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May 27, 2026

The Honorable Christa Moseng
Court of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164-0620

RE: In the Matter of the Proposed Rules Relating to Jail Facilities: CAH Docket No. 22-9051-40960- MSA Supplemental Comments

Judge Moseng:

Consistent with the rule-making hearing that you presided over today this document is submitted to supplement the Minnesota Sheriff Association (MSA) April 27, 2026, written comments and my presentation before you today. The MSA recognizes that many of the very recent proposed changes to Chpt. 2911 presented by the Minnesota Department of Corrections (DOC) to this Court were in response to many concerns raised over the past several years by County Sheriffs and Jail Administrators and the MSA is very appreciative of the fact that many of its concerns have been heeded and the proposed rules were adjusted to address many of the concerns. In review of the updated draft of rules that were presented to this Court there are still areas of significant concern and this submission addresses them.

MSA continues to be concerned that while the newest proposals are likely to have a less severe adverse fiscal impact on local government and county taxpayers, the DOC and its state partner at the Office of Management and Budget appear to be unable or

unwilling to follow what we believe to be the requirements of law, including Minn. Stat. Chpt. 14, to provide information on the specific fiscal impact of these rules. Fiscal impact is especially critical for smaller and more impoverished counties and as several commenters from those facilities have pointed out in their filed submissions, the proposed rules do very little to scale the demands the rules place on facilities. While in his presentation the Commissioner of Corrections and the DOC staff all spoke to the idea of recognizing that with jails one size does not fit all, to a very great degree the rules as proposed do not follow that recognition. We all recognized and understand that constitutional requirements do not vary depending on the size of the jail, but the proposed rules, which might be good correctional practices in many ways, clearly far exceed constitutional requirements for jail operations.

The need for a credible cost analysis of these rules on county government cannot be overstated and the OMB has the resources and presumably the skill set to do that and Minn. Stat. Chpt. 14 requires such an analysis under the rule-making process.[1] Minnesota sheriffs are elected officials who act with independent authority from the county board. The county board's primary role in jail operations is to provide adequate funding so sheriffs can meet constitutional and other mandated jail requirements. Under Minn. Stat. 387.20 a county sheriff is granted an annual budget from the county board and must justify the costs associated with that budget for all aspects of operations of the sheriff's office, including jails. Without an analysis by the DOC and/or Office of Management and Budget that duty of the sheriff is made far more difficult. Likewise, county boards that

[1] As presented on May 28, 2026,before this Court, even a rough estimate, which no evidence presented by DOC to date contradicts, concluded the March 2026 version of the proposed rules could cost county taxpayers from property tax dollars in the area of 100 million dollars a year. Since the vast bulk of those costs are staff cots they will continue to occur and increase on an annual basis.

must allocate limited resources to many competing county functions should be able to understand the impact of new DOC rules when they make those important and difficult decisions.

The MSA continues to urge this Court to require the DOC and OMB to comply with the requirements of Minn. Stat. Chpt. 14 and conduct that fiscal analysis so each impacted county can prepare for when these rules go into effect. We also propose by rue the DOC clarify that even if the new rules go into effect in mid-2027, that no enforcement action be taken against a licensed facility for a violation of the new rules that exceed and change the standards and resultant costs from existing rule until January 1, 2028. Our rationale is as follows.

Based upon the DOC proposed timeline whatever new rules are adopted will go into effect early to mid-2027, which is long after the 2027 annual county budget has been set. Minnesota counties operate on a fiscal year that is the calendar year and most counties are already working on the 2027 budget. This fiscal analysis needs to be conducted now and before the rules go into effect so counties can set the budget of the sheriff for next year. If the analysis is delayed or does not take place at all, leaving each county to its own devices, as a practical matter allocating funds to comply with the costs from these new rules, is not likely to take place at the county level until the start of the 2028 fiscal year. Counties need to plan accordingly and are going to need substantial time to plan and budget and that could be a major issue if a county has set a sheriff budget for 2027 based on current requirements because under Minn. Stat. 387.20 once the annual budget for the office of an elected official is set a sheriff has no legal recourse if a county board refuses to adjust it to take into account these new costs. Under Minn. Stat. 387.20 a

sheriff can appeal to district court if a county board fails to set a budget sufficient for the office to meet its duties under law, but that appeal window closes very quickly, usually by mid-January, so sheriffs could be left in a position of having to comply with costly new mandates in the later part of 2027 without the funds to implement them and with no legal recourse to get the funds. One would like to think DOC regulators would take that into account in imposing sanctions, but it is far better to insure that facilities will not be subject to sanctions by putting this provision into rule. A subpart could be added to Rule 2911.0100 to expressly so provide and we ask it be done.

In the presentation on May 28, 2026, Michelle Gross in apparent response to this cost discussion opined that counties have already paid out several million dollars in legal settlements for harm caused by jail rule violations and she specifically mentioned a case in Beltrami County. That argument is based on a false premise. Those settlements and liability are not based on a deficiency in existing rules, but a violation of them. As the public record shows in the case of Beltrami County a contracted medical provider was even subject to felony criminal charges and prosecution arising from the incident that led to that payout. Enacting more costly and onerous rules will not cure or prevent a rule violation as this very example demonstrates. In fact the examples presented by Ms. Gross underscore why the MSA as representative of sheriffs and counties is so rightfully concerned about ill-advised rules that are operationally unattainable or unrealistic. As Ms. Gross is certainly aware, since according to her presentation she makes a living suing correctional facilities, a basic element of such suits is a breach of duty of care and a common way for a plaintiff to try to prove that duty of care and breach is to cite a rule that has the force and effect of law, which 2911 rules do, and argue that failure to follow

the rule is the basis of liability. Every single rule adopted by the DOC can become a weapon to sue even well-meaning and well-intentioned jails, counties and their staff and employees so extreme caution must be exercised in the adoption of any rule to minimize the financial risk vividly demonstrated by Ms. Gross in her responsive presentation.

For the record we ask the court to recognize that comments made in the MSA prior submission of April 27, 2026, but not addressed by the DOC in its revisions should not be considered to be waived by the MSA and they are incorporated herein by reference. Significant changes made by the DOC in response to comments and recent meetings with Sheriff Office representatives are much appreciated, such as withdrawing nearly all incorporation by references proposals, and to the extent those comments have been rendered moot the MSA recognizes that and extends its appreciation to the DOC for hearing those concerns.

It is also understood that DOC representatives have made commitments in discussions to moderate the DOC approach in application of these rules and MSA does not question the veracity or sincerity of those representations made by the current DOC staff. However, as reflected in the history laid out in the SONAR, these rules are likely to be around a long time and it is only prudent to view them from the cautious perspective of how they could be applied differently by a different enforcement authority who might elect to exercise a less conciliatory and more authoritarian approach to rule enforcement. The rules must be written to address not only the current staff philosophy and approach but to consider and protect license holders from those who may take a less reasonable approach at a future time. For that reason the proposed rules must be viewed not through

the lens of how current DOC staff plan to apply them, but how a future regulatory body might apply them.

Before commenting on specific provisions MSA notes one overall concern and that concern is that throughout the rules the proposed amendments on policies require facilities to not only have policies on a variety of topics but also to "follow them." This language is concerning because it might lead to a situation in which the DOC takes licensing sanctions not because a facility failed to follow a minimum rule standard, but for failure to follow its own policies that exceed 2911 mandates. This situation could also lead to the perverse result of making the minimum standards of the rules the legally safest standard to write into policy, which then as a practical matter makes them also the maximum policy. The effect will be to encourage licensed entities do the bare minimum of what is required by the rules and discourage positive innovations in facility operations and inmate management.

To the extent county attorneys assist in liability risk reduction, which they do, they will prudently advise Sheriffs against adopting any policy that they are not willing to be sanctioned for if it is violated. This advice is soundly based on hundreds of years of common law precedent for civil liability. Anglo-American common law has long held a defendant can be liable for negligence only if one breaches a legal duty of due care and if you have no legal duty, then failure to do anything will not result in liability. However, once you voluntarily assume a duty, if you breach the standard of care and duty you can be liable. Therefore the legally safest course it never to assume such a voluntary duty.

Our society has long recognized that the legally safest course of action of doing nothing or minimal legal compliance may not be socially desirable and most states,

including Minnesota, have adopted a way to encourage people to voluntarily assume such duties without risk of liability. That concept, commonly known as a Good Samaritan Law, is found in Minn. Stat. 604A.01, subd. 2 and it could serve in the nature of a model in the rules. It is suggested that a provision be added to Minn. Rule Chpt. 2911 that provides explicitly that a licensee shall not be subject to sanctions simply for the violation of their own policies when those policies exceed the minimum legal standards imposed by the Rules or Minnesota Statutes.

While it is understood that representations have been made by DOC representatives that the current staff and regulators do not intend to impose sanctions in such circumstances, as noted above these rules should be written to protect against a change of heart or mind by those who have the power to sanction a jail license and have the ability to shut them down. Members of the MSA have had the unfortunate experience in the last several years of being given a commitment by DOC regulators that rule "interpretations" would not be the basis of a violation report and then that commitment not being honored so such a rule provision could be a guarantee to protect against such actions and future enforcement change of heart.

The language to address this issue could be easily included in Rule 2911.0100, as subp. D and simply read: Nothing in this chapter provides a basis for adverse license action against a licensee for a violation of the licensee's own policies when those policies exceed the minimum requirements imposed upon the licensee by Minnesota Statutes or these Rules.

The inclusion of this provision contains another benefit to the DOC as it reduces the risk of a rule challenge on the grounds that it violates Minn. Stat. 14.07, subd. 4.

