STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

ALYSSA PUPHAL and
NATASHA CURTIN WEBER,

Plaintiffs,

v. Case No. 2024CV001711

WISCONSIN DEPARTMENT OF CORRECTIONS
And JARED HOY, in his official capacity as Secretary
of the Wisconsin Department of Corrections,

Defendants.

PLAINTIFFS' NOTICE OF MOTION AND MOTION TO REOPEN AND FOR ORDER TO SHOW CAUSE

PLEASE TAKE NOTICE that Plaintiffs, by undersigned counsel, will appear before the Dane County Circuit Court, the Honorable Stephen Ehlke presiding, on a date and time to be set by the Court, to seek an Order requiring Defendants Jared Hoy and the Wisconsin Department of Corrections ("DOC", together "Defendants") to show cause why they should not be held in contempt, and why appropriate sanctions should not issue. Defendants have failed to comply with this Court's Writ of Mandamus (the "Writ") issued February 24, 2025, which directed them to establish "forthwith" the Mother-Young Child Program required by Wis. Stat. § 301.049. Accordingly, Plaintiffs respectfully move this Court to reopen this case for the limited purpose of enforcing this Writ.

I. BACKGROUND

Since 1991, Wisconsin law has required Defendants to operate a Mother-young childcare program ("Mother-Child Program" or "Program"), allowing eligible mothers in prison to retain physical custody of their children. *See* Wis. Stat. § 301.049(1). The Wisconsin legislature instructed Defendants to: place program participants in the least restrictive placement consistent with community safety and correctional needs and objectives; provide a stable, safe and stimulating environment for participating children; provide services to bolster the mother-child relationship; and prepare participating mothers for success after the program. *Id.* at (3). The law further requires Defendants to "purchase the services of a private, nonprofit organization to administer the mother-young childcare program." *Id.* at (4).

The Wisconsin legislature has appropriated funds every year since 1991 for the Mother-Child Program. *See* Wis. Stat. § 20.410(1)(cw). The legislature appropriated $198,000 to the DOC in each of FY2025 and FY2026 to comply with this law. *See* 2025 Wisconsin Act 15 (FY2025-27 state budget), at 66.[1]

Thus, 35 years ago, the Wisconsin legislature acted to ensure that mothers could retain physical custody of their infants while incarcerated. And for 35 years, the Wisconsin legislature has funded this Program. Despite the legislature's mandate, with funding to support it, Defendants have yet to create this Program.

[1] Available at: https://docs.legis.wisconsin.gov/2025/related/acts/15.pdf.

Plaintiffs came before this Court seeking a writ of mandamus. And on February 24, 2025, nearly a year ago, the Court ordered Defendants "to comply with Wis. Stat. § 301.049 forthwith." *See* Dkt. 56.

Since early last year, when this Court ordered Defendants' compliance with the statute, counsel for Plaintiffs have repeatedly discussed the planned implementation of the Program with Defendants. Counsel for Plaintiffs have met with DOC representatives three times via videoconference: on June 26, August 1, and December 16, 2025. In all three of these meetings, DOC representatives did not offer Plaintiffs' counsel any information that indicates they are in compliance with the Writ.

Plaintiffs have also submitted multiple requests for public records to the DOC seeking clarification of the DOC's compliance with the Writ. On June 26, 2025, the same day as the first meeting with DOC representatives, Plaintiffs submitted a request for public records pertaining to the Program, to which DOC partially responded on August 1. Based on the documents produced, and the June 26 and August 1 meetings, Plaintiffs were concerned about the lack of progress on forming the Program and complying with the Writ.

On November 19, 2025, Plaintiffs' counsel requested a third meeting with Defendants. Plaintiffs also submitted a second records request for documents created after the date of DOC's August 1, 2025 records production.[2] In response,

[2] In the Parties' December 16, 2025 meeting, Defendants told Plaintiffs that a *partial* production of the public records requested on November 19 would be delivered the first week of January. As of the date of filing this Motion, almost three and a half months after the request, Plaintiffs have not

Defendants stated they could not meet until December 16, 2025. By agreement, and to facilitate a productive discussion, Plaintiffs' counsel provided DOC with a list of questions two weeks prior to the December 16, 2025 meeting. *See* Attachment A (letter from Plaintiffs' counsel to DOC counsel, sent via email on December 1, 2025).

