

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

FROM: Representative Scott Walker, Chair

DATE: March 18, 1999

RE: CLEARINGHOUSE RULE 98-208

On Thursday, March 18, 1999 the following rule was referred to the Assembly Committee on Corrections and The Courts:

Clearinghouse Rule 98-208, relating to search and seizure of probation or parole offenders.

The deadline for committee action on this rule is Friday, April 16, 1999. If you would like a copy of this rule, please contact Ed Eberle in my office at 266-9181. If you are interested in requesting a hearing and/or submitting comments, please do so prior to the Friday the 16th of April.

Thank you.

WISCONSIN LEGISLATURE - COMMITTEE ATTENDANCE FORM

DATE

4/14/99

COMMITTEE

Connectors & Coords

LEGISLATOR NAME

Phil Montgomerie

WISCONSIN LEGISLATURE - COMMITTEE ATTENDANCE FORM

LEGISLATOR NAME

Shelly Stebbins

COMMITTEE

Connectors & the Coords

4/14/99

DATE

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

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March 9, 1999

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 98-208
An order to amend sections of DOC 328.21 (3) and (7), relating to the search and seizure of probation or parole offenders.

Gentlemen:

As provided in s. 227.19 (2), Stats., notice is given that the above-captioned 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 Robert Pultz at (608) 267-0922.

Sincerely,

A handwritten signature in cursive script that reads 'Jon E. Litscher'.

Jon E. Litscher
Secretary

Enclosures

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

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

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 328.21 (3) and (7) (intro.), 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.

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 and allow the Department to search an offender's residence for an offender as well as contraband. The rule is pursuant to a legislative enactment that provided funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. The rule will make community supervision more meaningful and promote accountability among offenders by allowing the Department of Corrections to search the residences of offenders who are not in compliance with the rules of supervision.

This amended rule substitutes the term "offender" as defined in Ch. DOC 328.03 (24), for the term "client." Recent rules submitted by the Department implement the use of the term "offender" rather than "client" when referring to a person on field supervision. During 1999 the Department plans to submit comprehensive amendments to Ch. DOC 328. Those amendments will substitute the term "offender" for the term "client" throughout the rule.

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) (intro.) 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 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 Jon E. Litscher
Jon E. Litscher, Secretary

Dated: 3/10/99

SEAL:

PROPOSED ADMINISTRATIVE RULES AMENDMENTS
DOC 328.21 (3) and 7 (intro.)
RELATING TO SEARCH AND SEIZURE OF
PROBATION AND PAROLE OFFENDERS

Need for Rule: These rule amendments are pursuant to a legislative enactment that provided funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. These rule amendments will allow the Department to search an offender's residence for an offender as well as contraband. The amended rule will promote accountability among offenders that have absconded from field supervision.

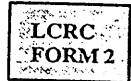
Response to Rules Clearinghouse Recommendations: The analysis to the rule amendments was changed to add an explanation for substituting the term "offender" for the term "client."

Testimony at Public Hearings: Public Hearings on the proposed and emergency rule were held at Madison, WI on March 1, 1999, and at Waukesha, WI on March 3, 1999. There was no testimony from the public at these hearings.

Rule Modifications as a Result of Public Hearings/Written Comments: Not applicable.

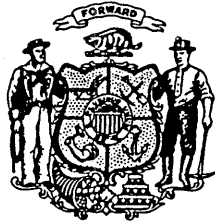
Final Regulatory Flexibility Analysis: The proposed rule does not require small business to perform any duties and will have no impact on small businesses as defined in s. 227.114 (1) (a), Stats.

WISCONSIN LEGISLATIVE COUNCIL STAFF



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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 98-208

AN ORDER to amend DOC 328.21 (3) and (7), relating to the search and seizure of probation or parole offenders.

Submitted by **DEPARTMENT OF CORRECTIONS**

12-28-98 RECEIVED BY LEGISLATIVE COUNCIL.
01-28-99 REPORT SENT TO AGENCY.

RNS:SPH:kjf;ksm

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

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CLEARINGHOUSE RULE 98-208

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The rule amends s. DOC 328.21 (3) and (7) (intro.). One of the proposed changes is to substitute the term "offender" for "client." Both these terms are defined by rule; see s. DOC 328.03 (24) and (25), respectively. "Client" is defined to mean ". . . a person who is committed to the custody of the department for correctional purposes and is under field supervision of the department, . . ." (emphasis added). "Field supervision" is addressed in s. DOC 328.04 and applies to both parole and probation supervision. "Offender" is defined to mean ". . . a probationer or parolee." Since all other subsections of current s. DOC 328.21 use the term "client," and since other portions of subs. (3) and (7) use the term "client," the analysis to the rule should explain why the terminology is being changed in these two provisions or the changes should be deleted.

b. The rule amends only the introduction to s. DOC 328.21 (7). The term "(intro.);" should be inserted after the references to sub. (7) in both the introductory clause to the rule and the treatment clause for SECTION 2.