

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

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**CLEARINGHOUSE REPORT TO AGENCY**

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[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 99-015**

AN ORDER to create DOC 330.01 to 330.17, relating to pharmacological treatment of certain child sex offenders.

Submitted by **DEPARTMENT OF CORRECTIONS**

01-29-99 RECEIVED BY LEGISLATIVE COUNCIL.

02-25-99 REPORT SENT TO AGENCY.

RS:AS:jal;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

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## CLEARINGHOUSE RULE 99-015

### 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.]**

#### 1. Statutory Authority

Section DOC 330.11 (1) (b) states that, in a hearing regarding the pharmacological treatment of a probationer or parolee, no privilege other than the attorney-client privilege is applicable. However, s. 227.45 (1), Stats., states that an agency or hearing examiner in a contested case must give effect to the rules of privilege recognized by law. Is the pharmacological treatment hearing not a contested case or does specific statutory authority exist for s. DOC 330.11 (1) (b)?

#### 2. Form, Style and Placement in Administrative Code

a. In s. DOC 330.05 (1), the title should either be deleted or a title should be created for sub. (2) as well. [See s. 1.05 (1), Manual, and s. DOC 330.11.] If titles are used for these subsections, they should be written in solid capital letters. [See s. 1.05 (2) (c), Manual.]

b. In s. DOC 330.07 (2), the word "will" should be replaced by the word "shall."

#### 4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DOC 330.01, "s. 304.06 Stats." should be replaced with "s. 304.06 (1q) (a), Stats." This comment also applies to s. DOC 330.03 (14).

b. In s. DOC 330.06 (2), the notation "s." should be inserted before the cross-reference.

c. In s. DOC 330.15 (5), it appears that the reference to “sub (3)” should be replaced by a reference to “s. DOC 330.11 (3) (a).”

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The introductory clause for the rule-making order should state that the order creates ch. DOC 330.

b. In the plain language analysis, the statutes listed as statutory authority and statutes interpreted should be listed in numerical order. In addition, the initial statement of statutory authority is not consistent with the statement of authority in s. DOC 330.02. These statements should be reconciled.

c. In the first paragraph of the analysis, the word “promulgated” should be inserted following the phrase “These rules are.” In the second paragraph, the word “offenders” should be replaced by the word “offender’s.”

d. In s. DOC 330.03 (intro.), the sentence should end with a colon. Also, a comma should be inserted after “indicated.”

e. In s. DOC 330.03 (1), “levels of” should be inserted before “testosterone.”

f. In s. DOC 330.03 (15), “of corrections” should be deleted. Also, “employee” should be spelled “employe.”

g. Section DOC 330.03 (16) should be rewritten to read: “Therapeutic level” means the hormone level that, as determined by the treating physician, is the intended effect of pharmacological treatment on an offender.

h. In s. DOC 330.04 (2) and (4), “when” should be replaced with “if.”

i. In s. DOC 330.04, it appears that sub. (3) should precede sub. (2) in order to accurately track the chronology of events in determining that pharmacological treatment is required. Also, in sub. (2), the use of the word “may” implies that the department may determine that a serious child sex offender should not be the subject to pharmacological treatment under certain circumstances. However, these circumstances are not specified.

j. In s. DOC 330.05 (2) (a), the word “a” should be inserted before the phrase “psychiatric history.” In sub. (2) (b), the phrase “an antiandrogen or chemical equivalent” should be replaced by the defined term “pharmacological treatment.” In sub. (2) (d), where are the protocols for treatment, clinical and medical evaluations to be found?

k. In s. DOC 330.06 (1), “A” should be replaced with “The” and “to be” should be inserted before “a proper medical subject.”

l. In s. DOC 330.07 (1), could there be clarification as to how the department will establish rules and conditions of supervision regarding pharmacological treatment in writing? In addition, should these rules also specify possible sanctions an offender may face?

m. It appears that ss. DOC 330.06 and 330.07 should follow the rule provisions regarding the pharmacological treatment hearing.

n. In s. DOC 330.10, it would be helpful to have a citation to indicate what the program review committee process is. [See also s. DOC 330.14 (2).]

o. In s. DOC 330.11 (1) (intro.), the introduction should contain introductory material, such as, "In the hearing:".

p. In s. DOC 330.11 (3) (a) 2. and 3., the sentences should begin with "That the offender."

q. In s. DOC 330.12, the word "or" should be inserted before the word "supervision" and the word "in" should be inserted before the phrase "the direct supervision."

r. In s. 330.14 (1), it is unclear what is meant by "division administrator" in this section. Since this is the only time the phrase is used in the chapter, it would be clearer to delete the definition and clarify in s. DOC 330.03 (4) to which division administrator or administrators an offender of the department may appeal.

s. Section DOC 330.17 (1) should clarify that an offender may be sanctioned only for refusing to take medications after there has been a hearing (unless waived) at which it was determined that the department could order that the offender take the medications. Also, in sub. (1), the first comma should be replaced by the word "or."

PROPOSED ORDER OF  
DEPARTMENT OF CORRECTIONS  
PROMULGATING RULES  
DOC 330

h. 200-300

Under the authority vested in the Department of Corrections by ss. 227.11(2), 973.10, and 304.06 (1q), Stats., the Department of Corrections hereby proposes an order to create ~~DOC 330.01 through DOC 330.17~~, relating to pharmacological treatment of certain child sex offenders.

Statutory authority: ss. 227.11 (2), 973.10, and 304.06 (1q), Stats. }  
Statutes interpreted: ss. 973.10 (1) and (2), and 304.06 (1q), Stats. }

Analysis Prepared by the Department of Corrections

These rules are <sup>promulgated</sup> pursuant to recently enacted legislation, s. 304.06 (1q), Stats., relating to pharmacological intervention with certain serious child sex offenders. These rules create definitions, establish the authority and purpose for requiring pharmacological treatment of sex offenders, establish criteria for screening, establish the duration of treatment and criteria for termination of treatment, and create a hearing and review process prior to the implementation of pharmacological intervention. These rules provide sanctions if a serious child sex offender refuses to comply with the rules and conditions for pharmacological treatment following a hearing that results in a decision that the department may mandate pharmacological treatment for the offender. These rules allow the department to detain offenders when they fail to cooperate with the implementation process.

The recently enacted legislation, sec 304.06 (1q), Stats., allows the department to require compliance with pharmacological intervention as a condition of probation or parole supervision. Rules of probation/parole supervision must be reasonable. Courts in Wisconsin have upheld rules of supervision as reasonable when the rule relates either to the need for community safety or the offender's rehabilitation. This legislative enactment carries with it the presumption that pharmacological treatment of certain child sex offenders promotes the twin goals of community protection and offender rehabilitation. X

Offenders selected for pharmacological treatment must be statutorily eligible by satisfying the definition of serious child sex offender. The department screening process allows for exempting those offenders who are not proper medical subjects due to a prevailing medical condition that prevents treatment with an antiandrogen or its chemical equivalent. The offender must also have a diagnosis of pedophilia or any other condition for which an antiandrogen may be prescribed. The hearing process allows the offender an opportunity to overcome the legislative presumption for pharmacological treatment by showing that such treatment is not necessary for public protection and will not further the offender's rehabilitation. ?

Section 1. Chapter DOC 330 is created to read: PHARMACOLOGICAL TREATMENT FOR CERTAIN CHILD SEX OFFENDERS

**DOC 330.01 Applicability.** This chapter interprets s. 304.06(1q), Stats. This chapter applies to the department of corrections and to all serious child sex offenders, as defined by s. 304.06 Stats.

**DOC 330.02 Purpose.** The purpose of this chapter is to provide guidelines for requiring pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen, as a condition of probation or parole as a pilot service of the department. This chapter is promulgated pursuant to authority conferred by ss. 227.11 (2), 301.03 (3) and (3c), Stats.

