



Enhancing Safety in Correctional Facilities

Background, Explanation of Need, and Solutions

Forty-five years ago, the legislature granted the Department of Corrections (DOC) the authority to establish minimum standards in correctional facilities with respect to management, operation, physical condition, security, safety, health, treatment, and discipline.¹ Two years later, it gave the DOC authority to license correctional facilities in the state, as well as revoke those licenses in the event of noncompliance with minimum standards.² That statutory authority lacked specificity and procedural clarity and has not been substantively revised for half a century.³

The recent media attention focusing on conditions and practices in jail facilities, some of which have resulted in deaths of individuals committed to the custody of those facilities, as well as an audit of the DOC's Inspection and Enforcement Unit, revealed a need for legislative change, among other things.

The goals of this proposal are to: 1) ensure minimum standards for licensed facilities comport with current best practices; 2) increase transparency among and between all of the detention facilities in Minnesota, strengthening public trust; and 3) ensure there is accountability on behalf of DOC in upholding licensing and enforcement obligations required by law and on behalf of facilities when violations of minimum standards occur. The Governor's COVID-19 Recovery Budget allocates \$992,000 in fiscal year 2022 and \$492,000 in fiscal year 2023 to improve and expand the oversight of correctional facilities, update the jail reporting system, and strengthen the minimum standards established by DOC.

Summary of Bill Sections

This bill involves two different sections of statute, as well as a restructuring of current statutory authority described in MN Stat. § [241.021v](#), subd. 1. Throughout the bill, statutory language is revised to align with current terminology and understanding of sound correctional practices. The intent behind the restructuring and additional subdivisions is to update the archaic licensing and revocation authority currently in statute and ensure clarity for all parties in moving through the licensing process and responding to licensing actions.⁴

SECTION	DESCRIPTION
1 – Amends section 241.021, subdivision 1	Correctional facilities; inspection; licensing: <ul style="list-style-type: none">• Requires that DOC issue guidance through rulemaking on:<ul style="list-style-type: none">○ Mental health, including assessment beyond screening, medication administration and discharge planning

¹ See [1976 c 299 s 1](#).

² See [1978 c 778 s 1](#).

³ See *attached* Licensing Authority Legislative History for detailed description of obligations and authority.

⁴ See *attached* DOC Licensing Actions flowchart detailing current licensing and sanctioning actions and proposed licensing framework.

SECTION	DESCRIPTION
	<ul style="list-style-type: none"> ○ Self-assessment of compliance with minimum standards ○ Sharing relevant information with medical personnel ○ Facilitating medical assessment ○ Code of conduct policy development, prohibited conduct, such as chokeholds, and annual training ○ Death review policy development for circumstances surrounding the death of an individual in custody of the facility <ul style="list-style-type: none"> ○ Rights statement development and availability ● Clarifies DOC must inspect and determine compliance with minimum standards established in rule and any related law ● Clarifies license expiration practices ● Increases timeline for death reporting to 24 hours and codifies reporting obligations related to uses of force and those currently in Rule related to emergencies and unusual occurrences ● Requires Commissioner to publicly post its facility inspection reports within 30 days of completion ● Moves outdated revocation statutory language to 241.021, subdivision 1b
<p>2 – Adds subdivision 241.021, subdivision 1a</p>	<p>Correction order; conditional license:</p> <p>(a) Updates archaic language and clarifies ways commissioner may act without revoking a license as intended by legislature and codifies elements of correction of deficiencies currently authorized in Rule</p> <p>(b) Authorizes commissioner to lift orders or restrictions if satisfactory progress towards substantial compliance is made</p> <p>(c) Clarifies that the licensing actions are not lock-step but can be issued in any order</p>
<p>3 – Adds subdivision 241.021, subdivision 1b</p>	<p>License revocation order:</p> <p>(a) Updates archaic language and establishes clear process for revocation with notice and time for response</p> <p>Addresses confusion with condemnation statutory authority that focuses on insecure or unfit for use issues</p> <p>Facilities will remain operational during notice and written response period</p> <p>(b) Articulates process for facility administrator to respond</p>

SECTION	DESCRIPTION
	<p>(c) Adds parameters for what must be considered when revoking a license</p> <p>(d) Clarifies contents of revocation order and authority to authorize use until a certain date for purposes of effectuating a facility closure in certain circumstances</p> <p>(e) Relocates current statutory language</p>
4 – Adds subdivision 241.021, subdivision 1c	<p>Temporary license suspension: Creates authority and establishes process to issue a temporary immediate suspension to a facility <u>only</u> if there is an imminent risk of life-threatening harm or serious physical injury to persons confined or incarcerated in the facility, staff, law enforcement, visitors, or the public</p>
5 – Adds subdivision 241.021, subdivision 1d	<p>Reconsideration of orders; appeals: Establishes the right of facility administrators for reconsideration of orders, the process and timeline in which to request reconsideration, and clearly defines the information that must be included in the request, as well as makes clear that commissioner’s decisions on requests for reconsideration are final and subject to appeal</p>
6 – Adds subdivision 241.021, subdivision 1e	<p>Report: creates reporting obligations for DOC to legislature, including:</p> <ul style="list-style-type: none"> • Information on individuals who have died in facilities • Information on death review results • Information on uses of force • Information on individuals housed outside of DOC facilities • Summary data on complaints and discipline <u>for DOC only</u>
7 – Adds subdivision 241.021, subdivision 1f	<p>Definition: relocates the definition of “correctional facility” as it pertains to this section of statute from 241.021, subdivision 1(f) to 241.021, subdivision 1f</p>
8 – Adds subdivision 241.021, subdivision 7	<p>Intake release of information: Requires all correctional facilities provide a release of information form to individuals upon intake allowing them to authorize information and circumstances related to health status that can be shared in the event of incapacitation</p>
9 – Adds subdivision 241.021, subdivision 8	<p>Death review teams: Establishes death review process requirement for licensed facilities:</p> <ul style="list-style-type: none"> • Use a chosen, objective, medical expert, and includes mental health if appropriate • Assess for preventable mortality and morbidity within 90 days of death

