocation of license proceedings shall be done in accordance with Minn. Stat. § 241.021, subd. 1 (4).

D. Issuance of license. A license shall be granted if the facility is in substantial conformance with rules stated herein, or is making satisfactory progress towards substantial conformance, and if the interests and well-being of children and youth received therein are protected. The license shall remain in force one (1) year unless sooner revoked.

E. Intended use. A facility shall be used only for the classification for which it is licensed.

F. Posted license. The license(s) of each juvenile residential facility shall be conspicuously posted in an area where residents are admitted to the facility.

G. Severability. The provisions of these rules are severable.

11 MCAR 2.554 Variance.

A. Variance of specific rule. The granting of a variance under this section shall not constitute a precedent for any other juvenile residential facility. The granting and denial of all variances shall be in writing and made within 30 days of the request for a variance. Such variance will be granted by the Commissioner if, in the licensing procedure or enforcement of the standards in these rules:

1. To require a particular juvenile residential facility to strictly comply with one or more of the provisions will result in undue hardship, or jeopardize the health, safety, security, detention, or well-being of the residents or facility staff;

2. The juvenile residential facility is otherwise in substantial conformity with the standards contained in these rules or making satisfactory progress toward substantial conformity;

3. Granting of the variance will not preclude the facility from making satisfactory progress toward substantial conformity with the rules;

4. The granting of the variance will not leave the interests and well-being of the residents unprotected; and

5. The facility will take such surrogate action as is necessary or available to comply with the general purpose of the standards to the fullest extent possible.

B. Emergencies. During an emergency, as defined in these rules and as declared by a facility administrator, those rules directly affected by the emergency and which, if not suspended, would adversely affect the health, security, safety, detention, or well-being of the persons detained or confined in juvenile residential facilities or the facility staff, shall be inoperative when an emergency is declared by the administrator.

1. The facility administrator shall notify the Department of Corrections in writing within 72 hours of any emergency which resulted in the suspension of any rule.

2. No suspension of rules because of an emergency declared by a facility administrator may exceed seven (7) days unless the administrator obtains the approval of the Commissioner of Corrections for a variance of the rules and such a variance is

necessary for the protection of the health, security, safety, detention or well-being of the staff or the persons detained or confined in the institution where the emergency exists.

11 MCAR § 2.559 Juvenile residential facility definitions.

A. "Administrative Segregation" shall mean the status of physical separation of those juveniles who are determined to be prone to escape, prone to be assaultive or need protection from other juveniles.

B. "Approved Capacity" shall mean the number of residents or occupants for which any room, unit, building, facility or combination thereof, was planned, designed and approved in compliance with these standards.

C. "Average Daily Population" shall mean the average number of residents (juveniles) residing daily during the last calendar year.

D. "Child Care Worker" shall mean those staff with whose primary duties are the day-to-day ongoing supervision of residents.

E. "Commissioner" shall mean the Commissioner of the Minnesota Department of Corrections.

F. "Controlled Substance" shall mean a drug, substance or immediate precussor in Schedules I through V of Minn. Stat. § 152.02,

(1980). The term shall not include distilled spirits, wine, malt beverages, intoxicating liquor or tobacco.

G. "Department of Corrections" or "Department" as used in these standards shall mean the Minnesota Department of Corrections.

H. "Disciplinary Segregation" or "Room Restriction" shall mean that status assigned a juvenile as a consequence or means of control resulting from a violation of facility rules or statutes. Such status shall consist of confinement in a room or housing unit separate from others who are not on disciplinary segregation status.

I. "Emergency" shall mean any significant incident or disruption of normal facility procedures, policies, routines or activities such as fire, riot, natural disaster, suicide, assault or medical emergency.

J. "Facility Administrator" shall mean the chief executive officer, superintendent, director or other individual who has been assigned, designated or delegated full time responsibility and authority for the administration and operation of a juvenile residential facility.

K. "Governing Authority" shall mean the political body, political subdivision or the board of directors of a corporation.

L. "Inspection" shall mean an on-site assessment of existing conditions made to determine the facility's compliance with those rules.

M. "Juvenile Residential Facility" shall mean any private, city, county, city and county, or multiple county juvenile residential facility which constitutes a dispositional alternative available to the juvenile court under the provisions of Minn. Stat. § 260.185 having a residential component with the exception of group foster homes as defined in Department of Corrections 11 MCAR § 2.445, G.

N. "Legend Drug" shall mean a drug which is required by federal law to bear the following statement: "Caution: Federal law prohibits dispensing without prescription."

O. "Medicine" shall mean any remedial agent that has the property of curing, preventing, treating or mitigating diseases, or that is used for that purpose. For the purpose of these rules, medicine shall include legend and non-legend drugs.

P. "Policy" shall mean a written statement declaring mission, purpose, and ideological position.

Q. "Procedure" shall mean a statement establishing the action plan to accomplish policy.

R. "Resident" shall mean any individual confined and residing in the juvenile residential facility.

S. "Substantially Conform" shall mean a compliance rating of 100% on items labeled mandatory and a rating of 70% compliance on all other items in this rule.

T. "Undue Hardship" shall mean the financial costs are not warranted when weighed against the benefits derived.

U. "Variance" shall mean the waiver of a specific rule for a specific period of time.

11 MCAR § 2.567 Personnel.

A. Staff health. All personnel shall be screened for tuberculosis prior to employment. Such tests shall be of either the tuberculin skin test or the chest roentgenogram (x-ray). If a skin test is positive, a chest roentgenogram (x-ray) shall be required. Additional testing shall be required upon known exposure to tuberculosis. (Mandatory)

B. Recruitment.

1. The selection, appointment and promotion of facility personnel shall be based on assessed ability.

2. All child care workers shall be a minimum of 18 (eighteen) years of age.

3. Recruitment standards shall be reasonable and geared to reach the widest possible work force. They shall set forth the basic requirements of age, ability, preparatory experience, and physical condition.

4. A criminal record check shall be conducted on all new employees prior to employment. (Mandatory)

C. Employee evaluation. Each employee shall complete a probationary period and be evaluated during the probationary period before being permanently appointed. The evaluation shall be in writing, discussed with the employee and made a part of the employee's personnel record.

D. Staffing requirements.

1. Staffing plan. The facility administrator shall prepare and retain a staffing plan indicating the personnel assignments and duties.

2. Minimum staff requirements.

a. Facility administrator. There shall be a single administrator or chief executive of each facility.

b. Person in charge. In the absence of the facility administrator, a staff person shall be designated as person in charge.

c. Staff presence. No person shall be housed in the facility without a staff person on duty, awake and alert at all times, and capable of responding to reasonable needs of residents. (Mandatory)

d. Sex of staff. Staff members shall not be placed in positions of responsibility for the supervision and welfare of residents of the opposite sex in circumstances that can be described as invasion of privacy, degrading or humiliating to the resident.

e. Back-up staff. Where staff of one sex are used as program resource with residents of the opposite sex, staff of the residents' same sex must be on duty, awake and alert in the facility.

f. Relief staff. Personnel shall perform ancillary functions such as transportation or court escort to the extent that security, supervision, program, and facility administration are not jeopardized by such activities.

g. Training for relief staff. Part-time and relief staff shall complete orientation training appropriate to assigned responsibilities. Such orientation shall be documented.

h. Child care workers, educational/vocational, social service and recreation staff ratio to residents shall be as follows:

(1) During waking hours, the ratio of staff to residents shall be one (1) staff to ten (10) residents. Staff who are not involved with the youth in direct service shall not be considered in this ratio. (Mandatory)

(2) During non-waking hours of youth, a combination of staff resources and physical plant resources shall provide a procedure for reporting incidents. This shall include a staff person present, awake and alert during these times. (Mandatory)

i. Educational/vocational staff and program shall be provided consistent with Minnesota Department of Education Rules 5 MCAR 1.0120 - 1.0129. (Mandatory)

j. Recreation staff. Each facility shall have a minimum of one (1) staff person designated to develop, implement and coordinate recreational programs for the residents and act as a liaison between the facility and the community. Such person shall have training and/or experience appropriate to required responsibilities.

k. Volunteer coordinator.

(1) The facility administrator shall designate a person to coordinate volunteer services if volunteers are utilized by the facility.

(2) There shall be a system for registration and identification of volunteers.

(3) Volunteers shall agree in writing to abide by facility policies.

(4) Written policies shall specify that volunteers perform professional services only when certified or licensed to do so by appropriate professional organizations.

(5) Written policies and procedures shall provide that the administrator curtails, postpones or discontinues the services of a volunteer or volunteer organization when there are substantial reasons for doing so.

1. Social service staff (case management personnel). A minimum of one (1) staff person for every twenty-five (25) residents shall be designated responsible for the coordination of resident program plans.

11 MCAR § 2.571 Staff training (pre-service and in-service).

A. Training plan.

1. The facility administrator shall develop an orientation training plan for new employees and volunteers and make provisions for on-going in-service training of employees and volunteers.

2. Written in-service training plans shall be developed annually.

B. Pre-service orientation training.

1. Child care workers shall complete a minimum of forty (40) hours of pre-service orientation training prior to assuming full responsibility for supervising residents.

2. Written policies and procedures shall provide that full-time staff or volunteers who work in direct contact with residents shall receive a total of forty (40) additional hours of training during their first year of employment in the following areas:

a. Human relations and communication skills;

b. Crisis intervention;

c. Special needs of youth;

d. Problem-solving and guidance;

e. Facility's philosophy for handling troubled youth;

f. Resident rules and regulations;

g. Rights and responsibilities of residents;

h. Grievance and disciplinary procedures;

i. Security procedures;

j. Physical restraint procedures;

k. Supervision of residents;

l. Report writing;

m. Significant legal issues;

n. Interaction of elements of the juvenile justice system;

o. Relationships with other agencies;

p. Fire emergency procedures; and

q. First aid and life-sustaining functions.

C. In-service training. Child care workers, middle management and non-management professional personnel shall complete forty (40) hours of in-service training per year.

1. Management personnel and facility administrators shall complete forty (40) hours of training per year.

2. Personnel who work with residents, who are confined separately from the total population, shall receive specialized training in the problems people encounter who live in confinement.

3. Space and equipment required for training and staff development shall be provided.

11 MCAR § 2.575 Staff deployment, job description, work assignments, post orders, policies and procedures.

A. Job descriptions.

1. Each facility administrator shall develop written job descriptions for all position classifications and post assignments which define responsibilities, duties and qualifications.