**DOC 330.03 Definitions.** Unless otherwise indicated in this chapter :

- (1) "Antiandrogen" means a chemical agent that lowers testosterone.
- (2) "Condition" means specific rules, regulations or prohibitions imposed on an offender under the supervision of the department of corrections by the court, parole commission or department.
- (3) "Department" means the Wisconsin department of corrections.
- (4) "Division administrator" means the administrator of the department of corrections, division of program planning and movement or the administrator of the division of community corrections.
- (5) "Hearing" means the department's administrative proceeding to determine whether the department may impose a condition of supervision requiring compliance with pharmacological treatment.
- (6) "Hearing examiner" means a person appointed to preside over the hearing, to review the evidence presented, including testimony, and to determine, based on the evidence presented, whether the department may impose a condition of supervision requiring the offender to comply with pharmacological treatment.
- (7) "Offender" means an inmate, probationer, or parolee who is committed to the custody of the department for correctional purposes.
- (8) "Pharmacological treatment" means treatment with an antiandrogen or the chemical equivalent of an antiandrogen.
- (9) "Physician" has the meaning given in s. 448.01(5), Stats.
- (10) "Proper medical subject" means a serious child sex offender who does not have a diagnosed physical condition that precludes treatment with an antiandrogen.
- (11) "Revocation" means the removal of an offender from probation or parole supervision in accordance with ch. DOC 331.
- (12) "Rules" means those written departmental regulations applicable to a specific offender under supervision.
- (13) "Secretary" means the secretary of the department of corrections.

(14) "Serious child sex offender" has the meaning given in s.304.06, Stats.

(15) "Supervision" means the control and monitoring of offenders on probation or parole supervision by a department of corrections employee or contract agency employee.

(16) "Therapeutic level" means the pharmacological treatment has lowered the offender's hormone level into the range of intended effect as determined by the treating physician.

that has of the p.t.

rewrite

**DOC 330.04 Pharmacological treatment required.**

(1) Pharmacological treatment may not be made a condition of probation or parole supervision without first complying with this chapter.

(2) Pharmacological treatment may be made a condition of probation or parole supervision for an offender when all of the following criteria are satisfied:

5

(a) The offender is a serious child sex offender.

(b) The offender is a proper medical subject.

(c) The offender has a diagnosis of pedophilia or any other diagnosis for which the treatment may include an antiandrogen or chemical equivalent.

(3) Serious child sex offenders may be required to undergo clinical and medical evaluations to determine the appropriateness of requiring the administration of an antiandrogen or chemical equivalent.

(4) The department shall conduct a pharmacological treatment hearing when the department determines that pharmacological treatment should be required and the serious child sex offender does not waive the pharmacological treatment hearing and all of the conditions in sub. (2) are satisfied.

no express statement what's left to decide & how?

**DOC 330.05 Clinical and medical evaluation.**

(1) Qualification of individual conducting clinical evaluation. A licensed physician designated by the department shall conduct the clinical and medical evaluation.

(2) The designated physician shall do the following:

(a) Obtain psychiatric history and administer appropriate diagnostic instruments.

(b) Make a determination as to the presence of pedophilia and any other diagnosis for which the treatment may include an antiandrogen or chemical equivalent. This clinical determination shall be in the form of a written report.

p.t.

(c) Obtain the medical history, conduct a physical examination and conduct and interpret appropriate laboratory tests to determine whether the offender is a proper medical subject.

(d) Follow all protocols established by the department for treatment, clinical, and medical evaluations.

(e) Provide the offender with sufficient information for the offender to understand the risks and benefits of pharmacological treatment.

is this pretreat sec 330.04?

(f) Provide the department with a copy of the offender's medical records on an ongoing basis throughout the course of treatment. Such records shall include documentation and verification of the offender's compliance with pharmacological treatment.

*post orders*

(g) Apply principles and techniques of medical science in determining that an offender is a proper medical subject for pharmacological treatment at regularly established times throughout the course of treatment.

(h) Monitor the pharmacological treatment on an ongoing basis as follows:

1. Obtain appropriate laboratory tests, including testosterone levels.
2. Obtain updated medical history.
3. Conduct physical examinations as needed.

**DOC 330.06 Duration of treatment.** Pharmacological treatment shall be continued throughout the duration of the serious child sex offender's supervision unless one of the following applies:

- (1) A serious child sex offender is found not a proper medical subject.
- (2) The pharmacological treatment hearing process described in DOC 330.09 results in a finding that the department may not order pharmacological treatment for the serious child sex offender.
- (3) The department determines that continuing pharmacological treatment will no longer be beneficial.

*start treatment before hearing*

**DOC 330.07. Rules and conditions established; the serious child sex offender's duty to comply; department's response upon serious child sex offender's refusal to comply.**

- (1) The department shall establish rules and conditions of supervision regarding pharmacological treatment in writing. The rules and conditions of supervision and any sanctions the department may use in response to non-compliance by the serious child sex offender shall be explained to the offender and acknowledged in writing.
- (2) Serious child sex offenders required to undergo pharmacological treatment ~~will~~ *shall* comply with all rules and conditions ordered by the parole commission or the department.
- (3) Serious child sex offenders refusing to comply with rules and conditions of pharmacological treatment after a decision by a hearing examiner permitting the department to require pharmacological treatment may be sanctioned or recommended for revocation.

**DOC 330.08 Notice of pharmacological treatment hearing.**

- (1) The serious child sex offender shall receive written notice of the pharmacological treatment hearing. The notice shall be given at least 72 hours before the hearing.
- (2) The notice shall include all of the following:
  - (a) A statement that a rule requiring compliance with pharmacological treatment has been recommended by the department.

- (b) The date, time and manner of the hearing.
- (c) The right of the offender to be present at the hearing.
- (d) The right of the offender to be represented by an advocate.
- (e) The right of the offender to be heard and to present evidence and relevant witnesses.
- (f) The right to cross-examine department witnesses.
- (g) The right to a written decision within 10 working days of the hearing, including the reasons for the decision.
- (h) The right to appeal the decision to the division administrator within 10 working days of the decision.

**DOC 330.09 Pharmacological treatment hearing.** The department shall hold a pharmacological treatment hearing unless waived by the serious child sex offender. A hearing examiner shall do all of the following:

- (1) Conduct the pharmacological treatment hearing.
- (2) Keep summary notes of the hearing.
- (3) Decide to permit or disapprove a condition of probation or parole requiring compliance with prescribed pharmacological treatment.
- (4) Issue a written decision, including the reasons for it, within 10 working days of the hearing.

*any standard here? 330.04(2) 330.11(3)*

**DOC 330.10 Manner of hearing.** The hearing may be included as part of the program review committee process and appearances may be in person or by telephone.

*crossed out*

**DOC 330.11 Hearing procedure.**

- (1) *In the hearing*  
~~Evidence~~

- (a) The hearing examiner is not bound by common law or statutory rules of evidence. The hearing examiner may admit all testimony having relevance including hearsay evidence.
- (b) No privilege other than the attorney-client privilege is applicable. *?*
- (c) All evidence shall be made part of the record in the case.
- (2) The hearing examiner may do all of the following:
  - (a) Administer oaths and affirmations.
  - (b) Take an active role in questioning witnesses and eliciting testimony.
  - (c) Regulate the course of the hearing.

(3) Burden of proof.

(a) The department has the burden to establish, by a preponderance of the evidence, all of the following:

1. That the offender is a serious child sex offender.
2. Is a proper medical subject.
3. Has a diagnosis for pedophilia or any other diagnosis for which an antiandrogen may be prescribed.