While that statute allows a rule to incorporate by reference outside requirements, the statute also restricts the way that is done. If a licensee risks a sanction for violating its own policies that exceed rule minimum standards, a strong claim can be made that the policy is both a de facto and de jure rule and as such is invalid under several provisions of Minn. Stat. Chpt. 14. A good lawyer would make exactly such a claim in defending a county in a licensing dispute and if the claim prevails it puts the entire Rule 2911 in legal jeopardy. Including in rule the language suggested above provides a defense to such a claim and actually encourages the development of innovative standards and actions by license holders by eliminating the disincentives described above. It is urged that if DOC elects to continue to include the "and follow" language, the suggested rule provision also be added.

We now address line by line comments that raise concerns or issues.

Lines 1.10 to 1.12 are confusing as written because they seem to indicate the inmate helps determine administrative separation status. This needs to be clarified to show it is not the case.

Red-line Line 6.02 seeks to create a new definition of "Response to resistance." While it is understood this term is now a trendy alternative to a discussion of traditional use of force, as was pointed out during the May of 2026 national American Jail Association Conference, that phrase is not used in any long-established United States Supreme Court and lower courts case law and even now in their decisions these courts continue to discuss related issues by still using the term "authorized use of force". It is suggested that this new terminology of "Response to Resistance" could be explained at the end of the definition by adding words such as, "as legally defined by statutes and

legal precedent as authorized use of force." Addition of this phrase would help guide all interested parties in the event courts begin to adopt the new response to resistance terminology as a way to apply lawful use of force concepts.

In red-line 9.16 in the last line after the word "not" and before the word "impact" We suggest the word "adversely" be added.

Commencing on line 12.12, Rule 2911.0400 concerns variances but it should be noted the entire variance discussion omits statutory reference to the variance provisions in Minn. Stat. 14.055 and 14.056. It is unclear if this procedure is intended to implement those statutes or is in addition to them as it clearly cannot legally be a substitute for statutes as rules cannot control over statutes. This interplay should be clarified.

Line 24.20 mandates new staff that have minimal inmate contact have at least 24 hours of orientation and training during the first year of employment but there is no statement as to what that orientation and training must address or where that number comes from. Likewise the requirement of at least 16 hours of annual training in lines 25.19 and 25.20 remain similarly deficient.

Red-line 27.13 concerning training about substance abuse unduly singles out the one symptom of dehydration, which implies it to be the most important and significant aspect of training on the subject. Consulted medical providers do not share that assessment and therefore that reference as an example should be removed.

Concerns with line 28.15 on training about response to resistance can be cured by the definition modification previously included in this comment.

Line 44.20 concerning discipline and a step-down plan demonstrates that even with many of the changes the DOC now proposes in response to the various comments

that it has either missed, because of the understandable rush to submit edits and updates, or fails to fully embrace the idea and legal requirement that it only has authority to impose minimum standards. The lines speak to a step-down management plan, "if offered at the facility." Because the rule apparently does not find such a plan is a minimum standard requirement, since it does mandate the existence of such a program, reference to it should be eliminated since it exceeds a minimum standard by conditioning its application on whether a facility elects to offer it or not. Further, to the extent such a program might be a good correctional practice for some facilities, this conditional language is a stark example of the principles discussed earlier in these comments. If a facility offers such practice, then it is subject to sanctions if the DOC inspectors find fault with it. A prudent administrator to avoid that risk would be wise simply to not use such a program feature because by not having it, there is no risk of an adverse finding by the DOC. This same issue exists with red line 47.7.

In the realm of inmate discipline red-line line 45.2 limiting disciplinary confinement to no more than 60 consecutive days remains unduly restrictive for hopefully rare but serious violations.[2] For example, an inmate who murdered a staff member in a facility is subject to this limit. It should be noted that the DOC imposes no such limits upon itself in DOC Policy 303.010, dated 8/20/2024. It is recognized that there may be other separate options for longer periods of time, but since a period of incarceration in jails is reduced under Minn. Stat. 631.425, subd. 6 for "good behavior", the indirect effect of this provision may be to effectively cap the lose of this "good time."

[2] DOC has circulated in the past few weeks more than one draft of proposed rule updates and this comment is in response to one of those drafts. If conversations with DOC representatives cause this limitation to be removed from the submitted rules before this court, obviously this comment can be disregarded.

If the DOC desires to keep this language a clause should be added to make clear that this provision does not preclude consecutive disciplinary sentences that might when taken together exceed 60 days.

Red-line line 52.22 concerning substance use disorder services again demonstrates a place where the proposed rules still seek to impose standards that exceed legally required minimums. The proposed rule speaks to "substance use disorder services, if offered, which may include…." By definition as written this means it is not a minimum standard and therefore has no place in this set of rules.

While the newest version of the proposed rules effectively eliminates much incorporation of outside standards by reference, which is a positive development, it essentially sneaks back in by line 64.4 and reference to the most recently adopted version of Dietary Guidelines for Americans. For all the reasons previously established in earlier comments on the rules and the SONAR about these Guidelines that have caused DOC to remove them in the incorporation by reference section, this reference should also be removed. In addition there is simply no need for the reference. The rule requires approval of dietary plans by a licensed dietary professional. That person as a licensed professional has a legal and ethical obligation to meet professional standards and it is neither necessary nor appropriate to by an abstract rule to tell the person how to practice their profession. That reference should be deleted.

The conditional "if language" again appears at lines 78.13 and 85.20 concerning medication assisted substance use disorder treatment. As has already been discussed that language demonstrates the rule seeks to impose more than the statutorily authorized minimum standards and therefore has no valid place in the rules.

It is recognized that portions of Rule 2911.6800 as proposed were recently updated in an effort to reflect the changes in Minn. Stat. 241.021, subd. 4f caused by 2026 Session Laws, Chpt. 97, Art. 4, section. 1. The proposed rules do not fully conform with the new legislation. For example lines 104.11 to 104.13 state that before a jail medical provider can change or end a medication the provider must first seek written consent of the inmate. This is contrary to statute and actually reflects language repealed by the new legislation. Nothing in the statute requires the written consent of the inmate nor does it require that written consent even be asked for prior to the rest of the statute options being used by a medical provider. This language must be removed as it violates the new statute. Likewise the word "only" in line 104.15 must be removed because it also violates the new statute.

Line 104.19 and red-line 104.20 also exceed the provisions of the updated statute and attempt to substitute a rule for the reasonable professional judgment of medical providers. They also impose a duty directly on the provider not required under the statute. The rule purports to require the health authority make at least two attempts using different methods of communication if available to contact the prescribing provider. The statute has no such requirements. The new language of statute simply provides "reasonable attempts were made to consult the health care professional who prescribed the medication." The statute does not mandate the attempts be made by the actual provider and could be met if a staff member acting in place of and for the provider made a reasonable effort. Further, the reasonable effort may vary with circumstances and are properly determined by the jail's health care provider based on the case-by-case circumstances of each inmate and medical condition. Sometimes one effort might be

reasonable, sometimes two and sometimes more. Since both the statute and proposed rule provide the efforts be documented if DOC inspectors are so inclined they will have ample opportunities to second guess the professional judgment of the medical provider and this rule needs to be changed to conform to the express language of the statute.

In a like vein lines 105.3 to 105.16 seek to impose requirements that exceed the new statute and improperly interfere with professional medical judgment that could be of harm to inmate patients. For example lines 105.4 to 105.5 mandate a 7-day waiting period for a provider to object to medication change. That is simply without any legal authority and contrary to professional medical discretion. It is noteworthy that in the SONAR's lengthy discussion the DOC submits not one medical provider that supports this proposed rule. In the SONAR itself the DOC does not really try to justify these requirements beyond noting they are dictated by the 2025 legislation. That legislation is no longer the law of the land and this rule must be modified to conform and limit itself to the express language of the newly amended statute. Failure to do so will simply lead to many of the undesirable results that caused medical providers to bring suit to invalidate the 2025 session law and therefore this particular rule as proposed remains unreasonable and must be rejected.

Either on its own initiative or if need by based on the findings of this Court, on behalf of the citizens and taxpayers of Minnesota, County Sheriffs and counties, the MSA urges modification of proposed tule amendments to Rule 2911 as established in this communication and its communication of April 27, 2026.

Thanks to the court for its Consideration,

S/Richard Hodsdon
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June, 4, 2026

The Honorable Christa Moseng
Court of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164-0620

RE: In the Matter of the Proposed Rules Relating to Jail Facilities: CAH Docket No. 22-9051-40960-MSA Supplemental Comments

Judge Moseng:

The purpose of this comment is to clarify the record concerning statements made during the May 28, 2026 hearing regarding proposed amendments to Rule 2911. During public testimony, an individual identifying herself as Michelle Gross referenced an approximately $2.5 million settlement involving a death that occurred at the Beltrami County Jail and suggested the proposed rule changes were necessary because of that incident.

As the Jail Administrator at the time of the incident and an individual with direct knowledge of both the circumstances and resulting legal claim, I was disappointed by the material omissions and incomplete characterization of the facts presented during that testimony. Because Ms. Gross represented herself as having direct involvement and knowledge of the case, it is important that the complete factual context also be reflected in the record.

Specifically, of the total settlement amount referenced during the hearing, over $2 million was paid by the jail's contracted medical provider and its insurers based upon the actions and conduct of its own medical staff. The medical provider was an independent contracted vendor, and the staff member involved was never an employee of Beltrami County. That individual was also subject to criminal prosecution arising from the incident.

Beltrami County's portion of the settlement was significantly smaller, at $500,000, yet public discussions surrounding this case for more than six years have repeatedly and inaccurately

implied that the County alone bore responsibility for the outcome. That narrative is incomplete and misleading.

Equally important, the facts of this case do not support the assertion that the proposed Rule 2911 amendments would have prevented the incident or materially changed the outcome. The legal allegations in the matter were based in significant part upon failures to comply with existing standards and allegations of medical malpractice by the contracted medical provider. This was not a situation caused by an absence of rules or deficiencies within the existing Rule 2911 framework.