2. The job descriptions shall be readily available to all employees with copies on file in the administrator's office.

B. Work assignments. Work assignments shall be consistent with qualifications as stated in job descriptions and the approved staffing plan of the facility.

C. Staff policies and procedures. The facility administrator shall develop written policies and procedures such as escape, fire, medical emergencies, admission, release, laundry, feeding, canteen, visiting, and security checks.

D. Policy and procedure manuals.

1. Policy manuals shall be available to all staff within the facility.

2. The policy and procedures manual shall be reviewed and updated annually.

E. Personnel policies. Written personnel policies shall be developed by the facility administrator and governing body which specify hours of work, vacations, illness, sick leave, holidays, retirement, employee health services, group insurance, evaluation procedures, promotions, personal hygiene practices, attire, conduct, and disciplinary actions, and shall be available to employees.

F. The facility shall have a grievance procedure for employees.

G. The facility administrator shall develop a written plan for dissemination of information to the public, to government agencies, and to the media.

11 MCAR § 2.579 Records and reports.

A. Maintenance of records and reports. The following records, reports and statistics shall be maintained for a period of one (1) year following the last state inspection or longer if necessary to meet applicable statutory or local unit of government requirements:

1. Admission and release records; (Mandatory)

2. Resident personal property records;

3. Clothing, linen and laundry records;

4. Records of budget requests and work orders;

5. Special occurrence records;

6. Records of policies and procedures;

7. Employee personnel records;

8. Records of staff training;

9. Accounting records;

10. Food service records;

11. Daily log.

12. Programming records;

13. Medical and dental records; and

14. Disciplinary records.

B. Storage of records.

1. Space shall be provided for the safe storage of records.

2. Records shall be filed in an organized and retrievable manner.

C. Filing of records.

1. Records of released residents shall be filed in the facility for one (1) year following discharge.

2. Confidentiality of resident records and resident access to personal files shall be kept in conformity with state law. (Mandatory)

3. The contents of case records shall be organized according to an established format.

4. Case records shall be safeguarded from unauthorized and improper disclosure.

11 MCAR § 2.583 Resident welfare.

A. Facility program.

1. Program objectives. The facility administration shall prepare a written program description and a statement of objectives and goals.

2. Special staff assignment. Every client shall be assigned to a staff person to assure regular face to face contact. (Mandatory)

3. Social services. The facility administrator shall maintain a social services program, such as individual and group counseling, community services and family services. (Mandatory)

4. Counseling clients. Policies and procedures shall assure that a staff person is available to counsel clients upon request and during times of crisis.

5. Intake policies and procedures.

a. The facility shall have a written program description that describes the facility's goals and objectives, programs and services offered and the admission requirements.

b. Intake policies shall be organized in a form suitable for distribution to staff, residents, referral resources, funding agencies and the general public.

c. Intake form. The facility shall complete an intake form on each resident which shall include:

(1) Name;

(2) Address;

(3) Date of birth;

(4) Sex;

(5) Race or ethnic origin;

(6) Reason for referral;

(7) Whom to notify in case of emergency;

(8) Date information gathered;

(9) Name of referring agency or committing authority;

(10) Social history, where available;

(11) Special medical problems or needs;

(12) Personal physician, if applicable; and

(13) Legal status, including jurisdiction, length and conditions of placement.

B. Separation.

1. Separation of male and female juveniles shall provide complete separation of living and sanitation facilities. (Mandatory)

2. Facility administrators who schedule coeducational activities shall staff the activities consistent with personnel rules stated herein.

C. Information to residents.

1. Copies of rules shall be made available to all residents and include:

a. Rules governing conduct, disciplinary consequences and disciplinary procedures;

b. Procedures for obtaining personal hygiene and canteen items; and

c. Policies and procedures governing visiting, correspondence, bathing, laundry, clothing, bedding exchange and other operational procedures.

2. Each resident, within twenty-four (24) hours of admission (exclusive of weekends and holidays), shall be provided with a copy of the program information and activities available.

3. Rules as well as program information shall be read to those residents who are unable to read.

D. Individual program plan. A written program plan individualized for each resident shall be developed.

E. The resident's program plan shall be reviewed and revised as appropriate on a monthly basis or more often if appropriate.

F. Pre-release planning and follow-up programs shall be developed for each resident.

G. The facility program shall encourage and foster the development and use of community resources.

H. Individualized progress reports shall be made available to the parent or legal guardian upon request.

I. Written policies and procedures shall exist for resident grievances and appeal procedures.

J. Private facilities shall have written criteria defining the procedures for removal of a resident from the program.

K. Resident discipline.

1. Administrative segregation.

a. The facility administrator shall develop and implement policies and procedures for administrative segregation.

b. Administrative segregation shall consist of separate and secure housing, but shall not involve any deprivation of amenities or privileges normally afforded other residents, except to the extent that the protection of the resident, staff or public justify the necessity of such deprivation.

c. Any resident placed on administrative segregation shall be reviewed by the facility administrator or a designee within eight (8) hours or whenever the original circumstances that placed him/her in such a status have been altered. Continuation or change of such status shall require documented approval of the facility plan or a designee.

2. Discipline plan. (Mandatory)

a. All facilities shall have a resident discipline plan, which explains the consequences or administrative sanctions for specific behaviors, omissions, the administrative process for handling major and minor violations and the right to internal review.

b. The facility plan shall include a system of due process to include at a minimum:

(1) Published the rules of conduct and the penalties for violation of rules.

(2) Written notice of alleged violation of rule.

(3) The right to be heard by an impartial hearing officer and present evidence in defense.

(4) The right to appeal.

3. Disciplinary segregation (room restriction).

a. Disciplinary segregation shall be used only with due process procedures as outlined in Section 2.583 K.2.b.

b. A resident placed in disciplinary segregation prior to a due process hearing shall have a due process hearing within twenty-four (24) hours of such segregation (exclusive of holidays and weekends) unless documented cause can be shown for delays. As examples:

(1) Resident request for delay;

(2) Logistically impossible as in the case of mass disturbances.

4. Other limitations on disciplinary actions.

a. Residents shall be issued clothing and bedding. Residents who persist in the destruction of bedding or clothing may be deprived of such articles. The decision to deprive residents of clothing and bedding shall be reviewed by the shift supervisor during each eight (8) hour period.

b. The delegation of authority to any resident or group of residents to exercise the right of punishment over any other resident or group of residents is prohibited.

c. No resident shall be deprived of the use of materials necessary to maintain an acceptable level of personal hygiene.

5. Policies and procedures shall govern the use of restraints.

a. Instruments of restraint shall not be used except:

(1) As a precaution against escape during a transfer;

(2) On medical grounds by direction of a consulting or attending physician or psychologist; or

(3) By order of the facility administrator or person in charge to prevent a resident from injuring self, others or damaging property.

b. Such instruments shall not be applied for any longer time than is necessary.

c. Each incident involving the use of restraints consistent with 2.583 K.5.a.(2) or 2.583 K.5.a.(3) shall be documented and placed on file.

d. Facility personnel authorized to use restraints shall receive training in the use of restraints. Evidence of such training shall be documented and on file.

L. Activities.

1. Each facility administrator shall develop and implement a written plan for the constructive scheduling of resident time. (Mandatory)

a. The facility administrator shall arrange with the clergy to conduct religious services and provide counseling if requested. (Mandatory)

b. No resident shall be required to attend religious services. (Mandatory)

c. Religious services shall be held in such a location that the residents who do not wish to participate do not have to. (Mandatory)

d. Any resident desiring to read the Bible or sacred book of another religion shall be provided a copy at the expense of the county. (Mandatory)

e. Attendance or lack of attendance at religious services shall not be considered a basis for any right or privilege within the facility. (Mandatory)

2. The facility administrator shall develop and implement a plan for library service to include:

a. Access to current leisure reading material; and

b. Textbooks necessary to complete a course of study.

c. Legal books and references requested by residents shall be provided upon request to the extent resources permit. The facility's governing body shall not be responsible for purchasing legal books and references.

3. Work assignments. The facility shall develop a policy and procedure on work to include:

a. Work activities such as maintaining own room and maintaining activity areas;

b. Not being required to perform personal duties for staff or maintain areas away from the facility;

c. Eligibility criteria for work activities;

d. Statement that care shall be taken not to require juveniles to perform work they cannot physically perform.

4. Exercise and recreation. Each facility administrator shall develop and implement a planned physical exercise and recreational activities schedule for all residents. Such a program shall include:

a. Regulations to protect the facility's security and the residents' welfare;

b. Provisions for a minimum of two (2) hours daily of organized and supervised physical exercise and recreational activities and leisure time activities, excluding time spent watching television, for all residents. Organized and supervised means pre-planned exercise or activities supervised by staff qualified to direct same;

c. Indoor space and equipment for active recreation; and

d. Space, equipment and supportive staff for outdoor recreational programming.

5. The administrator shall develop leisure time activities such as television, radio, table games, hobby craft items and library materials.

6. Visiting plan. The facility administrator shall develop resident visiting policies and procedures to include: (Mandatory)

a. Security rules;

b. Provisions for residents to meet with attorneys. Attorney visits shall not be monitored;

c. The numbers of visits for each resident and the number of visitors permitted for each visit;

d. Visiting schedule offering both evening and daytime hours on weekdays and weekends;

e. Visiting for members of the resident's immediate family, counsel, and clergyman and others who would be helpful in planning for the child;

f. A written statement of the administrators right and responsibility to deny a visit to a resident when he has reasonable grounds to believe the visit might endanger the security of the facility;

g. The denial of a visit shall be in writing with a copy being issued to the resident, the person attempting to visit and the resident file;

h. Visitors shall register names, addresses and relationships to resident;

i. No area used for resident visiting shall use audio monitoring equipment during visits;

j. Visits conducted in residents' living areas shall not conflict with the normal activities of residents not receiving visitors.

7. Correspondence and telephone. The facility administrator shall develop a policy for resident mail consistent with the legal rights of juveniles and the facility's security.

8. Juvenile clothing, bedding and laundry services.

a. Each resident shall have neat and clean clothing appropriate to the season.

b. Clothing used to supplement residents' personal clothing shall be of a non-jail/non-uniform type.

c. Clothing exchanges shall occur minimally twice a week or more often as necessary.

d. Residents excess personal clothing shall be returned to designated family members or stored in a manner which prevents mildew and other damage.

e. Policies and procedures shall govern possession of personal property by each resident, inventory control and storage of excess property.

