

98-070 - DOC 328.22(S) - CUSTODY /
DETENTION - REBATION: PROLES

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-070

AN ORDER to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Submitted by **DEPARTMENT OF CORRECTIONS**

05-07-98 RECEIVED BY LEGISLATIVE COUNCIL.
06-04-98 REPORT SENT TO AGENCY.

RNS:SPH:kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

PROPOSED RULES OF THE
DEPARTMENT OF CORRECTIONS

DOC 328.22 (5) Wis. Adm. Code

Subject:

AUTHORITY OF THE DEPARTMENT TO DETAIN ANY PAROLEE OR FELONY
PROBATIONER IN ANY DEPARTMENT INSTITUTION.

Statutory Authority:

Sections 227.11 (2), and 973.10, Stats.

Analysis Prepared by the Department of Corrections

The objective of the rule is public safety. The rule will allow for the detention of any convicted felon in a Department of Corrections institution. The present rule allows for detention of any parolee at a Department institution, however only felony probationers with an imposed and stayed sentence can be detained at Department institutions. The Wisconsin Supreme Court ruling in Sullivan v. Kliesment, which allows the Milwaukee County Sheriff to refuse Department of Corrections detainees when dangerous overcrowding conditions prevail necessitates this rule amendment. This rule amendment will protect former and potential victims from criminal behavior by felons that are being supervised by the Department.

Forms

NA

Agency Procedure for Promulgation

Approval of notice of submittal to joint legislative council by secretary of department of corrections, submittal of rule to JLCS, notice of submittal to revisor and notice secretary of administration under s. 227.14 (4m); approval of notice of hearing by secretary under 227.17 (2m), Stats.; public hearing under ss. 227.17 and 227.18, Stats; notice of hearing to revisor of statutes and secretary of administration under s. 227.17 (1) (bm); approval of rules in final draft form by secretary; legislative standing committee review under 227.19; Stats.; and filing of rules under s. 227.20, Stats.

Name and Phone Number of Agency Contact

Deborah Rychlowski, Office of Legal Counsel, 266-8426.

Date Sent to Legislative Council Administrative Rules Clearinghouse

May 5, 1998



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



State of Wisconsin
Department of Corrections

Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

SEP 4

September 2, 1998

Honorable Douglas La Follette
Secretary of State
10th Floor-30 West Mifflin Street
Madison, Wisconsin 53703

Dear Mr. La Follette:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified copy of DOC 328.22 (5), relating to the authority of the Department to detain any parolee or any felony probationer in any Department institution.

If you have any questions, please call Deborah Rychlowski at (608) 266-8426.

Sincerely,

Michael J. Sullivan
Secretary

Enclosure

SEP 4

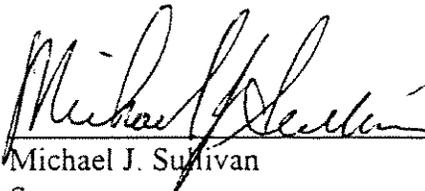
STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

I, Michael J. Sullivan, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rules, relating to authority of the Department to detain any parolee or any felony probationer in any Department institution, were duly approved and adopted by the Department on September 2, 1998.

I further certify that this copy has been compared by me with the original on file in this Department and that it 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 of Corrections
149 E. Wilson Street in the City of
Madison, this 2nd day of September, 1998.

SEAL



Michael J. Sullivan
Secretary



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary

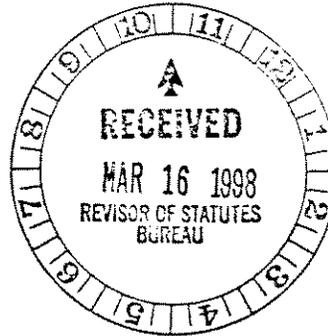


State of Wisconsin
Department of Corrections

Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

March 16, 1998

Mr. Bruce E. Munson, Revisor
Revisor of Statutes Bureau
Suite 800
131 West Wilson Street
Madison, WI 53703-3233

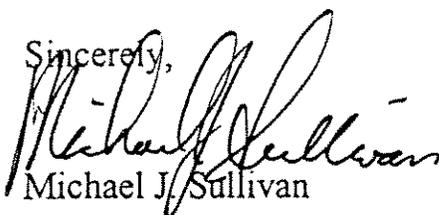


Dear Mr. Munson:

Pursuant to sec. 227.135, Stats., the Department of Corrections submits the enclosed statement of scope of a proposed administrative rule relating to the custody and detention of parolees and felony probationers. The department plans to have this proposed rule promulgated as an emergency rule on March 23, 1998.