Additionally, Beltrami County staff did not ignore or disregard the medical needs of the inmate involved. The inmate was transported to two separate hospitals for medical evaluation and treatment, and correctional staff followed the recommendations and discharge instructions provided by those medical professionals and the contracted healthcare provider. This inmate received medical treatment at Bemidji Sanford Hospital after which was transported to Fargo Sanford Hospital and discharged at approximately 2200 hours on 8-31-18 and expired approximately 43 hours afterwards. During his incarceration, staff also provided extensive direct care and monitoring, including hand-feeding, assisting with bathing and hygiene, and attending to his daily needs on a continual basis. These facts are critical to a fair and accurate understanding of the matter.

The Hardel Sherrell Act likewise had little relevance to the actual underlying facts and legal basis of the settled claim, despite repeated attempts to publicly associate the two. Using this unfortunate incident as justification for broad, unnecessary, and unduly burdensome regulatory changes is inappropriate and risks creating policy based upon incomplete or inaccurate representations of the facts.

For these reasons, I respectfully request that the record reflect the full context of the settlement, the involvement and liability of the contracted medical provider, and the fact that the existing rules and medical standards, not the absence of additional regulations, were central to the claims that ultimately resulted in settlement.

Respectfully submitted,

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June 15, 2026

VIA ONLINE COMMENT PORTAL

Court of Administrative Hearings
Administrative Law Judge Christa Moseng
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Re: Post-Hearing Response to the Department of Corrections Prehearing Comments & Revisions

Revisor ID No. R-4445; CAH Docket No. 22-9051-40960

To: The Honorable Judge Moseng

I am writing to submit a formal post-hearing response to the Minnesota Department of Corrections' (Department) Prehearing Comments & Revisions and the revised public draft issued on May 22, 2026.

First, I want to express my appreciation to Commissioner Schnell, Rulemaking Manager Tara Rathman, and the Department's team including Inspector General Mike Garland, Director Kristi Strang, Policy Director Amy Lauricella, and the Inspection and Enforcement Staff for their diligence in reviewing public comments and engaging with stakeholders. I also greatly appreciated the opportunity to attend the administrative hearing on May 28, 2026, which provided an invaluable forum for stakeholders to discuss these complex issues openly. The Department's willingness to re-evaluate the draft text demonstrates a commendable commitment to administrative transparency.

My original objection letter, dated April 21, 2026, laid out key legal and operational vulnerabilities spanning the proposed updates to Chapter 2911. In reviewing how the Department's responses and revisions intersect with these issues, I am particularly mindful of this Court's well-established emphasis on precise statutory boundaries, strict adherence to the Minnesota Administrative Procedure Act (Chapter 14), and constitutional due process. Because an enduring regulatory framework relies entirely on strict statutory construction and ensuring

that agency enforcement does not outpace explicit enabling authority remains paramount. While the Department has made meaningful strides to address my concerns, several critical elements still lack the necessary statutory anchoring or conflict with broader constitutional protections.

To focus strictly on the parameters I previously raised for the record, I submit the following evaluation of what has changed, what has not, and my remaining arguments and recommendations.

I. Enforcement of Internal Facility Policy / The "Floor vs. Ceiling" Doctrine

- **Original Position:** I objected to the Department treating deviations from local, internally generated policies as automatic state licensing violations. I argued this transforms a regulatory safety "floor" into an inflexible compliance "ceiling," punishing administrative excellence and incentivizing minimalist, risk-averse policy writing to avoid "regulatory ambush".

- **Department Response & Revisions:** The Department maintains its framework, asserting that enforcing local facility rules is necessary to close perceived "regulatory gaps" and ensure constitutional safeguards.

- **Re-Addressed Argument:** Immediately following the administrative hearing on May 28, 2026, I had the opportunity to speak directly with Commissioner Schnell and Inspector General Garland. While our conversation confirmed a shared overarching goal to reduce facility incidents and have incarcerated persons leave the facility in the same or better condition than when they arrive, we differ fundamentally on the proper mechanism to achieve that outcome. The Inspector General expressed a desire to close a perceived “regulatory gap” by holding facilities administratively accountable to their internal policies. I appreciate that perspective; however, as a practical matter, both administrative licensing sanctions and civil tort law are inherently reactive rather than proactive mechanisms.

  The critical distinction is one of lawful authority. The Department’s insistence on penalizing deviations from internal, localized policies remains an ultra vires expansion of power that fundamentally violates the Minnesota Administrative Procedure Act (MAPA). Under Minn. Stat. § 241.021, the Department's mandate is strictly limited to enforcing state promulgated minimum standards. By elevating fluid, non-promulgated local directives to the status of binding licensing law, the Department is engaging in rulemaking by proxy.

MAPA strictly prohibits an agency from enforcing standards of general applicability that have not undergone the independent scrutiny, notice, and public comment mandated by Chapter 14. Furthermore, because the Legislature vested rulemaking authority solely in the Commissioner, the Department cannot sub-delegate that authority to local administrators by absorbing their shifting internal manuals into the state's enforcement matrix. Treating internal policies as licensing mandates also ensures disparate, arbitrary enforcement across jurisdictions. A facility with an exemplary, highly detailed policy is heavily penalized for minor administrative deviations, while a facility operating under a minimalist manual escapes citation. This uneven application lacks a rational basis, creates an unconstitutional "moving target" for compliance, and violates basic tenets of procedural due process.

Most critically, the Department's assertion that it must enforce local policies to "close a regulatory gap" ignores the robust enforcement mechanism already established within the judicial branch. Under settled Minnesota law, county jails are already held strictly accountable in civil tort actions for failing to follow their internal directives. The Minnesota Supreme Court established in *Mumm* v. *Mornson*, 708 N.W.2d 475, 491 (Minn. 2006) that when a localized, written policy sets a narrow standard of conduct that an employee is bound to follow, it transforms an otherwise discretionary operational task into a binding ministerial duty. Under state tort law, the failure to precisely adhere to a ministerial duty strips a county and its officers of official immunity, exposing them to direct liability for negligence.

This accountability is demonstrated across jurisdictions. For instance, in *Amanda Buxton* v. *Mower County* (Minn. App. 2024), the Court of Appeals applied this exact principle, holding that because localized intake and well-being guidelines left nothing to officer discretion, the duties were ministerial and the failure to execute them stripped the defense of official immunity. Similarly, the courts have long recognized that while correctional facilities possess broad discretion in designing operational protocols, the actual execution of those protocols such as jailer responses to established medical distress under *Sandborg* v. *Blue Earth County* (Minn. App. 1999) carries an affirmative, non-immune duty of care.

Furthermore, federal courts in this jurisdiction routinely hold counties liable under 42 U.S.C. § 1983 where a systemic failure to execute internal well-being check logs demonstrates "deliberate indifference" under the *Monell* doctrine (see *Hardeman* v. *Beltrami County* (D. Minn. 2022)). The Inspector General's well intentioned perspective of a regulatory gap is flawed because the civil courts already heavily police internal

policy compliance through tort liability and substantial financial judgments; there is no "regulatory gap" for the Department to fill. The Department's administrative role under Chapter 14 is strictly confined to verifying compliance with a uniform, objective state-wide minimum standard.

- **Recommendation:** Strike all requirements mandating that facilities follow localized administrative policies as a condition of state licensure. The state's regulatory reach must be firmly anchored to the objective, universal safety outcomes explicitly promulgated within Chapter 2911; the operational path to achieving those outcomes must remain within the lawful discretion of the elected Sheriff.

II. Misclassification of Permissive Services as "Minimum Standards" / Telehealth (Rule 2911.5800, Subp. 1a)

- **Original Position:** I challenged the inclusion of Rule 2911.5800, Subpart 1a, noting that because it uses conditional language ("If a facility provides telehealth..."), the service is an elective convenience and not a baseline minimum security or operational necessity. I further noted that clinical telemedicine is already heavily regulated by the Minnesota Telehealth Act and the Board of Medical Practice, areas where the Department lacks statutory subject-matter expertise.
- **Department Response & Revisions:** The Department declined to strike the section, defending its inclusion by citing a legislative directive under Minn. Stat. § 241.021, Subd. 1(a)(12), which requires the Commissioner to promulgate rules establishing minimum standards that include "specific guidance pertaining to... a policy regarding the use of telehealth".
- **Re-Addressed Argument:** The Department's defense relies on its enabling legislation. While Minn. Stat. § 241.021, Subd. 1(a) instructs the Commissioner to provide "specific guidance pertaining to... a policy regarding the use of telehealth," it explicitly commands that these rules establish "minimum standards for these facilities." The Department's draft creates an irreconcilable structural paradox. By introducing Subpart 1a with conditional language stating that these rules apply only "if a facility provides telehealth" the Department acknowledges that a county jail can completely opt out of telehealth services and remain fully licensed. By definition, an optional service that a facility can legally operate without cannot constitute a universal state "minimum standard" for facility licensure. Under strict rules of statutory construction, the Legislature does not write self-contradicting mandates. The statutory inclusion of Clause (12) was intended to ensure that if a facility utilizes telehealth, it maintains an internal policy framework to

govern its local application. It was never intended to transform an elective technological medium into a strict state licensing trap. Furthermore, the Department's attempt to enforce technical and operational telehealth mandates represents an impermissible jurisdictional overreach into fields heavily occupied by specialized state authorities. Clinical telemedicine, data security streams, and provider-patient standards are already rigorously regulated under the Minnesota Telehealth Act (Minn. Stat. § 62A.673) and governed by the Minnesota Board of Medical Practice. The Department lacks the statutory jurisdiction, technical infrastructure, and subject-matter medical expertise required to independently regulate or audit telecommunications software, encryption baselines, or clinical delivery mechanisms. By imposing an extra, unnecessary layer of granular DOC oversight, the rule creates a high risk of conflicting administrative mandates. A facility's elective telehealth infrastructure could comply fully with the standards of the Board of Medical Practice, federal privacy laws, and contracted vendor mandates, yet still face state corrective action from a correctional inspector evaluating a fluid technology platform through an arbitrary administrative lens.

