

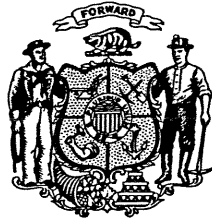
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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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)]

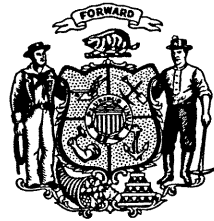
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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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.

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 proposed and order to amend 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.

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 offender's 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.

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

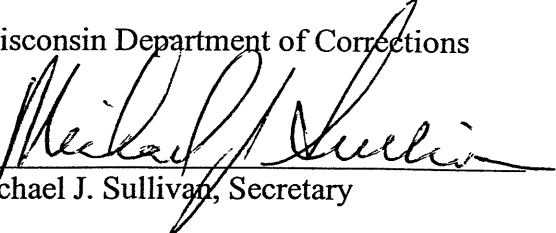
DOC 328.21 (3) SEARCH OF LIVING QUARTERS OR PROPERTY. (a) A search of a ~~client's~~ an offender's living quarters or property may be conducted by field staff if there are reasonable grounds to believe that the quarters or property contain contraband or an offender who is deemed to be in violation of 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.

(intro.)
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 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: 12/28/98

SEAL:

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 227.17, and 973.10, Stats., that the department of corrections will hold hearings pursuant to the proposed administrative rule amendment relating to the search and seizure of probation and parole offenders. These hearings relate to the proposed permanent rule and the emergency rule now in effect and published on December 3, 1998.

Hearing Information

March 1, 1999	GEF III Bldg.
Monday	125 S. Webster St. Rm. 041
2:00 p.m. to 3:00 p.m.	Madison, WI

March 3, 1999	State Office Bldg.
Wednesday	141 N.W. Barstow St. Rm. 137A
12:00 p.m. to 1:00 p.m.	Waukesha, WI

The public hearing sites are accessible to people with disabilities.

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 proposed 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.

Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.114, Stats., it is not anticipated that the emergency or permanent rule will have an economic impact on small businesses.

Fiscal Estimate

These rules implement search and seizure policy relating to probation and parole offenders. The intent of the Department in promulgating these rules is to comply with the legislative enactment directing the Department to address the problem of probation and parole absconders.

These administrative rules should not have a departmental fiscal effect separate from the statutory effect.

Contact Person

To obtain a copy of either the emergency or permanent rule or for more information concerning the hearings, write or phone:

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

Written Comments

Written comments concerning the rules received at the above address no later than March 10, 1999, will be given the same consideration as testimony presented at the hearings.

Tommy G. Thompson
Governor

Jon E. Litscher
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
Fax (608) 267-3661

March 10, 1999

Senator Judy Robson
Joint Committee for Review of Administrative Rules
P.O. Box 7882
Madison, Wisconsin 53707-7882

Representative Glenn S. Grothman
Joint Committee for Review of Administrative Rules
P.O. Box 8952
Madison, Wisconsin 53708-8952

RE: Clearinghouse Rule 98-208, Relating to the search and seizure of probationers and parolees

Dear Senator Robson and Representative Grothman:

The Department of Corrections (DOC) promulgated an emergency rule concerning the above captioned subject matter on December 3, 1998. The emergency rule will expire on May 2, 1999 before it can be replaced with a proposed permanent rule. Hence, I am requesting that the Joint Committee for Review of Administrative Rules extend the emergency rule by 60 days pursuant to s. 227.24, (2), Stats.

The emergency rule is required to permit agents of the DOC to search an offender's residence for an offender who is in violation of field supervision. Currently the DOC may only search for contraband.

The DOC submitted the attached scope statement on November 23, 1998. The enclosed proposed permanent rule was submitted to the Administrative Rules Clearinghouse and the Revisor of Statutes on December 28, 1998. The enclosed Administrative Rules Clearinghouse report was received on January 29, 1999. On March 1 and 3, public hearings were conducted in Madison and Waukesha, respectively. No public testimony was offered at either hearing nor were written comments received. Although the permanent rule in final draft form will be submitted within the next few days, it is not anticipated that the rule can be promulgated prior to expiration of the emergency rule.

Copies of the hearing notice, order creating the emergency rule, and proposed permanent rule are enclosed. Should you have any questions concerning the request to extend the effective period of the emergency rule, please contact Robert Pultz of the DOC Office of Legal Counsel at 267-0922.

Sincerely,

A handwritten signature in cursive script that reads "Jon E. Litscher". The signature is written in dark ink and is positioned above the printed name.

Jon E. Litscher
Secretary

Enclosures

Cc: JCRAR members

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

SUBJECT:

Rule promulgation and amendment to allow the Department of Corrections to search an offenders residence for an offender who is deemed to be in violation of probation or parole supervision.

DESCRIPTION OF POLICY ISSUES:

Description of the Objectives of the Rule:

The objective of the rule is to provide for public protection and promote accountability of offenders that have absconded from community supervision. The present rule allows the Department of Corrections to search an offenders residence for contraband when reasonable grounds exist and supervisory approval is obtained. The rule amendment will enlarge the search authority to allow searches of an offender's residence for an offender deemed to be in violation of probation or parole supervision. The rule amendment enables the Department to utilize its search authority in such a way as to protect victims and the public at large.

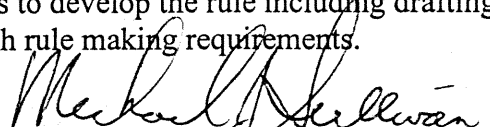
STATUTORY AUTHORITY FOR THE RULE:

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 40 hours to develop the rule including drafting, cost estimates, public hearings, and complying with rule making requirements.

Date: November 23, 1998


Michael J. Sullivan
Secretary
Department of Corrections

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 1, 1998, upon publication, as an emergency rule.

Wisconsin Department of Corrections

By Michael J. Sullivan
Michael J. Sullivan, Secretary

Dated: 11/23/98

SEAL:

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.

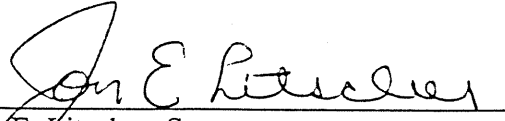
SECTION 2. DOC 328.21 (7) (intro.) is amended to read:

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, Secretary

Dated: 3/10/99

SEAL: