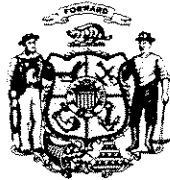


498-002 CORR 3284332 TESTING -SEX  
OFFENDERS



**Tommy G. Thompson**  
Governor



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

**Michael J. Sullivan**  
Secretary

**State of Wisconsin**  
**Department of Corrections**

April 9, 1998

Senator Richard Grobschmidt  
Joint Committee for Review of Administrative Rules  
Room 404, 100 N. Hamilton Street  
Madison, Wisconsin 53707

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

4 7 13 1998

Re: Clearinghouse Rule 98-0002, relating to lie detector testing of probationers and parolees who are sex offenders

Dear Senator Grobschmidt and Representative Grothman:

The Department of Corrections has an emergency rule which will expire on May 14, 1998, before it can be replaced by a permanent rule. Under s. 227.24 (2), Stats., I ask the Joint Committee to extend by 60 days the above captioned emergency rule which creates ss. DOC 328.04(3)(o) and (p), 332.015, 332.02(6) to (11), and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders.

This emergency rule is required to establish a program for lie detector testing of probationers and parolees. The Department of Corrections has proposed a permanent rule to establish the lie detector program. The Department submitted the proposed permanent rule to the Administrative Rules Clearinghouse and the Revisor of Statutes on January 5, 1998, a copy of which is enclosed. The Department received the report from the Administrative Rules Clearinghouse on February 2, 1998. On March 1, 1998, the Department scheduled this rule for two public hearings on March 16, 1998, a copy of the notice of hearing is enclosed. Both hearings were held. The open comment period for written comments extended to March 23, 1998. The Department submitted the proposed administrative rule to the legislature on March 24, 1998, a copy of the submittal is enclosed. The Department will not be able to promulgate the permanent rule before the emergency rule expires on May 14, 1998.

Copies of the order creating the emergency rule and the proposed order creating a permanent rule are enclosed. If you have any questions about our request to extend the effective period of the emergency rule, please contact Kathryn R. Anderson of the Department's Office of Legal Counsel at 266-9281.

Sincerely,

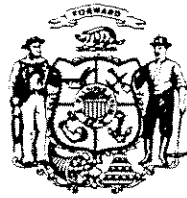
  
Michael J. Sullivan  
Secretary

Enclosures

cc: JCRAR Members

Tommy G. Thompson  
Governor

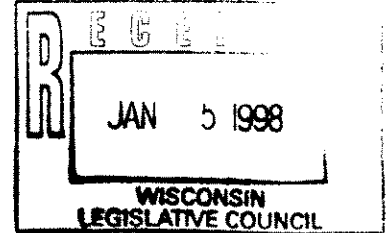
Michael J. Sullivan  
Secretary



Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
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State of Wisconsin  
Department of Corrections

January 5, 1998



Ronald Sklansky, Director  
Administrative Rules Clearinghouse  
One East Main Street, Suite 401  
P.O. Box 2536  
Madison, WI 53701-2536

Dear Mr. Sklansky:

Pursuant to s. 227.15 (1), Stats., the Department of Corrections submits proposed amendments to administrative rules DOC 328 and 332, relating to polygraph testing for sex offenders, for your review.

If you have any questions regarding these proposed amendments to DOC 328 and 332, please contact Kathryn Anderson at 266-9281.

Sincerely,

A handwritten signature in cursive script that reads 'Michael J. Sullivan'.

Michael J. Sullivan,  
Secretary

Enclosure

PROPOSED RULES OF THE  
DEPARTMENT OF CORRECTIONS

DOC 328 and 332 Wis. Adm. Code

Subject:

LIE DETECTOR TESTING FOR SEX OFFENDERS WHO ARE ON PROBATION OR PAROLE

Statutory Authority:

Sections 301.132 and 227.11 (2) (a), Stats.