As written, the Department's rule creates a regressive, anti-innovation framework. If a progressive Sheriff attempts to improve local operations by introducing an elective telehealth portal, they may be penalized with state licensing citations under Subpart 1a if the technical connection experiences an administrative glitch. Conversely, a facility that refuses to innovate and relies solely on minimalist in-person care escapes state administrative scrutiny entirely. This dynamic penalizes administrative initiative, discourages the adoption of modern healthcare delivery models, and transforms a permissive tool into a mechanism for regulatory ambush. The Department's administrative oversight under Chapter 14 should govern basic medical access outcomes; it should not weaponize the voluntary technical methods used to achieve those outcomes.

- **Recommendation:** Strike Rule 2911.5800, Subpart 1a in its entirety as an improper application of a statutory minimum standard. If the Administrative Law Judge determines the subpart must remain to satisfy the literal text of Minn. Stat. § 241.021, Subd. 1(a)(12), it must be amended to include an explicit Safe Harbor provision to prevent regulatory conflict: "Technical deviations, infrastructure interruptions, or administrative compliance deficiencies regarding a facility's elective telehealth infrastructure shall not serve as a basis for state licensing corrections, citations, or adverse licensing actions, provided that the facility consistently maintains alternative, baseline in-person medical or mental health care access as required elsewhere under this Chapter."

III. Unlawful Elimination of Appeal Rights (Rule 2911.0400, Subp. 1c)

- **Original Position:** I strongly opposed the proposed language that sought to make the Commissioner's variance decisions "final and not subject to appeal under Minnesota Statutes, chapter 14," calling it an unconstitutional bypass of the Court of Administrative Hearings (CAH).
- **Department Response & Revisions:** The Department has struck Subpart 1c in its entirety. In response to public feedback, the Department has removed the language that would have blocked formal administrative appeals.
- **Commendation:** I thank the Department for this correction. Striking this subpart preserves essential procedural due process and protects the legal rights of counties facing significant fiscal mandates resulting from variance actions.

IV. Usurpation of Budgetary Authority / Staffing Analysis Mandate (Rule 2911.0900)

- **Original Position:** I objected to the mandate requiring facilities to complete a formal "staffing analysis" in addition to a "staffing plan". I argued that regulating the analytical *methodology* rather than the objective *staffing ratios* infringes on the local operational discretion of the Sheriff and the budgetary control of the County Board.
- **Department Response & Revisions:** The Department did not strike the requirement for a staffing analysis, maintaining that it is vital for identifying facility risks. However, they significantly narrowed the language by removing the requirement for Commissioner approval of the staffing plans and adjusting the rules so facilities do not need to generate a new analysis annually, but rather review existing plans.
- **Re-Addressed Argument:** While the removal of the state-approval requirement is a positive logistical step, the remaining mandate forcing a specific "staffing analysis" methodology remains legally problematic. Under Minn. Stat. § 387.11 and § 641.01, the Legislature meticulously balanced local power. The elected Sheriff has exclusive charge and custody over jail operations, while the County Board retains exclusive control over county finances and appropriations. The state's lawful regulatory reach under Chapter 14 is limited to enforcing uniform, objective staff-to-incarcerated-person ratios to ensure safety. Mandating the internal analytical process an agency must use to justify its resource requests forces a state-dictated methodology into local budgetary debates. It impermissibly infringes upon the statutory independence of local officials by regulating the internal process of administration rather than the objective baseline of safety and conflicts with Minn. Stat. § 14.002, which demands performance-based outcomes over prescriptive processes.

- **Recommendation:** Clarify the rule text to establish that if a facility that maintains the mandatory, objective staff posts and numerical ratios set by the state, the internal planning methodology used by the Sheriff remains a matter of local executive governance.

V. Incorporation of Discretionary Standards / External "Toolkits" (Rule 2911.0210)

- **Original Position:** I objected to the incorporation by reference of broad, fluctuating external documents (such as federal dietary guides or national behavioral health toolkits) as binding licensing requirements, creating an unstable regulatory environment and an unpromulgated "moving target".
- **Department Response & Revisions:** The Department heavily revised its approach to incorporations by reference. They removed several broad external references and instead embedded specific, simplified operational metrics directly within the rule text, drawing a clear boundary between mandatory licensing minimums and optional recommended practices.
- **Commendation:** I commend the Department for this shift. Embedding concrete requirements directly in Chapter 2911 protects facilities from arbitrary citations based on external documents that have never undergone the independent scrutiny of the MAPA.

VI. Public Release of Tactical Security Procedures (Rule 2911.2700, Subp. 1)

- **Original Position:** I warned that language requiring facilities to provide full copies of facility "procedures" to incarcerated individuals violated the Minnesota Government Data Practices Act (MGDPA) by forcing the public exposure of nonpublic, tactical security data.
- **Department Response & Revisions:** The Department clarified in its response and revised its draft text to establish that jails are not required to hand over full operational policy manuals. They narrowed the text to mandate that facilities provide only relevant information that individuals can reasonably understand regarding their immediate rights, facility rules, property procedures, and medical access.
- **Commendation:** This crucial narrowing addresses my safety concerns. It successfully protects tactical facility security plans from public exposure while respecting basic notice requirements.

VII. Mandated Reporting on Post-Discharge Individuals / Out-of-Facility Deaths (Rule 2911.3700)

- **Original Position:** I strongly objected to requiring Sheriffs to report and review deaths occurring outside the physical facility following a medical release or transfer. I cited severe jurisdictional overreach under Minn. Stat. § 241.021, and highlighted massive civil liability risks under federal HIPAA privacy protections, as a facility loses its law-enforcement exemption (45 CFR § 164.512) the moment active custody terminates.
- **Department Response & Revisions:** The Department amended the rule in its May 22, 2026 supplemental draft to state that facilities are only required to report and review an out-of-custody death if they have active knowledge of it, eliminating the burden to proactively track individuals post-release. They maintained, however, that a policy review must occur if the underlying medical event began in custody.
- **Re-Addressed Argument:** While narrowing the scope to "active knowledge" softens the immediate logistical burden, it completely fails to cure the underlying federal statutory conflict. Merely reducing the frequency of a legal violation does not render the underlying framework lawful. Under Minn. Stat. § 387.11, an elected Sheriff's lawful custody and legal charge over an individual terminates the exact second a court executes a release or a discharge occurs. At that precise moment, the individual returns to private civilian status, and the facility's law enforcement disclosure exemption under HIPAA (45 CFR § 164.512) permanently evaporates. Consequently, outside medical providers and hospitals are strictly barred by federal law from sharing Protected Health Information (PHI) with a law enforcement agency or a jail administrator without an explicit, specialized waiver from the individual or their legal estate.

  The Department's revised draft ignores a critical legal reality. "Active knowledge" is not a substitute for lawful authorization under federal privacy law. Even if a facility inadvertently acquires "active knowledge" that a former incarcerated person has passed away, the facility remains legally prohibited from accessing, managing, or formally reviewing the confidential medical records or clinical outcomes associated with that out-of-custody event. Forcing a jail to conduct a formal administrative review under Chapter 2911 necessitates handling unauthorized health data, placing Minnesota counties in severe, unindemnified jeopardy of federal civil and criminal penalties. An administrative rule cannot compel a local official to act outside their statutory jurisdiction, nor can it mandate a process that triggers a direct violation of federal law. The state's regulatory reach must stop at the facility's threshold; once discharge is executed, the administrative jurisdiction of Chapter 2911 legally concludes.

- **Recommendation:** Amend Part 2911.3700 to state explicitly that the reporting and formal review of deaths applies exclusively to individuals who pass away while in the active legal and physical custody of the facility.

VIII. Conclusion

The modifications made by the Department in its May 22, 2026, draft represent substantial and positive progress on several of the foundational concerns raised in my initial comments. Striking the jurisdictional limitations on appeals, narrowing the public disclosure of tactical security data, and removing the prescriptive state-approval mandate over local staffing plans successfully cure several critical regulatory vulnerabilities.

However, to ensure that the final iteration of Chapter 2911 is legally sustainable and operationally viable, the remaining structural deficiencies must be resolved. Consistent with your Honor's rigorous application of administrative law and deep familiarity with textualist principles developed during your distinguished tenure with the Minnesota Court of Appeals under Judge Kevin Ross, I look to this Court to enforce the clear statutory boundaries set by the Legislature.

Because the Department's current draft continues to outpace its enabling legislation regarding internal policy enforcement, the misclassification of optional telehealth portals as state minimum standards, prescriptive data-gathering staffing methodologies, and unauthorized reporting mandates on out-of-custody deaths that invite federal HIPAA violations, I respectfully request that the Court direct the Department to make these final structural corrections. Such adjustments are vital to ensure strict adherence to Chapter 14, preserve the statutory independence of local elected officials, and protect the essential constitutional safeguards required for lawful administrative rulemaking.

Thank you for your continued time, impartiality, and careful attention to these ongoing regulatory concerns.

Respectfully,

Christopher Thoma
chris@elkcreekconsulting.com

CC: via e-mail
Commissioner Paul Schnell, Minnesota Department of Corrections
Tara Rathman, Rule Making Manager, Minnesota Department of Corrections

Itasca County Sheriff's Office

JOE DASOVICH, SHERIFF

Shawn Racine
Itasca County Jail
108 NE 5th St Grand Rapids MN 55744
June 12, 2026

The Honorable Christa Moseng
Court of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164-0620

RE: In the Matter of the Proposed Rules Relating to Jail Facilities: CAH Docket No. 22- 9051-40960

Honorable Judge Moseng,

I understand that some of these have been addressed and/or changed and may be repetitive to the ongoing meetings with the MSA and DOC but without a new rule to address, these are some of the comments I had.