(b) Once the department has established all of the criteria in sub. (3) (a), pharmacological treatment shall be ordered unless the serious child sex offender can establish by a preponderance of the evidence all of the following:

1. Pharmacological treatment of the offender is not necessary for public protection.
2. Pharmacological treatment will not further the rehabilitation of the serious child sex offender.

**DOC 330.12 Qualification of hearing examiner.** The hearing examiner may not be currently involved in the offender's treatment, diagnosis, supervision, or the direct supervision of the agent or physician treating the offender.

**DOC 330.13 Offender advocate.** An advocate of the offender's choosing may represent a serious child sex offender. The advocate may present witnesses and evidence on behalf of the serious child sex offender and cross-examine department witnesses. The advocate may not be a person in the custody or under the supervision of the department.

**DOC 330.14 Appeal of decision.**

(1) The serious child sex offender or the department may appeal a decision of the hearing examiner to the division administrator within 10 days of the written decision.

(2) When the pharmacological treatment hearing is conducted as part of the program review process the appeal shall be to the administrator of the division of program planning and movement. When the hearing is not part of the program review process the appeal shall be to the administrator of the division of community corrections.

**DOC 330.15 Review of decision.**

(1) Every 24 months, a hearing examiner shall review the decision ordering mandatory compliance with required pharmacological treatment in accordance with the standards in s. DOC 330.11 (3).

(2) A different hearing examiner may perform the review.

(3) Upon request of the serious child sex offender the review shall be in the form of a pharmacological treatment hearing.

(4) The hearing examiner may continue the order permitting the department to require prescribed pharmacological treatment if evidence since the time of the last review shows that all of the criteria in s.DOC 330.11(3)(a) have been satisfied.

*330.11(3)*

(5) When the department has established all of the criteria in sub.(3) pharmacological treatment shall be continued unless the offender can establish all of the criteria in s.DOC 330.11(3)(b).

*(4)*

**DOC 330.16 Waiver.** A serious child sex offender may sign a form waiving the pharmacological treatment hearing or review.

**DOC 330.17 Detention pending clinical and medical evaluation or pharmacological treatment hearing.**

(1) An offender who prior to parole refuses to participate in pharmacological treatment evaluations at the hearing process or refuses to take pharmacological treatment medications may be taken into custody and detained in any state correctional institution or county jail for the purpose of public protection.

*at the hearing*  
*3*  
*?*  
*keep in it*  
*not meet*  
*condition*

(2) Detention under sub.(1) may continue until the pharmacological treatment evaluations are completed, the hearing decision is received, and the therapeutic level of the serious child sex offender is achieved.

**FISCAL ESTIMATE**

A copy of the fiscal estimate is attached.

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 (jp)  
Jon E. Litscher, Secretary

Dated: 1-29-99

SEAL:

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DOC 330 Permanent Rule

Amendment No. if Applicable

Subject The creation of Administrative Rule 330, relating to the Chemical Castration of Certain Child Sex 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**

S. 304.06(1q) of the WI state statutes authorizes the Department of Corrections to require pharmacological treatment of certain child sex offenders using an antiandrogen, or the chemical equivalent of an antiandrogen, as a condition of probation or parole. Administrative Rule DOC 330 is created for this purpose.

\$374,700 in GPR funds have been authorized to treat no more than 50 offenders at any one time in a pharmacological treatment program. It is not anticipated that the amendment of DOC 330 will have any additional fiscal impact on the Department.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)  
Elaine Velez, 267-7193  
Department of Corrections

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

Date  
1/29/99

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 23, 1999

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

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

RE: Clearinghouse Rule 99-015, Relating to the pharmacological treatment of probationers and parolees

Dear Senator Robson and Representative Grothman:

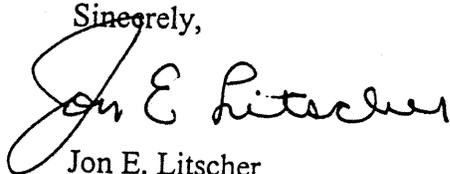
The Department of Corrections (DOC) promulgated an emergency rule concerning the above captioned subject matter on January 1, 1999. The emergency rule will expire on May 30, 1999 before it can be replaced with a proposed permanent rule. Hence, I am requesting that the Joint Committee for Review of Administrative Rules extend the emergency rule by 60 days pursuant to s. 227.24, (2), Stats.

The emergency rule is required to permit the DOC to continue the process of selecting serious child sex offenders, ordering medical exams, interviewing offenders, and conducting hearings for the pharmacological treatment process.

The DOC submitted the attached scope statement on December 23, 1998. The enclosed proposed permanent rule was submitted to the Administrative Rules Clearinghouse and the Revisor of Statutes on January 29, 1999. The enclosed Administrative Rules Clearinghouse report was received on February 26, 1999. On March 1, 2, and 3, public hearings were conducted in Madison, Wisconsin Rapids, and Waukesha, respectively. No public testimony was offered at either hearing. However, one inmate of a correctional institution filed a written comment in opposition to the rule. Although the permanent rule will be submitted in final draft form within the next week, 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 black ink and is positioned above the printed name.

Jon E. Litscher  
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

December 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

RE: Emergency Administrative Rule on Pharmacological Intervention with Serious Child Sex Offenders

Dear Senator Welch and Representative Grothman:

Please find enclosed the emergency rule relating to pharmacological intervention with serious child sex offenders under the supervision of the Department of Corrections. This rule is pursuant to Wisconsin Act 284. 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



DEC 29 1998

Pharmacological Intervention for Certain Serious Child Sex Offenders  
ORDER  
OF  
DEPARTMENT OF CORRECTIONS  
PROMULGATING EMERGENCY RULES

Under the authority vested in the Department of Corrections by ss. 227.11 (2), and, 304.06 (1q), Stats., the Department of Corrections hereby creates DOC ch. 330, relating to pharmacological treatment of serious child sex offenders.

Statutory authority: ss. 227.11 (2), and 304.06 (1q), Stats.

Statutes interpreted: s. 304.06 (1q), 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.

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 peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created section 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

Analysis by the Department of Corrections

In accordance with the recently enacted statutory authority cited above the department of corrections proposes to comply with legislative directives by creating rules to implement pharmacological treatment of serious child sex offenders.

This rule:

1. Creates definitions
2. Adopts the statutory definition for serious child sex offender.
3. Establishes the authority, purpose, and applicability for requiring pharmacological treatment.
4. Establishes criteria for the department to clinically and medically screen serious child sex offenders for applicability of pharmacological treatment.
5. Requires the department to establish rules and conditions for offenders required to undergo pharmacological treatment.

6. Establishes a hearing process prior to administration of an antiandrogen and provides for a hearing waiver by the offender.
7. Establishes the qualifications for hearing examiners.
8. Establishes a review process for pharmacological treatment.
9. Provides for sanctions if a serious child sex offender refuses to comply with the rules and conditions for pharmacological treatment.
10. Establishes the duration of treatment and criteria for termination of pharmacological treatment.
11. Requires the department to maintain records on offenders that undergo pharmacological treatment.
12. Allows the department to detain serious child sex offenders when they fail to cooperate with the pharmacological treatment implementation process prior to parole.

Section 1. Chapter DOC 330 is created to read: PHARMACOLOGICAL TREATMENT FOR CERTAIN CHILD SEX OFFENDERS

**DOC 330.01 Applicability.** This chapter interprets s. 304.06(1q), Stats. This chapter applies to the department of corrections and to all serious child sex offenders, as defined by s. 304.06 Stats.

**DOC 330.02 Purpose.** The purpose of this chapter is to provide guidelines for requiring pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen, as a condition of probation or parole as a pilot service of the department. This chapter is promulgated pursuant to authority conferred by ss. 227.11 (2), 301.03 (3) and (3c), Stats.