After the Parties' December 16, 2025 meeting, the following circumstances were clear:

- Defendants have yet to establish a Mother-Child Program, as required by the Writ and state law.
- Defendants still cannot say when this Program will be created.
- Despite the Court's Order, Defendants continue to assert that the Program cannot be implemented without further legislative action.
- While Defendants have yet to finalize formal criteria for entry into the Program, the tentative criteria they previewed are so narrowly tailored that not a single incarcerated woman would be eligible for the Program currently if it did exist.
- Defendants have failed to establish even the interim program they discussed with Plaintiffs in June 2025.

In short, there has been no meaningful progress in the eleven months since this Court ordered Defendants to establish the Program "forthwith." Defendants

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received this production. Counsel for Plaintiffs inquired about the status of the public records request on January 26, 2026. On January 30, 2026, Defendants' counsel responded that they would "try" to get counsel answers by "the end of next week."

remain in violation of the Court's Order, to the severe detriment of incarcerated women and their infants in Wisconsin.

II. ARGUMENT

A. The Court has authority to reopen this case for purposes of enforcement.

This motion is made pursuant to the Court's statutory and inherent authority to enforce its own orders. Wis. Stat. § 785.02; *see also Frisch v. Henrichs*, 2007 WI 102, ¶ 32, 304 Wis. 2d 1, 736 N.W.2d 85. Any "disobedience, resistance or obstruction" of a court order constitutes contempt of court. Wis. Stat. § 785.01(1)(b). A person aggrieved by a party's contempt of court may seek imposition of remedial sanctions by filing a motion for that purpose in the proceeding to which the contempt is related. Wis. Stat. § 785.03(1)(a). Following notice, motion, and hearing, the court may impose remedial sanctions. *See id.*; *see also* Wis. Stat. § 785.01(3) (defining "remedial sanction" as one "imposed for the purpose of terminating a continuing contempt of court).

The Court indisputably has authority to reopen this case to enforce the Writ. Wis. Stat. § 806.07(1)(h) (empowering the court to reopen the case and modify the judgment "for any other reason justifying relief"); *Frisch*, 2007 WI 102 at ¶ 32 ("A court's power to use contempt stems from the inherent authority of the court... Despite the fact that the power exists independently of statute, this court ruled [in 1880] that when the procedure and penalties of contempt are proscribed by statute, the statute controls.") (citations omitted); s*ee also State ex rel. V.J.H. v. C.A.B.*, 163

Wis. 2d 833, 843, 472 N.W.2d 839 (Ct. App. 1991) (enforcing contempt order following case closure for failure to comply with the court's judgment).

Contempt proceedings and remedial sanctions are appropriate where, as here, the contemnor has failed to comply with a court order, and the sanction is "imposed for the purpose of terminating a continuing contempt of court." Wis. Stat. § 785.01(3).

B. Defendants' noncompliance with the Writ demands remedial sanctions under Wis. Stat. § 785.03(1)(2).

Compliance with a judicial order, and especially an order relating to a statutory mandate, is not optional. *State v. Simmons*, 2023 WI App 62, ¶ 11, 998 N.W.2d 851 (quoting *Maness v. Meyers*, 419 U.S. 449, 459 (1975) ("We begin with the basic proposition that all orders and judgments of courts must be complied with promptly.")).[3] Yet, Defendants' failure to take meaningful steps to develop the Mother-Child Program, let alone establish it, demonstrates their view of this Court's Writ as just that—optional. With each month that passes, Defendants' failure to act violates state law and violates the Writ. In doing so, they are continuing to deny incarcerated mothers in Wisconsin an important statutory right.