9. Linens and bedding.

a. Each resident admitted to the facility shall have the following articles made available:

(1) One bath towel;

(2) One clean, firm, fire-retardant mattress (polyurethane mattresses are prohibited);

(3) Two sheets or one sheet and a clean mattress cover;

(4) Sufficient clean blankets to provide comfort under existing temperature conditions;

(5) One pillow and one pillow case.

b. Clean linens shall be furnished once each week.

c. Bedding and linens which are worn out or unfit for further use shall not be used.

10. Removal of clothing and bedding. Policies and procedures should provide the guidelines for removing clothing and/or bedding from a resident if the behavior of the resident threatens the safety and/or security of the individual, others or the facility. A special occurrence report shall be completed and filed within the facility.

11. Laundry services.

a. Laundry services shall meet daily clothing, linen and bedding needs.

b. Care shall be taken to maintain separation of clean and soiled linens and clothing.

c. Residents' personal clothing and other non-linen items shall be laundered in accordance with appropriate washing procedures for the various fabrics.

12. Emergencies and special occurrences.

a. Emergency plan. The facility administrator shall develop a written disaster plan. The plan shall include: (Mandatory)

(1) Location of alarms and fire fighting equipment;

(2) Emergency drill policy;

(3) Specific assignments and tasks for personnel;

(4) Persons and emergency departments to be notified;

(5) Procedure for evacuation of all persons;

(6) Arrangements for temporary confinement of residents.

b. The plan shall be developed for the facility and with the assistance and advice of the local fire and/or rescue authority (Civil Defense).

c. Copies of the disaster plan containing basic emergency procedures shall be available at a central staff station.

d. All employees shall review emergency procedures every six (6) months. Evidence of such review shall be documented.

e. All incidents of a serious nature which endanger the lives or physical welfare of staff or residents shall be formally reported to the Department of Corrections within ten (10) days.

(1) Incidents of a serious nature shall include:

(a) Death;

(b) Serious injury or illness (accidental, self or other inflicted, incurred subsequent to placement);

(c) Fire causing serious damage;

(d) Riot;

(e) Assaults requiring medical care;

(f) Other serious disturbances;

(g) Occurrences of infectious diseases and disposition; and

(h) Escape (applicable to secure facilities).

(2) Special occurrences shall be reported on forms provided by the Minnesota Department of Corrections.

(3) In the event of serious illness, accident or imminent death, the resident's family or others who maintain a close relationship with him/her shall be notified.

f. When a resident's death occurs:

(1) The date, time and circumstances of the resident's death shall be recorded;

(2) The coroner's office shall be notified;

(3) The parents or guardian of the deceased shall be notified immediately;

(4) Personal belongings of the deceased resident shall be preserved for the resident's parents or guardian.

11 MCAR § 2.587 Food service.

A. General requirements.

1. The goals of food service in each facility shall be to provide food and beverages to residents that are nutritionally adequate; palatable; produced in a manner to prevent foodborne

illness; of adequate quantity and variety; served at appropriate temperatures; and, prepared by methods which conserve nutritional value.

2. The designated food service supervisor shall be trained in food service operations prior to assuming this reponsibility.

B. Food handling practices.

1. Food service shall be in accordance with the Minnesota Department of Health Rules 7 MCAR §§ 1.161 -1.170. (Mandatory)

2. Food catered to a facility shall be obtained from a source licensed by the Minnesota Department of Health or other authorized agency and transported, handled and served in a manner consistent with 7 MCAR §§ 1.161-1.170. (Mandatory)

C. Dietary service. Nutritional needs of residents shall be met in accordance with the following dietary allowances: (Mandatory)

1. Meat or protein group. Two (2) or more servings per day. A serving within this group is defined as:

a. 2-3 ounces cooked, lean, edible meat

b. 2 medium eggs

c. 4 tablespoons peanut butter

d. 1 cup dry beans

2. Milk group. Two (2) servings per day. A serving is defined as:

a. 1 cup of milk

b. 1 ounce of cheese

c. 1/2 cup cottage cheese

3. Cereal and bread group. Four (4) or more servings per day. A serving is defined as:

a. 1/2 to 1 slice of bread

b. 1/2 to 3/4 cup cereal

c. 1/2 to 3/4 cup rice

d. 1/2 to 3/4 cup of pasta

4. Fruit and vegetable group. Four (4) or more servings per day. A serving is defined as:

a. 1/2 cup potatoes

b. 1/2 cup cooked vegetables

c. 4 pieces raw vegetables

d. 1/2 cup fruit

e. 1 cup citrus juice

D. There shall not be more than fourteen (14) hours between a substantial evening meal and breakfast. At least three (3) meals shall be made available at regular times during each twenty-four (24) hour period.

E. Any facility housing residents in need of medically prescribed therapeutic diets shall have documentary evidence that such diets are provided for as ordered by the attending physician.

F. The food service plan of the facility shall provide special diets required to meet the medical and religious needs of the residents.

G. Food shall not be withheld as punishment for unacceptable behavior. (Mandatory)

H. Meals shall be served under supervision of staff.

I. Records of menus and of foods purchased shall be retained for one (1) year.

J. Menus shall be planned and posted one (1) week in advance and reviewed regularly by a nutritionist or dietician.

K. A minimum of two (2) hot meals shall be provided each day.

L. Food management policies and procedures shall include a food expenditure cost accounting system designed to isolate cost per meal per resident.

M. Canteen services shall be available to residents on a twice per week basis. Facilities which do not operate a canteen shall implement a system whereby residents have the opportunity to purchase or obtain sundry items on a twice per week basis.

N. Food storage.

1. All food prepared in bulk shall be stored in seamless containers after opening the original container.

2. Dry milk and milk products after opening shall be stored in seamless, air-tight containers.

3. Storage of non-perishable food shall be stored off the floor on washable shelving in a ventilated room.

4. Food shall be protected from dust, flies, rodents, vermin, overhead leakage and other sources of contamination, and shall be placed away from areas with excessive heat.

5. All perishable food (fresh fruit and vegetables) and potentially hazardous food (meat and dairy products) shall be stored off the floor on washable, corrosion-resistant shelving under sanitary conditions, and at temperatures which will protect against spoilage.

6. Meat and dairy products shall be stored at forty (40) degrees Fahrenheit or below, and fruit and vegetables at fifty (50) degrees Fahrenheit or below. When stored together, the lower temperatures shall apply. Temperatures shall be monitored by an accurate thermometer.

7. The storage of detergents, cleaners, pesticides and other non-food items, including employees' personal items, shall be prohibited in food storage areas.

8. Returned portions of food and beverages from individual servings shall not be reused unless such food or beverage is served in a sealed wrapper or container which has not been unwrapped or opened.

9. Ice.

a. Ice shall be stored and handled in a sanitary manner.

b. Stored ice shall be kept in an enclosed container.

c. An ice scoop shall be stored separate from the ice to prevent the handle from contact with the ice.

O. Transport of food.

1. Food shall be covered during transport through non-dietary areas, but need not be covered when served in a contiguous dining area.

2. The food service system shall be capable of maintaining hot foods at one-hundred-fifty (150) degrees Fahrenheit or higher; cold food at forty (40) degrees Fahrenheit or lower.

3. A dumbwaiter or conveyor, used for the transport of soiled linen or soiled dishes, shall not be used for the transport of food.

11 MCAR § 2.591 Security.

A. Policies and procedures. Security policies and procedures shall be developed to cover the following:

1. Control and recovery of contraband;

2. Delivery and service procedure;

3. Prohibition on firearms and other weapons in resident areas;

4. Search and shake down procedures;

5. A system of accounting for the location of residents;

6. Riot prevention and control; and

7. Supervision of all residents outside the facility perimeter.

B. Admissions.

1. The intake procedure conducted by the admitting officer for all admissions shall provide for a thorough search of the resident and belongings. In the event of all new admissions, a shower (delousing if indicated), an assessment of health status and physical needs, an inventory of resident's property, properly recorded and signed by the owner as correct, and completion of an admission form shall be completed.

2. No juvenile shall be received by the staff of a facility until the arresting or escorting officer has produced proper credentials and/or until the proper documents have been completed

identifying the purpose for placement. The arresting or escorting officer shall be required to sign his name and title on a form which is part of the intake and record.

3. All intake procedures shall be conducted in a manner and location that assures the personal privacy of the resident and the confidentiality of the transaction from unauthorized personnel.

C. Releases.

1. Upon release of a resident, the property of the resident, unless held for authorized investigation or litigation, shall be returned with a signed receipt acknowledging same.

2. Residents shall be permitted to make arrangements for transporation prior to release.

D. Contraband control searches.

1. Visitors who seek to enter a security area of the facility and refuse to submit to a search by a staff member of the same sex, shall be denied the privilege to visit if such procedures are established for the facility.

2. The facility shall be regularly inspected for contraband, evidence of breaches in security, and inoperable security equipment.

E. Locks and keys.

1. When not in use, all keys to locks shall be properly tagged and securely stored.

2. One (1) complete set of facility keys and locks shall be kept on hand for replacement purposes.

3. Keys and locks that serve a critical security purpose shall be easily identifiable and never issued except upon order of the facility administrator or person in charge, and in accordance with established procedure. (Mandatory)

4. No security keys and locks shall be made available to residents.

F. Dangerous Material. Material dangerous to either security or safety shall be properly secured. (Mandatory)

G. Count procedure.

1. Each facility shall have a written policy and procedure governing counts.

2. Formal counts shall occur minimally every eight (8) hours and shall be logged.

11 MCAR § 2.595 Environmental/personal health and sanitation.

A. Availability of medical and dental resources.

1. The facility shall have a licensed physician(s) or medical resources designated for the medical supervision, care and treatment of residents. (Mandatory)

2. The facility shall insure twenty-four (24) hour a day availability of consultation, advice and emergency medical service.

3. The local health authority shall be requested to inspect annually the facility with respect to sanitatation and health conditions.