If you have any questions, please call Robert Pultz at (608) 267-0922.

Sincerely,


Michael J. Sullivan
Secretary

cc: Mark Bugher

Enclosure

**DEPARTMENT OF CORRECTIONS
STATEMENT OF SCOPE OF PROPOSED RULE**

SUBJECT:

Rule promulgation and amendment to expand the categories of felony offenders that may be held in custody at Department of Corrections Institutions.

DESCRIPTION OF POLICY ISSUES:

Description of the Objectives of the Rule:

The objective of the rule is public safety. The rule will allow for the detention of any convicted felon in a Department of Corrections institution. The present rule allows for detention of any parolee at a Department institution, however only felony probationers with an imposed and stayed sentence can be detained at Department institutions. The Wisconsin Supreme Court ruling in Sullivan v. Kliesment, which allows the Milwaukee County Sheriff to refuse Department of Corrections detainees when dangerous overcrowding conditions prevail necessitates this rule amendment. This rule amendment will protect former and potential victims from criminal behavior by felons that are being supervised by the Department.

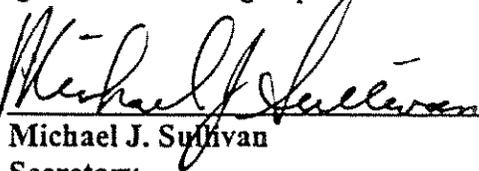
STATUTORY AUTHORITY FOR THE RULE:

Control and Supervision of Probationers: ss. 973.10, Stats.

ESTIMATE OF THE AMOUNT OF TIME STATE EMPLOYEES WILL SPEND TO DEVELOP THE RULE AND OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:

The Department estimates that it will take 50 hours to develop the rule including drafting, cost estimates, public hearings, and complying with rule making requirements.

Date: March 11 1998


Michael J. Sullivan
Secretary

Department of Corrections



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



State of Wisconsin
Department of Corrections

Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

March 23, 1998

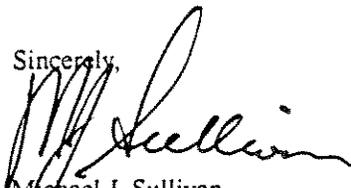
Honorable Douglas La Follette
Secretary of State
10th Floor-30 West Mifflin Street
Madison, Wisconsin 53703

Dear Mr. La Follette:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified copy of emergency rule DOC 328, relating to custody and detention of felony probationers and parolees.

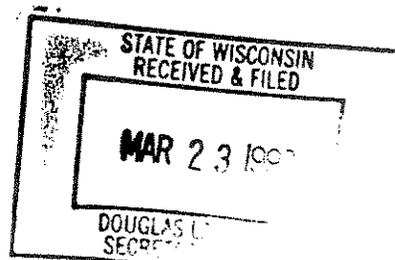
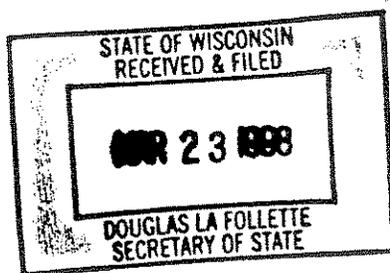
If you have any questions, please call Robert Pultz at (608) 267-0922.

Sincerely,



Michael J. Sullivan
Secretary

Enclosures



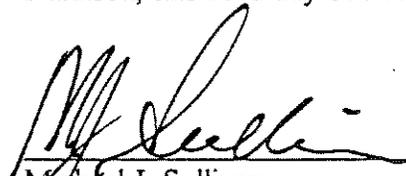
STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

I, Michael J. Sullivan, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed emergency rule, relating to the custody and detention of felony probationers and parolees, was duly approved and adopted by the Department on March 23, 1998.

I further certify that this copy has been compared by me with the original on file in this Department and that it 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 of Corrections
149 E. Wilson Street in the City of
Madison, this 23rd day of March, 1998.