Comments 2911:
Remove the language for "and follow" from all the rules, especially when they are above the minimum standard. Appears to give permission to sanction a jail for having a policy above the minimum standard. It would create jails to not want to go above a minimum standard.

Lines 6.2 and 67.10: Response to resistance: Add or replace with Use of Force: There is not any mention of response to resistance in the statutes listed/referenced.

9.16: Specifically states "minimum standards", why create rules that go beyond minimum standards.

11.11: If the commissioner determines that the administrator has not remedied: Is there any appeal of the determination of the commissioner if a jail/MSA believes they have met the remedy.

12.4: Appears jails need to do a full DOC approved inspection even on the off years if approved for biannual. Why is it needed if jail is compliant already?

13.5: Granting a variance, is this an example of a minimum standard or best practices or both?

18.16 Staffing is required, must resubmit, does not constitute approval or disapproval of staffing levels. Why add if it states only need to meet the minimum for subpart 15.

25.15/26.12 and 2911.4950. Repetitive having in both places. Also, the statutes referenced from 67.12 do not have response to resistance mentioned in them. 241.88 is restraint, not resistance: 243.52 is use of force: 609.06 is restraint and use of force: 609.066 is force and deadly force.

27.1 Omit if not mandatory/minimum. "if available" Jails would not add so they are not sanctioned for going beyond the minimum.

27.13 Remove "including dehydration". Over emphasis on the term.

31.7 Unsure what "no matter the record's format" is intended, Needed?

34.11 Add "when practicable" at the end.

35.21 Remove "within 2 hours" it is not in the statute referenced and not needed. 24 hours would be more appropriate. Also remove "that complies with applicable state and federal law" it already references the state statute. And/or reference the federal law that is being addressed.

38.5 Remove "at least every six hours" add language when willing and/or able to cooperate with process after initial attempt. Or minimum within 24 hours so they are not asking in the middle of the night for new arrivals.

39.12 Remove "all facility" and "procedures". Too inclusive under data practices and necessary information is available in the inmate handbook.

44.19 Remove: not required nor a minimum standard.
46.18 Leave at 30 days: 7 days is already there for reviews and is repetitive.
47.7 Remove: not required nor a minimum standard.
2911.2860/2870 Overreach on Disciplinary Seg side. This is not necessary for some inmates on the Disciplinary side. Remove Disciplinary Seg from these sections.
2911.2880 What is this data collected for? Necessary?
52.22 "If offered", remove this section of the rule, not required nor a minimum standard
60.3 Extremely vague statement. Should be removed "any other emergency or unusual occurrence listed on the DOC Portal"
2911.3700 Sub 8 Critical Incident Debriefing: Remove, not required nor a minimum standard
64.4 Remove Dietary Guidelines for Americans: Already covered by licensed dietitian and the rule.
69.5 "non-custody staff" Who are these? Clarify

Itasca County Sheriff's Office

JOE DASOVICH, SHERIFF

69.6 Please clarify what this means "Unless the context indicates otherwise"
70.21-71.13 Well-being check audits. Good thought but not a minimum standard and should not be in the rules. Jails will get inspected to see whether they do them properly, whether they audit or not.
72.3 No reason that ALL non-compliant intakes should meet this criterion. There are several examples (sovereign citizens) that may not give information for days that would qualify as this line of special needs checks.
73.1 to 73.6 Repetitive and not needed in the rule. Already covered, remove.
73.13 Should read: when determined to discontinue more-frequent checks. Remove the rest.
78.13 Remove: "if facility offers" not a minimum standard and should not be in the rules
79.1 Remove: The standard is 14 days, follow ups are covered in other areas.
80.16 Remove "including prenatal vitamins" as this is a medical provider decision.
80.22 Remove: Is this a minimum standard?
2911.5800 SUBP 8b. Remove this section: These are medical provider determinations and should be made by medical as to frequency.
84.10 to 84.14 Remove: "If a facility does not have" not a minimum standard for all jails and should be removed. Staff only need to know if on special watch.
85.6 Remove, this is a medical decision and should not be in the rules. States "if clinically indicated"
2911.5820 Remove: "if offered" not a minimum standard. Could leave in part D. Rest should be removed.
89.11 Remove: "if available", not a minimum standard
102.17 Replace "must" with "may" based on the medical providers determination
104.4 This section should follow 241.021 4f. This is written more restrictive than the statute and is not the minimum standard. Rewrite according to the statute.
105.17 to 105.19: Remove if section not rewritten: Health care personnel would need medical provider approval for this.
106.2 "if available" section should be removed as not a minimum standard.

Thank you for this opportunity and the continuation to work with jails on these important topics/rules.

Sincerely submitted by
Shawn Racine

Itasca County Jail Captain
June 12, 2026

June 16, 2026

Court of Administrative Hearings
Administrative Law Judge Christa Moseng
600 North Robert Street, PO Box 64620
Saint Paul, Minnesota 55164-0620

Re: Comments on Proposed Permanent Rules Relating to Jail Facilities (Chapter 2911) Revisor ID No. R-4445; CAH Docket No. 22-9051-40960

Honorable Judge Moseng:

I am writing on behalf of The Advocates for Human Rights ("The Advocates" or "AHR") with comments on the Proposed Permanent Rules relating to Minnesota jail facilities. On behalf of The Advocates, I served on the Rule 2911 Advisory Committee and am The Advocates' executive director.

The Advocates for Human Rights is an independent, non-profit, non-governmental organization headquartered in Minnesota. AHR's mission is to implement international human rights standards to promote civil society and reinforce the rule of law. AHR has provided free legal representation to people detained by federal immigration authorities in Minnesota county jails for 30 years and, since 2017, has systematically monitored hearings at the Fort Snelling Immigration Court. These programs inform our comment, as they are the contexts in which the Advocates regularly interacts with people who are detained in Minnesota county jails.

I. General observations:

Whenever a Minnesota jurisdiction takes a person into detention, it has the responsibility to ensure that person's health, safety, access to due process, and dignity are respected, protected, and fulfilled. Minnesota laws and regulations must comply with international human rights obligations. Because detained persons depend upon their custodian to ensure these rights are upheld, and because detained persons are particularly vulnerable to human rights violations, special international standards relating to their treatment have been established.[1] Most fundamentally, when the State decides to deprive a

[1] UN Standard Minimum Rules for the Treatment of Prisoners, General Assembly resolution 70/175, annex, adopted on 17 December 2015, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E ebook.pdf. *See also* Appendix A detailing international legal standards relating to the human rights of detained persons.

person of their liberty, the State assumes the responsibility of guaranteeing the basic human rights of that person.[2]

In Minnesota, state law historically has provided little guidance or standards for jails beyond minimal licensure requirements, and approaches to budgets, oversight, and transparency vary widely. People who experience harm while detained face nearly insurmountable barriers to seeking redress in the courts. Lack of clearly defined standards, oversight, and accountability mechanisms, coupled with a system driven by cost and revenue concerns and with little popular support, have led to serious failures relating to health care and safety, solitary confinement, and due process. Indeed, these failures are precisely what finally propelled the Minnesota Legislature to pass the Hardel Sherrell Act.

Throughout the proceedings of the Rule 2911 Advisory Committee, discussion focused on the admittedly scarce resources available to elected county sheriffs to safely fulfill their custodial obligations. Sheriffs repeatedly underscored that any rule would require increased staffing and that mental health, chemical dependency, and physical health care was frequently unavailable, too often because hospitals refuse to admit people who are in custody. These practical concerns are real.

But continuing to allow county jails to enjoy a near total lack of oversight and accountability, outside of that provided by the election of sheriffs, is neither justifiable nor likely to result in the devotion of resources sufficient to solve this endemic problem. For this reason, we support the enactment of a Rule which requires minimum uniform standards for ensuring health, safety, and access to justice.

Though this Rule is a positive step toward improved standards of confinement, the Rule still fails to meet several significant international human rights standards and therefore, allows for ongoing rights violations. The Rule does not contemplate the circumstances of the many people held in long term detention in these pre-trial facilities, such as those under ICE custody. Further, the Proposed Rule lacks specificity in its oversight of solitary confinement standards.

This Comment highlights these areas where the Proposed Rule either fails to meet international standards or where it is altogether silent.

II. The Proposed Rule fails to address human rights violations resulting from long-term detention in pre-trial facilities:

The Proposed Rule fails entirely to address the distinct needs of people held for prolonged periods of time in Minnesota's county jails. Most people who cycle through Minnesota jails are held for a matter of days. But others, typically held under contract from state or federal authorities, may spend months or, in some cases, years, inside a Minnesota county jail. While tragedies like the deaths of Hardel Sherrell

[2] United Nations, Working Group on Arbitrary Detention, Report submitted to the Human Rights Council, A/HRC/10/21, Ch. III: Thematic considerations, ¶ 46 (adopted Feb. 16, 2009).

and Brent Huber, Jr. underscore that even a few days in custody can have life-ending consequences, prolonged detention in facilities designed for short-term stays inflicts unique harm.

Perhaps the clearest example of people held for long periods of time in pre-trial facilities are those held under Immigrations and Customs Enforcement (ICE) custody. AHR has gathered extensive information about these experiences through providing legal services to people who are detained, detention visits to pre-trial facilities across Minnesota, and our Immigration Court Observation Project. AHR trains hundreds of volunteers to observe immigration proceedings at the Fort Snelling Immigration Court, many of which pertain to people currently detained in facilities in Minnesota.

Though the information that AHR can provide is specific to people detained under ICE custody, the negative impacts of long-term detention are not exclusive to this population. We can surmise that other people held for long periods of time awaiting trial or appeal likely suffer similar situations.