**DOC 330.03 Definitions.** Unless otherwise indicated in this chapter

- (1) "Antiandrogen" means a chemical agent that lowers testosterone.
- (2) "Condition" means specific rules, regulations or prohibitions imposed on an offender under the supervision of the department of corrections by the court, parole commission or department.
- (3) "Department" means the Wisconsin department of corrections.
- (4) "Division administrator" means the administrator of the department of corrections, division of program planning and movement or the administrator of the division of community corrections.
- (5) "Hearing" means the department's administrative proceeding to determine whether the department may impose a condition of supervision requiring compliance with pharmacological treatment.
- (6) "Hearing examiner" means a person appointed to preside over the hearing, to review the evidence presented, including testimony, and to determine, based on the evidence

presented, whether the department may impose a condition of supervision requiring the offender to comply with pharmacological treatment.

- (7) "Offender" means an inmate, probationer, or parolee who is committed to the custody of the department for correctional purposes.
- (8) "Pharmacological treatment" means treatment with an antiandrogen or the chemical equivalent of an antiandrogen.
- (9) "Physician" has the meaning given in s. 448.01(5), Stats.
- (10) "Proper medical subject" means a serious child sex offender who does not have a diagnosed physical condition that precludes treatment with an antiandrogen.
- (11) "Revocation" means the removal of an offender from probation or parole supervision in accordance with ch. DOC 331.
- (12) "Rules" means those written departmental regulations applicable to a specific offender under supervision.
- (13) "Secretary" means the secretary of the department of corrections.
- (14) "Serious child sex offender" has the meaning given in s.304.06, Stats.
- (15) "Supervision" means the control and monitoring of offenders on probation or parole supervision by a department of corrections employee or contract agency employee.
- (16) "Therapeutic level" means the pharmacological treatment has lowered the offender's hormone level into the range of intended effect as determined by the treating physician.

**DOC 330.01 Pharmacological treatment required.**

- (1) Pharmacological treatment may not be made a condition of probation or parole supervision without first complying with this chapter.
- (2) Pharmacological treatment may be made a condition of probation or parole supervision for an offender when all of the following criteria are satisfied:
  - (a) The offender is a serious child sex offender.
  - (b) The offender is a proper medical subject.
  - (c) The offender has a diagnosis of pedophilia or any other diagnosis for which the treatment may include an antiandrogen or chemical equivalent.
- (3) Serious child sex offenders may be required to undergo clinical and medical evaluations to determine the appropriateness of requiring the administration of an antiandrogen or chemical equivalent.
- (4) The department shall conduct a pharmacological treatment hearing when the department determines that pharmacological treatment should be required and the serious child sex offender does not waive the pharmacological treatment hearing and all of the conditions in sub. (2) are satisfied.

**DOC 330.05 Clinical and medical evaluation.**

- (1) Qualification of individual conducting clinical evaluation. A licensed physician designated by the department shall conduct the clinical and medical evaluation.
- (2) The designated physician shall do the following:
  - (a) Obtain psychiatric history and administer appropriate diagnostic instruments.
  - (b) Make a determination as to the presence of pedophilia and any other diagnosis for which the treatment may include an antiandrogen or chemical equivalent. This clinical determination shall be in the form of a written report.
  - (c) Obtain the medical history, conduct a physical examination and conduct and interpret appropriate laboratory tests to determine whether the offender is a proper medical subject.
  - (d) Follow all protocols established by the department for treatment, clinical, and medical evaluations.
  - (e) Provide the offender with sufficient information for the offender to understand the risks and benefits of pharmacological treatment.
  - (f) Provide the department with a copy of the offender's medical records on an ongoing basis throughout the course of treatment. Such records shall include documentation and verification of the offender's compliance with pharmacological treatment.
  - (g) Apply principles and techniques of medical science in determining that an offender is a proper medical subject for pharmacological treatment at regularly established times throughout the course of treatment.
  - (h) Monitor the pharmacological treatment on an ongoing basis as follows:
    1. Obtain appropriate laboratory tests, including testosterone levels.
    2. Obtain updated medical history.
    3. Conduct physical examinations as needed.

**DOC 330.06 Duration of treatment.** Pharmacological treatment shall be continued throughout the duration of the serious child sex offender's supervision unless one of the following applies:

- (1) A serious child sex offender is found not a proper medical subject.
- (2) The pharmacological treatment hearing process described in DOC 330.09 results in a finding that the department may not order pharmacological treatment for the serious child sex offender.
- (3) The department determines that continuing pharmacological treatment will no longer be beneficial.

**DOC 330.07. Rules and conditions established; the serious child sex offender's duty to comply; department's response upon serious child sex offender's refusal to comply.**

- (1) The department shall establish rules and conditions of supervision regarding pharmacological treatment in writing. The rules and conditions of supervision and any sanctions the

department may use in response to non-compliance by the serious child sex offender shall be explained to the offender and acknowledged in writing.

- (2) Serious child sex offenders required to undergo pharmacological treatment will comply with all rules and conditions ordered by the parole commission or the department.
- (3) Serious child sex offenders refusing to comply with rules and conditions of pharmacological treatment after a decision by a hearing examiner permitting the department to require pharmacological treatment may be sanctioned or recommended for revocation.

**DOC 330.08 Notice of pharmacological treatment hearing.**

(1) The serious child sex offender shall receive written notice of the pharmacological treatment hearing. The notice shall be given at least 72 hours before the hearing.

(2) The notice shall include all of the following:

(a) A statement that a rule requiring compliance with pharmacological treatment has been recommended by the department.

(b) The date, time and manner of the hearing.

(c) The right of the offender to be present at the hearing.

(d) The right of the offender to be represented by an advocate.

(e) The right of the offender to be heard and to present evidence and relevant witnesses.

(f) The right to cross-examine department witnesses.

(g) The right to a written decision within 10 working days of the hearing, including the reasons for the decision.

(h) The right to appeal the decision to the division administrator within 10 working days of the decision.

**DOC 330.09 Pharmacological treatment hearing.** The department shall hold a pharmacological treatment hearing unless waived by the serious child sex offender. A hearing examiner shall do all of the following:

(1) Conduct the pharmacological treatment hearing.

(2) Keep summary notes of the hearing.

(3) Decide to permit or disapprove a condition of probation or parole requiring compliance with prescribed pharmacological treatment.

(4) Issue a written decision, including the reasons for it, within 10 working days of the hearing.

**DOC 330.10 Manner of hearing.** The hearing may be included as part of the program review committee process and appearances may be in person or by telephone.

**DOC 330.11 Hearing procedure.**

(1) Evidence.

(a) The hearing examiner is not bound by common law or statutory rules of evidence. The hearing examiner shall admit all testimony having relevance including hearsay evidence.

(b) No privilege other than the attorney-client privilege is applicable.

(c) All evidence shall be made part of the record in the case.

(2) The hearing examiner may do all of the following:

(a) Administer oaths and affirmations.

(b) Take an active role in questioning witnesses and eliciting testimony.

(c) Regulate the course of the hearing.

(3) Burden of proof.

(a) The department has the burden to establish, by a preponderance of the evidence, all of the following:

1. That the offender is a serious child sex offender.
2. Is a proper medical subject.
3. Has a diagnosis for pedophilia or any other diagnosis for which an antiandrogen may be prescribed.

(b) Once the department has established all of the criteria in sub. (3) (a), pharmacological treatment shall be ordered unless the serious child sex offender can establish by a preponderance of the evidence all of the following:

1. Pharmacological treatment of the offender is not necessary for public protection.
2. Pharmacological treatment will not further the rehabilitation of the serious child sex offender.

**DOC 330.12 Qualification of hearing examiner.** The hearing examiner may not be currently involved in the offender's treatment, diagnosis, supervision, or the direct supervision of the agent or physician treating the offender.