4. Each facility shall have emergency dental care available to residents.

5. Ambulance services shall be available on a twenty-four (24) hour a day basis. (Mandatory)

B. Physical examination.

1. Residents shall have a general medical history and physical examination or health assessment within thirty (30) days preceding admission or within (7) days after admission.

a. The medical report shall be filed in the resident's health file and shall include appropriate instructions for meeting special needs, such as diet or medications.

b. Registered nurses or licensed practical nurses performing health assessments shall have access to a consulting licensed physician.

c. Stimulants, tranquilizers, psychotropic drugs, and drugs requiring intramuscular administration shall be prescribed only by a physician. (Mandatory)

2. Policies and procedures for medical care shall exist for the following:

a. Obtaining medical consent;

b. Receiving screening;

c. Collecting health appraisal data;

d. Medical services;

e. Dental services;

f. Emergency medical and dental services;

g. First aid;

h. Notifying next of kin or legal guardian in case of serious illness, injury or death;

i. Providing chronic care;

j. Convalescent care;

k. Medical preventive maintenance;

l. Screening, referral and care of mentally ill and retarded residents;

m. Making staff aware of special medical problems;

n. Implementing the special medical program;

o. Immunizing, where possible;

p. Delousing procedures;

q. Providing detoxification procedures;

r. Providing pharmaceuticals;

s. Special medical programs; and

t. Follow-up medical referral after discharge.

3. Receiving screening shall be part of the intake process. Areas to be assessed include:

a. Possibility of pregnancy;

b. Possibility of venereal disease;

c. Current illnesses and health problems;

d. Medications taken and special health requirements;

e. Status of immunizations;

f. Screening of other health problems designated by the responsible physician;

g. Behavioral observation, including state of consciousness and mental status;

h. Notation of body deformities, trauma markings, bruises, lesions, ease of movement, and/or jaundice;

i. Condition of skin and body orifices, including rashes and infestations; and

j. Disposition/referral of residents to qualified medical personnel on an emergency basis.

C. Sick call. The facility shall provide space, staff, and a procedure for daily sick call.

D. Posting of available resources. A listing and telephone numbers of the medical, dental and ambulance resources and telephone numbers shall be posted at the facility's primary staff station.

E. Hospitalization of a resident.

1. Each facility administrator shall insure the availability of hospital services for residents.

2. When a resident requires hospitalization, he/she shall be supervised on a twenty-four (24) hour per day basis unless the following conditions have been satisfied:

a. The resident has been deemed not in need of custody supervision; or

b. The resident is medically incapacitated in the opinion of the attending physician.

F. First aid.

1. Child care workers responsible for the supervision, safety and well-being of residents shall be trained in basic first aid procedures and have a current first aid certificate (renewed every three years).

2. Facilities shall have a minimum of one (1) first aid kit which is approved by the physician located at the facility's control center or primary staff station.

3. The first aid kit shall be inspected regularly by a designated staff person to assess the need for replenishment of supplies. Such inspection shall be documented.

4. One person on duty per shift shall have training in receiving screening, basic life support, cardiopulmonary resuscitation (CPR), and recognition of symptoms of the illness most common to the facility.

G. Medical and dental records.

1. The facility shall record complaints of illness or injury by residents. The facility response shall be documented.

2. Medical and dental records shall be maintained on each resident.

H. Personal hygiene.

1. Each resident shall be permitted daily bathing or showering.

2. Residents shall receive provisions for obtaining personal hygiene items at facility expense i.e., soap, sanitary pads, toothbrush and toothpaste.

3. There shall be hair care services available to residents.

4. Each living unit provides, at a minimum:

a. One (1) toilet for every five (5) residents;

b. One (1) washbasin for every five (5) residents;

c. One (1) shower for every five (5) residents;

d. A bathtub in the facility available to all residents; and

I. Delivery, supervision and control of medicines.

1. Delivery of medicine shall be conducted only by licensed medical or nursing personnel or by facility staff members who have been trained in the delivery of medications.

2. The delivery of legend drugs by unlicensed staff shall be under the direction of a consulting physician.

3. The facility administrator, shall develop plans and procedures for the secure storage, delivery, supervision and control of medicine. Such plans and procedures shall include:

a. Storage.

(1) All medicines shall be kept in a secure storage place.

(2) Medicine requiring refrigeration shall be stored in a secure refrigerator.

(3) Residents shall not be allowed in any room used for the storage of medicine without direct staff supervision.

(4) Only staff authorized to deliver medicine shall have access to keys for medicine storage areas.

(5) Stock supplies of legend (prescription-type) drugs shall not be maintained. (Mandatory)

(6) Prescribed medicine shall be kept in its original container, bearing the original label.

(7) Poisons and medicine intended for external use shall be clearly marked and shall be stored separate from medicine intended for internal use.

b. Delivery, control and recording of legend drugs.

(1) Diabetics with permission of the attending physician shall be permitted to self-administer insulin injections.

(2) Other medicine administered by injection shall be given only by a physician, registered nurse, or licensed practical nurse. (Mandatory)

(3) Unless ordered otherwise by the attending physician, medicine delivered to residents shall be self-administered under staff supervision.

(4) Procedures shall be developed for the positive identification of the recipient of all medicine.

(5) Prescribed medicine shall be delivered in accordance with the physician's instructions at the correct time and in the prescribed dose.

(6) No resident, while receiving legend drugs, shall receive any non-legend drug without the approval of the attending physician. (Mandatory)

(7) Adverse reactions to drugs shall be reported at once to the attending physician and an explanation shall be made in the resident's record. (Mandatory)

(8) Resident refusal of prescribed medicine shall be reported to the attending physician and an explanation shall be made in the resident's record.

(9) No resident shall be deprived of medicine as prescribed due to penalty or staff retaliation. (Mandatory)

(10) A physician shall be contacted prior to the next prescribed medicine dosage time for instructions on all newly admitted residents who are either in possession of prescribed medicine or indicate a need for such. (Mandatory)

c. Recording of legend drugs entering the facility. Records of receipt, the quantity of such drugs, and of the disposition of all legend drugs shall be maintained in sufficient detail to enable an accurate accounting at any time.

4. If authorized by the attending physician, prescribed medicine belonging to a resident shall be given to them when released or to appropriate authorities when transferred. This shall be recorded in the resident's record.

5. Unused portions of prescribed medicine shall be destroyed by incineration or by flushing into the sewer system. (Mandatory)

a. Such destruction shall be performed by the facility administrator or a designee and witnessed by a staff member.

b. A notation of the destruction shall be made in the resident's record and shall include the name and quantity of the drug destroyed and shall be signed by the facility administrator or a designee and staff witness.

6. Unused portions of controlled substances shall be handled by contacting the Minnesota Board of Pharmacy. (Mandatory)

7. Methadone programs shall not be made available unless in compliance with all existing laws and regulations governing such programs. (Mandatory)

8. Written policy shall prohibit the facility administrator from conducting medical or pharmaceutical testing for experimental or research purposes.

9. If medical services are delivered in the facility or through contract services, space, equipment, supplies and materials shall be provided.

J. Isolation for contagious disease.

1. Residents who are suspected of having a contagious disease shall be detained in isolation for only that period of time necessary to obtain advice and consultation from a physician.

2. Continuation of such isolation shall be determined by the attending physician.

3. A resident placed in isolation for medical reasons shall not be deprived of any more privileges, rights or amenities than shall be consistent with his/her classification prior to such assignment except to the extent that such privileges, rights or amenities would endanger the health of staff, other residents, or the public.

K. Mentally ill residents. Screening and referral for care shall be provided to mentally ill or retarded juveniles. The physician shall provide a written list of symptoms or behavior indicative of mental illness and retardation for staff training and shall designate specific referral sources.

1. If the facility administrator or designee determines a resident to be mentally ill, a licensed physician's opinion (preferably a psychiatrist) shall be secured as soon as possible, but not more than eight (8) hours after such determination.

2. A licensed physician's opinion is supportive of the facility administrator or designee, and if practical and feasible,

such resident shall be transferred to a medical facility designated by the county and approved by the State Department of Health for diagnosis, treatment and evaluation of such suspected mental illness pursuant to Minn. Stat. § 253A.04, Emergency Hospitalization of Mentally Ill and Mentally Deficient Persons. (Mandatory)

L. Housekeeping, sanitation, plant maintenance.

1. The physical plant shall meet all standards required by the State Building Code, State Fire Marshal and the State Health Department. (Mandatory)

2. General requirement. The entire facility inclusive of every building, structure or enclosure utilized by the facility - walls, floors, ceiling, registers, fixtures, equipment and furnishings shall be kept in good repair.

3. Established plan. The person responsible for plant maintenance, housekeeping and sanitation shall develop and implement a written plan with identified policies and procedures for same.

4. Inspections. The facility administrator shall develop and implement a written plan for the daily inspection of the facility with respect to housekeeping, sanitation, and plant maintenance. Such inspections shall be recorded.

5. The facility administration shall have available to it the services of a qualified fire and safety officer who reviews all fire and safety policies and procedures at least annually.

6. Written policies and procedures shall specify the facility's fire prevention regulations and practices to ensure the safety of staff, residents and visitors. These include provision for an adequate fire protection service, a system of quarterly fire inspection and testing of equipment, an annual inspection by local or state fire officials, and availability of fire hoses or extinquishers at appropriate locations throughout the facility. (Mandatory)

7. There shall be an automatic fire alarm and heat and smoke detection system approved by the state fire marshal or recognized state authority, and tested on a regular basis. (Mandatory)

8. Work requests.

a. The facility administrator shall develop policies and procedures designed to detect and correct building and equipment deterioration, safety hazards and unsanitary conditions.

b. Such policies and procedures shall include:

(1) A requirment that the facility staff report unsanitary and unsafe conditions as well as physical plant and equipment repairs and replacement needs;

(2) A process whereby work requests are prioritized and filed with the governing body by the facility administrator in an expedient manner;

(3) A records system allowing for review of budget and work requests, expenditures, dates and actions pursuant to detection of need, submission of work orders and completion of requests.

9. Insect and rodent control. Any condition or in the facility conducive to harborage or breeding of insects, rodents, or other vermin shall be eliminated immediately. (Mandatory)

M. Sleeping rooms.

1. Single occupancy sleeping rooms shall have a minimum of seventy (70) square feet of floor space per person.

2. Double occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.

3. Multi occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.

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ADMINISTRATIVE
HEARINGS

RULES GOVERNING
JUVENILE RESIDENTIAL FACILITIES

May 28, 1981

DEPARTMENT OF CORRECTIONS
266 Metro Square Building
7th & Robert Streets
St. Paul, MN 55101

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11 MCAR § 2.551 Introduction.