Analysis Prepared by the Department of Corrections

The Department of Corrections promulgated an emergency rule which is identical to the proposed permanent rule. The emergency rule is effective December 15, 1997. A recent session law, 1995 Wis. Act 440, created s. 301.132, Stats., which directs the department to establish a sex offender honesty testing program. Section 301.132, Stats., became effective June 1, 1997. Lie detector testing of probationers and parolees is recognized as an effective supervision tool for determining the nature and extent of deviant sexual behavior and developing appropriate intervention strategies. In addition, it is anticipated that testing will improve treatment outcomes by overcoming offender denial and by detecting behaviors that lead to re-offending.

This proposed order:

1. Creates definitions for offender, probation and parole agent, and lie detector examination process.
2. Adopts the statutory definitions of lie detector, polygraph, and sex offender.
3. Establishes the authority, purpose and applicability of the lie detector examination process.
4. Requires an offender who is a sex offender to submit to a lie detector test if required by the department.
5. Establishes criteria for the selection of offenders who are required to participate in the lie detector examination process.
6. Requires that the department provide notice to the offender who is required to participate in the lie detector examination process of the lie detector program requirements, instructions to complete any necessary questionnaires and of the date, time and location of the scheduled test.

7. Provides that an agent and an examiner shall determine the questions the offender may be asked during the lie detector examination process.
8. Allows an agent to consult with a treatment provider regarding the questions the offender may be asked during the lie detector examination process.
9. Provides that the department may administer the lie detector tests or contract with an outside vendor to administer the tests.
10. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.
11. Provides that an offender's probation or parole may not be revoked based solely on a finding of deception as disclosed by a lie detector test.
12. Identifies the circumstances under which the department may disclose information regarding the lie detector tests or the information derived from the lie detector examination process.
13. Provides that the department may not use the lie detector examination process as a method of punishment or sanction.
14. Provides that an offender shall pay the costs of the lie detector test and a \$5.00 administrative fee with each payment. The cost of the lie detector test may vary depending on the type of test used.
15. Establishes procedures for the collection of lie detector fees.
16. Provides for sanctions for an offender's failure to pay the lie detector fees.
17. Provides the criteria for lie detector fee deferrals.
18. Provides for the reporting and notice to the offender when payment of lie detector fees is not received.

#### Forms

This proposed permanent rule is the same as an emergency rule which was effective December 15, 1997. Copies of the forms for the emergency rule are attached. The forms are:

1. Notice of Lie Detector Program Requirements
2. Lie Detector Fee Schedule/ Payment Deferral
3. Offender Notification of Required Lie Detector Test

#### Agency Procedure for Promulgation

Approval of notice of submittal to joint legislative council by secretary of department of corrections, submittal of rule to JLCS, notice of submittal to revisor and notice to secretary of administration under s. 227.14 (4m); approval of notice of hearing by secretary under 227.17 (2m), Stats.; public hearing under ss.

227.17 and 227.18, Stats; notice of hearing to revisor of statutes and secretary of administration under s. 227.17 (1) (bm); approval of rules in final draft form by secretary; legislative standing committee review under 227.19; Stats.; and filing of rules under s. 227.20, Stats.

Name and Phone Number of Agency Contact

Kathryn Anderson, Office of Legal Counsel, 266-9281.

Date Sent to Legislative Council Administrative Rules Clearinghouse

January 5, 1998.

ORDER OF THE  
DEPARTMENT OF CORRECTIONS  
CREATING RULES

The Department of Corrections proposes this permanent rule which is identical to an emergency rule which was effective December 15, 1997. A recent session law, 1995 Wis. Act 440, created s. 301.132, Stats., which directs the department to establish a sex offender honesty testing program. Section 301.132, Stats., became effective June 1, 1997. Lie detector testing of probationers and parolees is recognized as an effective supervision tool for determining the nature and extent of deviant sexual behavior and developing appropriate intervention strategies. In addition, it is anticipated that testing will improve treatment outcomes by overcoming offender denial and by detecting behaviors that lead to re-offending.