SEAL



Michael J. Sullivan
Secretary

ORDER OF
DEPARTMENT OF CORRECTIONS
PROMULGATING EMERGENCY RULES
DOC 328.22 (5)

FINDING OF EMERGENCY

The Department of Corrections finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff have worked cooperatively to alleviate the crowded conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court ruled in Sullivan v. Kliesmet, that the Sheriff of Milwaukee County may refuse to accept Department of Corrections detainees when severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

Under the authority vested in the Department of Corrections by ss. 227.11(2), and 973.10, Stats., the Department of Corrections hereby amends DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Statutory authority: ss. 227.11 (2), and 973.10, Stats.

Statutes interpreted: ss. 973.10 (1), and (2), Stats.

Adoption Procedure: This rule is adopted under the procedures authorized in ss. 227.16 (2) (c), and 227.24 (1) (a) and (4), Stats.

Analysis Prepared by the Department of Corrections

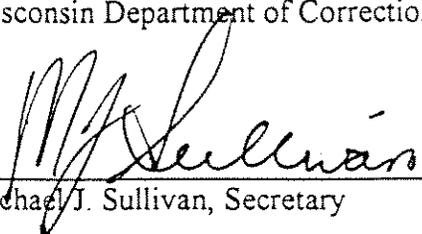
The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) A The department may detain a client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained in an institution pending revocation proceedings.

This rule shall take effect on March 23, 1998, upon publication, as an emergency rule.

Wisconsin Department of Corrections

By 
Michael J. Sullivan, Secretary

Dated: 3/12/98

SEAL:



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



State of Wisconsin
Department of Corrections

Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

May 5, 1998

Ronald Sklansky, Director
Administrative Rules Clearinghouse
One East Main Street, Suite 401
P.O. Box 2536
Madison, Wisconsin

Dear Mr. Sklansky:

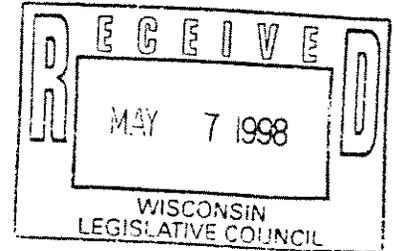
Pursuant to s. 227.15 (1), Stats., the Department of Corrections submits proposed administrative rule DOC 328.22 (5) which expands the authority of the Department to detain any parolee or any felony probationer in any Department institution.

If you have any questions regarding proposed DOC 328.22 (5), please contact Deborah Rychlowski at 266-8426.

Sincerely,

Michael J. Sullivan,
Secretary

Enclosures



PROPOSED RULES OF THE
DEPARTMENT OF CORRECTIONS

DOC 328.22 (5) Wis. Adm. Code

Subject:

AUTHORITY OF THE DEPARTMENT TO DETAIN ANY PAROLEE OR FELONY PROBATIONER IN ANY DEPARTMENT INSTITUTION.

Statutory Authority:

Sections 227.11 (2), and 973.10, Stats.

Analysis Prepared by the Department of Corrections

The objective of the rule is public safety. The rule will allow for the detention of any convicted felon in a Department of Corrections institution. The present rule allows for detention of any parolee at a Department institution, however only felony probationers with an imposed and stayed sentence can be detained at Department institutions. The Wisconsin Supreme Court ruling in Sullivan v. Kliesment, which allows the Milwaukee County Sheriff to refuse Department of Corrections detainees when dangerous overcrowding conditions prevail necessitates this rule amendment. This rule amendment will protect former and potential victims from criminal behavior by felons that are being supervised by the Department.

Forms

NA

Agency Procedure for Promulgation

Approval of notice of submittal to joint legislative council by secretary of department of corrections, submittal of rule to JLCS, notice of submittal to revisor and notice secretary of administration under s. 227.14 (4m); approval of notice of hearing by secretary under 227.17 (2m), Stats.; public hearing under ss. 227.17 and 227.18, Stats; notice of hearing to revisor of statutes and secretary of administration under s. 227.17 (1) (bm); approval of rules in final draft form by secretary; legislative standing committee review under 227.19; Stats.; and filing of rules under s. 227.20, Stats.

Name and Phone Number of Agency Contact

Deborah Rychlowski, Office of Legal Counsel, 266-8426.