A. Minn. Stat. § 241.021, subd. 11, as amended by Laws of 1978, ch. 778, provides that the Commissioner of Corrections promulgate rules establishing minimum standards for all correctional facilities throughout the State, whether public or private, established and operated for the detention and confinement of a person detained or confined therein according to law except to the extent that they are inspected or licensed by other State regulating agencies. The rules which follow are minimum requirements for juvenile residential facilities.

B. Annual inspections. Juvenile residential facilities required to be licensed by Minn. Stat. § 241.021, subd. 1 (1), will be inspected annually.

C. Revocation of license for non-conformance. Revocation of license proceedings shall be done in accordance with Minn. Stat. § 241.021, 1, (4).

D. Issuance of license. A license shall be granted if the facility is in substantial conformance with rules stated herein, or is making satisfactory progress towards substantial conformance, and if the interests and well-being of children and youth received therein are protected. The license shall remain in force one (1) year unless sooner revoked.

E. Intended use. A facility shall be used only for the classification for which it is licensed.

F. Posted license. The license(s) of each juvenile residential facility shall be conspicuously posted in an area where residents are admitted to the facility.

G. Severability. The provisions of these rules are severable.

11 MCAR 2.554 Variance.

A. Variance of specific rule. The granting of a variance under this section shall not constitute a precedent for any other juvenile residential facility. The granting and denial of all variances shall be in writing and made within 30 days of the request for a variance. Such variance will be granted by the Commissioner if, in the licensing procedure or enforcement of the standards in these rules:

1. To require a particular juvenile residential facility to strictly comply with one or more of the provisions will result in undue hardship, or jeopardize the health, safety, security, detention, or well-being of the residents or facility staff;

2. The juvenile residential facility is otherwise in substantial conformity with the standards contained in these rules or making satisfactory progress toward substantial conformity;

3. Granting of the variance will not preclude the facility from making satisfactory progress toward substantial conformity with the rules;

4. The granting of the variance will not leave the interests and well-being of the residents unprotected; and

5. The facility will take such surrogate action as is necessary or available to comply with the general purpose of the standards to the fullest extent possible.

B. Emergencies. During an emergency, as defined in these rules and as declared by a facility administrator, those rules directly affected by the emergency and which, if not suspended, would adversely affect the health, security, safety, detention, or well-being of the persons detained or confined in juvenile residential facilities or the facility staff, shall be inoperative when an emergency is declared by the administrator.

1. The facility administrator shall notify the Department of Corrections in writing within 72 hours of any emergency which resulted in the suspension of any rule.

2. No suspension of rules because of an emergency declared by a facility administrator may exceed seven (7) days unless the administrator obtains the approval of the Commissioner of Corrections for a variance of the rules and such a variance is

necessary for the protection of the health, security, safety, detention or well-being of the staff or the persons detained or confined in the institution where the emergency exists.

11 MCAR § 2.559 Juvenile residential facility definitions.

A. "Administrative Segregation" shall mean the status of physical separation of those juveniles who are determined to be prone to escape, prone to be assaultive or need protection from other juveniles.

B. "Approved Capacity" shall mean the number of residents or occupants for which any room, unit, building, facility or combination thereof, was planned, designed and approved in compliance with these standards.

C. "Average Daily Population" shall mean the average number of residents (juveniles) residing daily during the last calendar year.

D. "Child Care Worker" shall mean those staff with whose primary duties are the day-to-day ongoing supervision of residents.

E. "Commissioner" shall mean the Commissioner of the Minnesota Department of Corrections.

F. "Controlled Substance" shall mean a drug, substance or immediate precussor in Schedules I through V of Minn. Stat. § 152.02,

(1980). The term shall not include distilled spirits, wine, malt beverages, intoxicating liquor or tobacco.

G. "Department of Corrections" or "Department" as used in these standards shall mean the Minnesota Department of Corrections.

H. "Disciplinary Segregation" or "Room Restriction" shall mean that status assigned a juvenile as a consequence or means of control resulting from a violation of facility rules or statutes. Such status shall consist of confinement in a room or housing unit separate from others who are not on disciplinary segregation status.

I. "Emergency" shall mean any significant incident or disruption of normal facility procedures, policies, routines or activities such as fire, riot, natural disaster, suicide, assault or medical emergency.

J. "Facility Administrator" shall mean the chief executive officer, superintendent, director or other individual who has been assigned, designated or delegated full time responsibility and authority for the administration and operation of a juvenile residential facility.

K. "Governing Authority" shall mean the political body, political subdivision or the board of directors of a corporation.

L. "Inspection" shall mean an on-site assessment of existing conditions made to determine the facility's compliance with those rules.

M. "Juvenile Residential Facility" shall mean any private, city, county, city and county, or multiple county juvenile residential facility which constitutes a dispositional alternative available to the juvenile court under the provisions of Minn. Stat. § 260.185 having a residential component with the exception of group foster homes as defined in Department of Corrections 11 MCAR § 2.445, G.

N. "Legend Drug" shall mean a drug which is required by federal law to bear the following statement: "Caution: Federal law prohibits dispensing without prescription."

O. "Medicine" shall mean any remedial agent that has the property of curing, preventing, treating or mitigating diseases, or that is used for that purpose. For the purpose of these rules, medicine shall include legend and non-legend drugs.

P. "Policy" shall mean a written statement declaring mission, purpose, and ideological position.

Q. "Procedure" shall mean a statement establishing the action plan to accomplish policy.

R. "Resident" shall mean any individual confined and residing in the juvenile residential facility.

S. "Substantially Conform" shall mean a compliance rating of 100% on items labeled mandatory and a rating of 70% compliance on all other items in this rule.

T. "Undue Hardship" shall mean the financial costs are not warranted when weighed against the benefits derived.

U. "Variance" shall mean the waiver of a specific rule for a specific period of time.

11 MCAR § 2.567 Personnel.

A. Staff health. All personnel shall be screened for tuberculosis prior to employment. Such tests shall be of either the tuberculin skin test or the chest roentgenogram (x-ray). If a skin test is positive, a chest roentgenogram (x-ray) shall be required. Additional testing shall be required upon known exposure to tuberculosis. (Mandatory)

B. Recruitment.

1. The selection, appointment and promotion of facility personnel shall be based on assessed ability.

2. All child care workers shall be a minimum of 18 (eighteen) years of age.

3. Recruitment standards shall be reasonable and geared to reach the widest possible work force. They shall set forth the basic requirements of age, ability, preparatory experience, and physical condition.

4. A criminal record check shall be conducted on all new employees prior to employment. (Mandatory)

C. Employee evaluation. Each employee shall complete a probationary period and be evaluated during the probationary period before being permanently appointed. The evaluation shall be in writing, discussed with the employee and made a part of the employee's personnel record.

D. Staffing requirements.

1. Staffing plan. The facility administrator shall prepare and retain a staffing plan indicating the personnel assignments and duties.

2. Minimum staff requirements.

a. Facility administrator. There shall be a single administrator or chief executive of each facility.

b. Person in charge. In the absence of the facility administrator, a staff person shall be designated as person in charge.

c. Staff presence. No person shall be housed in the facility without a staff person on duty, awake and alert at all times, and capable of responding to reasonable needs of residents. (Mandatory)

d. Sex of staff. Staff members shall not be placed in positions of responsibility for the supervision and welfare of residents of the opposite sex in circumstances that can be described as invasion of privacy, degrading or humiliating to the resident.

e. Back-up staff. Where staff of one sex are used as program resource with residents of the opposite sex, staff of the residents' same sex must be on duty, awake and alert in the facility.

f. Relief staff. Personnel shall perform ancillary functions such as transportation or court escort to the extent that security, supervision, program, and facility administration are not jeopardized by such activities.

g. Training for relief staff. Part-time and relief staff shall complete orientation training appropriate to assigned responsibilities. Such orientation shall be documented.

h. Child care workers, educational/vocational, social service and recreation staff ratio to residents shall be as follows:

(1) During waking hours, the ratio of staff to residents shall be one (1) staff to ten (10) residents. Staff who are not involved with the youth in direct service shall not be considered in this ratio. (Mandatory)

(2) During non-waking hours of youth, a combination of staff resources and physical plant resources shall provide a procedure for reporting incidents. This shall include a staff person present, awake and alert during these times. (Mandatory)

i. Educational/vocational staff and program shall be provided consistent with Minnesota Department of Education Rules 5 MCAR 1.0120 - 1.0129. (Mandatory)

j. Recreation staff. Each facility shall have a minimum of one (1) staff person designated to develop, implement and coordinate recreational programs for the residents and act as a liaison between the facility and the community. Such person shall have training and/or experience appropriate to required responsibilities.

k. Volunteer coordinator.

(1) The facility administrator shall designate a person to coordinate volunteer services if volunteers are utilized by the facility.

(2) There shall be a system for registration and identification of volunteers.

(3) Volunteers shall agree in writing to abide by facility policies.

(4) Written policies shall specify that volunteers perform professional services only when certified or licensed to do so by appropriate professional organizations.

(5) Written policies and procedures shall provide that the administrator curtails, postpones or discontinues the services of a volunteer or volunteer organization when there are substantial reasons for doing so.

1. Social service staff (case management personnel). A minimum of one (1) staff person for every twenty-five (25) residents shall be designated responsible for the coordination of resident program plans.

11 MCAR § 2.571 Staff training (pre-service and in-service).

A. Training plan.

1. The facility administrator shall develop an orientation training plan for new employees and volunteers and make provisions for on-going in-service training of employees and volunteers.

2. Written in-service training plans shall be developed annually.

B. Pre-service orientation training.

1. Child care workers shall complete a minimum of forty (40) hours of pre-service orientation training prior to assuming full responsibility for supervising residents.

2. Written policies and procedures shall provide that full-time staff or volunteers who work in direct contact with residents shall receive a total of forty (40) additional hours of training during their first year of employment in the following areas:

a. Human relations and communication skills;

b. Crisis intervention;

c. Special needs of youth;

d. Problem-solving and guidance;

e. Facility's philosophy for handling troubled youth;

f. Resident rules and regulations;

g. Rights and responsibilities of residents;

h. Grievance and disciplinary procedures;

i. Security procedures;

j. Physical restraint procedures;

k. Supervision of residents;

l. Report writing;

m. Significant legal issues;

n. Interaction of elements of the juvenile justice system;

o. Relationships with other agencies;

p. Fire emergency procedures; and

q. First aid and life-sustaining functions.

C. In-service training. Child care workers, middle management and non-management professional personnel shall complete forty (40) hours of in-service training per year.