Statutory Authority: Sec. 301.132 and Sec. 227.11 (2) (a), Wis. Stats.

Statutes Interpreted: Sec. 301.132, Wis. Stats

This order:

1. Creates definitions for offender, probation and parole agent, and lie detector examination process.
2. Adopts the statutory definitions of lie detector, polygraph, and sex offender.
3. Establishes the authority, purpose and applicability of the lie detector examination process.
4. Requires an offender who is a sex offender to submit to a lie detector test if required by the department.
5. Establishes criteria for the selection of offenders who are required to participate in the lie detector examination process.
6. Requires that the department provide notice to the offender who is required to participate in the lie detector examination process of the lie detector program requirements, instructions to complete any necessary questionnaires and of the date, time and location of the scheduled test.
7. Provides that an agent and an examiner shall determine the questions the offender may be asked during the lie detector examination process.
8. Allows an agent to consult with a treatment provider regarding the questions the offender may be asked during the lie detector examination process.
9. Provides that the department may administer the lie detector tests or contract with an outside vendor to administer the tests.
10. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.
11. Provides that an offender's probation or parole may not be revoked based solely on a finding of deception as disclosed by a lie detector test.
12. Identifies the circumstances under which the department may disclose information regarding the lie detector tests or the information derived from the lie detector examination process.
13. Provides that the department may not use the lie detector examination process as a method of punishment or sanction.
14. Provides that an offender shall pay the costs of the lie detector test and a \$5.00 administrative fee with each payment. The cost of the lie detector test may vary depending on the type of test used.
15. Establishes procedures for the collection of lie detector fees.
16. Provides for sanctions for an offender's failure to pay the lie detector fees.
17. Provides the criteria for lie detector fee deferrals.

18. Provides for the reporting and notice to the offender when payment of lie detector fees is not received.

The order provides for including the rules for the lie detector program in the same chapter of the Wisconsin Administrative Code, ch. DOC 332, as the rules for registration and community notification of sex offenders, which were published as emergency rules on June 1, 1997.

### ORDER

Under the authority vested in the Department of Corrections by s. 301.132 (3), Stats., the Department of Corrections hereby creates rules interpreting s. 301.132, Stats, as follows:

SECTION 1. DOC 328.04 (3) (o) and (p) are created to read:

DOC 328.04 (3) (o) Submit to the lie detector examination process under s. DOC 332.14 as directed by the department.

(p) Pay fees for the lie detector examination process under ss. DOC 332.15 (3) and 332.18 and comply with any required department procedures regarding payment of fees.

SECTION 2. DOC 332.015 is created to read:

DOC 332.015 AUTHORITY AND APPLICABILITY OF LIE DETECTOR TESTING. These rules are promulgated under the authority of s. 301.13 (3), Stats., to establish a lie detector program for probationers and parolees who are sex offenders. The rules apply to the department and to probationers and parolees who are sex offenders.

SECTION 3. DOC 332.02 (6) to (11) are created to read:

DOC 332.02 (6) "Lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or other similar device, whether mechanical or electrical, that is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(7) "Lie detector examination process" means the entire process of lie detector testing, including completion of any preliminary questionnaires, pretest questions, baseline questions and the actual lie detector testing, and post-testing interrogation.

(8) "Offender" means a probationer or parolee.

(9) "Polygraph" means an instrument that fulfills all of the following requirements:

(a) Records continuously, visually, permanently and simultaneously any changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(b) Is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(10) "Probation and parole agent" or "agent" means an employe of the department who is assigned the duties and responsibilities of an agent under chs. DOC 328, DOC 331 and DOC 333.

(11) "Sex offender" means a person in the custody of the department who meets any of the criteria specified in s. 301.45 (1), Stats.



SECTION 4. . . . DOC 332.15 to 332.18 are created to read:

DOC 332.15 LIE DETECTOR REQUIREMENT. The department may require an offender who is a sex offender to submit to the lie detector examination process in accordance with s. DOC 332.17 as a condition of supervision.

