

ALYSSA PUPHAL and
NATASHA CURTIN WEBER,

Plaintiffs,

v.

Case No. 2024CV001711

WISCONSIN DEPARTMENT
OF CORRECTIONS, *et al.*,

Defendants.

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR ORDER TO
SHOW CAUSE**

This Court has already held that Defendants did not meet their duty under Wis. Stat. § 301.049 and ordered compliance “forthwith.” Dkt. 56 at 2. Defendants now attempt to relitigate that ruling, insisting a “new” community-based program suffices. Their opposition rests on three untenable positions: (1) DOC has operated a compliant Mother-Young Child Care Program since 1993; (2) DOC’s community-based program satisfies the Writ; and (3) DOC’s noncompliance is neither intentional nor harmful to Plaintiffs.

Plaintiffs have made their *prima facie* showing. The burden has shifted. But Defendants’ justifications rest on disputed facts, contradicted by their own internal communications. The contempt statute exists for precisely this reason: disputed claims of compliance must be tested through evidence at a hearing. The only

proper path forward is targeted discovery and an evidentiary hearing before this Court.

I. ARGUMENT

A. Defendants' community program does not satisfy the Court's order to comply with Wis. Stat. § 301.049 "forthwith."

A person who disagrees with a court order "is bound to obey it until relieved therefrom in some legally prescribed way." *Monicken v. Monicken*, 226 Wis. 2d 119, 125, 593 N.W.2d 509 (Ct. App. 1999). Over a year ago, this Court "directed and ordered [Defendants] to comply with Wis. Stat. § 301.049 *forthwith*," to "further the legislature's goal of including as many mothers and children in the pool of candidates considered for acceptance into this program as possible." Dkt. 56 at 2. Despite this, Defendants *still* claim they have "been administering a Mother Young Child Care Program since 1993." Dkt. 85 at 2. They remain bound to obey the Writ unless relieved from it. *Monicken*, 226 Wis. 2d at 125.

Defendants' own records undermine their compliance claim. After the Writ issued, DOC's internal emails acknowledged the Program needed to be implemented for "incarcerated women," admitted it had not been done, and said only that DOC would "work towards implementation." Dkt. 84, Sec. Gutner Dec., Ex. 11. Another employee admitted that running a § 301.049-compliant program was something DOC had "never" done. *Id.*, Ex. 12. DOC does not address these admissions.

DOC's community-based program is noncompliant for three independently sufficient reasons. First, DOC—with no logical basis—layers Wis. Stat. § 301.046 eligibility requirements atop § 301.049, criteria found nowhere in the statute that screen out the vast majority of incarcerated women at TCI. Dkt. 87, Reible Dec., Ex. 112 at 2–3. Second, DOC concedes that only one woman currently qualifies. Dkt. 85 at 9. A program reducing a statutory entitlement to a single participant is no program at all. Third, DOC's own employees described the draft policy as “not complete,” “put together quickly,” and “‘off’ a bit.” Dkt. 84, Sec. Gutner Dec., Exs. 12–13.

Even if Defendants' community program could satisfy Wis. Stat. § 301.049, its eligibility criteria gut the clear statutory right found by this Court. A party may not substitute alternative performance of its own devising. *See City of Milwaukee v. Patton*, 158 Wis. 617, 149 N.W. 381, 382 (1914). This Court recognized that the Legislature intended *broad* access. Dkt. 56 at 2. DOC now claims *one* incarcerated woman qualifies—proving that DOC has converted a broadly available statutory right into one available to a single person. Dkt. 85 at 14–16.¹ Nor can DOC invoke “the department approves” in § 301.049(2)(b) to nullify the Legislature's inclusion of *prisoners* in the eligibility pool. Statutes must be interpreted to avoid absurd results. *Salachna v. Edgebrook Radiology*, 2021 WI App 76, ¶ 19, 399 Wis. 2d 759, 966

¹ The policy also requires that the mother be minimum or minimum-community custody, have no unresolved legal matters, submit to GPS monitoring, complete or actively engage in parenting classes, satisfy risk and psychological assessments, secure child-welfare coordination, and have a stable housing and childcare plan. Dkt. 87, Reible Dec., Ex. 112 at 3–7.

N.W.2d 923. If “the department approves” permits criteria so restrictive that virtually no incarcerated woman qualifies, then § 301.049(2)(a) becomes a nullity. This Court already rejected DOC’s attempt to read prisoners out of the statute. Dkt. 56 at 2. DOC may not accomplish through administrative criteria what the Writ prohibits.