**DOC 330.13 Offender advocate.** An advocate of the offender's choosing may represent a serious child sex offender. The advocate may present witnesses and evidence on behalf of the serious child sex offender and cross-examine department witnesses. The advocate may not be a person in the custody or under the supervision of the department.

**DOC 330.14 Appeal of decision.**

- (1) The serious child sex offender or the department may appeal a decision of the hearing examiner to the division administrator within 10 days of the written decision.
- (2) When the pharmacological treatment hearing is conducted as part of the program review process the appeal shall be to the administrator of the division of program planning and movement. When the hearing is not part of the program review process the appeal shall be to the administrator of the division of community corrections.

**DOC 330.15 Review of decision.**

- (1) Every 24 months, a hearing examiner shall review the decision ordering mandatory compliance with required pharmacological treatment in accordance with the standards in s. DOC 330.11 (3).
- (2) A different hearing examiner may perform the review.
- (3) Upon request of the serious child sex offender the review shall be in the form of a pharmacological treatment hearing.
- (4) The hearing examiner may continue the order permitting the department to require prescribed pharmacological treatment if evidence since the time of the last review shows that all of the criteria in s.DOC 330.11(3)(a) have been satisfied.
- (5) When the department has established all of the criteria in sub (3) pharmacological treatment shall be continued unless the offender can establish all of the criteria in s.DOC 330.11(3)(b).

**DOC 330.16 Waiver.** A serious child sex offender may sign a form waiving the pharmacological treatment hearing or review.

**DOC 330.17 Detention pending clinical and medical evaluation or pharmacological treatment hearing.**

- (1) An offender who prior to parole refuses to participate in pharmacological treatment evaluations, the hearing process or refuses to take pharmacological treatment medications may be taken into custody and detained in any state correctional institution or county jail for the purpose of public protection.
- (2) Detention under sub.(1) may continue until the pharmacological treatment evaluations are completed, the hearing decision is received, and the therapeutic level of the serious child sex offender is achieved.

**FISCAL ESTIMATE**

A copy of the fiscal estimate is attached.

Dated this 23 day of December, 1998

  
MICHAEL J. SULLIVAN  
Secretary, Department of Corrections

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DOC 330 Emergency Rule  
Amendment No. if Applicable

Subject The creation of Administrative Rule 330, relating to the Chemical Castration of Certain Child Sex 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 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

Assumptions Used in Arriving at Fiscal Estimate

S. 304.06(1q) of the WI state statutes authorizes the Department of Corrections to require pharmacological treatment of certain child sex offenders using an antiandrogen, or the chemical equivalent of an antiandrogen, as a condition of probation or parole. Administrative Rule DOC 330 is created for this purpose.

\$374,700 in GPR funds have been authorized to treat no more than 50 offenders at any one time in a pharmacological treatment program. It is not anticipated that the amendment of DOC 330 will have any additional fiscal impact on the Department.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)  
Elaine Velez, 267-7193  
Department of Corrections

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

Date  
12/22/1998



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

December 30, 1998

Members of the Wisconsin Legislature

Dear Member of the Legislature:

Enclosed is a copy of an emergency rule promulgated by the Department of Corrections. The emergency rule will be published in the Wisconsin State Journal on January 1, 1999 which is also the effective date of the rule.

Any questions should be directed to Robert G. Pultz at (608) 267-0922.

Sincerely,

Michael J. Sullivan  
Secretary

Enclosure

SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 27, 1999

Secretary Jon E. Litscher  
Department of Corrections  
149 East Wilson Street  
PO Box 7925  
Madison, WI 53707-7925

Dear Secretary:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on May 27, 1999. At that meeting, JCRAR received public testimony regarding **Emergency Rule DOC 330**, relating to pharmacological treatment of probationers and parolees.

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 27, 1999 and adopted the following motion:

Carried unanimously, pursuant to §227.24(2)(a), *Stats.*, the Joint Committee for Review of Administrative Rules extend the effective date of **Emergency Rule DOC 330** by **60 days**, at the request of the Department of Corrections.

Ayes: (10) Senators Robson, Grobschmidt, Shibilski, Welch, and Darling; Representatives Grothman, Seratti, Gunderson, Kreuser, and Black

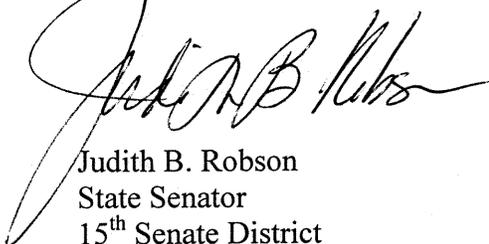
Noes: (0)

Absent: (0)

**Motion Carried: Extension Granted.**  
10 Ayes, 0 Noes, 0 Absent.

Pursuant to §227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:chmiv

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson

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 29, 1999

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

APR 01 1999

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

Re: Clearinghouse Rule 99-015  
An order to create ch. DOC 330, relating to the pharmacological treatment of serious child sex 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 Judy Robson, JCRAR  
Representative Glenn S. Grothman, JCRAR

PROPOSED ORDER OF  
DEPARTMENT OF CORRECTIONS  
PROMULGATING RULES  
DOC 330

Under the authority vested in the Department of Corrections by ss. 227.11(2), 304.06 (1q), and 973.10, Stats., the Department of Corrections hereby proposes an order to create Ch. DOC 330, relating to pharmacological treatment of certain child sex offenders.

Statutory authority: ss. 227.11 (2), 304.06 (1q), and 973.10, Stats.  
Statutes interpreted: ss. 304.06 (1q), and 973.10, Stats.

Analysis Prepared by the Department of Corrections

These rules are promulgated pursuant to recently enacted legislation, s. 304.06 (1q), Stats., relating to pharmacological intervention with certain serious child sex offenders. These rules create definitions, establish the authority and purpose for requiring pharmacological treatment of sex offenders, establish criteria for screening, establish the duration of treatment, criteria for termination of treatment, and create a hearing and review process prior to the implementation of pharmacological intervention. These rules provide sanctions if a serious child sex offender refuses to comply with the rules and conditions for pharmacological treatment following a hearing that results in a decision that the department may mandate pharmacological treatment for the offender. These rules allow the department to detain offenders when they fail to cooperate with the implementation process.

The recently enacted legislation, sec 304.06 (1q), Stats., allows the department to exercise discretion to require compliance with pharmacological intervention as a condition of probation or parole supervision. Rules of probation/parole supervision must be reasonable. Courts in Wisconsin have upheld rules of supervision as reasonable when the rule relates either to the need for community safety or the offender's rehabilitation. This legislative enactment carries with it the presumption that pharmacological treatment of certain child sex offenders promotes the twin goals of community protection and offender rehabilitation.

Offenders selected for pharmacological treatment must be statutorily eligible by satisfying the definition of serious child sex offender. The department screening process allows for exempting those offenders who are not proper medical subjects due to a prevailing medical condition that prevents treatment with an antiandrogen or its chemical equivalent. The offender must also have a diagnosis of pedophilia or any other condition for which an antiandrogen may be prescribed. The hearing process allows the offender an opportunity to overcome the legislative presumption for pharmacological treatment by showing that such treatment is not necessary for public protection and will not further the offender's rehabilitation.

Section 1. Chapter DOC 330 is created to read: PHARMACOLOGICAL TREATMENT FOR CERTAIN CHILD SEX OFFENDERS

**DOC 330.01 Applicability.** This chapter interprets s. 304.06(1q), Stats. This chapter applies to the department of corrections and to all serious child sex offenders, as defined by s. 304.06 (1q) (a), Stats.

**DOC 330.02 Purpose.** The purpose of this chapter is to provide guidelines for requiring pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen, as a condition of probation or parole as a pilot service of the department. This chapter is promulgated pursuant to authority conferred by ss. 227.11 (2), 304.06 (1q), and 973.10, Stats.