Date Sent to Legislative Council Administrative Rules Clearinghouse

May 5, 1998

PROPOSED ORDER OF
DEPARTMENT OF CORRECTIONS
PROMULGATING RULES
DOC 328.22 (5)

Under the authority vested in the Department of Corrections by ss. 227.11(2), and 973.10, Stats., the Department of Corrections hereby proposes an order to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Statutory authority: ss. 227.11 (2), and 973.10, Stats.

Statutes interpreted: ss. 973.10 (1), and (2), Stats.

Analysis Prepared by the Department of Corrections

The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

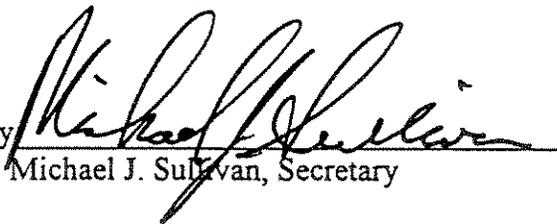
SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) ~~A. The department may detain a client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained~~ in an institution pending revocation proceedings.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

By


Michael J. Sullivan, Secretary

Dated: 5/6/98

SEAL:

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Emergency Administrative Rule broadening DOC's ability to detain all felony probationers pending revocation proceedings in an institution.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.410(1)(a), (b), (bn)

Assumptions Used in Arriving at Fiscal Estimate

The current Administrative Rule allows the Department of Corrections (DOC) to detain felony probationers with an imposed and stayed sentence who are pending revocation proceedings in an institution. This emergency Administrative Rule broadens that language to include all felony probationers, not just those with imposed and stayed sentences.

DOC anticipates that this rule change will result in more felony probationers being detained in DOC institutions while there are pending revocation proceedings. This increased usage could result in a need for more contracted space or more crowded conditions at DOC facilities. If the increased usage results in more crowded conditions within DOC facilities, increased costs will be incurred in the areas of food, supplies and services, and staff coverage. If the increased usage results in more offenders being transferred to contracted facilities, then DOC would incur an increase in contract costs.

Increased usage of DOC facilities for offenders who were formally detained in county jails, will impact on local county jail populations. It is anticipated that local county jails will experience lower DOC populations. These lower population numbers could also result in less revenue from reimbursable holds.

The Department's automated data on offenders being held in custody does not provide a breakdown of the type of probation. Although it is anticipated that local county jails will experience decreased populations and revenue and that DOC will experience increased costs and workload as the result of this rule change, it is difficult to estimate just how much of an impact will occur.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Lucie Widzinski-Pollock 266-5070
Department of Corrections

Authorized Signature/Telephone No.
Robert Margolies
Robert Margolies, 266-2931

Date
March 13, 1998

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-070

AN ORDER to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Submitted by **DEPARTMENT OF CORRECTIONS**

05-07-98 RECEIVED BY LEGISLATIVE COUNCIL.
06-04-98 REPORT SENT TO AGENCY.

RNS:SPH:kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



State of Wisconsin
Department of Corrections

Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

May 8, 1998

Mr. Gary L. Poulson
Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street
Room 800
Madison, WI 53703-3233



Re: Emergency Rule DOC 328.22 (5), Proposed Permanent Rule CR-98-070

Emergency and Proposed Permanent Rule Relating to Expanding the Authority of DOC to Detain Any Parolee or Any Felony Probationer in Any Department Institution

Dear Mr. Poulson:

Pursuant to s. 227.17, Stats., please find enclosed the Notice of Hearing for the emergency rule for DOC 328.22 (5), and the proposed permanent rule CR-98-070. The emergency rule and proposed permanent rule relate to expanding the authority of DOC to detain any parolee or any felony probationer in any Department institution. Also enclosed is a 3.5" double-density disk containing a copy of the notice.

I approve the attached notice of hearing.

If you have questions, please contact Robert Pultz at (608) 267-0922.

Sincerely,

Michael J. Sullivan
Secretary

Enclosure

cc: Richard G. Chandler
State Budget Director

NOTICE OF HEARING
DEPARTMENT OF CORRECTIONS
EMERGENCY RULE AND PROPOSED PERMANENT RULE
328.22 (5), CR-98-070

(Authority of the Department to Detain Any Parolee or Any Felony Probationer in Any
Department Institution - DOC 328.22 (5))

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.11 (2) (a), and 973.10, Stats., the department of corrections proposes the following emergency rule and proposed permanent rule relating to the authority of the department to detain any parolee or any felony probationer in any department institution. The rules are the same.

