

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of the  
Department of Corrections Governing  
Municipal Lockup Facilities

**ORDER ON REVIEW  
OF RULES UNDER  
MINN. STAT. § 14.26  
AND MINN. R. 1400.2300**

This matter came before Administrative Law Judge Eric L. Lipman upon the application of the Minnesota Department of Corrections (Department) for a legal review under Minn. Stat. § 14.26 (2014).

On December 8, 2014, the Department filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.26 and Minn. R. 1400.2300 (2013).

Based upon a review of the written submissions by the Department, and all of the documents in the rulemaking record,

**IT IS HEREBY DETERMINED THAT:**

1. The Department has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2014), and Minnesota Rules, Chapter 1400 (2013).
3. As detailed in the accompanying Memorandum, proposed rule 2945.0120, subp. 1a (C) is unreasonably vague and defective.
4. As detailed in the accompanying Memorandum, proposed rule 2945.2520, subp. 2, is unreasonably vague and defective.
5. As detailed in the accompanying Memorandum, modest revisions to proposed rules 2945.0120, subp. 1a (C) and 2945.2520, subp. 2 can resolve the defects. These revisions, or ones substantially like them, would not make the proposed rules substantially different than those originally published in the *State Register*. See Minn. Stat. § 14.05, subd. 2.

**IT IS HEREBY ORDERED THAT:**

1. Proposed rules 2945.0120, subp. 1a (C) and 2945.2520, subp. 2 are **DISAPPROVED**.
2. The remaining proposed rules in AR-4058 (September 9, 2014) are **APPROVED**.

Dated: December 22, 2014



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ERIC L. LIPMAN  
Administrative Law Judge

**MEMORANDUM**

In this rulemaking, the Department proposes to revise regulations in Minnesota Rule Chapter 2945. The Department seeks to update the minimum standards for municipal jail facilities so as to remove duplicative language and to address changes in both the law and technology that have occurred since 1992.<sup>1</sup>

**Minn. R. 2945.0120, Subpart 1a, Item C (Rule Compliance)**

The Department proposes to delete some existing language in Part 2945.0120, and to modify the regulation so as to clarify the standards for state inspection of municipal lockup facilities.<sup>2</sup> Item C of the proposed rule now reads:

A Class II or Class III municipal lockup facility must comply with at least 90 percent of parts of 2945.0120 to 2945.5490 that are not listed in item B or do not specifically exclude that type of facility.<sup>3</sup>

The proposed rule, however, does not make clear how the rule parts will be totaled or the compliance percentages calculated.

In order to meet the regulatory standard, local facilities would need to guess as to which features of the rule will be counted towards the percentage requirement. Likewise, the standards that the Department's inspectors might use in making this

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<sup>1</sup> Exhibit A; Ex. D at 1-3.

<sup>2</sup> Ex. D at 9 (Statement of Need and Reasonableness, or "SONAR").

<sup>3</sup> Ex. C at 6.

determination are neither stated elsewhere in the rule, nor a part of common understanding, so as to make the intended meaning clear.<sup>4</sup>

If a proposed rule fails to provide a reasonable notice of when the regulatory standards will apply, the proposed rule is defective.<sup>5</sup>

In this instance, some of the text that is needed to make the Department's plan clear is proposed for deletion from subpart 1. One possible cure to the ambiguity in subpart 1a (C), would be to borrow some of the text that is otherwise proposed for deletion and place it into the new section. Item C could be revised to state:

A Class II or Class III municipal lockup facility must comply with at least 90 percent of parts of 2945.0120 to 2945.5490 that are not listed in item B or do not specifically exclude that type of facility. **For each rule part, every subpart, item and subitem is counted as a separate regulatory standard toward the required percentage totals.**<sup>6</sup>

Modifying the proposed rules with the bolded text is needed and reasonable, and would not make a substantial change from the rules as they were originally proposed.<sup>7</sup> The Department could make such a revision in its final Order adopting the rules.<sup>8</sup>

### **Minn. R. 2945.2520, Subpart 1 (Detainee Visitation)**

The Department proposes to delete some existing language in Part 2945.2520, and to modify this regulation so as to "strengthen the wording regarding juvenile visitation" in municipal lockup facilities.<sup>9</sup> Subpart 1 of the proposed rule now reads:

Subpart 1. Initial visits for juveniles. The initial visit for parents, guardians, and attorneys must be permitted at any time. Visits by parents, guardians, and attorneys with juvenile detainees must be as unrestricted as administratively possible.<sup>10</sup>

The revised rule, however, does not make clear what is meant by the terms "administratively possible" and how determinations of such possibilities will be made.

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<sup>4</sup> See, e.g., *In the Matter of the Proposed Rules Governing the Licensure of Treatment Programs for Chemical Abuse and Dependency and Detoxification Programs, Minnesota Rules, Chapter 9530*, OAH Docket No. 3-1800-15509-1 (2004) ("The Administrative Law Judge finds the requirement that a program have a particular licensure, and 'any additional certifications required by the department,' to be impermissibly vague and a defect in the rule").

<sup>5</sup> See, *In the Matter of Proposed Amendments to Rules Governing Apprenticeship Wages*, OAH Docket No. 7-1900-17022-1, slip op. at 36 (2006).

<sup>6</sup> Emphasis added. See also, Ex. C at 4-6.

<sup>7</sup> Minn. Stat. § 14.05, subd. 2.

<sup>8</sup> See, Ex. N; Minn. Stat. § 14.365 (9) (2014); Minn. R. 1400.2090 (A).

<sup>9</sup> Ex. D at 11 (SONAR).

<sup>10</sup> Ex. C at 13.

Likewise, the standards that the Department's inspectors might use in making this determination are neither stated elsewhere in the rule, nor a part of common understanding, so as to make the intended meaning clear.<sup>11</sup>

As noted above, if a proposed rule fails to provide a reasonable notice of when the regulatory standards will apply, the proposed rule is defective.

One possible cure to the ambiguity in subpart 1 would be to direct municipal facilities to address how they will regulate access to juvenile detainees by the detainee's parents, guardians, and attorneys in the facility's visiting policy. Subpart 2 of this same regulation establishes requirements for a facility-specific detainee visitation policy.<sup>12</sup> Requiring local facilities to describe their procedures; and any particular challenges they would face in affording routine contact between juveniles and their parents, guardians, or attorneys, serves several purposes. It permits the Department to have both close oversight of local facilities and allows plans that are nimble enough to address particular needs and circumstances.

Modifying the proposed rules in this way is needed and reasonable, and would not make a substantial change from the rules as they were originally proposed. The Department could make such a revision in its final Order adopting the rules.

**E. L. L.**

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<sup>11</sup> See Note 4, *supra*.

<sup>12</sup> Ex. C at 13-14.