1. Management personnel and facility administrators shall complete forty (40) hours of training per year.

2. Personnel who work with residents, who are confined separately from the total population, shall receive specialized training in the problems people encounter who live in confinement.

3. Space and equipment required for training and staff development shall be provided.

11 MCAR § 2.575 Staff deployment, job description, work assignments, post orders, policies and procedures.

A. Job descriptions.

1. Each facility administrator shall develop written job descriptions for all position classifications and post assignments which define responsibilities, duties and qualifications.

2. The job descriptions shall be readily available to all employees with copies on file in the administrator's office.

B. Work assignments. Work assignments shall be consistent with qualifications as stated in job descriptions and the approved staffing plan of the facility.

C. Staff policies and procedures. The facility administrator shall develop written policies and procedures such as escape, fire, medical emergencies, admission, release, laundry, feeding, canteen, visiting, and security checks.

D. Policy and procedure manuals.

1. Policy manuals shall be available to all staff within the facility.

2. The policy and procedures manual shall be reviewed and updated annually.

E. Personnel policies. Written personnel policies shall be developed by the facility administrator and governing body which specify hours of work, vacations, illness, sick leave, holidays, retirement, employee health services, group insurance, evaluation procedures, promotions, personal hygiene practices, attire, conduct, and disciplinary actions, and shall be available to employees.

F. The facility shall have a grievance procedure for employees.

G. The facility administrator shall develop a written plan for dissemination of information to the public, to government agencies, and to the media.

11 MCAR § 2.579 Records and reports.

A. Maintenance of records and reports. The following records, reports and statistics shall be maintained for a period of one (1) year following the last state inspection or longer if necessary to meet applicable statutory or local unit of government requirements:

1. Admission and release records; (Mandatory)

2. Resident personal property records;

3. Clothing, linen and laundry records;

4. Records of budget requests and work orders;

5. Special occurrence records;

6. Records of policies and procedures;

7. Employee personnel records;

8. Records of staff training;

9. Accounting records;

10. Food service records;

11. Daily log.

12. Programming records;

13. Medical and dental records; and

14. Disciplinary records.

B. Storage of records.

1. Space shall be provided for the safe storage of records.

2. Records shall be filed in an organized and retrievable manner.

C. Filing of records.

1. Records of released residents shall be filed in the facility for one (1) year following discharge.

2. Confidentiality of resident records and resident access to personal files shall be kept in conformity with state law. (Mandatory)

3. The contents of case records shall be organized according to an established format.

4. Case records shall be safeguarded from unauthorized and improper disclosure.

11 MCAR § 2.583 Resident welfare.

A. Facility program.

1. Program objectives. The facility administration shall prepare a written program description and a statement of objectives and goals.

2. Special staff assignment. Every client shall be assigned to a staff person to assure regular face to face contact. (Mandatory)

3. Social services. The facility administrator shall maintain a social services program, such as individual and group counseling, community services and family services. (Mandatory)

4. Counseling clients. Policies and procedures shall assure that a staff person is available to counsel clients upon request and during times of crisis.

5. Intake policies and procedures.

a. The facility shall have a written program description that describes the facility's goals and objectives, programs and services offered and the admission requirements.

b. Intake policies shall be organized in a form suitable for distribution to staff, residents, referral resources, funding agencies and the general public.

c. Intake form. The facility shall complete an intake form on each resident which shall include:

(1) Name;

(2) Address;

(3) Date of birth;

(4) Sex;

(5) Race or ethnic origin;

(6) Reason for referral;

(7) Whom to notify in case of emergency;

(8) Date information gathered;

(9) Name of referring agency or committing authority;

(10) Social history, where available;

(11) Special medical problems or needs;

(12) Personal physician, if applicable; and

(13) Legal status, including jurisdiction, length and conditions of placement.

B. Separation.

1. Separation of male and female juveniles shall provide complete separation of living and sanitation facilities. (Mandatory)

2. Facility administrators who schedule coeducational activities shall staff the activities consistent with personnel rules stated herein.

C. Information to residents.

1. Copies of rules shall be made available to all residents and include:

a. Rules governing conduct, disciplinary consequences and disciplinary procedures;

b. Procedures for obtaining personal hygiene and canteen items; and

c. Policies and procedures governing visiting, correspondence, bathing, laundry, clothing, bedding exchange and other operational procedures.

2. Each resident, within twenty-four (24) hours of admission (exclusive of weekends and holidays), shall be provided with a copy of the program information and activities available.

3. Rules as well as program information shall be read to those residents who are unable to read.

D. Individual program plan. A written program plan individualized for each resident shall be developed.

E. The resident's program plan shall be reviewed and revised as appropriate on a monthly basis or more often if appropriate.

F. Pre-release planning and follow-up programs shall be developed for each resident.

G. The facility program shall encourage and foster the development and use of community resources.

H. Individualized progress reports shall be made available to the parent or legal guardian upon request.

I. Written policies and procedures shall exist for resident grievances and appeal procedures.

J. Private facilities shall have written criteria defining the procedures for removal of a resident from the program.

K. Resident discipline.

1. Administrative segregation.

a. The facility administrator shall develop and implement policies and procedures for administrative segregation.

b. Administrative segregation shall consist of separate and secure housing, but shall not involve any deprivation of amenities or privileges normally afforded other residents, except to the extent that the protection of the resident, staff or public justify the necessity of such deprivation.

c. Any resident placed on administrative segregation shall be reviewed by the facility administrator or a designee within eight (8) hours or whenever the original circumstances that placed him/her in such a status have been altered. Continuation or change of such status shall require documented approval of the facility plan or a designee.

2. Discipline plan. (Mandatory)

a. All facilities shall have a resident discipline plan, which explains the consequences or administrative sanctions for specific behaviors, omissions, the administrative process for handling major and minor violations and the right to internal review.

b. The facility plan shall include a system of due process to include at a minimum:

(1) Published the rules of conduct and the penalties for violation of rules.

(2) Written notice of alleged violation of rule.

(3) The right to be heard by an impartial hearing officer and present evidence in defense.

(4) The right to appeal.

3. Disciplinary segregation (room restriction).

a. Disciplinary segregation shall be used only with due process procedures as outlined in Section 2.583 K.2.b.

b. A resident placed in disciplinary segregation prior to a due process hearing shall have a due process hearing within twenty-four (24) hours of such segregation (exclusive of holidays and weekends) unless documented cause can be shown for delays. As examples:

(1) Resident request for delay;

(2) Logistically impossible as in the case of mass disturbances.

4. Other limitations on disciplinary actions.

a. Residents shall be issued clothing and bedding. Residents who persist in the destruction of bedding or clothing may be deprived of such articles. The decision to deprive residents of clothing and bedding shall be reviewed by the shift supervisor during each eight (8) hour period.

b. The delegation of authority to any resident or group of residents to exercise the right of punishment over any other resident or group of residents is prohibited.

c. No resident shall be deprived of the use of materials necessary to maintain an acceptable level of personal hygiene.

5. Policies and procedures shall govern the use of restraints.

a. Instruments of restraint shall not be used except:

(1) As a precaution against escape during a transfer;

(2) On medical grounds by direction of a consulting or attending physician or psychologist; or

(3) By order of the facility administrator or person in charge to prevent a resident from injuring self, others or damaging property.

b. Such instruments shall not be applied for any longer time than is necessary.

c. Each incident involving the use of restraints consistent with 2.583 M.5.a.(2) or 2.583 M.5.a.(3) shall be documented and placed on file.

d. Facility personnel authorized to use restraints shall receive training in the use of restraints. Evidence of such training shall be documented and on file.

L. Activities.

1. Each facility administrator shall develop and implement a written plan for the constructive scheduling of resident time. (Mandatory)

a. The facility administrator shall arrange with the clergy to conduct religious services and provide counseling if requested. (Mandatory)

b. No resident shall be required to attend religious services. (Mandatory)

c. Religious services shall be held in such a location that the residents who do not wish to participate do not have to. (Mandatory)

d. Any resident desiring to read the Bible or sacred book of another religion shall be provided a copy at the expense of the county. (Mandatory)

e. Attendance or lack of attendance at religious services shall not be considered a basis for any right or privilege within the facility. (Mandatory)

2. The facility administrator shall develop and implement a plan for library service to include:

a. Access to current leisure reading material; and

b. Textbooks necessary to complete a course of study.

c. Legal books and references requested by residents shall be provided upon request to the extent resources permit. The facility's governing body shall not be responsible for purchasing legal books and references.

3. Work assignments. The facility shall develop a policy and procedure on work to include:

a. Work activities such as maintaining own room and maintaining activity areas;

b. Not being required to perform personal duties for staff or maintain areas away from the facility;

c. Eligibility criteria for work activities;

d. Statement that care shall be taken not to require juveniles to perform work they cannot physically perform.

4. Exercise and recreation. Each facility administrator shall develop and implement a planned physical exercise and recreational activities schedule for all residents. Such a program shall include:

a. Regulations to protect the facility's security and the residents' welfare;

b. Provisions for a minimum of two (2) hours daily of organized and supervised physical exercise and recreational activities and leisure time activities, excluding time spent watching television, for all residents. Organized and supervised means pre-planned exercise or activities supervised by staff qualified to direct same;

c. Indoor space and equipment for active recreation; and

d. Space, equipment and supportive staff for outdoor recreational programming.

5. The administrator shall develop leisure time activities such as television, radio, table games, hobby craft items and library materials.

6. Visiting plan. The facility administrator shall develop resident visiting policies and procedures to include: (Mandatory)

a. Security rules;

b. Provisions for residents to meet with attorneys. Attorney visits shall not be monitored;

c. The numbers of visits for each resident and the number of visitors permitted for each visit;

d. Visiting schedule offering both evening and daytime hours on weekdays and weekends;

e. Visiting for members of the resident's immediate family, counsel, and clergyman and others who would be helpful in planning for the child;

f. A written statement of the administrators right and responsibility to deny a visit to a resident when he has reasonable grounds to believe the visit might endanger the security of the facility;

g. The denial of a visit shall be in writing with a copy being issued to the resident, the person attempting to visit and the resident file;

h. Visitors shall register names, addresses and relationships to resident;

i. No area used for resident visiting shall use audio monitoring equipment during visits;

j. Visits conducted in residents' living areas shall not conflict with the normal activities of residents not receiving visitors.

7. Correspondence and telephone. The facility administrator shall develop a policy for resident mail consistent with the legal rights of juveniles and the facility's security.