SECTION	DESCRIPTION
	<ul style="list-style-type: none"> • Only requires notice to DOC of any recommendations for changes in policy, procedure, or training • Documentation created for death review is designated as confidential
<p>10 – Amends section 243.52, and adds subdivisions 1-3</p>	<p>(1) Discipline and prevention of escape:</p> <p>(2) Use of force: Prohibits chokeholds as authorized use of force, unless deadly force is justified</p> <p>(3) Duty to report: Creates a duty to report for staff who observe uses of force that exceed the degree of force permitted by law or who observe neglect of incarcerated individuals in facilities within 24 hours to facility administrator</p>

For additional information or questions, please contact Safia Khan, Director, Government and External Relations Unit for the DOC at safia.khan@state.mn.us or Amy Lauricella, Specialist, Government and External Relations Unit for the DOC at amy.lauricella@state.mn.us.

Inspection and Licensing Action Timeline

Statute lacks specificity and has not been substantively revised for almost half a century

1959

- Legislature created commissioner of corrections and transferred powers and duties relating to prisons, jails, and lockups from commissioner of public welfare - [1959 c 263 s 1](#)

1961

- Legislature required commissioner of corrections to investigate the whole system of corrections - [1961 c 750 s 27, subd. 2](#)
- No authority to act beyond requiring information be shared and reporting conditions found

1963

- Legislature gave commissioner of corrections responsibility to promulgate rule relating to standards in county regional jails and institute condemnation proceedings - [1963 c 452 s 1](#)
- Previously, condemnation proceedings (created in 1905) were administered only by district court when insecure or unfit for use

1969

- Legislature separated out juvenile foster care facilities - [1969 c 493 s 1](#)
- Granted corrections authority to issue licenses to juvenile facilities and first created the revocation language in use in both adult and juvenile statute today

1976

- Legislature granted commissioner authority to inspect adult facilities for compliance with more robust rules establishing minimum standards with respect to management, operation, physical condition, security, safety, health, treatment, and discipline - [1976 c 299 s 1](#)
- If found to be non-compliant, commissioner authorized to issue order restricting use by prohibiting detention for more than 72 hours

1978

- Legislature authorized commissioner to license all correctional facilities for up to 1 year - [1978 c 778 s 1](#)
- Granted commissioner authority to revoke licenses after due notice and hearing

1994

- Commissioner may license for up to 2 years - [1994 c 636 art 6 s 1, 2](#)

DOC LICENSING ACTIONS

CURRENT DOC Licensing or Sanctioning Actions

Minn. Stat. § 241.021(e) permits: order of deficiency, order restricting detention to 72 hours, condemnation proceedings, revocation of license – no timeline provided for process

Rule 2911.0300 permits: compliance order, action plan requirement, limited use agreement, sunset, restricted use or condemnation proceedings – disconnected from statutory authority

Guidance to issue is general and universal = when facility does not substantially conform to minimum standards

Limited appeal rights

Inspection every 2 years

Inspection finds no violations

Inspection finds facility does not substantially conform to minimum standards

Sanctions issued since 2015

7 capacity reductions

7 reclassifications

4 sunsets

1 limited use agreement

Order of deficiency - MS 241.021(e)

Sanctions - Rule 2911.0300, Subp. 4

Restricted use - no more than 72 hour hold per person - MS 241.021(e) and Rule 2911.0300, Subp. 2