Remedial sanctions under Wis. Stat. § 785.03(1)(2) are intended to end ongoing harm resulting from noncompliance with a court order. *Christensen v.*

[3] This is an unpublished disposition. Per Wis. Stat. § 809.23(3)(b), this case may be cited for its persuasive value because it was issued on October 17, 2023 by a single judge under Wis. Stat. § 752.31(2)(h).

Sullivan, 2008 WI App 18, ¶ 10, 307 Wis. 2d 754, 765, 746 N.W.2d 553, 559, *rev'd on other grounds*, 2009 WI 87, 320 Wis. 2d 76, 768 N.W.2d 798. Here, remedial sanctions are required to enforce the Writ and motivate Defendants to do what the law requires.

1. Defendants' violation of the Writ is ongoing.

Defendants' failure to establish the Mother-Child Program constitutes an intentional "disobedience, resistance, or obstruction" of a court order. *See* Wis. Stat. § 785.01(1)(b). The failure to comply with the Writ is evidenced by: (1) the still non-existent Mother-Child Program, and (2) the indefensibly narrow eligibility criteria Defendants have previewed—*i.e.*, criteria that would render the Program essentially meaningless even if established.

Most significantly, as to mothers in DOC's physical custody, Defendants have unquestionably failed to implement the Program and cannot so much as offer an estimated date by which it will be implemented. Nearly a full year after the Court's Writ, Defendants *still* cannot articulate Program structure, eligibility criteria, estimated implementation timeline, or any other meaningful details that could be considered a reasonable attempt to comply with Wis. Stat. § 301.049 and the Writ. *See* Dkt. 56, ¶ 2. (filed Feb. 24, 2025).

Equally as problematic, Defendants have verbally previewed their tentative eligibility criteria for the Program, which, if adopted, would be so exclusive that not even one woman currently in DOC custody would be qualified or permitted to participate. Defendants' basis for this position appears to be § 301.049(b)'s

provision that an incarcerated mother "may enter the program" if, first, she consents to participate, and second, "the department approves." Nevertheless, Defendants should not be allowed to subvert the substantive rights of the statute (and the language of the Writ) by simply refusing to approve any participants who are imprisoned.

This not only runs contrary to the spirit and letter of the law (and the Writ), but would also constitute an "order of general application" that, to have the effect of law, "must be promulgated as a rule." *See* Wis. Stat. § 227.01(13). Under Chapter 27 rulemaking requirements, "[n]o agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter[.]" Wis. Stat. § 227.10(2m). To Plaintiffs' knowledge, the DOC has not promulgated *any* rules related to the Program. Defendants cannot be in compliance with the Writ without first establishing Program criteria via the appropriate rulemaking processes.

The Parties discussed these proposed eligibility criteria in detail at their December 16, 2025 meeting, including how many currently incarcerated women would be eligible to participate in the Program under those criteria. Remarkably, Defendants admitted that *not even one* of the mothers in DOC's physical custody would currently qualify. If true, these proposed eligibility criteria—even for their tentative program—are so narrow they would render Wis. Stat. § 301.049

pointless. *See Salachna v. Edgebrook Radiology*, 2021 WI App 76, ¶19, 399 Wis. 2d 759, 966 N.W.2d 923 ("it is well-established that statutory interpretations that render provisions meaningless should be avoided and statutes should be interpreted to avoid absurd or unreasonable results.").

2. Defendants' violation of the Writ continues to harm Plaintiffs and all incarcerated mothers in DOC's physical custody.

Plaintiffs, along with most every incarcerated mother in DOC's physical custody with a child under one year old, have suffered and will continue to suffer irreparable harm from Defendants' non-compliance with the statute and the Writ. As the Court has recognized (*see* Dkt. 56, ¶ 4), because § 301.049 affords these women a statutory right to participate in the Mother-Young Program, the denial of this right constitutes *de facto* irreparable harm. *State ex rel. Dep't of Nat. Res. v. Wisconsin Ct. of Appeals, Dist. IV*, 2018 WI 25, ¶ 47, 380 Wis. 2d 354, 909 N.W.2d 114 ("It is nearly tautological to observe that losing a statutorily granted right is a harm. Losing the right with no means to recover it makes the harm irreparable.").

