Scott Walker
Wauwatosa's Representative in the Wisconsin State Assembly

MEMO

TO: Members of the Assembly Committee on Corrections and the Courts

FROM: Rep. Scott Walker, Chair

DATE: Feb. 3, 2000

RE: **Clearinghouse Rule 97-014**

On Feb. 1, 2000, the following rule was referred to the Assembly Committee on Corrections and the Courts:

Clearinghouse Rule 97-014, relating to inmate visitation.

The deadline for committee action on this rule is March 1, 2000. If you wish to submit comments or request a hearing, please do so before this date. You may also obtain a copy of the rule by calling Missy in my office at 6-9180.

Thank you.

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MAR 2 9 2000

March 28, 2000

Representative Mark Pocan
Room 418 North, State Capitol
Madison, WI 53708

Re: Comments relating to CR 97-014

Dear Representative Pocan:

I am in receipt of your letter to Representative Walker regarding CR 97-014, Administrative Code DOC 309 relating to inmate visitation. Your letter raises eight areas of concern. The following is the Department's response to your concerns.

1. The Department has eliminated language permitting inmates and visitors to embrace and kiss at the beginning and end of visits for security reasons. It is possible, and does happen, that the inmates and visitors transfer contraband during the embrace or kiss. This obviously hinders the institution's ability to maintain safety and security. By removing this rule language, the Department has not completely denied an inmate the ability to embrace or kiss visitors, but is allowing the institutions to make this decision locally and individually.

2. The rule will allow institutions to require or use information regarding visitors that may be obtained from sources other than the inmate or visitor. This is necessary in order to verify information given by the inmate or visitor. It may be necessary to verify Department records regarding a visitor who is a previous inmate. It may be necessary to verify probation or parole records for a potential visitor or to perform criminal background checks. Any of these things would be done within the confines of confidentiality laws. The Department would be unable, without consent from the visitor, to access any information that is confidential.

3. The rule will remove the language requiring that institutions have written policies and procedures relating to visits to inmates in "segregation." This specific language was unnecessary in the rule because it is provided for generally in 309.09 which reads as follows:

> ***DOC 309.09 Regulation of visits for inmates.*** *(1) The department shall establish policies and procedures governing visitation in prisons. Each institution shall establish written policies and procedures regarding visitation and shall make them available to inmates and visitors at each institution*

Institutions are STILL required to provide a copy of policies and procedures.

4. The rule requires institutions to provide written policies and procedures. Each institution is inherently expected to maintain current administrative rules and institution policies and procedures. If a visitor finds that an institution's rules or policies are out-dated, that issue should be directed toward the specific institution and the institution will then have the opportunity to correct the situation. The institution has an obvious security interest in maintaining current rules and policies in order for the visitors and inmates to follow necessary and required behaviors.

5. The rule removes the requirement for immediate family members to be routinely approved for visiting lists for security reasons. While the Department recognizes the importance and the significance of a close family support system, it may not always be in the interest of security or safety to allow all immediate family members to visit. Security and safety of all visitors, inmates and staff must be the priority in an institution. It is possible that an immediate family member is a prior employee, inmate, or a co-defendant in a criminal matter. These situations may be enough to prevent the immediate family member from being an appropriate visitor.

   The rule removes the definition of "immediate family member" and, as suggested in your letter, maintains the definition of "close family member."

6. As your letter mentions, the rule does currently provide that the inmate may not make changes in the visiting list for a minimum of six months from the date of original approval. The rule clarifies that an inmate may not make changes in the visiting list for a minimum of 6 months for subsequent approvals and for disapproval.

7. This rule was submitted to the Legislative Council Administrative Rules Clearinghouse for review. The language in 309.08 (4)(j) met with Legislative Council approval for clarity.

8. This rule will allow the Warden to impose no-contact visiting for more than one year based on an inmate's violation of a visitation rule. This is done in the interest of safety and security for visitors, inmates and staff. If an inmate has acted in a manner so as to violate the visitation rule and the Warden deems the violation egregious enough so that the inmate may continue to pose a threat to security, the Warden must have the ability to prevent the inmate from further violation. If the inmate no-contact visiting is imposed for any other reason or believes the limitation to be unfair then the inmate has the right to access the Inmate Complaint System.

I trust these responses to your concerns will be helpful in understanding why the Department has chosen to amend the rule as it has. Should you have further questions, feel free to contact me via letter or telephone at 608-267-9839.