**DOC 330.03 Definitions.** Unless otherwise indicated, in this chapter:

- (1) "Antiandrogen" means a chemical agent that lowers levels of testosterone.
- (2) "Condition" means specific rules, regulations or prohibitions imposed on an offender under the supervision of the department of corrections by the court, parole commission or department.
- (3) "Department" means the Wisconsin department of corrections.
- (4) "Division administrator" means the administrator of the department of corrections, division of program planning and movement when the pharmacological treatment hearing is conducted as part of the program review process in s. DOC 302.18, and the administrator of the department of corrections, division of community corrections when the hearing is not conducted as part of the program review process.
- (5) "Hearing" means the department's administrative proceeding to determine whether the department may impose a condition of supervision requiring compliance with pharmacological treatment.
- (6) "Hearing examiner" means a person appointed to preside over the hearing, to review the evidence presented, including testimony, and to determine, based on the evidence presented, whether the department may impose a condition of supervision requiring the offender to comply with pharmacological treatment.
- (7) "Offender" means an inmate, probationer, or parolee who is committed to the custody of the department for correctional purposes.
- (8) "Pharmacological treatment" means treatment with an antiandrogen or the chemical equivalent of an antiandrogen.
- (9) "Physician" has the meaning given in s. 448.01(5), Stats.
- (10) "Proper medical subject" means a serious child sex offender who does not have a diagnosed physical condition that precludes treatment with an antiandrogen.
- (11) "Revocation" means the removal of an offender from probation or parole supervision in accordance with ch. DOC 331.
- (12) "Rules" means those written departmental regulations applicable to a specific offender under supervision.

- (13) "Secretary" means the secretary of the department of corrections.
- (14) "Serious child sex offender" has the meaning given in s.304.06 (1q) (a), Stats.
- (15) "Supervision" means the control and monitoring of offenders on probation or parole supervision by a department employe or contract agency employe.
- (16) "Therapeutic level" means the hormone level that, as determined by the treating physician, is the intended effect of pharmacological treatment on an offender.

**DOC 330.04 Pharmacological treatment required.**

- (1) Pharmacological treatment may not be made a condition of probation or parole supervision without first complying with this chapter.
- (2) Serious child sex offenders may be required to undergo clinical and medical evaluations to determine the appropriateness of requiring the administration of an antiandrogen or chemical equivalent.
- (3) Pharmacological treatment may be made a condition of probation or parole supervision for an offender if all of the following criteria are satisfied:
  - (a) The offender is a serious child sex offender.
  - (b) The offender is a proper medical subject.
  - (c) The offender has a diagnosis of pedophilia or any other diagnosis for which the treatment may include an antiandrogen or chemical equivalent.
- (4) The department shall conduct a pharmacological treatment hearing if the department determines that pharmacological treatment should be required and the serious child sex offender does not waive the pharmacological treatment hearing and all of the conditions in sub. (2) are satisfied.

**DOC 330.05 Clinical and medical evaluation.**

- (1) A licensed physician designated by the department shall conduct the clinical and medical evaluation.
- (2) The designated physician shall do the following:
  - (a) Obtain a psychiatric history and administer appropriate diagnostic instruments.
  - (b) Make a determination as to the presence of pedophilia and any other diagnosis for which the treatment may include pharmacological treatment. This clinical determination shall be in the form of a written report.
  - (c) Obtain the medical history, conduct a physical examination and conduct and interpret appropriate laboratory tests to determine whether the offender is a proper medical subject.
  - (d) Provide the offender with sufficient information for the offender to understand the risks and benefits of pharmacological treatment.

(e) Provide the department with a copy of the offender's medical records on an ongoing basis throughout the course of treatment. Such records shall include documentation and verification of the offender's compliance with pharmacological treatment.

(f) Apply principles and techniques of medical science in determining that an offender is a proper medical subject for pharmacological treatment at regularly established times throughout the course of treatment.

(g) Monitor the pharmacological treatment on an ongoing basis as follows:

1. Obtain appropriate laboratory tests, including testosterone levels.
2. Obtain updated medical history.
3. Conduct physical examinations as needed.

**DOC 330.06 Notice of pharmacological treatment hearing.**

(1) The serious child sex offender shall receive written notice of the pharmacological treatment hearing. The notice shall be given at least 72 hours before the hearing.

(2) The notice shall include all of the following:

(a) A statement that a rule requiring compliance with pharmacological treatment has been recommended by the department.

(b) The date, time and manner of the hearing.

(c) The right of the offender to be present at the hearing.

(d) The right of the offender to be represented by an advocate.

(e) The right of the offender to be heard and to present evidence and relevant witnesses.

(f) The right to cross-examine department witnesses.

(g) The right to a written decision within 10 working days of the hearing, including the reasons for the decision.

(h) The right to appeal the decision to the division administrator within 10 working days of the decision.

**DOC 330.07 Pharmacological treatment hearing.** The department shall hold a pharmacological treatment hearing unless waived by the serious child sex offender. A hearing examiner shall do all of the following:

(1) Conduct the pharmacological treatment hearing.

(2) Keep summary notes of the hearing.

(3) Decide to permit or disapprove a condition of probation or parole requiring compliance with prescribed pharmacological treatment.

(1) Issue a written decision, including the reasons for it, within 10 working days of the hearing.

**DOC 330.08 Manner of hearing.** The hearing may be included as part of the program review committee process in s. DOC 302.18 and appearances may be in person or by telephone.

**DOC 330.09 Hearing procedure.** In the hearing:

(1) Evidence.

(a) The hearing examiner may admit all testimony having relevance including hearsay evidence.

(b) The rules of evidence other than ch. 905, Stats., with respect to privileges do not apply except that unduly repetitious or irrelevant questions may be excluded.

(c) All evidence shall be made part of the record in the case.

(2) The hearing examiner may do all of the following:

(a) Administer oaths and affirmations.

(b) Take an active role in questioning witnesses and eliciting testimony.

(c) Regulate the course of the hearing.

(3) Burden of proof.

(a) The department has the burden to establish, by a preponderance of the evidence, all of the following:

1. That the offender is a serious child sex offender.

2. That the offender is a proper medical subject.

3. That the offender has a diagnosis for pedophilia or any other diagnosis for which an antiandrogen may be prescribed.

(b) Once the department has established all of the criteria in sub. (3) (a), pharmacological treatment shall be ordered unless the serious child sex offender can establish by a preponderance of the evidence all of the following:

1. Pharmacological treatment of the offender is not necessary for public protection.

2. Pharmacological treatment will not further the rehabilitation of the serious child sex offender.

**DOC 330.10 Qualification of hearing examiner.** The hearing examiner may not be currently involved in the offender's treatment, diagnosis, or supervision, or in the direct supervision of the agent or physician treating the offender.

**DOC 330.11 Offender advocate.** An advocate of the offender's choosing may represent a serious child sex offender. The advocate may present witnesses and evidence on behalf of the serious child sex offender and cross-examine department witnesses. The advocate may not be a person in the custody or under the supervision of the department.

**DOC 330.12 Appeal of decision.** The serious child sex offender or the department may appeal a decision of the hearing examiner to the division administrator within 10 days of the written decision.

**DOC 330.13 Review of decision.**

(1) Every 24 months, a hearing examiner shall review the decision ordering mandatory compliance with required pharmacological treatment in accordance with the standards in s. DOC 330.11 (3).

(2) A different hearing examiner may perform the review.

(3) Upon request of the serious child sex offender the review shall be in the form of a pharmacological treatment hearing.

(4) The hearing examiner may continue the order permitting the department to require prescribed pharmacological treatment if evidence since the time of the last review shows that all of the criteria in s.DOC 330.11(3)(a) have been satisfied.