Hearing Information

<u>Date & Time</u>	<u>Location</u>
June 26, 1998 Friday 2:00 P.M. to 3:00 P.M.	Secretary's Conference Room Department of Corrections 149 E. Wilson Street, 3rd Floor Madison, Wisconsin

The public hearing site is accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

Statutory authority: ss. 227.11 (2), and 973.10, Stats.

Statutes interpreted: ss. 973.10 (1), and (2), Stats.

FINDING OF EMERGENCY

The Department of Corrections finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff have worked cooperatively to alleviate the crowded conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court ruled in Sullivan v. Kliesmet, that the Sheriff of Milwaukee County may refuse to accept Department of Corrections detainees when

severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) ~~A. The department may detain a client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained~~ in an institution pending revocation proceedings.

This permanent rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

DOC anticipates that this rule change will result in more felony probationers being detained in DOC institutions while there are pending revocation proceedings. This increased usage could result in a need for more contracted space or more crowded conditions at DOC facilities. If the increase results in more crowded conditions within DOC facilities, increased costs will be incurred in the area of food, supplies and services, and staff coverage. If the increased usage results in more offenders being transferred to contracted facilities, then DOC would incur an increase in contract costs.

Increased usage of DOC facilities for offenders who were formerly detained in county jails, will impact on local county jail populations. It is anticipated that local county jails will experience lowered DOC populations. These lower population numbers could also result in less revenue from reimbursable holds.

The Department's automated data on offenders being held in custody does not provide a breakdown of the type of probation. Although it is anticipated the local county jails will experience decreased populations and revenue and that DOC will experience increased costs and workload as the result of this rule change, it is difficult to estimate just how much of an impact will occur.

Contact Person

Robert Pultz (608) 267-0922
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, Wisconsin 53707-7925

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments

Written comments on the proposed rules received at the above address no later than June 30, 1998, will be given the same consideration as testimony presented at the hearing.

File copy



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

State of Wisconsin Department of Corrections

July 7, 1998

D.S.
7/14/98

Senator Robert Welch
Joint Committee for Review of Administrative Rules
Room 201, 1 East Main Street
Madison, Wisconsin 53707

Representative Glenn S. Grothman
Joint Committee for Review of Administrative Rules
State Capitol, Room 125 West
Madison, Wisconsin 53708

Re: Clearinghouse Rule 98-070, Relating to the custody and detention of felony probationers and parolees

Dear Senator Welch and Representative Grothman:

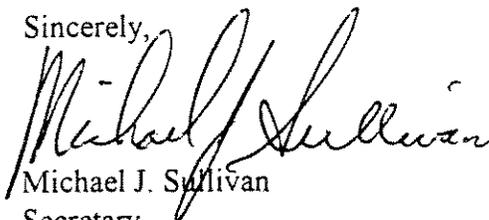
The Department of Corrections has an emergency rule which will expire on August 20, 1998, before it can be replaced by a permanent rule. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the emergency rule amending DOC 328.22 (5) by 60 days.

This emergency rule is required to alleviate the overcrowding that continues to prevail in the Milwaukee County Jail. The Department of Corrections has proposed a permanent rule to provide that any felony probationer may be detained in a Department of Corrections institution. The Department submitted a scope statement on March 16, 1998, a copy of which is enclosed. The Department submitted the proposed permanent rule to the Administrative Rules Clearinghouse and the Revisor of Statutes on May 7, 1998, copies of which are enclosed. The Department received the report from the Administrative Rules Clearinghouse on June 4, 1998, a copy of which is enclosed. On May 8, 1998, the Department scheduled this rule for hearing on June 26, 1998. A copy of the notice of hearing is enclosed. The hearing was held. No one appeared to testify at the hearing and no one submitted written comments to the Department. The Department

will not be able to promulgate the permanent rule before the emergency rule expires on August 20, 1998.

Copies of the order creating the emergency rule and the proposed order creating a permanent rule are enclosed. If you have any questions about our request to extend the effective period of the emergency rule, please contact Deborah Rychlowski of the Department's Office of Legal Counsel at 266-8426.

Sincerely,



Michael J. Sullivan
Secretary

Enclosures

cc: JCRAR Members



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



State of Wisconsin
Department of Corrections

Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

July 17, 1998

Scott Jensen, Speaker
Wisconsin State Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Fred Risser, President
Wisconsin State Senate
Room 102,
119 Martin Luther King Blvd.
Madison, Wisconsin 53702

Re: Clearinghouse Rule 98-070
An order to amend DOC 328.22 (5), relating to the custody and detention of
felony probationers and parolees.

Gentlemen:

As provided in s. 227.19 (2), Stats., notice is given that the above-mentioned rule is in final draft form. This notice and the report required under s. 227.19 (2) and (3), Stats., are submitted in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rule, please contact Deborah Rychlowski at (608) 266-8426.

Sincerely

Michael J. Sullivan
Secretary

*Kay Schubert
Lorna Doyle
7-17-98*

Enclosures

cc: Gary Poulson, Deputy Revisor of Statutes
Senator Robert Welch, JCRAR
Representative Glenn S. Grothman, JCRAR

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-070

AN ORDER to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Submitted by **DEPARTMENT OF CORRECTIONS**

05-07-98 RECEIVED BY LEGISLATIVE COUNCIL.
06-04-98 REPORT SENT TO AGENCY.

RNS:SPH:kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Emergency Administrative Rule broadening DOC's ability to detain all felony probationers pending revocation proceedings in an institution.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.410(1)(a), (b), (bn)

Assumptions Used in Arriving at Fiscal Estimate

The current Administrative Rule allows the Department of Corrections (DOC) to detain felony probationers with an imposed and stayed sentence who are pending revocation proceedings in an institution. This emergency Administrative Rule broadens that language to include all felony probationers, not just those with imposed and stayed sentences.

DOC anticipates that this rule change will result in more felony probationers being detained in DOC institutions while there are pending revocation proceedings. This increased usage could result in a need for more contracted space or more crowded conditions at DOC facilities. If the increased usage results in more crowded conditions within DOC facilities, increased costs will be incurred in the areas of food, supplies and services, and staff coverage. If the increased usage results in more offenders being transferred to contracted facilities, then DOC would incur an increase in contract costs.

Increased usage of DOC facilities for offenders who were formally detained in county jails, will impact on local county jail populations. It is anticipated that local county jails will experience lower DOC populations. These lower population numbers could also result in less revenue from reimbursable holds.

The Department's automated data on offenders being held in custody does not provide a breakdown of the type of probation. Although it is anticipated that local county jails will experience decreased populations and revenue and that DOC will experience increased costs and workload as the result of this rule change, it is difficult to estimate just how much of an impact will occur.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Lucie Widzinski-Pollock 266-5070
Department of Corrections

Authorized Signature/Telephone No.
Robert Margolies
Robert Margolies, 266-2931

Date
March 13, 1998

RULES—DOC 328.22 (5)
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO s. 227.19 (3) STATS.
RELATING TO THE CUSTODY AND DETENTION OF
FELONY PROBATIONERS AND PAROLEES

Need for Rule

The Wisconsin Supreme Court ruled in Sullivan v. Kliesmet, that the Sheriff of Milwaukee County may refuse to accept Department of Corrections detainees when severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

The current Sec. DOC 328.22 (5) Wis. Admin. Code allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution. This rule will help alleviate the overcrowding.

Plain Language Analysis

This rule will expand the authority of the Department to detain any parolee or any felony probationer in a Department institution.

Forms

No forms need to be developed for this rule.

Responses to Clearinghouse Recommendations

The Legislative Council's Rules Clearinghouse Report contained no comments.

Public Hearings

The Department held one public hearing on the proposed rule. The public hearing was held on June 26, 1998 in Madison. No one appeared to testify at the public hearing. The open comment period for written comments ended June 30, 1998. No one submitted written comments during the open comment period.

Modifications Made as A Result of Public Hearing Testimony

No modifications were made to the proposed rules in response to comments received during the public review of this rule as no public comments were received.

Final Regulatory Flexibility Analysis

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1).

PROPOSED ORDER OF
DEPARTMENT OF CORRECTIONS
PROMULGATING RULES
DOC 328.22 (5)

Under the authority vested in the Department of Corrections by ss. 227.11(2), and 973.10, Stats., the Department of Corrections hereby proposes an order to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Statutory authority: ss. 227.11 (2), and 973.10, Stats.
Statutes interpreted: ss. 973.10 (1), and (2), Stats.

