

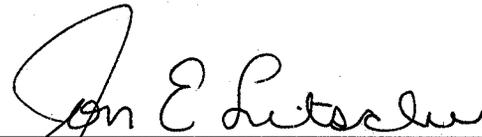
STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

I, Jon E. Litscher, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rules, relating to pharmacological treatment of certain serious child sex offenders was duly approved and adopted by the Department and will be effective August 1, 1999.

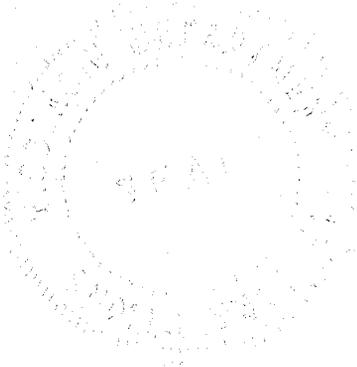
I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections
149 E. Wilson Street in the City of
Madison, this 20th day of May, 1999.

SEAL



Jon E. Litscher
Secretary



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. (3) 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.

(4) 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 330.09 (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 330.09 (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.

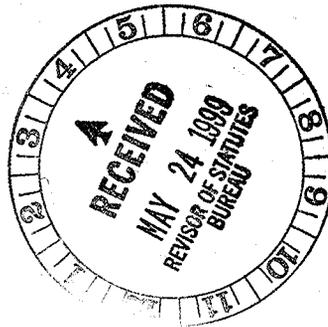
This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

By Jon E. Litscher
Jon E. Litscher, Secretary

Dated: 5/20/99

SEAL:



Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



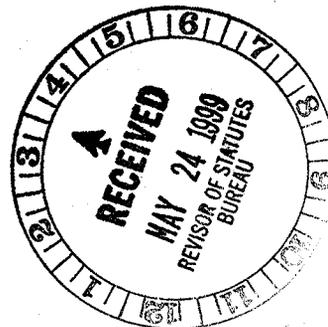
State of Wisconsin
Department of Corrections

Mailing Address

149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471
Fax (608) 267-3661

May 21, 1999

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



Dear Mr. Munson:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified and uncertified copy of DOC 330, relating to the pharmacological treatment of certain serious child sex offenders. The Department needs this rule to be effective by August 1, 1999, so that there will not be a gap between the emergency rule and the permanent rule.

If you have any questions, please contact Robert G. Pultz, Office of Legal Counsel, at (608) 267-0922.

Sincerely,

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

Jon E. Litscher
Secretary

Attachment