AHR has observed for years that people detained by ICE in Minnesota facilities suffer from serious medical and mental health issues without adequate care. This population is uniquely vulnerable. People in Minnesota jails under ICE contracts include those who, because of immigration status, have been excluded from both the private health insurance market and publicly funded coverage. ICE also detains people who fled to the United States after suffering persecution, torture – including torture while detained in their home countries – and other trauma. Detention can stretch indefinitely while cases work their way through a chronically backlogged federal immigration court system. Further, federal immigration enforcement, which disproportionately targets Black, Latine, and Asian communities, amplifies the effects of underlying health disparities experienced by such communities. And, because people detained by ICE face civil immigration proceedings, they have no right to government-appointed counsel and never appear in front of independent courts who have the authority to address misconduct, order redress of harm, or, in many cases, even review custody status.

The complex demands of incarcerating people facing civil immigration proceedings explain the relatively high per diem rate paid by ICE to local jails, compared to the rates paid by municipal, county, state, and federal authorities to hold people with pending criminal charges or sentences following convictions. ICE's Performance-Based National Detention Standards reflect these needs by requiring access to the outdoors, accommodation of legal orientation programs, and specialized immigration legal research facilities, among other things.[3]

But ICE readily waives compliance with these standards when it contracts with Minnesota jails.[4] Jails, in turn, use ICE detention contracts as windfall revenue sources, in some cases expanding jail capacity to

[3] https://www.ice.gov/factsheets/facilities-pbnds.

[4] See ICE Office of Inspector General, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards, Jan. 29, 2019, available at

accommodate greater numbers of ICE detainees and generate additional revenue.[5] Counties have made little investment in even the most basic functions – including interpretation, translation, court access, our access to the outdoors – needed to ensure people's health, safety, dignity, and due process rights.

The federal government's willingness to waive appropriate standards does not relieve Minnesota jurisdictions of their responsibility to ensure that the basic human rights of those they choose to incarcerate are met. Jails which contract with ICE have a responsibility to ensure that they have appropriate facilities, staffing, programming, and expertise to ensure the health, safety, and due process of the people it confines. Minnesota Rules should include standards that meet this minimum obligation.

a. Long-term detention in pre-trial facilities undermines health

Contracts between ICE and local jails obfuscate responsibility for people in detention, with both sides pointing to contract terms rather than to Minnesota's medical, nursing, pharmacy, or psychology practice standards. And because people detained by ICE may be held for weeks, months, or in some cases, years, deprivation of medical care and access to the outdoors has serious consequences.

Court observers documented egregious health concerns in at least 70 hearings corresponding to 33 unique individuals held at Minnesota county jails in 2025 and the first 3 months of 2026. Some of these hearings regarded the same respondent presenting the same health concern over many months without medical intervention. In many cases, people were forced to decide between facing ongoing medical neglect while they defended themselves or accepting return to a country where they may face danger in order to save their health. While our observations are limited to people detained by ICE, we can surmise that people detained while awaiting trial for criminal matters face similar medical neglect that not only harms their health but could pressure them to take a guilty plea to get out of the facility and receive care.

Observers saw numerous people pressured to accept return to their home country as the only way to get medical care. One person had his hand broken by ICE when he was arrested and detained in winter 2026. This left his bone exposed and protruding from his palm. The only treatment he received in detention was pain medication. An observer stated: "I audibly gasped at this, as it's an open fracture and

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https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf (last accessed Feb. 19, 2021).

[5] In September 2020, Steele and Freeborn counties renewed an agreement for Steele to take non-ICE detainees from Freeborn in order for Freeborn to increase capacity for more lucrative ICE detainees. See https://www.southernminn.com/owatonna_peoples_press/news/article_d7560861-78ba-598c-8744-b82e10573ccc.html (copies of the agreement on file with The Advocates).

very serious - requiring antibiotics and surgical repair within 24 hours." He begged to be deported as soon as possible to get the necessary medical care.

Another person who had a pending application based on fear of government persecution reported he had been detained for one month without his HIV medication. The judge asked him three times if he wanted to be deported. Each time, he said that he did "because without my medications, I am getter sicker."

Court observers also witnessed the case of a detained person with hemophilia who had not been given his medication while in detention. He reported bleeding in his mouth that wouldn't stop. The judge asked the jail deputy to get him treatment. After being in detention for nearly a month, he finally reported he had received his medication - provided by an outside organization, not the jail.

Observers also saw people with severe mental illness who faced prolonged detention and lacked appropriate mental health care. Jails do not appear to provide ongoing treatment or to use trained and licensed mental health providers for assessment, monitoring, and treatment. Observers followed one person's case throughout 7 hearings over 10 months. He had severe mental illness; the immigration judge was mostly unable to communicate with him and had to mute his microphone during proceedings. His attorney requested that he be transferred to a mental health treatment center. At the next hearing, the government's attorney reported that the therapist at the county jail did not see any reason he could not remain detained and did not order a transfer to mental health treatment. The county jail stated it had no concerns, effectively rendering the person unable to participate in his legal proceedings.

b. Detention in pre-trial facilities results in due process violations

The Proposed Rule fails to require that Minnesota jails which choose to detain people under contract do not violate basic due process rights. By choosing to take custody of people in exchange for per diem payments, Minnesota jurisdictions assume the responsibility for ensuring that the basic human rights of those individuals are met.

Because Minnesota jails routinely and increasingly incarcerate people on behalf of ICE, the Proposed Rule should include standards to ensure due process for people detained under contract. At a minimum, these standards should address interpretation, translation, law library access, document filing procedures, and access to appropriate remote hearing facilities where sensitive testimony can be provided.

Minnesota's pre-trial detention facilities evolved to work within Minnesota's criminal legal system. Understanding their role in ensuring people appear at scheduled hearings and have access to legal paperwork and to their attorneys, jails are designed and staffed to meet this constitutional responsibility. For people held in pre-trial detention on criminal charges, jails can assume guaranteed access to counsel and timely appearance before an independent judge to determine custody status. But neither are present for people detained on civil immigration charges, and jails which elect to hold

people on civil immigration charges cannot avoid their responsibility to ensure due process simply because they are incarcerating people under contract.

Minnesota jails enable the arbitrary detention of people in immigration proceedings. Contracts with ICE may provide significant revenue for Minnesota jails that lack necessary resources, but they also enable long-term confinement without a chance to challenge their detention. These conditions violate human rights under the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (ICCPR). Since ICE detention in Minnesota jails lacks an individualized assessment and process to challenge custody decisions, case management tailored to individual needs, and access to legal and support services, this detention is considered arbitrary in violation of ICCPR articles 9(1) and 9(4).

More concretely, people in long-term detention languish without access to attorneys. They attend court via iPads, dependent upon jail personnel to file paperwork with the Immigration Court on time. All too often, people give up and leave the country – even when they have the right to stay and fight their cases – because they cannot bear indefinite detention. Analogously, people in long-term detention awaiting a trial or appeal may face similar circumstances and feel they have no other choice but to plead guilty or give up on an appeal to get out of these conditions.

Federal immigration laws allow ICE to detain anyone facing removal charges while the case is pending and subject many people to "mandatory" detention during their immigration proceedings, meaning there is no judicial authority to order release while the case is pending. All defenses to deportation require the detained person to file lengthy, complex forms, fully completed in English, with the Immigration Court. Many defenses also require the detained person to file significant documentary evidence of past torture or other persecution, family relationships, length of time in the United States, medical conditions, employment history, and other information. None of these issues are new or specific to the recent expansion of mandatory immigration detention, but the scale of these problems has only grown.

People detained in Minnesota jails with ICE detention contracts must try to defend themselves from deportation despite limited access to attorneys, interpreters, translation services, legal resources, and evidence. People must file all documents in English with the Immigration Court, appear for hearings, and testify, often about their experience of persecution and torture, all from within the Minnesota county jails which hold them.

Detained people face significant barriers to finding and communicating with attorneys, posing serious due process concerns in a system already plagued by low representation rates. People detained by ICE have no access to a "public defender" system for civil deportation (removal) hearings. Most people must appear

before the judge, prepare lengthy applications, gather evidence, and present complex legal arguments in deportation hearings all by themselves.[6]

The Advocates for Human Rights' attorneys struggle to contact potential clients for case screening and to work with clients to prepare applications and testimony. Court observers document that difficulty communicating with attorneys resulted in case delays and continued detention.

People appearing pro se struggle to obtain, complete, and file required forms and evidence with the immigration court. Jails fail to provide detained people with access to reliable immigration court filing procedures, interpretation and translation assistance, copiers, and immigration legal resources. This failure directly undermines people's access to full and fair hearings and, ultimately, can mean permanent separation from families and communities or even return to a country where they face persecution or torture.

Further, all immigration paperwork must be completed in English and any non-English evidence must be accompanied by a certified translation, but jails fail to make language access or support available. Immigration judges, meanwhile, regularly direct unrepresented people to ask other detainees for help. Court observers documented one case where the person was visibly alarmed when the court told him it had not received his application. He told the judge that he had paid another detainee to translate the application into English but had not received a copy after providing it to the guard to be mailed to the court because there was no copier that he could use. The judge told him to re-file or risk being deported if the asylum application was not received within three weeks.

It is important to state that since COVID-19, all deportation hearings for detained people are remote. People appearing in front of the Immigration Judge no longer receive paper copies of charging documents, evidence, or even the list of free legal services during their hearings.[7] Detained people can no longer file required forms and evidence in person at their hearings. People rely on jails to timely deliver paperwork to the Fort Snelling Immigration Court. Court observers documented several instances where required forms had not reached the immigration judge by the time of the hearing despite the person having given the paperwork to the guard to mail pursuant to policy. One person reported that he gave the application to the guard at the jail, but the court did not receive it. Another person, who was refiling his application in English after the court rejected his first attempt because the application was in Spanish, also told the judge that he had given the paperwork to a guard to mail. The guard subsequently reported that the

[6] TRAC Immigration, State and County Details on Deportation Proceedings in Immigration Court, available at https://trac.syr.edu/phptools/immigration/nta/ (last accessed Feb. 12, 2021).

