

CR 87-43

CERTIFICATE

**RECEIVED**

**JUN 16 1987**

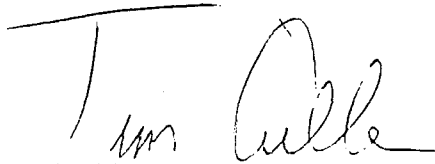
*11:30 am*  
Revisor of Statutes  
Bureau

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Timothy F. Cullen, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to detection of use of intoxicants by inmates of adult correctional institutions were duly approved and adopted by this Department on June 15, 1987.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 15th day of June, 1987.



\_\_\_\_\_  
Timothy F. Cullen, Secretary  
Department of Health and Social Services

SEAL:

8-1-87

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
REPEALING AND RECREATING RULES

To repeal and recreate HSS 303.59(2), relating to detection of use of intoxicants by inmates of adult correctional institutions.

Analysis Prepared by the Department of Health and Social Services

Drug use in correctional institutions poses a serious threat to institutional safety and security because it leads to the entry and selling of contraband and provides financial incentives that can corrupt staff and inmates. To discourage drug use in its institutions, the Division of Corrections has been conducting random urine tests to detect the presence of intoxicating substances. Test results have led to disciplinary actions which have deterred inmates from using intoxicants and from bringing them into institutions.

Until the recent promulgation of an emergency rule, the Department's rules on urine testing required that the results of every positive urine test be confirmed by a separate test. This order makes permanent the emergency rule provisions requiring a confirmatory test only under the following circumstances: 1) the first test is the sole evidence of use of intoxicants, 2) a major penalty will be imposed as a result of the first test, 3) the inmate does not admit that he or she has used or is using an intoxicant, and 4) the inmate requests a confirmatory test. The order requires an inmate to pay for half the cost of a confirmatory test. If the inmate cannot pay for half the cost of the test, the institution in which the inmate is confined is required to loan him or her the necessary funds. If the results of the confirmatory test do not substantiate the results of the first test, the inmate will be refunded any money he or she paid for the confirmatory test.

The limitations on confirmatory testing specified in this order correct the original rule language on confirmatory testing to reflect agreements between the Division of Corrections and the Office of the State Public Defender arising out of a recent court case in the Dane County Circuit Court. The limitations also ensure continuation of the urine testing program by reducing the costs associated with confirmatory testing. The level of drug use in Wisconsin correctional institutions has substantially decreased since the implementation of the urine testing program. If testing were limited or discontinued, the level of drug use and drug dealing within institutions would probably increase dramatically, seriously threatening the safety and security of the institutions.

ORDER

Pursuant to authority vested in the Department of Health and Social Services by ss. 46.03(6)(b), 53.07 and 227.11(2)(a), Stats., the Department of Health and Social Services hereby repeals and recreates rules interpreting ss. 53.04, 53.07, and 53.08, Stats., as follows:

SECTION 1. HSS 303.59(2) is repealed and recreated to read:

HSS 303.59(2)(a). When a test on a specimen of an inmate's breath, blood, stool or urine or a physical examination of an inmate indicates use of an intoxicating substance, and the test or examination was requested in accordance with s.HSS 306.16, the inmate is guilty of an offense, unless the use of the intoxicating substance was not intentional or was the result of legitimate use of prescription medication.

(b) The results of a test conducted under par. (a) on a specimen of an inmate's urine shall be confirmed by a second test if all of the following conditions are met:

1. The test under par. (a) is the sole evidence of use of intoxicants;
2. A major penalty as defined in s. HSS 303.68(1)(a) will be imposed as a result of the test under par. (a);
3. The inmate does not admit the use of intoxicating substances; and
4. The inmate requests a confirmatory test.

(c) Any confirmatory test shall be conducted in accordance with division procedures and shall be a separate test approved by the state laboratory of hygiene using a chemical method different from the first test.

(d) An inmate who requests a confirmatory test shall pay for half the cost of the test. If the inmate does not have sufficient funds to pay for half the cost of the test, the institution in which the inmate is confined shall loan the inmate the necessary funds. If the confirmatory test does not validate the results of the first test, the inmate shall be refunded any money he or she contributed to the cost of the confirmatory test.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Dated: June 15, 1987

By: 

Timothy F. Cullen  
Secretary

Seal:

2-13-9/22A



State of Wisconsin

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson  
Governor

Timothy F. Cullen  
Secretary

Mailing Address:  
Post Office Box 7850  
Madison, WI 53707

June 15, 1987

**RECEIVED**

**JUN 16 1987**

Mr. Orlan Prestegard  
Revisor of Statutes  
9th Floor - 30 on the Square  
Madison, Wisconsin 53702

Revisor of Statutes  
Bureau

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 303.59(2), administrative rules relating to detection of use of intoxicants by inmates of adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rule changes do not affect small businesses as defined in s. 227.114(1)(a), Stats., because they apply to adult correctional institutions and to inmates of those institutions.

Sincerely,

Timothy F. Cullen  
SECRETARY

Enclosure