DOC 332.16 PURPOSE OF LIE DETECTOR PROGRAM. (1) The department may use the lie detector examination process as a supervision tool for offenders who are sex offenders. Testing may achieve the following in supervising an offender who is a sex offender:

- (a) Disclose offense pattern information for treatment purposes.
- (b) Hold the offender accountable for behaviors which occur while on supervision.
- (c) Verify the accuracy of self-reporting.
- (d) Assist in the monitoring and early identification of rule violations and other criminal behavior.
- (e) Provide a deterrent to re-offending.
- (f) Identify the offenders who need more intensive supervision or treatment.
- (g) Provide more information for purposes of assessment, treatment and monitoring.

(2) The department shall not use the lie detector examination process as a punishment or sanction.

DOC 332.17 OPERATION OF LIE DETECTOR PROGRAM. (1) SELECTION OF PARTICIPANTS. Upon the approval of an agent's supervisor, an agent may require an offender who is a sex offender to participate in the lie detector program. The agent may require an offender who is a sex offender to submit to the lie detector examination process based on the following:

- (a) For an offender who is a sex offender and who is approaching release from confinement:
  1. The offender's criminal record of sexual offenses.
  2. The offender's adjustment under previous supervision.
  3. The offender's participation in offense-related programming while incarcerated or institutionalized.
  4. The offender's motivation or refusal to participate in continued programming in the community.
  5. The assessed risk the offender poses to the public.
- (b) For an offender who is a sex offender and who is currently on probation or parole:
  1. The offender's criminal record of sexual offenses.
  2. The offender's adjustment under supervision, including recent rules violations or consideration for alternatives to revocation.
  3. The offender's compliance with current programming involvement.
  4. The assessed risk the offender poses to the public.

(2) NOTICE. (a) An agent shall provide an offender who is a sex offender and who is selected to participate in the lie detector examination process written notice of the lie detector program requirements. The department may require an offender who is a sex offender to participate in the lie detector examination process without the offender's informed consent.

(b) An agent shall provide written notice to an offender who is a sex offender and who is required to take a lie detector test which shall include the following:

1. Date, time, and location of the scheduled test.
2. Instructions to complete any preliminary questionnaires.

(3) LIE DETECTOR TEST QUESTIONS. (a) The lie detector examiner shall determine the questions to be asked during the lie detector examination process and shall consult with the agent in determining the questions to be asked. If the offender who is a sex offender is receiving treatment, the examiner or agent may consult with the treatment provider regarding development of questions to be asked during the lie detector examination process.

(b) The agent or examiner may consider any of the following in determining the questions to be asked during the lie detector examination process:

1. The offender's involvement in current offense-related programming.
2. The offender's level of denial.
3. The offender's recent pattern of rules violations.
4. The offender's noncompliance with treatment.
5. The agent's need to verify the offender's compliance with supervision, treatment or self-reporting.
6. The agent's need to document and verify the extent of the offender's sexual history.

(4) TEST ADMINISTRATION. The department may administer lie detector tests or contract with an outside vendor to administer the tests.

(5) ASSESSMENT OF FEES. The department shall establish a schedule of fees to partially offset the costs of the program for offenders who are sex offenders and who are required to take a lie detector test.

(a) An offender shall pay for the costs of the test in accordance with a schedule of fees developed by the department. The costs of the tests may vary depending on the type of test used.

(b) An offender shall also pay a \$5 administrative fee with each payment.

(6) SANCTIONS. (a) If an offender who is a sex offender refuses to participate in any portion of the lie detector examination process or to pay a lie detector fee, the agent shall investigate the refusal as a violation of a rule or condition of supervision in accordance with ch. DOC 331.

(b) If an offender who is a sex offender discloses a violation of a rule or condition of supervision during the lie detector examination process, the agent shall investigate the disclosure as a violation of a rule or condition of supervision, in accordance with ch. DOC 331.