Furthermore, in addition to the *de facto* harm caused by the denial of these women's statutory right to participate in the Program, their inability to access the real-world benefits of a prison nursery initiative also demands consideration. At this moment, *each and every woman* in DOC's physical custody with a baby under one year old sleeps apart from her child *every single night*. This is the case despite the Court's Order, issued nearly a year ago, that the DOC administer a program

that is available to "females who are prisoners[,] as well as to females who are on probation, extended supervision, or parole." Dkt. 56, ¶ 2 (filed Feb. 24, 2025).

Tellingly, Defendants have not appealed the Writ and thus have forfeited the ability to challenge either the Writ or the Court's factual findings in support of same. The Writ remains in effect and binding on Defendants, and their failure to comply continues to harm not only Plaintiffs but, as mentioned above, all mothers in DOC custody who meet the criteria enumerated in § 301.049.

3. Remedial sanctions are necessary to incentivize Defendants to comply with the Writ.

The intent behind "the contempt statute, [] is to provide the court with a mechanism, or toolbox, to effect compliance with court orders." *Frisch*, 2007 WI 102 at ¶ 82. Wis. Stat. § 785.04 sets forth several options for remedial sanctions, including:

> (a) payment sufficient to compensate a party for loss suffered as a result of the contempt;
> (b) imprisonment while the contempt is ongoing for up to six months;
> (c) forfeiture of up to $2000 per day while the contempt continues;
> (d) an order designed to ensure compliance with a prior order; and
> (e) a sanction other than those specified if the court finds that those would be ineffectual to terminate a continuing contempt. Wis. Stat. § 785.04. Importantly, the Court may also award attorney fees and other litigation costs.

See Town of Seymour v. City of Eau Claire, 112 Wis. 2d 313, 332 N.W.2d 821 (Ct. App. 1983).

Here, remedial sanctions are necessary and appropriate to end the significant harm caused by Defendants' failure to comply with the Writ. Plaintiffs

are specifically seeking (1) a daily forfeiture, (2) post-judgment discovery, and (3) an award of their attorney fees.

Plaintiffs request a daily forfeiture for two reasons. First, the nature of Defendants' violation is well-suited for a continually-accruing fine. For months, Defendants have offered little more than excuses for their inaction. The imposition of a daily forfeiture would put Defendants on the clock, making it costly to drag their feet any longer. *Dreifuerst v. Wisconsin Movers Supply Co.*, 2015 WI App 68, ¶ 25, 364 Wis. 2d 756, 869 N.W.2d 169 (affirming contempt penalties of $1,000 per day, an aggregated judgment of $140,000) ("[T]he circuit court imposed a remedial sanction that was specifically authorized by statute for the clear purpose of compelling compliance with its orders.").

Second, the fines collected might be used to support the Program once established. Plaintiffs request that the collected fines be held in escrow or otherwise segregated and/or dedicated to support the Program. Defendants claim to need additional money from the legislature to create the Program. Plaintiffs reject this claim, but a growing fine under Wis. Stat. § 785.04 would ensure resources for the Program without legislative action.

Further, Plaintiffs seek authorization to take formal discovery concerning Defendants' failure to comply with the Writ, including written discovery and depositions. Discovery is authorized here as in any other case. *See* Wis. Stat. § 804.01(2)(a) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[] . . ."). Since

the Writ issued, Defendants have made partial and delayed productions of requested records. Defendants' answers to Plaintiffs' inquiries have been vague and incomplete, prompting Plaintiffs to provide questions weeks in advance in the hope Defendants would come to the call prepared with substantive updates. Plaintiffs have asked how many incarcerated women are currently pregnant or have a child under age one, but no answer has been provided as of this filing. All the while, Defendants presumably track this information as required by DOC policy *See* Provision of Services to Pregnant Patients, DAI Policy #500.30.09 (eff. 1/21/21) (outlining procedures for pregnant inmates, including "DOC-3357 – Pregnancy Log" and other recordkeeping). Post-judgment discovery is necessary here to monitor Defendants' compliance and evaluate whatever administrative roadblocks they identify.