[7] As required by regulation, EOIR maintains the List of Pro Bono Legal Service Providers and roster of Recognized Organizations and Accredited Representatives. See 8 C.F.R. § 1003.61 and § 1292.2.

unmailed application had been located and would be sent to the court. Such delays not only impacted people's cases but resulted in prolonged detention as they waited for the guards to mail the paperwork.

Court observers first began to document problems that impeded detained peoples' access to full and fair immigration court hearings during remote court appearances during COVID-19. However, observers continue to report due process concerns related to county jails' approach to facilitating virtual hearings in 2026. Some jails consistently struggle to connect via Webex for their detainees' hearings. Recent examples include June 3, 2026, when observers witnessed the connection with Crow Wing County jail failing, meaning several cases scheduled were not heard. Respondents then have to wait weeks or more to have their next hearing, subjecting them to potentially even longer periods of detention. On June 4, 2026, observers witnessed multiple issues. One respondent was applying for asylum from Crow Wing. She asked jail staff to mail it for her and give her a copy to keep, but they told her she could not get a copy. The Immigration Judge said they never received her application. Then, during cases from Kandiyohi, observers said the video feed was barely functioning and black portions on the screen obscured the respondents' face.

Observers have even seen respondents forced to participate in their proceedings from what appeared to be solitary confinement. In spring 2026, an observer described a respondent who appeared in court "peeking through the slit" in his cell out at the tablet a jail guard held. The observer said it was "hard to hold back tears in court. The level of cruelty is astounding."

The observer later spoke with the respondent's brother who had attended the hearing. He said his brother struggled with mental health and was going through drug withdrawal in custody. A month later, observers saw this respondent again, still from his jail cell. The government then reassigned his case to an out-of-state judge who does proceedings on Webex (virtual platform) and does not allow observers. Court observers could not follow his case, despite significant concerns about his mental health, competency and access to a fair judicial process.

Problems with video technology undermine due process and lead to delays and prolonged detention. Immigration judges must assess credibility to determine eligibility for release on bond, asylum, protection under the Convention Against Torture, and other deportation defenses. Frozen and obscured screens interfered with judges' ability to assess eye contact, demeanor, and other indicia of credibility.

As one observer noted, "people are supposed to have a right to 'face their accuser'… but the setup of video doesn't even allow them to look at each other and that is the best of circumstances. What about without video or with a frozen image? Sometimes they couldn't even tell if the person was there or not. How does that uphold human dignity?"

III. The Proposed Rule introduces necessary but incomplete oversight of solitary confinement

The Proposed Rule attempts to introduce oversight of solitary confinement (referred to variously as "separation" or "segregation" in the Proposed Rule) in Minnesota jails, but it fails to define the minimum conditions of confinement necessary to meet international standards.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, defines "solitary confinement" as "the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days." Many studies have demonstrated that solitary confinement "can be as clinically distressing as physical torture."[8] The Mandela Rules state that solitary confinement should be used only as a last resort, is prohibited in excess of 15 days, and should never be used for people with a mental or physical disability.[9]

Prolonged solitary confinement happens in Minnesota jails. For example, in 2021, AHR documented reports of people being held for 7 days without getting a daily 1-hour release and being in "the hole" for 23 days while suffering from mental health issues concerning to the immigration judge.[10]

a. However, the Proposed Rule lacks specificity in its definition of the conditions of separation

Section 2911.2790 "Administrative Separation and Disciplinary Segregation; Placement Generally" refers to "administrative separation" and "disciplinary segregation." It is understood that these terms mean the person is not in the general population. However, there is no specific definition of what "separation" is. This raises concern that administrative separation could amount to solitary confinement. For example, it is not defined if someone in administration separation would still go to meals with other inmates, have access to meaningful human contact, or have access to the outdoors. This sort of specificity is necessary to understand if this separation would amount to solitary confinement.

It is concerning that these terms are left open to interpretation. The lack of specificity means administrative separation *could* be the equivalent of solitary confinement, in violation of international

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[8] Jeffrey L. Metzner and Jamie Fellner, Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, Journal of the American Academy of Psychiatry and the Law Online March 2010, 38 (1) 104-108, available at http://jaapl.org/content/38/1/104.

[9] UN Standard Minimum Rules for the Treatment of Prisoners, General Assembly resolution 70/175, annex, adopted on 17 December 2015, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E ebook.pdf.

[10] Advocates for Human Rights, James H. Binger Center for New Americans and Minnesota Immigrant Health Alliance. "Immigration Detention and COVID-19 in Minnesota: Illuminating Human Rights Concerns in Minnesota Jails. March 2021. P 13. ice_detention_covid-19_and_mn_jails_final 5.pdf

law. Further, there is no specificity on the deprivation of privileges while in separation or segregation, which international law does contemplate.

International law speaks directly to the "regime" for those held in solitary confinement. According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), people in solitary confinement for preventative purposes should have individualized plans that should maximize their contact with others, beginning with staff and then expanding to other prisoners, and should "provide as full a range of activities as is possible to fill the days."[11] People on remand "should be treated as far as possible like other remand prisoners, with extra restrictions applied only as strictly required for the administration of justice."[12] The regime for prisoners in disciplinary solitary confinement should not include a deprivation of family contact or access to a lawyer.[13] Such prisoners should have at least one hour of outdoor exercise per day and access to reading material and stimulation to maintain their mental wellbeing.[14]

Having some access to the outside world mitigates the toll of separation. Therefore, the Advocates recommends that the Proposed Rules require that inmates in separation receive the same in-cell provisions and conditions as inmates who are not in solitary. AHR recommends that the Proposed Rule more specifically require that inmates in administrative separation be given access to mediums of interaction with the outside world like television, radio, or newspapers, or other activities with which they can occupy their time. AHR also recommends that, to the extent possible, if an inmate in disciplinary segregation wants to work during their confinement, that measures be taken to allow that inmate to participate in appropriate work. Finally, AHR recommends that the Proposed Rules require that inmates in separation have interactions with the outside world- beyond just interaction with prison staff- through either periodic contact with family members or other inmates.[9]

However, even with these connections to the outside world in place, separation cannot be indefinite. The European Court of Human Rights speaks to this fact. The Court examined the degree of isolation imposed on a prisoner in assessing whether a violation of Article 3 (prohibition against torture) has occurred. For instance, the court found that a complete "prohibition on visits" caused a prisoner "suffering clearly exceeding the avoidable level inherent in detention."[15] In other cases, the Court found there was not an

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[11] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Solitary Confinement of Prisoners (2011), available at https://rm.coe.int/16806cccc6 at 7.

[12] Id. at 7.

[13] Id. at 7.

[14] Id. at 7.

[15] Onoufriou v. Cyprus, Application No. 24407/04, European Court of Human Rights, para. 80 (2010)

Article 3 violation because the prisoner still had some contact with others (see Ramírez Sanchez v. France where the Court found no violation as the prisoner had access to television, newspapers, and language lessons, met with prison chaplain, and received weekly visits from his lawyers and some family members, meaning his "isolation was partial and relative").[16] However, the court has stated that even "relative isolation cannot be imposed on a prisoner indefinitely."[17]

Finally, the Proposed Rule fails to ensure due process for people detained by ICE who are in either administrative or disciplinary separation/segregation. The Rules should make clear that people appearing for hearings from within Minnesota jails must be able to fully represent themselves, meet with counsel, access evidence, prepare and file paperwork, and have the ability to both appear on screen and see the judge and courtroom. Appearing via an iPad held through the slot of the cell does not meet the minimum standards of due process.

b. The Proposed Rule allows for prolonged and indefinite solitary confinement in violation of international law

International law prohibits both prolonged and indefinite solitary confinement. Rule 44 of the Nelson Mandela Rules defines prolonged solitary confinement as any exceeding 15 days. The Proposed Rule clearly contemplates solitary confinement of up to 60 days, far exceeding the 15-day limit, in clear violation of international law. Rule 43(1)(a) of the Mandela Rules prohibits "[i]ndefinite solitary confinement." The Proposed Rule effectively fails to set any limit, again violating international law.

The Proposed Rule states that an inmate may not be in administration separation or disciplinary segregation for more than 60 consecutive days (Proposed Rule Sections 2911.2800 (4b(B)) and 2911.2850 (2A) respectively). Specifically, the Proposed Rule states an inmate must not be in disciplinary segregation longer than 60 consecutive days for "a rule violation." Notably, the rules do not define what constitutes "a rule violation," and does not provide any maximum limitation of time spent in separation if there are multiple rule violations. Without this specificity, a person could have back-to-back 60 consecutive day disciplinary segregations that go on indefinitely.

IV. Conclusion

The Advocates welcomes this Proposed Rule as an important step to require minimum health, safety and due process standards across Minnesota county jails. Previous discussions have focused on the insufficient resources available to county sheriffs to meet these minimum standards. This is clearly a

[16] Ramírez Sanchez v. France, Application No. 59450/00, European Court of Human Rights, paras. 105, 106 and 135 (2006)

[17] Ramírez Sanchez v. France, para. 145.

significant barrier, but not a way to avoid the responsibility of guaranteeing the basic human rights of the people the state deprives of liberty.

Though the Proposed Rule is a positive step toward implementing these minimum standards, it still fails to address significant human rights violations. The Rule does not contemplate the circumstances of the many people held in long term detention in these pre-trial facilities, such as those under ICE custody. The Advocates has documented egregious rights violations pertaining to health care and due process for people detained long term. Further, the Proposed Rule lacks specificity in its treatment of solitary confinement. It does not define minimum standards of confinement for solitary, nor does it prohibit prolonged and indefinite solitary confinement.

Sincerely,

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Appendix A.