(c) If an offender who is a sex offender discloses criminal conduct during the lie detector examination process, the agent, with the approval of the agent's supervisor, shall refer the disclosure to law enforcement authorities.

(d) Revocation of probation or parole of an offender who is a sex offender may not be based solely on a finding of deception as disclosed by a lie detector test.

(7) DISCLOSURE OF TEST INFORMATION. The department may disclose information regarding a lie detector test or information disclosed during the lie detector test examination process of an offender who is a sex offender only to the following and only for purposes relating to correctional programming, care and treatment of the offender:

- (a) Department employees.
- (b) Department vendors.
- (c) Another agency or person.
- (d) Law enforcement agencies.

DOC 332.18 LIE DETECTOR FEE. The department shall do all of the following in establishing a fee schedule for lie detector testing and in collecting lie detector fees:

(1) BASIS OF FEE. Base the lie detector fee payment schedule upon the offender's ability to pay with the goal of receiving payment for the costs of administering the test and a \$5 administrative fee with each payment.

(2) TIMING OF PAYMENTS. Permit payment of the fee to be paid in any of the following ways:

(a) Full payment of the fee within 30 days of the date the offender takes the lie detector test.

(b) Quarterly payment of the fee to be paid in full within one year of the date the offender takes the lie detector test.

(c) Monthly installment payments of the fee to continue until the fee is paid in full.

(3) DEFERRAL OF PAYMENTS. (a) Except if the offender has the present ability to pay the fee, permit deferral of payment if the offender meets one or more of the following conditions, until a time when the conditions no longer exist:

1. Has used all reasonable and appropriate means to obtain employment as determined by the offender's probation and parole agent, but has been unable to obtain employment which provides the offender sufficient income to pay the lie detector fee.

2. Is a student enrolled in a full-time course of instruction. In this subdivision, "full-time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full-time high school or full-time junior high school, and "school" means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no deferral may be given. The educational institution shall certify to the department that the offender is enrolled and attending a full-time course work at the educational institution.

3. Is undergoing psychological, chemical or medical treatment consistent with the supervision plan approved by the department and is unable to be employed. The treatment provider shall certify the status to the department.

4. Has a statement from a licensed physician excusing the offender from work for medical reasons and is unable to be employed because of the medical reasons.

(b) The agent shall make a determination concerning an offender's deferral of payment of the lie detector fee within 10 working days of determining that an offender is required to participate in the lie detector examination process or within 10 working days of a reported change in the offender's financial or employment status.

(c) The agent's supervisor shall review all decisions made by the offender's probation and parole agent to defer payment of the lie detector fee.

(4) COLLECTION. Develop procedures for the collection of lie detector fees. The offender who is a sex offender shall pay the lie detector fees to the department according to the procedures established by the department.

(5) COPIES OF FEE SCHEDULE AND PAYMENT PROCEDURES. Provide the offender who is a sex offender with copies of the lie detector fee schedule, administrative fee requirement, and lie detector fee payment procedures.

(6) RECORD OF PAYMENTS. Record all lie detector fees paid by the offender, and on request of the offender, provide the offender with a copy of the record of payments to verify receipt of the payments.

(7) NOTICE TO OFFENDER WHEN PAYMENT IS NOT RECEIVED. Advise the offender in writing if payment of the lie detector fee has not been made in accordance with the payment schedule.

(8) POSSIBLE ACTIONS IF FEE IS NOT PAID. Take action under s. DOC 332.17(6) (a), if an offender who is a sex offender fails to pay a lie detector fee. The department may use any of the following actions in any order when an offender who is a sex offender fails to pay the lie detector fee:

(a) Counseling.

(b) Wage assignment.

(c) Review of supervision level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, electronic monitoring or detention in a jail, correctional facility or house of correction.

(d) Issue a recommendation for revocation of parole or probation under the provisions of ch. DOC 331 for the offender's willful failure to pay the lie detector fee after the agent has taken action under sub. (1) and has determined that the offender has the ability to pay the lie detector fee.