Lastly, Plaintiffs request that the Court order Defendants to pay Plaintiffs' costs and attorney fees for time expended related to this motion and obtaining compliance with the Writ. *See Nationstar Mortg. LLC v. Stafsholt,* 2018 WI 21, ¶ 32, 380 Wis. 2d 284, 301, 908 N.W.2d 784, 792 (Awarding attorney fees in "exceptional cases and for dominating reasons of justice.") (internal citations omitted). Counsel for Plaintiffs have expended considerable time and effort in attempting to secure compliance with the Court's Writ. Defendants should be required to cover the cost of these efforts.

III. CONCLUSION

Defendants have failed to comply with Wis. Stat. § 301.049, which has been on the books since 1991. Further, for nearly a year now, they have failed to comply with the Writ of Mandamus issued in this case. To avoid another year of excuses—or worse, another 35 years—Plaintiffs ask the Court to reopen this case for the purposes of enforcing the Court's Writ.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court exercise its enforcement powers to ensure that its Order is complied with by:

1. Reopening this case for the limited purpose of enforcing its Final Judgment and Writ of Mandamus;

2. Ordering Defendants to appear and show cause why they should not be held in remedial contempt under Wis. Stat. § 785.03(1)(a) for failure to comply with the Writ;

3. Setting a briefing schedule and scheduling a hearing on the issue of Defendants' compliance and remedial sanctions;

4. Authorizing Plaintiffs to take post-judgment discovery under Wis. Stat. § 804.05–804.09 to obtain records, communications, and depositions relevant to DOC's actions and asserted justification for noncompliance; and

5. Ordering such further relief as may be necessary to secure Defendants' compliance with the Court's Writ "forthwith."

Respectfully submitted this 4th Day of February, 2026.

ACLU of WISCONSIN FOUNDATION, INC.

Ryan V. Cox (SBN: 1140899)
207 E. Buffalo St., Suite 325
Milwaukee, WI 53202-5774
Phone: (414) 272-4032
Facsimile: (414) 272-0182
rcox@aclu-wi.org

Jenifer M. Bizzotto (SBN 1101341)
Phone: (414) 272-4032, Ext. 350
Facsimile: (414) 272-0182
jbizzotto@aclu-wi.org

QUARLES & BRADY LLP

Electronically signed by /s/ Gregory T. Everts
Gregory T. Everts (SBN: 1001636)
33 East Main St., Suite 900
Madison, WI 53703
Phone: (608) 251-5000
Facsimile: (608) 251-9166
gregory.everts@quarles.com

Dan Janssen (SBN: 1022112)
Nathan Oesch (SBN: 1101380)
Mackenzie A. Gutner (SBN: 1135981)
Dominique S. Fortune (SBN: 1125896)
411 East Wisconsin Ave., Suite 2400
Milwaukee, WI 53202
Phone: (414) 277-5000
Facsimile: (414) 271-3552
daniel.janssen@quarles.com
nathan.oesch@quarles.com
mackenzie.gutner@quarles.com
dominique.fortune@quarles.com

Attorneys for Plaintiffs Alyssa Puphal and Natasha Curtin-Weber

ATTACHMENT A

Attch. A

Quarles

Quarles & Brady LLP
Attorneys at Law
411 East Wisconsin Avenue
Suite 2400
Milwaukee, WI 53202-4428
414-277-5000
Fax 414-271-3552
quarles.com

Writer's Direct Dial: 414-277-5461
E-Mail: Mackenzie.gutner@quarles.com

VIA E-MAIL

December 1, 2025

Dear Attorney Paulson,

Attached to this letter is a list of questions regarding the Wisconsin Department of Correction's (DOC's) compliance with the writ of mandamus issued by Hon. Stephen E. Ehlke of Dane County Circuit Court on February 24, 2025 (the "Order"), requiring the DOC to comply with Wis. Stat. § 301.049 "forthwith."