Overview of International Standards

In referencing the international standards on this topic, this comment looks to several international agreements and guidelines related to correctional facilities. These include: (i) the International Covenant on Civil and Political Rights ("ICCPR"); (ii) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"); (iii) the European Convention on Human Rights ("ECHR"); (iv) the American Convention on Human Rights ("ACHR"); and (v) the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules").

The Mandela Rules

The Mandela Rules began as the Standard Minimum Rules for the Treatment of Prisoners, originally adopted by United Nations Member States during the first UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955. *The Nelson Mandela Rules*, UNITED NATIONS, https://www.unodc.org/unodc/en/justice-and-prison-reform/nelsonmandelaruleshistory.html (last visited Apr. 15, 2025). In December 2015, the United Nations General Assembly adopted by consensus the revised UN Standard Minimum Rules for the Treatment of Prisoners, naming them the "Nelson Mandela Rules," in honor of the late president of South Africa who was imprisoned for 27 years due to his struggle for justice and human rights. *Id*. Now, the Mandela Rules have been adopted as the universally agreed minimum standards of the United Nations. *Id*. "The 122 Rules cover all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners – whether pre-trial or convicted." *UN Nelson Mandela Rules*, PENAL REFORM, https://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/ (last visited Apr. 15, 2025). Accordingly, the Mandela Rules provide states with widely accepted and detailed guidelines for protecting the rights of incarcerated persons deprived of their liberty – particularly when solitary confinement is utilized as an administrative or disciplinary procedure. *The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty* (July 18, 2019), https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty. Here, the Mandela Rules serve as a primary point of reference in determining whether the standards pertaining to administrative separation and disciplinary segregation align with internationally accepted minimum standards.[1]

ICCPR

The ICCPR was adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, with the United States joining in ratification in 1992. United Nations Hum. Rts. Off. of the High Comm'r, *Background to the International Covenant on Civil and Political Rights and Optional Protocols*, OHCHR, https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols (last visited Apr. 15, 2025). The ICCPR aims to ensure the protection of civil and political rights, including

freedom from torture and the right to be treated with humanity in detention. *Id*. Ultimately, the ICCPR serves as a yardstick for nations drafting governing documents concerning basic human rights. Christian Tomuschat, *International Covenant on Civil and Political Rights*, UNITED NATIONS AUDIOVISUAL LIBR. OF INT'L L., https://legal.un.org/avl/ha/iccpr/iccpr.html (Oct. 2008). In most countries, the ICCPR has been made part and parcel of the national legal order. *Id*. Accordingly, the ICCPR is utilized across the world as a legal basis for protecting human rights. Here, the ICCPR serves as a point of reference in determining whether the Proposed Rules align with widely accepted international standards concerning the preservation of such basic human rights during periods of incarceration.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The CAT was adopted by the United Nations General Assembly on December 10, 1984, entering into force soon after on June 26, 1987 – having been ratified by twenty states. Hans Danelius, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNITED NATIONS AUDIOVISUAL LIBR. OF INT'L L. (June 2008), https://legal.un.org/avl/ha/catcidtp/catcidtp.html. The United States ratified the CAT in October 1994. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations Treaties, https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003d679 (last visited Apr. 15, 2025). Like the ICCPR, the CAT serves as a "landmark document which has proven fundamental in the global struggle against torture and the fight for justice and reparation for victims, providing not only a basis for the work of the Committee against Torture, but also for other UN anti-torture mechanisms, civil society, and, most importantly, for States parties to the Convention." Committee Against Torture, *40th Anniversary of the Convention Against Torture*, OHCHR, https://www.ohchr.org/en/treaty-bodies/cat/40th-anniversary-convention-against-torture (last visited Apr. 15, 2025). Accordingly, the CAT also serves as a point of reference in determining whether the Proposed Rules align with widely accepted international standards concerning torture and acts which amount to cruel or degrading treatment, again during periods of incarceration.

ECHR

The European Convention on Human Rights (ECHR) was adopted in 1950, entering into full force in 1953. *A Convention to Protect Your Rights and Liberties*, COUNCIL OF EUROPE, https://coe.int/en/web/human-rights-convention/home (last visited Apr. 15, 2025). The ECHR "lays down absolute rights which can never be breached by the States, such as the right to life or the prohibition of torture, and it protects certain rights and freedoms which can only be restricted by law when necessary in a democratic society, for example the right to liberty and security or the right to respect for private and family life." *The European Convention on Human Rights*, COUNCIL OF EUROPE, https://www.echr.coe.int/documents/d/echr/Convention_Instrument_ENG (last visited Apr. 15, 2025). The ECHR's application is overseen by the European Court of Human Rights, which interprets the provisions "dynamically, in light of the present-day conditions." *Id*. Accordingly, the ECHR serves as an

additional benchmark by which to measure the Proposed Rules—determining how well they align with the standards set forth in Europe for the protection of human rights during periods of incarceration.

This comment also discusses foreign case law applying the ECHR. On this subject, the European Court of Human Rights evaluates cases of solitary confinement—in particular whether a member state's imposition of solitary confinement violates Article 3 of the ECHR, which provides that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

ACHR

The American Convention on Human Rights (ACHR) was adopted after the Inter-American Specialized Conference on Human Rights, on November 22, 1969. *What is the I/A Court H.R.?*, INTER-AM. CT. OF HUM. RTS., https://corteidh.or.cr/que_es_la_corte.cfm?lang=en#collapse1-2 (last visited Apr. 15, 2025). At its core, the ACHR lays out the rights and liberties, including the right to humane treatment and the right to judicial protection, that must be respected by state parties. *Id*. The ACHR's application is overseen by the Inter-America Commission on Human Rights and the Inter-American Court of Human Rights. *Id*. Specifically, Article 5 of the ACHR recognizes the right to humane treatment, including that "[e]very person has the right to have his physical, mental, and moral integrity respected," and that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." This Convention has been interpreted by the Inter-American Court of Human Rights in evaluating alleged violations of the Convention in cases involving solitary confinement. Accordingly, the ACHR serves as an additional benchmark by which to measure the Proposed Rules—determining how well they align with the standards set forth in the Americas for the protection of human rights during periods of incarceration.

Faribault County Sheriff's Office

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June 17, 2026

The Honorable Christa Moseng
Court of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164

RE: In the Matter of the Proposed Rules Relating to Jail Facilities
OAH Docket No. 22-9051-40960
Revisor's ID No. R-4445
Post-Hearing Comments on Updated Proposed Amendments

Dear Judge Moseng:

Thank you for the opportunity to provide additional comments regarding the Minnesota Department of Corrections' updated proposed amendments to Minnesota Rules Chapter 2911.

I appreciate the Department's willingness to review stakeholder feedback and make revisions following the hearing process. Several concerns raised by county sheriffs, jail administrators, and the Minnesota Sheriffs' Association appear to have been addressed or improved through the updated proposals. Those efforts are recognized and appreciated.

However, after reviewing the updated amendments, I continue to have concerns regarding several provisions that may create significant operational and fiscal challenges for smaller rural county jails.

Staffing and Direct Supervision Requirements

While revisions have been made, concerns remain regarding staffing expectations and interpretations of direct supervision requirements.

Small county jails often operate with limited staffing resources while maintaining safe and effective operations under existing standards. Requirements that could be interpreted to require increased staffing levels during lockdown periods, segregation housing, or other routine operations may create substantial financial burdens without a demonstrated corresponding increase in inmate or staff safety.

Many rural counties continue to face recruitment and retention challenges. Compliance should not depend upon staffing resources that may not be reasonably available despite a county's good-faith efforts.

Expanded Training Requirements

The proposed amendments continue to expand training and orientation expectations.

While training is an essential component of jail operations, additional required training hours create practical concerns related to staffing coverage, overtime expenses, scheduling, and employee availability.

For smaller facilities, even modest increases in training requirements may result in significant operational impacts that extend beyond the actual training costs themselves.

Policies and Procedures

I remain concerned with provisions requiring facilities not only to maintain policies but to ensure complete compliance with all locally adopted policies and procedures.

County facilities frequently adopt policies that exceed minimum standards in an effort to improve operations, address local circumstances, or implement best practices.

Facilities should not be discouraged from adopting enhanced policies out of concern that any deviation from those policies could later become the basis for a licensing concern. Minimum standards should remain the benchmark for compliance.

Medical and Treatment-Related Requirements

I continue to have concerns that portions of the proposed rules move beyond establishing minimum jail standards and instead impose expectations more commonly associated with licensed treatment facilities or medical providers.

County jails play an important role in providing access to medical and mental health care, but they should not be regulated as treatment facilities when they lack the staffing, resources, and professional infrastructure available in those settings.

Requirements involving medication management, treatment-related decision-making, and other clinical matters should allow appropriate reliance on the judgment of qualified medical professionals.

Small Facility Considerations

One of my primary concerns throughout this rulemaking process remains the limited recognition of the realities faced by smaller county facilities.

Uniform requirements applied equally to all facilities may not adequately account for significant differences in:

- Facility size
- Staffing models
- Budgetary resources
- Inmate populations
- Workforce availability

The practical effect may be that smaller facilities face disproportionately greater burdens despite operating safely and effectively under existing standards.

Fiscal Impact

Finally, I continue to believe that the cumulative fiscal impact of these proposed amendments warrants additional consideration.

While individual provisions may appear manageable when viewed independently, the combined effect of expanded training requirements, increased documentation obligations, staffing expectations, reporting requirements, audits, and policy mandates may create substantial long-term costs for counties.

These costs are particularly significant for rural counties operating within limited budgets and facing ongoing recruitment challenges.

I appreciate the Department's efforts to address concerns raised during this process and acknowledge that several revisions have improved the proposed rules.

Nevertheless, I respectfully urge continued review of the remaining provisions identified above and encourage consideration of additional modifications that better reflect the operational realities of Minnesota's smaller county jail facilities.

Thank you for your time and consideration.

Respectfully submitted,

Melissa Sonnek
Jail Administrator
Faribault County Jail