8. Juvenile clothing, bedding and laundry services.

a. Each resident shall have neat and clean clothing appropriate to the season.

b. Clothing used to supplement residents' personal clothing shall be of a non-jail/non-uniform type.

c. Clothing exchanges shall occur minimally twice a week or more often as necessary.

d. Residents excess personal clothing shall be returned to designated family members or stored in a manner which prevents mildew and other damage.

e. Policies and procedures shall govern possession of personal property by each resident, inventory control and storage of excess property.

9. Linens and bedding.

a. Each resident admitted to the facility shall have the following articles made available:

(1) One bath towel;

(2) One clean, firm, fire-retardant mattress (polyurethane mattresses are prohibited);

(3) Two sheets or one sheet and a clean mattress cover;

(4) Sufficient clean blankets to provide comfort under existing temperature conditions;

(5) One pillow and one pillow case.

b. Clean linens shall be furnished once each week.

c. Bedding and linens which are worn out or unfit for further use shall not be used.

10. Removal of clothing and bedding. Policies and procedures should provide the guidelines for removing clothing and/or bedding from a resident if the behavior of the resident threatens the safety and/or security of the individual, others or the facility. A special occurrence report shall be completed and filed within the facility.

11. Laundry services.

a. Laundry services shall meet daily clothing, linen and bedding needs.

b. Care shall be taken to maintain separation of clean and soiled linens and clothing.

c. Residents' personal clothing and other non-linen items shall be laundered in accordance with appropriate washing procedures for the various fabrics.

12. Emergencies and special occurrences.

a. Emergency plan. The facility administrator shall develop a written disaster plan. The plan shall include: (Mandatory)

(1) Location of alarms and fire fighting equipment;

(2) Emergency drill policy;

(3) Specific assignments and tasks for personnel;

(4) Persons and emergency departments to be notified;

(5) Procedure for evacuation of all persons;

(6) Arrangements for temporary confinement of residents.

b. The plan shall be developed for the facility and with the assistance and advice of the local fire and/or rescue authority (Civil Defense).

c. Copies of the disaster plan containing basic emergency procedures shall be available at a central staff station.

d. All employees shall review emergency procedures every six (6) months. Evidence of such review shall be documented.

e. All incidents of a serious nature which endanger the lives or physical welfare of staff or residents shall be formally reported to the Department of Corrections within ten (10) days.

(1) Incidents of a serious nature shall include:

(a) Death;

(b) Serious injury or illness (accidental, self or other inflicted, incurred subsequent to placement);

(c) Fire causing serious damage;

(d) Riot;

(e) Assaults requiring medical care;

(f) Other serious disturbances;

(g) Occurrences of infectious diseases and disposition; and

(h) Escape (applicable to secure facilities).

(2) Special occurrences shall be reported on forms provided by the Minnesota Department of Corrections.

(3) In the event of serious illness, accident or imminent death, the resident's family or others who maintain a close relationship with him/her shall be notified.

f. When a resident's death occurs:

(1) The date, time and circumstances of the resident's death shall be recorded;

(2) The coroner's office shall be notified;

(3) The parents or guardian of the deceased shall be notified immediately;

(4) Personal belongings of the deceased resident shall be preserved for the resident's parents or guardian.

11 MCAR § 2.587 Food service.

A. General requirements.

1. The goals of food service in each facility shall be to provide food and beverages to residents that are nutritionally adequate; palatable; produced in a manner to prevent foodborne

illness; of adequate quantity and variety; served at appropriate temperatures; and, prepared by methods which conserve nutritional value.

2. The designated food service supervisor shall be trained in food service operations prior to assuming this reponsibility.

B. Food handling practices.

1. Food service shall be in accordance with the Minnesota Department of Health Rules 7 MCAR §§ 1.161 -1.170. (Mandatory)

2. Food catered to a facility shall be obtained from a source licensed by the Minnesota Department of Health or other authorized agency and transported, handled and served in a manner consistent with 7 MCAR §§ 1.161-1.170. (Mandatory)

C. Dietary service. Nutritional needs of residents shall be met in accordance with the following dietary allowances: (Mandatory)

1. Meat or protein group. Two (2) or more servings per day. A serving within this group is defined as:

a. 2-3 ounces cooked, lean, edible meat

b. 2 medium eggs

c. 4 tablespoons peanut butter

d. 1 cup dry beans

2. Milk group. Two (2) servings per day. A serving is defined as:

a. 1 cup of milk

b. 1 ounce of cheese

c. 1/2 cup cottage cheese

3. Cereal and bread group. Four (4) or more servings per day. A serving is defined as:

a. 1/2 to 1 slice of bread

b. 1/2 to 3/4 cup cereal

c. 1/2 to 3/4 cup rice

d. 1/2 to 3/4 cup of pasta

4. Fruit and vegetable group. Four (4) or more servings per day. A serving is defined as:

a. 1/2 cup potatoes

b. 1/2 cup cooked vegetables

c. 4 pieces raw vegetables

d. 1/2 cup fruit

e. 1 cup citrus juice

D. There shall not be more than fourteen (14) hours between a substantial evening meal and breakfast. At least three (3) meals shall be made available at regular times during each twenty-four (24) hour period.

E. Any facility housing residents in need of medically prescribed therapeutic diets shall have documentary evidence that such diets are provided for as ordered by the attending physician.

F. The food service plan of the facility shall provide special diets required to meet the medical and religious needs of the residents.

G. Food shall not be withheld as punishment for unacceptable behavior. (Mandatory)

H. Meals shall be served under supervision of staff.

I. Records of menus and of foods purchased shall be retained for one (1) year.

J. Menus shall be planned and posted one (1) week in advance and reviewed regularly by a nutritionist or dietician.

K. A minimum of two (2) hot meals shall be provided each day.

L. Food management policies and procedures shall include a food expenditure cost accounting system designed to isolate cost per meal per resident.

M. Canteen services shall be available to residents on a twice per week basis. Facilities which do not operate a canteen shall implement a system whereby residents have the opportunity to purchase or obtain sundry items on a twice per week basis.

N. Food storage.

1. All food prepared in bulk shall be stored in seamless containers after opening the original container.

2. Dry milk and milk products after opening shall be stored in seamless, air-tight containers.

3. Storage of non-perishable food shall be stored off the floor on washable shelving in a ventilated room.

4. Food shall be protected from dust, flies, rodents, vermin, overhead leakage and other sources of contamination, and shall be placed away from areas with excessive heat.

5. All perishable food (fresh fruit and vegetables) and potentially hazardous food (meat and dairy products) shall be stored off the floor on washable, corrosion-resistant shelving under sanitary conditions, and at temperatures which will protect against spoilage.

6. Meat and dairy products shall be stored at forty (40) degrees Fahrenheit or below, and fruit and vegetables at fifty (50) degrees Fahrenheit or below. When stored together, the lower temperatures shall apply. Temperatures shall be monitored by an accurate thermometer.

7. The storage of detergents, cleaners, pesticides and other non-food items, including employees' personal items, shall be prohibited in food storage areas.

8. Returned portions of food and beverages from individual servings shall not be reused unless such food or beverage is served in a sealed wrapper or container which has not been unwrapped or opened.

9. Ice.

a. Ice shall be stored and handled in a sanitary manner.

b. Stored ice shall be kept in an enclosed container.

c. An ice scoop shall be stored separate from the ice to prevent the handle from contact with the ice.

O. Transport of food.

1. Food shall be covered during transport through non-dietary areas, but need not be covered when served in a contiguous dining area.

2. The food service system shall be capable of maintaining hot foods at one-hundred-fifty (150) degrees Fahrenheit or higher; cold food at forty (40) degrees Fahrenheit or lower.

3. A dumbwaiter or conveyor, used for the transport of soiled linen or soiled dishes, shall not be used for the transport of food.

11 MCAR § 2.591 Security.

A. Policies and procedures. Security policies and procedures shall be developed to cover the following:

1. Control and recovery of contraband;

2. Delivery and service procedure;

3. Prohibition on firearms and other weapons in resident areas;

4. Search and shake down procedures;

5. A system of accounting for the location of residents;

6. Riot prevention and control; and

7. Supervision of all residents outside the facility perimeter.

B. Admissions.

1. The intake procedure conducted by the admitting officer for all admissions shall provide for a thorough search of the resident and belongings. In the event of all new admissions, a shower (delousing if indicated), an assessment of health status and physical needs, an inventory of resident's property, properly recorded and signed by the owner as correct, and completion of an admission form shall be completed.

2. No juvenile shall be received by the staff of a facility until the arresting or escorting officer has produced proper credentials and/or until the proper documents have been completed

identifying the purpose for placement. The arresting or escorting officer shall be required to sign his name and title on a form which is part of the intake and record.

3. All intake procedures shall be conducted in a manner and location that assures the personal privacy of the resident and the confidentiality of the transaction from unauthorized personnel.

C. Releases.

1. Upon release of a resident, the property of the resident, unless held for authorized investigation or litigation, shall be returned with a signed receipt acknowledging same.

2. Residents shall be permitted to make arrangements for transporation prior to release.

D. Contraband control searches.

1. Visitors who seek to enter a security area of the facility and refuse to submit to a search by a staff member of the same sex, shall be denied the privilege to visit if such procedures are established for the facility.

2. The facility shall be regularly inspected for contraband, evidence of breaches in security, and inoperable security equipment.

E. Locks and keys.

1. When not in use, all keys to locks shall be properly tagged and securely stored.

2. One (1) complete set of facility keys and locks shall be kept on hand for replacement purposes.

3. Keys and locks that serve a critical security purpose shall be easily identifiable and never issued except upon order of the facility administrator or person in charge, and in accordance with established procedure. (Mandatory)

4. No security keys and locks shall be made available to residents.

F. Dangerous Material. Material dangerous to either security or safety shall be properly secured. (Mandatory)

G. Count procedure.

1. Each facility shall have a written policy and procedure governing counts.

2. Formal counts shall occur minimally every eight (8) hours and shall be logged.

11 MCAR § 2.595 Environmental/personal health and sanitation.

A. Availability of medical and dental resources.

1. The facility shall have a licensed physician(s) or medical resources designated for the medical supervision, care and treatment of residents. (Mandatory)

2. The facility shall insure twenty-four (24) hour a day availability of consultation, advice and emergency medical service.

3. The local health authority shall be requested to inspect annually the facility with respect to sanitatation and health conditions.