To our knowledge, the DOC has yet to comply with the Order, entered nearly a year ago. Since the Order, the following interactions have occurred between the parties:

- June 26, 2025: Plaintiffs met with the DOC and submitted a public records request for documents pertaining to the Mother-Young Child Care Program.
- August 1, 2025: Plaintiffs met with the DOC a second time, and the DOC fulfilled the June 26, 2025 records request the same day.
- November 19, 2025: Plaintiffs requested a November meeting with DOC to discuss the documents received via the public records request and submitted another public records request for documents pertaining to the Mother-Young Child Care Program created after August 1, 2025.
- DOC responded that it was not available to meet until the second or third week of December.
- Plaintiffs offered to give the DOC a list of questions by December 1, 2025 so that the late December meeting could be as productive as possible.
- DOC responded that it could no longer meet until January 2026, but that if Plaintiffs provided DOC counsel with questions on December 1 as offered, DOC counsel could meet with Plaintiffs on December 16, 22, or 23 with prepared answers from the DOC.

We look forward to a productive meeting on December 16, 2025.

Best Regards,

QUARLES & BRADY LLP

Attorney for Plaintiffs

Enclosures

Questions for DOC on Mother-Young Child Care Program

Provided: 12/01/2025

1. When can we expect to receive the new documents from the 11/19 records request? (The Records Center shows collection "in progress").

2. What is the status of DOC's compliance with the writ to create and offer a Mother-Young Child Care Program to incarcerated women?

    a) Is DOC, in its own view, compliant?

    b) If not, when does DOC expect to be in compliance? Can you give a firm date? If not, why not?

    c) What *specific* steps has DOC taken since the writ was issued to comply?

6. The Ostara Initiative, a credible non-profit that DOC has already partnered with for other services, offered to create a Mother-Young Child Care Program for DOC (and at no cost to DOC) back in April 2024, and has continued to approach the DOC regarding such a program.

    a) What did DOC do to evaluate that proposal?

    b) Was the proposal rejected? If so, why?

        1. How does Ostara Initiative's proposal, and DOC's rejection of it, square with DOC's position that it needs major new funding and construction of facilities before it can create the program?

    c) If not, why did partnership efforts not continue?

    d) Ostara estimated it needed roughly $5 million in funding; however, the DOC requested over $20 million. Can you provide insight on the funding discrepancy?

7. What does DOC see as obstacles to creating the Mother-Young Child Care Program?

    a) What is being done to overcome them?

8. Why shouldn't DOC be held in contempt for non-compliance, given that a Mother-Young Child Care Program is not yet operating, decades after the DOC was mandated to have such a program, and more than 9 months after Judge Ehlke specifically ordered compliance "forthwith"?

9. Is DOC interpreting the writ to require offering the program solely to women who are eligible for community supervision? If so, please explain.

    a) At some point, DOC identified 5 options for proposed cohort criteria, with the number of eligible women ranging from 1 to 34 women. Are these

Attch. A

Questions for DOC on Mother-Young Child Care Program

Provided: 12/01/2025

options still being considered, and has DOC made a determination as to which of the 5 models it will pursue?

b) Relatedly, we've reviewed drafts of a proposed DAI Policy for the Mother-Young Child Care Program. Is DOC planning on pursuing adoption of some version of its proposed policy through the rulemaking process? If so, what's the status?

10. While DOC has been working to implement the Mother-Young Child Care Program, have expanded opportunities/activities in TCI been implemented?
    a) If yes, what's the status of the implementation?
    b) If no, what are the barriers?
    c) What other interim measures have been taken, if any, to increase mother's ability to spend time with their babies while the Mother-Young Child Care Program is being built?

11. On August 5, 2025, DOC had an initial meeting with DCF to possibly create a partnership for a birth-to-three program at one or all WWCS facilities.

    a) What's the status of that potential partnership? Are talks ongoing?
    b) What's the timeline of a birth-to-three program?