(5) When the department has established all of the criteria in s. DOC 330.09 (3) (a), pharmacological treatment shall be continued unless the offender can establish all of the criteria in s.DOC 330.09 (3) (b).

**DOC 330.14 Waiver.** A serious child sex offender may sign a form waiving the pharmacological treatment hearing or review.

**DOC 330.15 Detention pending clinical and medical evaluation or pharmacological treatment hearing.**

(1) An offender who prior to parole refuses to participate in pharmacological treatment evaluations or the hearing process or refuses to take pharmacological treatment medications may be taken into custody and detained in any state correctional institution or county jail for the purpose of public protection.

(2) Detention under sub. (1) may continue until the pharmacological treatment evaluations are completed, the hearing decision is received, and the therapeutic level of the serious child sex offender is achieved.

**DOC 330.16 Duration of treatment.** Pharmacological treatment shall be continued throughout the duration of the serious child sex offender's supervision unless one of the following applies:

(1) The serious child sex offender is found not to be a proper medical subject.

(2) The pharmacological treatment hearing process described in s. DOC 330.09 results in a finding that the department may not order pharmacological treatment for the serious child sex offender.

(3) The department determines that continuing pharmacological treatment will no longer be beneficial.

**DOC 330.17. Rules and conditions established; the serious child sex offender's duty to comply; department's response upon serious child sex offender's refusal to comply.**

(1) The department shall establish special written rules and conditions of supervision for each serious child sex offender ordered to comply with pharmacological treatment as provided in s. DOC 328.04 (2) (d). The rules and conditions of supervision and any sanctions the department may use in response to non-compliance by the serious child sex offender shall be explained to the offender and acknowledged in writing.

(2) Serious child sex offenders required to undergo pharmacological treatment shall comply with all rules and conditions ordered by the parole commission or the department.

(3) Serious child sex offenders refusing to comply with rules and conditions of pharmacological treatment after a decision by a hearing examiner permitting the department to require pharmacological treatment may be sanctioned or recommended for revocation.

### FISCAL ESTIMATE

A copy of the fiscal estimate is attached.

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: 3/30/99

SEAL:



PROPOSED ADMINISTRATIVE RULES  
DOC 330.01 through 330.17  
RELATING TO PHARMACOLOGICAL TREATMENT  
OF SERIOUS CHILD SEX OFFENDERS

**Need for Rule:** These rules are created pursuant to recently enacted legislation, s. 304.06 (1q), Stats., granting the Department of Corrections (Department) authority to require serious child sex offenders to comply with pharmacological treatment as a condition of parole or probation supervision.

These rules provide the framework for implementation of pharmacological treatment with the serious child sex offender. The rules include a mechanism for screening the serious child sex offender for treatment, requiring medical examinations, determining whether a diagnosis for pedophilia or a similar condition exists for which an antiandrogen may be prescribed, provide due process hearings, and establish rules of supervision.

**Response to Rules Clearinghouse Recommendations:** The recommendations for changes made by the Legislative Council Staff Rules Clearinghouse were accepted with the following exceptions:

Statutory Authority: (Comment at section No. 1., of Rules Clearinghouse report) The due process hearing required by these rules will recognize ch. 905, Stats., privileges as recommended by the Clearinghouse. However, these hearing are not contested case hearings under s. 227.42 (1), Stats. An exception to the contested case hearing requirement is found at s. 227.03 (4), Stats.

Clarity: (Comment at section No. 5. (l.), of Clearinghouse report) The rules of pharmacological treatment will be formulated in writing to meet the needs of every individual serious child sex offender. The Department has authority to require special conditions of supervision for individual offenders and to modify the rules at any time as provided at s. DOC 328.04 (3) (L), Wis. Admin. Code. An offender whom commits any violation of supervision or fails to comply with pharmacological treatment may be provided with a variety of sanctions or the Department may recommend revocation of probation/parole supervision as provided at s. DOC 331.03, Wis. Admin. Code. It is not necessary to reiterate that authority in this chapter.

Clarity: (Comment at section No. 5 (s.), of Clearinghouse rules report) s. 330.15 does not provide a method of sanctioning offenders. This section provides that an offender whom fails to comply with pharmacological treatment may be detained to prevent a violation until the screening and due process requirements determine whether the offender can be ordered to comply with pharmacological treatment. The authority to detain to prevent a violation can be found at s. 328.22 (2) (d), Wis. Admin. Code.

**Testimony at Public Hearings:** Public Hearings on the proposed and emergency rule were held at Madison, WI on March 1, 1999, Wisconsin Rapids, WI on March 2, 1999,

and at Waukesha, WI on March 3, 1999. There was no testimony from the public at any of these hearings.

One written comment was received pursuant to the Department's invitation for written comments on the rule. The comment was from Mr. William N. Ledford, an inmate presently incarcerated at Columbia Correctional Institution. The comment likened pharmacological treatment to the medical experimentation that took place in German concentration camps during World War II. Mr. Ledford opined that the rule should not be promulgated by the Department.

**Rule Modifications as a Result of Public Hearings/Written Comments:** The Department declines to make any changes to the rule as a result of Mr. Ledford's written comment.

**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.

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

Subject The creation of Administrative Rule 330, relating to the Chemical Castration of Certain Child Sex 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 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

Assumptions Used in Arriving at Fiscal Estimate

S. 304.06(1q) of the WI state statutes authorizes the Department of Corrections to require pharmacological treatment of certain child sex offenders using an antiandrogen, or the chemical equivalent of an antiandrogen, as a condition of probation or parole. Administrative Rule DOC 330 is created for this purpose.

\$374,700 in GPR funds have been authorized to treat no more than 50 offenders at any one time in a pharmacological treatment program. It is not anticipated that the amendment of DOC 330 will have any additional fiscal impact on the Department.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Elaine Velez, 267-7193

Department of Corrections

Authorized Signature/Telephone No.

*Robert Margolies*  
Robert Margolies, 266-2931

Date

1/29/99

# Bill would treat sex offenders with drugs to control hormones

WSJ 2-13-98

State Journal staff, AP

Some sex offenders could be injected with a drug designed to decrease their sex drive under a bill passed by the Assembly Thursday.

The "chemical castration bill" passed, 81-15. It now moves to the Senate for consideration.

The bill would allow the state's Department of Corrections to use hormone-controlling drugs in the treatment of some sex offenders so that they'll have less desire to commit sex crimes against children when they leave prison.

The chemical castration bill doesn't require the state to use the drugs, it simply gives state doctors the option to require prisoners to take them if doctors see it as the best treatment, said Tony Streveler, who heads the Corrections Department's Bureau of Offender programs.

"It's a good bill, one that we've been asking for," he said. "It won't work for everyone, but in some cases it can be very effective," he said.

Critics said the drugs are unproven — and that the state should wait before committing to risky treatments that give the Wisconsin public a fall sense of security. It passed by voice vote.

Men convicted of molesting children under age 13 could be injected with a drug that reduces testosterone, the male sex hormone, as a condition of parole or supervised release under the bill.

The treatment could also be used on people who have been found innocent of such sex crimes by reason of mental disease or defect when they are let out on supervised release.

"The status quo is not working when dealing with these sexually deviant criminals," said Rep. Steven Foti, R-Oconomowoc, who supported the bill. "Parents and communities need some assurance their children are safe from these predators."

The program would cost \$374,700 in 1999 to treat about 50 offenders.

Two drugs are among those being considered for the program. The state Department of Corrections estimated it would cost \$10,600 per year to treat an offender with the drug Depo Provera; it estimates it would cost

# How legislators voted

Here are the roll call votes for sentencing legislation and "chemical castration" measure that advanced Thursday in the Legislature.