Analysis Prepared by the Department of Corrections

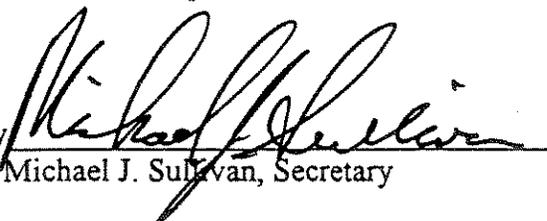
The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) ~~A~~ The department may detain a client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained in an institution pending revocation proceedings.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

By 
Michael J. Sullivan, Secretary

Dated: 5/6/98

SEAL:



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary

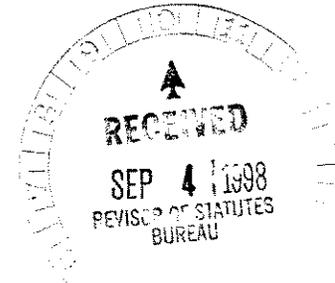


State of Wisconsin
Department of Corrections

Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

September 2, 1998

Bruce Munson
Revisor of Statutes Bureau
131 West Wilson Street, Room 800
Madison, Wisconsin 53703-3222



Dear Mr. Munson:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified and uncertified copy of DOC 328.22 (5), relating to the authority of the Department to detain any parolee or any felony probationer in any Department institution.

If you have any questions, please contact Deborah Rychlowski, Office of Legal Counsel, at (608) 266-8426.

Sincerely,


Michael J. Sullivan

Attachments

ORDER OF
DEPARTMENT OF CORRECTIONS
PROMULGATING RULES
DOC 328.22 (5)

Under the authority vested in the Department of Corrections by ss. 227.11(2), and 973.10, Stats., the Department of Corrections hereby proposes an order to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Statutory authority: ss. 227.11 (2), and 973.10, Stats.
Statutes interpreted: ss. 973.10 (1), and (2), Stats.

Analysis Prepared by the Department of Corrections

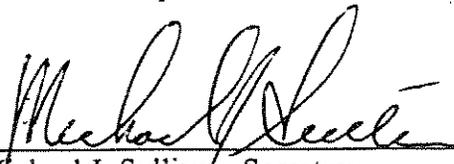
The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) ~~A. The department may detain a client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained~~ in an institution pending revocation proceedings.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

By 
Michael J. Sullivan, Secretary

Dated: 9/2/98

SEAL:

ORDER OF
DEPARTMENT OF CORRECTIONS
PROMULGATING RULES
DOC 328.22 (5)

Under the authority vested in the Department of Corrections by ss. 227.11(2), and 973.10, Stats., the Department of Corrections hereby proposes an order to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Statutory authority: ss. 227.11 (2), and 973.10, Stats.
Statutes interpreted: ss. 973.10 (1), and (2), Stats.

Analysis Prepared by the Department of Corrections

The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

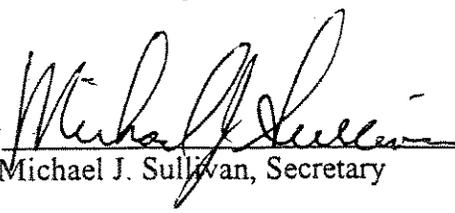
SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) ~~A. The department may detain a client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained~~ A. The department may detain a client on parole from a state correctional institution or on felony probation in an institution pending revocation proceedings.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

By


Michael J. Sullivan, Secretary

Dated: 9/2/20

SEAL:

Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

State of Wisconsin
Department of Corrections

November 30, 1998

Senator Robert Welch
Joint Committee for Review of Administrative Rules
Room 201, 1 East Main Street
Madison, Wisconsin 53707

Representative Glenn S. Grothman
Joint Committee for Review of Administrative Rules
State Capitol, Room 125 West
Madison, Wisconsin 53708

NOV 30 1998

RE: Emergency Administrative Rule on Search and Seizure of Probationers and Parolees

Dear Senator Welch and Representative Grothman:

Please find enclosed the emergency rule relating to search and seizure of probationers and parolees under the supervision of the Department of Corrections. This rule is pursuant to the creation of a Division of Community Corrections Absconder Unit in southeastern Wisconsin. Within the last 30 days, your respective offices were notified that this rule would be forthcoming.

Please direct any questions to Robert G. Pultz at 267-0922.