Defendants have also failed to comply “forthwith.”² In *fifteen* months, DOC has slow-walked meetings, delayed document productions, and abandoned any attempt to create the program the law requires. Instead, they are offering a program substantively similar to one the Court already deemed noncompliant. DOC will not comply without this Court’s further intervention.

B. Defendants’ intentional failure to comply is contemptuous.

“[A]ll orders and judgments of courts must be complied with promptly.” *Maness v. Meyers*, 419 U.S. 449, 459 (1975). Wisconsin law defines contempt as “intentional ... [d]isobedience” of “an order of a court.” Wis. Stat. § 785.01(1)(b). Defendants rely on the word “intentional,” claiming they cannot comply because the Legislature denied funding.³ But DOC has chosen not to comply.

Once Plaintiffs make a *prima facie* showing of a Writ violation (they have), Defendants bear the burden of demonstrating that their conduct is not

² Since the Writ was issued, Plaintiffs met with DOC on June 26, August 1, and December 16, 2025; submitted records requests on June 26 and November 19, 2025; and provided written questions before the December meeting. Dkt. 84, Sec. Gutner Dec. ¶¶ 4–7 & Ex. 10.

³ Confusingly, at the same time, DOC claims it is in compliance with the Court’s order. Compare Dkt. 85 at 17–19 (arguing compliance is “currently impossible” due to the Legislature’s refusal to fund the program), with Dkt. 85 at 2 (claiming DOC “has been administering a Mother Young Child Care Program since 1993” and is in compliance with the statute).

contemptuous. *Noack v. Noack*, 149 Wis. 2d 567, 575, 439 N.W.2d 600 (Ct. App. 1989). They cannot carry that burden here. Defendants seek to overcome Plaintiffs' *prima facie* showing with disputed factual claims contradicted by their own internal discussions. Due process and the contempt statute require that such disputes be resolved through an on-the-record hearing, not competing affidavits. *Evans v. Luebke*, 2003 WI App 207, ¶¶ 23–24, 267 Wis. 2d 596, 617 N.W.2d 304; Wis. Stat. § 785.03(1)(a). Whether compliance is “within the power of the person” is a factual question for the trial court. *Town of Seymour*, 112 Wis. 2d at 318. Fairness requires, at minimum, discovery and an evidentiary hearing at which Plaintiffs can test the State's claims.

1. DOC cannot overcome its intentional noncompliance by blaming another arm of the same State.

DOC is an arm of the State charged with administering Wis. Stat. § 301.049. *Mayhugh v. State*, 2015 WI 77, ¶ 32, 364 Wis. 2d 208, 867 N.W.2d 754. Defendants cannot convert the Writ into an optional directive by pointing to intra-governmental disagreements. Dkt. 85 at 17–19. The Court ordered compliance; DOC remains bound to comply. Because DOC was the proper defendant and vehicle for ordering statewide compliance, this Court may hold DOC in contempt for the State's failures. The Court's orders cannot be effectively vetoed by another branch. See *Evers v. Marklein*, 2024 WI 31, ¶ 31, 412 Wis. 2d 525, 8 N.W.3d 395.

2. DOC's own internal communications undermine any impossibility defense to noncompliance.

DOC's own documents confirm that noncompliance has been a choice. After the Writ issued, Defendants acknowledged they were required to implement the Program for incarcerated women, admitted they had not done so, and said only that they would "work towards implementation." Dkt. 84, Sec. Gutner Dec., Ex. 11. They then consciously pivoted to "initially implement a community-based program." *Id.*, Ex. 12. That pivot was a strategic preference, not a necessity. Nothing about Wis. Stat. § 301.049 requires the Program operate within a prison. *See* Wis. Stat. § 301.049(2)(a), (3)(a), (4). Absent evidence that an in-prison program is the *only* permissible model, DOC's bare assertion that compliance is impossible without new facilities is unfounded.

3. DOC rejected a viable proposal from an existing contractor and offers no justification for doing so.

DOC's impossibility claim is further undermined by the Ostara Initiative—an existing DOC contractor that offered to administer a § 301.049-compliant program at no cost as early as April 2024. Dkt. 84, Sec. Gutner Dec., Ex. 10 at 2. The statute directs DOC to "purchase the services of a private, nonprofit organization to administer the mother-young child care program." Wis. Stat. § 301.049(4). Yet DOC's Response does not mention this proposal, let alone explain why it was rejected. This silence reflects a § 301.046 mindset. Rather than fulfill § 301.049's plain directive, DOC seeks to combine this program with community residential confinement—a wholly different statute that screens out nearly every incarcerated woman. DOC's unexplained rejection of another viable option further supports intentional non-compliance.