Here is the 28-4 roll call by which the state Senate passed a "truth in sentencing" proposal that would keep convicts behind bars for three-quarters of their prison sentences. A "yes" vote was a vote for the proposal and a "no" vote was a vote against the proposal. Voting "yes" were 12 Democrats and 16 Republicans. Voting "no" were four Democrats.

**Democrats for:** Breske, Eland; Burke, Milwaukee; Chvala, Madison; Clausung, Menomonie; Decker, Schofield; Grobschmidt, S; Milwaukee; Jauch, Poplar; Moen, Whitehall; Plache, Racine; Potter, Kohler; Shibilski, Amherst; Wirch, Kenosha.

**Democrats against:** George, Milwaukee; Moore, Milwaukee; Risser, Madison; Wineke, Verona.

**Republicans for:** Cowles, Green Bay; Darling, River Hills; Drzewiecki, Pulaske; Ellis, Neenah; Farrow, Elm Grove; Fitzgerald, Juneau; Huelsman, Waukesha; Lasee, De Pere; Panzer, West Bend; Roessler, Oshkosh; Rosenzweig, Wauwatosa; Rude, Coon Valley; Schultz, Richland Center; Weeden, Beloit; Welch, Redgranite; Zien, Eau Claire.

**Republicans against:** None.

Here is the 81-15 roll call by which the Wisconsin Assembly voted to allow chemical castration of paroled sex offenders. A "yes" vote was a vote to pass the bill and a "no" vote was a vote to reject it. Voting "yes" were 31 Democrats and 50 Republicans. Voting "no" were 15 Democrats.

**Democrats for:** Baldwin, Baumgart, Black, Bock, Carpenter, Cullen, Dueholm, Hanson, Hasenohrl, Hebl, Huber, Hubler, Kreuser, Krusick, La Fave, Lehman, J.; Linton, Meyer, Plale, Plouff, Reynolds, Robson, Ryba, Springer, Staskunas, Steinbrink, Travis, Turner, Vander Loop, Wood, Ziegelbauer.

**Democrats against:** Boyle, Coggs, Gronemus, Krug, Kunicki, Morris-Tatum, Murat, Notestein, Potter, Riley, Schneider, Wasserman, Williams, Young, L. Young, R.

**Republicans for:** Ainsworth, Albers, Brandemuehl, Dobyns, Duff, Foti, Freese, Gard, Goetsch, Green, Grothman, Gunderson, Hahn, Handrick, Harsdorf, Hoven, Huebsch, Hutchison, Jensen, Jeskewitz, Johnsrud, Kaufert, Kedzie, Kelso, Klusman, Kreibich, Ladwig, Lasee, Lazich, Lehman, M; , Lorge, Musser, Olsen, Ott, Otte, Ourada, Owens, Porter, Powers, Schafer, Seratti, Skindrud, Spillner, Sykora, Underheim, Urban, Vrakas, Walker, Ward, Wieckert.

**Republicans against:** None.

**Republicans not voting:** Nass, Zukowski.

## Notice of Hearings

### Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 227.17, and 304.06 (1q), Stats., that the department of corrections will hold hearings pursuant to the proposed rule relating to pharmacological intervention with certain serious child sex offenders. These hearings relate to both the proposed permanent rule and the emergency rule now in effect and published on January 1, 1999.

### Hearing Information

March 1, 1999  
Monday  
12:00 p.m. to 2:00 p.m.

GEF III Bldg.  
125 S. Webster St. Rm. 041  
Madison, WI

March 2, 1999  
Tuesday  
10:00 a.m. to 12:00 p.m.

Wood Co. Courthouse - Public Auditorium  
400 Market St.  
Wisconsin Rapids, WI

March 3, 1999  
Wednesday  
10:00 a.m. to 12:00 p.m.

State Office Bldg.  
141 N.W. Barstow St. Rm. 137A  
Waukesha, WI

The public hearing sites are accessible to people with disabilities.

### Analysis Prepared by the Department of Corrections

These rules are pursuant to recently enacted legislation, s. 304.06 (1q), Stats., relating to pharmacological intervention with certain serious child sex offenders. These rules create definitions, establish the authority and purpose for requiring pharmacological treatment of sex offenders, establish criteria for screening, establish the duration of treatment and criteria for termination of treatment, and create a hearing and review process prior to the implementation of pharmacological intervention. These rules provide sanctions if a serious child sex offender refuses to comply with the rules and conditions for pharmacological treatment following a hearing that results in a decision that the department may mandate pharmacological treatment for the offender. These rules allow the department to detain offenders when they fail to cooperate with the implementation process.

The recently enacted legislation, sec 304.06 (1q), Stats., allows the department to require compliance with pharmacological intervention as a condition of probation or parole supervision. Rules of probation/parole supervision must be reasonable. Courts in

Wisconsin have upheld rules of supervision as reasonable when the rule relates either to the need for community safety or the offenders rehabilitation. The enabling legislative enactment carries with it the presumption that pharmacological treatment of certain child sex offenders promotes the twin goals of community protection and offender rehabilitation.

Offenders selected for pharmacological treatment must meet eligibility requirements by satisfying the statutory definition of serious child sex offender. The department screening process allows for exempting those offenders who are not proper medical subjects due to a prevailing medical condition that prevents treatment with an antiandrogen or its chemical equivalent. The offender must also have a diagnosis of pedophilia or any other condition for which an antiandrogen may be prescribed to satisfy eligibility requirements. The hearing process allows the offender an opportunity to overcome the legislative presumption for pharmacological treatment by showing that such treatment is not necessary for public protection and will not further the offender's rehabilitation.

### **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 pharmacological intervention with certain serious child sex offenders as required by s. 304.06 (1q), Stats. The intent of the Department in promulgating these rules is to comply with this recently enacted statute.

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.

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

**SUBJECT:**

Rule promulgation to allow the Department of Corrections to provide pharmacological intervention with serious child sex offenders.

**DESCRIPTION OF POLICY ISSUES:**

**Description of the Objectives of the Rule:**

The objective of the rule is to provide for the public safety and allow treatment of serious child sex offenders by means of pharmacological intervention. This rule implements recently enacted statutory authority for requiring pharmacological treatment as a condition of probation or parole using an antiandrogen, which is a substance that inhibits the biological effects of male hormones, such as testosterone, of persons convicted of child sex offenses where the victim has not yet reached 13 years of age.

The proposed permanent rule establishes policy for the identification and selection of offenders the department may require to undergo pharmacological treatment. Offenders who meet statutory requirements of having been convicted of a crime specified in s. 948.02(1) or (2) or 948.025(1), Stats., against a child who had not attained the age of 13 years will be screened clinically and medically using criteria set forth by this rule. Offenders who are not eliminated after clinical and medical evaluation will be provided notice of the department's intent to order the administration of antiandrogens, or their chemical equivalent.

The proposed permanent rule requires the department to establish rules for each offender required to undergo pharmacological treatment, including advising offenders of the consequences of violating the rules or conditions of probation or parole supervision. Unless waived by the offender a hearing process is provided to allow the offender to present relevant evidence before an impartial hearing examiner before treatment may begin. The offender may appeal adverse decisions of a hearing examiner to the applicable division administrator before complying with pharmacological treatment. The decision of the secretary is final. All offenders who are required to undergo pharmacological treatment will be reviewed every two years. Criteria for limiting or extending the duration of pharmacological treatment is specified.

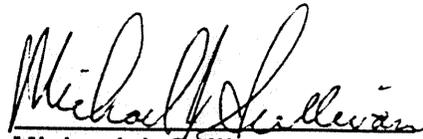
**STATUTORY AUTHORITY FOR THE RULE:**

This chapter interprets s. 304.06(1q), 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 300 hours to develop the rule including drafting, cost estimates, public hearings, and complying with rule making requirements.

Date: December 23rd 1998.

  
Michael J. Sullivan  
Secretary  
Department of Corrections