4. Each facility shall have emergency dental care available to residents.

5. Ambulance services shall be available on a twenty-four (24) hour a day basis. (Mandatory)

B. Physical examination.

1. Residents shall have a general medical history and physical examination or health assessment within thirty (30) days preceding admission or within (7) days after admission.

a. The medical report shall be filed in the resident's health file and shall include appropriate instructions for meeting special needs, such as diet or medications.

b. Registered nurses or licensed practical nurses performing health assessments shall have access to a consulting licensed physician.

c. Stimulants, tranquilizers, psychotropic drugs, and drugs requiring intramuscular administration shall be prescribed only by a physician. (Mandatory)

2. Policies and procedures for medical care shall exist for the following:

a. Obtaining medical consent;

b. Receiving screening;

c. Collecting health appraisal data;

d. Medical services;

e. Dental services;

f. Emergency medical and dental services;

g. First aid;

h. Notifying next of kin or legal guardian in case of serious illness, injury or death;

i. Providing chronic care;

j. Convalescent care;

k. Medical preventive maintenance;

l. Screening, referral and care of mentally ill and retarded residents;

m. Making staff aware of special medical problems;

n. Implementing the special medical program;

o. Immunizing, where possible;

p. Delousing procedures;

q. Providing detoxification procedures;

r. Providing pharmaceuticals;

s. Special medical programs; and

t. Follow-up medical referral after discharge.

3. Receiving screening shall be part of the intake process. Areas to be assessed include:

a. Possibility of pregnancy;

b. Possibility of venereal disease;

c. Current illnesses and health problems;

d. Medications taken and special health requirements;

e. Status of immunizations;

f. Screening of other health problems designated by the responsible physician;

g. Behavioral observation, including state of consciousness and mental status;

h. Notation of body deformities, trauma markings, bruises, lesions, ease of movement, and/or jaundice;

i. Condition of skin and body orifices, including rashes and infestations; and

j. Disposition/referral of residents to qualified medical personnel on an emergency basis.

C. Sick call. The facility shall provide space, staff, and a procedure for daily sick call.

D. Posting of available resources. A listing and telephone numbers of the medical, dental and ambulance resources and telephone numbers shall be posted at the facility's primary staff station.

E. Hospitalization of a resident.

1. Each facility administrator shall insure the availability of hospital services for residents.

2. When a resident requires hospitalization, he/she shall be supervised on a twenty-four (24) hour per day basis unless the following conditions have been satisfied:

a. The resident has been deemed not in need of custody supervision; or

b. The resident is medically incapacitated in the opinion of the attending physician.

F. First aid.

1. Child care workers responsible for the supervision, safety and well-being of residents shall be trained in basic first aid procedures and have a current first aid certificate (renewed every three years).

2. Facilities shall have a minimum of one (1) first aid kit which is approved by the physician located at the facility's control center or primary staff station.

3. The first aid kit shall be inspected regularly by a designated staff person to assess the need for replenishment of supplies. Such inspection shall be documented.

4. One person on duty per shift shall have training in receiving screening, basic life support, cardiopulmonary resuscitation (CPR), and recognition of symptoms of the illness most common to the facility.

G. Medical and dental records.

1. The facility shall record complaints of illness or injury by residents. The facility response shall be documented.

2. Medical and dental records shall be maintained on each resident.

H. Personal hygiene.

1. Each resident shall be permitted daily bathing or showering.

2. Residents shall receive provisions for obtaining personal hygiene items at facility expense i.e., soap, sanitary pads, toothbrush and toothpaste.

3. There shall be hair care services available to residents.

4. Each living unit provides, at a minimum:

a. One (1) toilet for every five (5) residents;

b. One (1) washbasin for every five (5) residents;

c. One (1) shower for every five (5) residents;

d. A bathtub in the facility available to all residents; and

I. Delivery, supervision and control of medicines.

1. Delivery of medicine shall be conducted only by licensed medical or nursing personnel or by facility staff members who have been trained in the delivery of medications.

2. The delivery of legend drugs by unlicensed staff shall be under the direction of a consulting physician.

3. The facility administrator, shall develop plans and procedures for the secure storage, delivery, supervision and control of medicine. Such plans and procedures shall include:

a. Storage.

(1) All medicines shall be kept in a secure storage place.

(2) Medicine requiring refrigeration shall be stored in a secure refrigerator.

(3) Residents shall not be allowed in any room used for the storage of medicine without direct staff supervision.

(4) Only staff authorized to deliver medicine shall have access to keys for medicine storage areas.

(5) Stock supplies of legend (prescription-type) drugs shall not be maintained. (Mandatory)

(6) Prescribed medicine shall be kept in its original container, bearing the original label.

(7) Poisons and medicine intended for external use shall be clearly marked and shall be stored separate from medicine intended for internal use.

b. Delivery, control and recording of legend drugs.

(1) Diabetics with permission of the attending physician shall be permitted to self-administer insulin injections.

(2) Other medicine administered by injection shall be given only by a physician, registered nurse, or licensed practical nurse. (Mandatory)

(3) Unless ordered otherwise by the attending physician, medicine delivered to residents shall be self-administered under staff supervision.

(4) Procedures shall be developed for the positive identification of the recipient of all medicine.

(5) Prescribed medicine shall be delivered in accordance with the physician's instructions at the correct time and in the prescribed dose.

(6) No resident, while receiving legend drugs, shall receive any non-legend drug without the approval of the attending physician. (Mandatory)

(7) Adverse reactions to drugs shall be reported at once to the attending physician and an explanation shall be made in the resident's record. (Mandatory)

(8) Resident refusal of prescribed medicine shall be reported to the attending physician and an explanation shall be made in the resident's record.

(9) No resident shall be deprived of medicine as prescribed due to penalty or staff retaliation. (Mandatory)

(10) A physician shall be contacted prior to the next prescribed medicine dosage time for instructions on all newly admitted residents who are either in possession of prescribed medicine or indicate a need for such. (Mandatory)

c. Recording of legend drugs entering the facility. Records of receipt, the quantity of such drugs, and of the disposition of all legend drugs shall be maintained in sufficient detail to enable an accurate accounting at any time.

4. If authorized by the attending physician, prescribed medicine belonging to a resident shall be given to them when released or to appropriate authorities when transferred. This shall be recorded in the resident's record.

5. Unused portions of prescribed medicine shall be destroyed by incineration or by flushing into the sewer system. (Mandatory)

a. Such destruction shall be performed by the facility administrator or a designee and witnessed by a staff member.

b. A notation of the destruction shall be made in the resident's record and shall include the name and quantity of the drug destroyed and shall be signed by the facility administrator or a designee and staff witness.

6. Unused portions of controlled substances shall be handled by contacting the Minnesota Board of Pharmacy. (Mandatory)

7. Methadone programs shall not be made available unless in compliance with all existing laws and regulations governing such programs. (Mandatory)

8. Written policy shall prohibit the facility administrator from conducting medical or pharmaceutical testing for experimental or research purposes.

9. If medical services are delivered in the facility or through contract services, space, equipment, supplies and materials shall be provided.

J. Isolation for contagious disease.

1. Residents who are suspected of having a contagious disease shall be detained in isolation for only that period of time necessary to obtain advice and consultation from a physician.

2. Continuation of such isolation shall be determined by the attending physician.

3. A resident placed in isolation for medical reasons shall not be deprived of any more privileges, rights or amenities than shall be consistent with his/her classification prior to such assignment except to the extent that such privileges, rights or amenities would endanger the health of staff, other residents, or the public.

K. Mentally ill residents. Screening and referral for care shall be provided to mentally ill or retarded juveniles. The physician shall provide a written list of symptoms or behavior indicative of mental illness and retardation for staff training and shall designate specific referral sources.

1. If the facility administrator or designee determines a resident to be mentally ill, a licensed physician's opinion (preferably a psychiatrist) shall be secured as soon as possible, but not more than eight (8) hours after such determination.

2. A licensed physician's opinion is supportive of the facility administrator or designee, and if practical and feasible,

such resident shall be transferred to a medical facility designated by the county and approved by the State Department of Health for diagnosis, treatment and evaluation of such suspected mental illness pursuant to Minn. Stat. § 253A.04, Emergency Hospitalization of Mentally Ill and Mentally Deficient Persons. (Mandatory)

L. Housekeeping, sanitation, plant maintenance.

1. The physical plant shall meet all standards required by the State Building Code, State Fire Marshal and the State Health Department. (Mandatory)

2. General requirement. The entire facility inclusive of every building, structure or enclosure utilized by the facility - walls, floors, ceiling, registers, fixtures, equipment and furnishings shall be kept in good repair.

3. Established plan. The person responsible for plant maintenance, housekeeping and sanitation shall develop and implement a written plan with identified policies and procedures for same.

4. Inspections. The facility administrator shall develop and implement a written plan for the daily inspection of the facility with respect to housekeeping, sanitation, and plant maintenance. Such inspections shall be recorded.

5. The facility administration shall have available to it the services of a qualified fire and safety officer who reviews all fire and safety policies and procedures at least annually.

6. Written policies and procedures shall specify the facility's fire prevention regulations and practices to ensure the safety of staff, residents and visitors. These include provision for an adequate fire protection service, a system of quarterly fire inspection and testing of equipment, an annual inspection by local or state fire officials, and availability of fire hoses or extinquishers at appropriate locations throughout the facility. (Mandatory)

7. There shall be an automatic fire alarm and heat and smoke detection system approved by the state fire marshal or recognized state authority, and tested on a regular basis. (Mandatory)

8. Work requests.

a. The facility administrator shall develop policies and procedures designed to detect and correct building and equipment deterioration, safety hazards and unsanitary conditions.

b. Such policies and procedures shall include:

(1) A requirment that the facility staff report unsanitary and unsafe conditions as well as physical plant and equipment repairs and replacement needs;

(2) A process whereby work requests are prioritized and filed with the governing body by the facility administrator in an expedient manner;

(3) A records system allowing for review of budget and work requests, expenditures, dates and actions pursuant to detection of need, submission of work orders and completion of requests.

9. Insect and rodent control. Any condition or in the facility conducive to harborage or breeding of insects, rodents, or other vermin shall be eliminated immediately. (Mandatory)

M. Sleeping rooms.

1. Single occupancy sleeping rooms shall have a minimum of seventy (70) square feet of floor space per person.

2. Double occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.

3. Multi occupancy sleeping rooms shall have a minimum of sixty (60) square feet of floor space per person.