(e) Any other appropriate means of obtaining the lie detector fee.

The rules contained in this order shall take effect the first of the month following publication in the Wisconsin Administrative Register.

Wisconsin Department of Corrections

Dated: \_\_\_\_\_

By: \_\_\_\_\_

MICHAEL J. SULLIVAN  
Secretary

SEAL:

## NOTICE OF LIE DETECTOR PROGRAM REQUIREMENTS

The following are in addition to any previous supervision rules or court ordered conditions. Failure to comply with the lie detector program requirements may be cause for increased supervision, sanctions and/or revocation.

OFFENDER NAME

DCC NUMBER

I have been advised of the following:

1. Pursuant to 1995 Wisconsin Statute 301.132, the Departments of Corrections or Health and Family Services has the authority to require me, as a condition of my probation or parole supervision to submit to a lie detector examination.
2. I will be required to fully comply with all procedures involved in the lie detector examination process, including but not limited to: fully and truthfully completing all required written reports or questionnaires, keeping all scheduled interview/testing appointments on time, responding truthfully to all questions directed to me, and cooperating fully with the examiner and use of lie detector equipment.
3. I understand that providing false or deceptive information during a lie detector examination process may result in a probation/parole violation investigation. Violations of supervision verified as a result of such investigation may result in restrictive sanctions which may include revocation of probation/parole.
4. I understand that I am required to pay all monetary costs of the lie detector testing and any other administrative fees as determined by the department. A payment plan will be established based upon ability to pay. Payment is always required and the Department of Corrections may use collection methods to collect payments. Refusal to pay will not excuse me from any required testing and may subject me to sanctions.
5. Pursuant to Wisconsin Statute 48.981, I understand that, if during any part of the lie detector examination process, I reveal having sexual contact with, neglecting, or physically abusing a person under the age of 18 years before my present court conviction, in such a way that the individual can be identified, my agent must report that information to appropriate authorities.
6. I understand that if during any part of the lie detector examination process I reveal that I have committed criminal behavior since my court conviction that can be verified, the behavior will be reported to appropriate authorities and will be regarded as a violation of probation/parole supervision.
7. I understand that if during any part of the lie detector examination process I disclose that I have violated the conditions of probation/parole since my present court conviction, the violation may result in restrictive sanctions including revocation of probation/parole.
8. I understand that the results of the lie detector examination process will be communicated to the Department of Corrections, other agencies, and contract providers, that provide offender care and treatment.
9. I understand that the results of the lie detector examination process will be used to evaluate and further develop a probation/parole supervision plan for me.

I have reviewed and explained these requirements to the offender.

AGENT SIGNATURE

AGENT# / LOCATION

PHONE NUMBER

DATE SIGNED

I have received a copy of these requirements. I, \_\_\_\_\_, on this date of \_\_\_\_\_

OFFENDER NAME

MONTH/DAY/YEAR

attest by my signature that I will enter into, fully cooperate with and successfully complete all lie detector program requirements as required by my agent and the Department of Corrections.

OFFENDER SIGNATURE

DATE SIGNED

By my signature I attest that the above named offender was given a copy of these requirements and refused to sign this form.

WITNESS SIGNATURE

DATE SIGNED

# LIE DETECTOR FEE SCHEDULE / PAYMENT DEFERRAL

Original Agreement       Amended Agreement       Payment Deferral

OFFENDER NAME (As it appears on Court Order)		DOC NUMBER	DATE OF BIRTH
AGREEMENT DATE	DEFERRAL REQUEST DATE	AGENT NAME	AGENT NUMBER

## TEST FEE SCHEDULE

You will be required to pay the full cost of the lie detector tests and any administrative fee payments. Your payment plan will be based upon your ability to pay, to be determined by the income information that is submitted on the Offender Report Form (DOC-8). You will be informed of the approximate cost of each exam when it is scheduled. The cost of each test will be added to the amount you owe. There will be a \$5.00 administrative fee for each payment.