Sincerely,

JMKane

Julie M. Kane
Assistant Legal Counsel

Cc: Representative Walker

FEB 2 8 2000

MARK POCAN

WISCONSIN STATE REPRESENTATIVE

MEMORANDUM

TO: Representative Scott Walker, Chair, Committee on Corrections and the Courts

FROM: Representatives Mark Pocan

DATE: February 24, 2000

RE: Clearinghouse Rule 97-014 (Relating to: inmate visitation).

After reviewing CR 97-014, I contacted a constituent of mine who deals with inmate visitation on a regular basis in order to see what her thoughts were on the proposed rule change. Due to this discussion, I would like to submit the following comments:

Overall, the changes grant too much discretion to individual institutions. There needs to be consistency within security levels and types of institutions, as a matter of fairness. Arbitrariness hurts correctional objectives by teaching offenders that happenstance, rather than the offender's behavior, determines his or her conditions of confinement.

Specific aspects of the rule that need to be addressed:

1.) "Deletes language allowing inmates and visitors to embrace and kiss and the beginning and end of the visit as well as holding children. This may be allowed through institution policy and procedure."

Prisoners' spouses and significant others already find the existing limitations on expressions of affection hard to bear. Prisoners who are parents already have minimal contact with their children. Taking away what little contact we have is felt as a form of punishment. Depriving prisoners of positive, affectionate contact, especially long-term, is not psychologically healthy.

It may be a matter of administrative convenience for some wardens to take away the greeting and parting kiss and hug—it might even eliminate a visiting-room-officer position or two—but this is not an adequate reason to deprive everyone in that facility. If

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there are problems with certain prisoners' or visitors' behavior in the visiting room, this should continue to be dealt with on an individual basis. If corrections officials are concerned about, for example, preventing child molesters from holding children, they should craft the rule more narrowly.

2.) "Permits an institution to require or utilize information from other sources in determining suitability for visitation."

Which information, and from which sources, to evaluate what criteria? As written, it is vague enough to raise serious concerns about privacy, and to deter citizens from applying for visitation.

3.) "Removes requirement that institutions have written policies and procedures relating to visits to inmates in segregation."

Whether or not the inmate is in segregation, we need to know basic things like what time we can visit and for how long. We also need to avoid scenarios out of Kafka—having our visits terminated or suspended for violating rules we didn't know existed. We need to protect against racial discrimination and other forms of unequal treatment by having a common written reference point for all segregation visits at an institution.

4.) "309.07 Conduct during visits. Visitors and inmates shall obey the administrative rules and institution policies and procedures regarding visitation."

Institutions should be required to make the applicable, and **current** administrative rules and institution policies and procedures available to all prisoners and visitors. (Visitors to Fox Lake have complained that the written rule handouts have not been updated for several years, despite dramatic changes in policy.)

5.) "Removes requirement that immediate family members be routinely approved for visiting if requested by inmate, and removes the definition of immediate family members."

Why? But 309.08© "The warden may approve more than 12 visitors on the visiting list if the first 12 visitors on the visiting list are close family members."

It looks like the rule will need to provide a definition of *close family members".

6.) "An inmate may not make any changes in an inmate's visiting list for a minimum of six months from the date of its original approval or for a minimum of six months after each subsequent approval or disapproval determination is made."

This policy is already in place. It would appear that it was not properly promulgated.

7.) "The warden shall determine whether a person may be approved for visiting, including no-contact visiting, or removed from a visiting list based on the following: ... The proposed visitor is a current or former employe, volunteer, contract agent or similarly situated individual within the past 12 months."

This needs rewording. As written, it would permanently bar all former employes, volunteers, etc., because they will always be a "former employe ... within the past 12 months". How about something like "the proposed visitor was an employe, volunteer, etc. within the past 12 months or is currently an employe, volunteer, etc." The rule should also indicate whether it would prevent former employees at, say, Taycheedah, from visiting someone at, say, Green Bay.

8.) "DOC 309.11(3)© No-contact visiting. In addition to any penalty imposed in sub (a) for a visiting violation, the warden may impose no-contact visiting for more than one year, and the inmate may appeal this to the administrator."

A year of no-contact visiting is a severe sanction. It often results in visitors no longer visiting and dropping out of the prisoner's support system. A limit of one year is not unreasonable. The provision for inmates to appeal is not sufficient to keep excessive punishment in check. The last legislative audit that was not on the inmate complaint system found that only 7 percent of complaints were decided in favor of the complainant.

Thanks for taking a look into these issues, and if you have any questions, please feel free to call me at 608/266-8570.