C. Plaintiffs continue to suffer harm from Defendants' failure to comply with the Court's order.

This case comes within the very function of the writ of *mandamus*: to compel performance of a positive legal duty when there is no other specific legal remedy. *Waupaca Cnty. v. Town of Matteson*, 79 Wis. 67, 48 N.W. 213, 214 (1891). The harm is especially acute because Wis. Stat. § 301.049 protects a time-sensitive interest that cannot be restored later. A mother cannot recover the months she is denied custody of her infant; a child who ages out of the statutory window cannot be made eligible after the fact. “Losing the right with no means to recover it makes the harm irreparable.” *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.

Ms. Curtin-Weber’s circumstances demonstrate that this harm is not abstract. She is pregnant again (due August 20, 2026), signed an Alternative to Revocation agreement to avoid returning to TCI because no Mother-Young Program was available there, and is housed at ARC House approximately 150 miles from home. Dkt. 83, Curtin-Weber Dec. ¶¶ 8–15. Defendants argue that “[n]either plaintiff is in prison now.” Dkt. 85 at 20. But Ms. Curtin-Weber is participating in the community program only because DOC forced a Hobson’s choice: accept a placement 150 miles from home or return to TCI where no compliant Program exists. Both women remain under DOC supervision, face potential reincarceration, and are pregnant or of childbearing age; DOC’s noncompliance poses an ongoing, concrete threat to their statutory rights. Ms.

Blaschuk's experience confirms this: she gave birth at TCI on April 7, 2025, was never notified of any Mother-Young Program eligibility, and knew of no program allowing a new mother to spend time with her baby beyond scheduled drop-in visits. Dkt. 82, Blaschuk Dec. ¶¶ 20–23.

This is an enforcement proceeding following a Writ already entered. Noncompliance continues to deprive Plaintiffs of their statutory right to participate in a § 301.049-compliant program at any time they are incarcerated.⁴ Plaintiffs have made their *prima facie* showing; Defendants' claimed justifications raise disputed questions of fact that can only be resolved through discovery and a hearing.

D. Plaintiffs' ongoing harm requires judicial intervention: discovery and an evidentiary hearing.

Plaintiffs' requested relief is necessary to stop DOC's ongoing violation of this Court's Writ. Without intervention, DOC will continue treating empty promises as substitutes for the court-ordered Program. Whether this Court reopens the case or proceeds directly to an evidentiary hearing, Plaintiffs are entitled to discovery and a hearing to test Defendants' claims and fashion an appropriate remedy.

1. Defendants do not, and cannot, dispute that remedial sanctions are appropriate.

⁴ This harm is especially sensitive as it is capable of repetition but is currently evading review.

Defendants dispute Plaintiffs' proposed allocation of fines but say nothing of Plaintiffs' primary motivation: to put Defendants on a clock. Remedial sanctions exist precisely for this type of noncompliance. *Christensen v. Sullivan*, 2008 WI App 18, ¶ 10, 307 Wis. 2d 754, 746 N.W.2d 553, *rev'd* on other grounds, 2009 WI 87, 320 Wis. 2d 76, 768 N.W.2d 798. Defendants' only objection is that forfeiture proceeds cannot be earmarked for the MYC program. Dkt. 85 at 22. Their attack on the destination of fines—not their coercive purpose—is telling. Even if the Court declines to earmark proceeds, a daily forfeiture remains an available coercive sanction.

2. Plaintiffs are entitled to discovery to probe Defendants' unsubstantiated claims that there are hurdles to their compliance.

Defendants cannot gesture vaguely toward funding or legislative inaction without proving those constraints exist. Whether compliance is within Defendants' capability is a question of fact. *Town of Seymour v. City of Eau Claire*, 112 Wis. 2d 313, 318, 332 N.W.2d 821 (Ct. App. 1983). DOC's delayed public-records productions revealed that its own employees did not know what the Program was, that eligibility criteria excluded virtually all incarcerated women, and that internal communications confirmed the Program did not exist for prisoners. Dkt. 84, Sec. Gutner Dec., Exs. 11–17. These revelations came only after Plaintiffs waited months for a 2,500-page production delivered after Defendants filed their first Response. *Id.* ¶¶ 4–7. Discovery will ensure Plaintiffs are not left to uncover critical evidence piecemeal through open-records requests DOC controls.

II. CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court schedule an evidentiary hearing and allow targeted discovery and a hearing before this Court to resolve the disputed factual issues and enforce the Writ.

Respectfully submitted this 20th Day of July, 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

QUARLES & BRADY LLP

Dominique Suzette Fortune
Dominique S. Fortune (SBN: 1125896)
411 East Wisconsin Ave., Suite 2400
Milwaukee, WI 53202
Phone: (414) 277-5000
dominique.fortune@quarles.com

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*