Sincerely,

Michael J. Sullivan
Secretary

Enclosures

ORDER
OF
DEPARTMENT OF CORRECTIONS
PROMULGATING EMERGENCY RULES
DOC 328.21 (3) and (7)

FINDING OF EMERGENCY

The Department of Corrections finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: A recent legislative enactment provided funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to search an offenders residence only for contraband. This rule amendment allows a search of an offender's residence for contraband or an offender

Under the authority vested in the Department of Corrections by ss. 227.11(2), and 973.10, Stats., the Department of Corrections hereby amends DOC 328.21 (3) and (7), relating to the search and seizure of probation or parole offenders.

Statutory authority: ss. 227.11 (2), and 973.10, Stats.

Statutes interpreted: ss. 973.10 (1) and (2), Stats.

Adoption Procedure: This rule is adopted under procedures authorized in ss. 227.16 (2) (c), and 227.24 (1) (a), and (4), Stats.

Analysis Prepared by the Department of Corrections

The current administrative rule Ch. DOC 328.21 (3) and (7), allows the Department of Corrections to search an offenders residence for contraband. The amended rule will enlarge this authority to allow the Department to search an offender's residence for an offender as well as contraband.

SECTION 1. DOC 328.21 (3) is amended to read:

DOC 328.21 (3) SEARCH OF LIVING QUARTERS OR PROPERTY. (a) A search of a ~~client's~~ an offender's living quarters or property may be conducted by field staff if there are reasonable grounds to believe that the quarters or property contain contraband or an offender who is deemed to be in violation of supervision. Approval of the supervisor shall be obtained unless exigent circumstances, such as suspicion the ~~parolee~~ offender will destroy contraband, ~~or~~ use a weapon or elude apprehension, require search without approval.

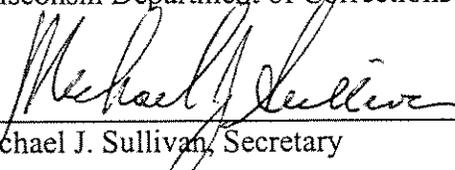
SECTION 2. DOC 328.21 (7) is amended to read:

DOC 328.21 (7) REASONABLE GROUNDS. In deciding whether there are reasonable grounds to believe that ~~a client~~ an offender has used, possesses or is under the influence of an intoxicating substance, that ~~a client~~ an offender possesses contraband ~~or, that a client's~~ an offender's living quarters or property contains contraband or that an offender in violation of supervision is located at the offender's residence, a staff member shall consider any of the following:

This rule shall take effect on December 3, 1998, upon publication, as an emergency rule.

Wisconsin Department of Corrections

By


Michael J. Sullivan, Secretary

Dated: _____

11/30/98

SEAL:

LRB or Bill No./Adm. Rule No.
DOC 328.21

Amendment No. if Applicable
(3) and (7)

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

The amendment of DOC administrative rule 328.21 (3) and (7), relating to the search and seizure of probation or parole offenders.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

DOC administrative rule 328.21 (3) and (7) relate to the search and seizure of probation and parole offenders.

The current administrative rule ch. DOC 328.21 (3) and (7), allows the Department of Corrections to search an offender's residence only for contraband. The amended rule will expand this authority to allow the Department to search for an offender as well as contraband.

1997 Wisconsin Act 27 approved the transfer of funds to the Joint Finance Committee (JFC) supplemental appropriation that would be utilized to create and operate an absconder unit in Milwaukee after the JFC approved a plan and budget submitted by the Department. The JFC approved the plan and budget for the absconder unit at the December 18, 1997 meeting.

The formula used in the Department of Corrections' case classification/staff deployment model (CC/SD) was adapted for the new absconder unit to account for the special time requirements needed to focus on locating absconders.

These amendments to DOC 328.21 will enhance this specialized absconder unit's ability to fulfill its mission. Any extra time spent looking for absconders has already been built into the CC/SD formula used for this absconder unit. It is not anticipated that standard agents will spend more time specifically looking for absconders as a result of these amendments and therefore, no extra cost would be incurred.

It is not anticipated that the amendment of DOC 328.21 will have a fiscal effect on the department.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Department of Corrections
Colleen Godfriaux, 266-0300

Authorized Signature/Telephone No.
Robert Margolies
Robert Margolies, 266-2931

Date
11-25-98