Revocation - MS 241.021(e), not addressed in Rule

If imminent risk of life-threatening harm, not addressed in statute or rule

Level 1 - Compliance order - correction in 180 days

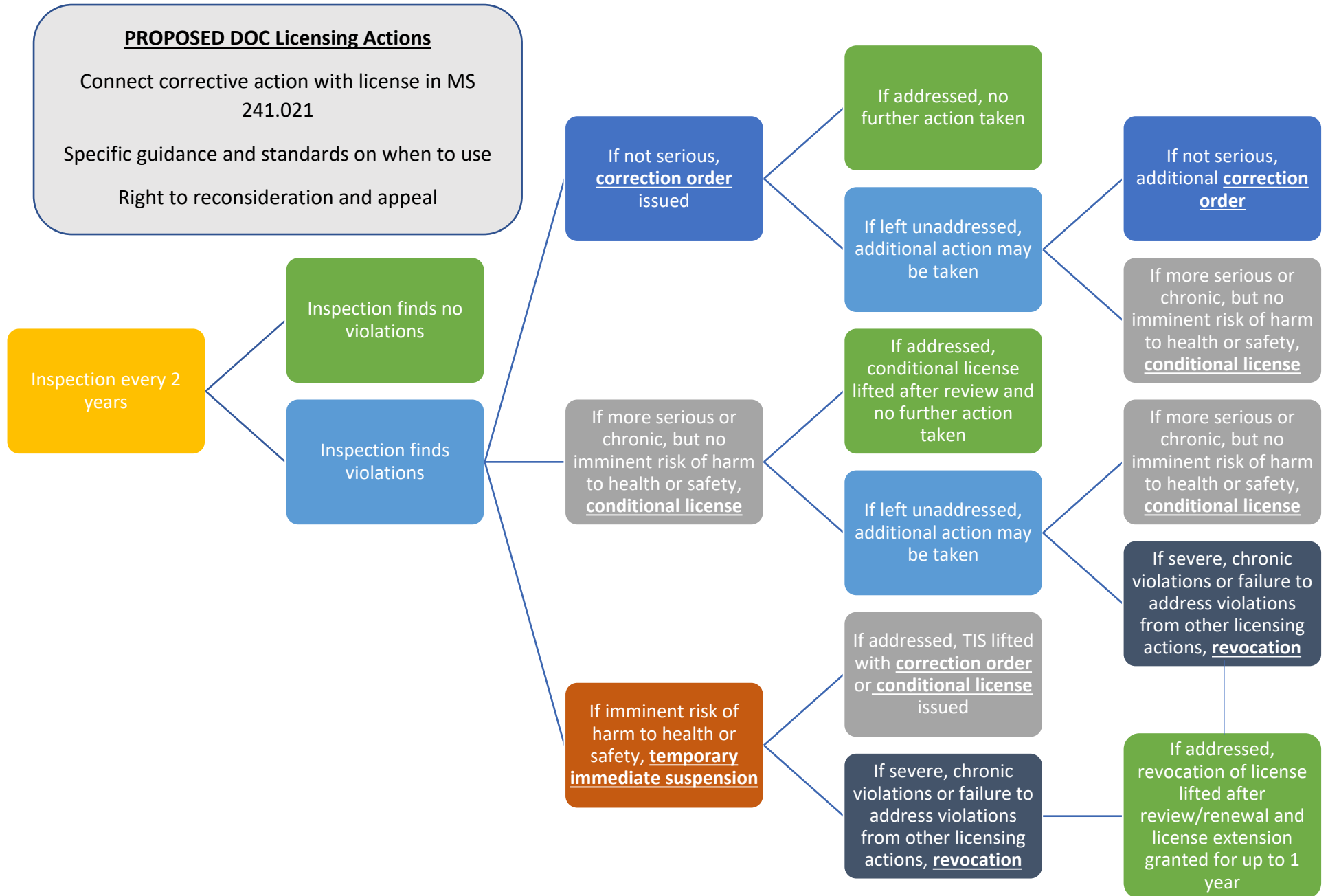
Level 2 - Action plan requirement - DOC may grant or deny within 30 days of receipt

Level 3 - Limited use agreement - when level 1-2 do not result in correction

Level 4 - Sunset - serious life-safety and physical plant deficiencies prevent compliance - timeline given for closure

Level 5 - Restricted use or condemnation proceedings - when level 1-4 do not result in correction

DOC LICENSING ACTIONS



DOC LICENSING ACTIONS

Licensed

In compliance with minimum standards

No violations found during inspections

Correction Order

Issued for non-serious violations

Order specifying the time period and actions to correct

Still fully operational

Requests for reconsideration go to Commissioner for final order and then can be appealed to MN Court of Appeals

Conditional license

Notice to facility when the nature, severity, or chronicity of violations require more serious attention

Requires compliance with special conditions and may include operational limitations, such as limited use agreements restricting facility operations:

- Limitation on intake, length of detention, individual's needs
- Reduced facility capacity

Requests for reconsideration go to Commissioner for final order and then can be appealed to MN Court of Appeals

Temporary Immediate Suspension

Imminent risk of harm to health or safety of people housed in the facility

Non-operational pending notice of intent to issue an order of revocation and written response

Can be lifted if imminent risk of harm is addressed and conditions to ensure safety of persons in facilities are put in place

Requests for expedited reconsideration are only to decide whether temporary immediate suspension remains in place while other licensing action is taken and then can be appealed to MN Court of Appeals

Revocation

Action taken only after severe or chronic violations

Must consider the nature, severity, and chronicity of violations and the effect on the health, safety, or rights of the persons housed in the facility

Operational during notice of intent to issue an order of revocation and written response *unless a temporary immediate suspension is issued*

Requests for reconsideration go to Commissioner for final order and then can be appealed to MN Court of Appeals