Currently the following tests are being given and the approximate prices are noted.

Disclosure / Sexual History - \$450.00	Instant Offense - \$375.00	Maintenance / Monitoring - \$300.00
Specific Issue - \$300.00	Re-test - \$150.00	Other _____ - \$ _____

## OFFENDER PAYMENT PLAN

Indicated below is the approved payment plan for any costs of lie detector tests that I may be required to take during supervision. It is understood that this plan may be changed with the approval of the assigned agent and by completing and signing an additional copy of this form.

- Full payment within thirty (30) days of taking the lie detector test plus a one time \$5.00 administrative fee.
- Quarterly payment of the lie detector fee plus a \$5.00 per payment administrative fee, total to be paid within one year of taking the lie detector test.
- Monthly installment payments of \$ \_\_\_\_\_ / month to continue until paid in full plus a \$5.00 per payment administrative fee.

OFFENDER SIGNATURE	DATE SIGNED	AGENT SIGNATURE	DATE SIGNED
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## OFFENDER PAYMENT DEFERRAL

DEFERRAL BEGIN DATE	ANTICIPATED DEFERRAL END DATE
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- UNEMPLOYMENT DEFERRAL**  
OFFENDER is required to provide a list to his/her agent with the following information:
  - 1) Name(s) of business(es) and date(s) where offender had a job interview
  - 2) Name(s) of business(es) and date(s) where offender completed an application for a job.
- FULL TIME STUDENT DEFERRAL**  
OFFENDER is required to provide verification by:
  - 1) Completing a Confidential Information Release Authorization (DOC-1163)
  - 2) Submitting this release to their educational institution to release verification of their enrollment and attendance in a full time course of instruction to the offender's agent.
- PSYCHOLOGICAL, CHEMICAL OR MEDICAL TREATMENT DEFERRAL**  
OFFENDER is required to provide verification by:
  - 1) Completing a Confidential Information Release Authorization (DOC-1163) for psychological, chemical or
  - 2) The information must be provided by the treatment agency to the offender's agent.
  - 3) The information from the treatment provider must also verify that the offender is unable to be employed as a result of participating in the treatment.
- MEDICAL REASONS DEFERRAL**  
OFFENDER is required to provide verification by:
  - 1) Completing a Confidential Information Release Authorization (DOC-1163)
  - 2) Submitting this release to a licensed physician.
  - 3) The information from the physician must verify the medical reason that makes the offender unable to be employed.

AGENT SIGNATURE	DATE APPROVED	DECISION <input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVE	SUPERVISOR SIGNATURE	DATE SIGNED
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LRB or Bill No./Adm. Rule No.  
Adm. Rule #328 & #332  
Amendment No. if Applicable

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

Subject  
Relating to Honesty Testing of 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

This administrative rule amends DOC 328 and DOC 332 relating to honesty testing of certain sex offenders.

The Legislature directed the Department of Corrections to establish a program for lie detector testing for probationers and parolees who are sex offenders and to implement the program by June 1, 1997.

This rule requires most sex offender probationers and parolees to repay the Department for the cost of the polygraph and an administrative fee. Department staff will spend approximately 40 hours creating an account balance screen in the mainframe database to provide account balances to the offenders.

The Department estimates approximately 90 offenders will be tested per year. If it is assumed that all 90 offenders pay for the costs on a monthly basis, the Department could record and process an additional 1,100 deposits per year. Although this will increase the Department's workload, the Department will be able to absorb the duties.

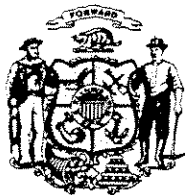
In summary, the Department will slightly increase its workload and incur approximately \$2,200 in one-time computer development costs. The Department is able to absorb these costs.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.) Department of Corrections C. Halpin 267-0934	Authorized Signature/Telephone No. <i>Robert Margolis</i> Robert Margolis 266-2931	Date December 2, 1997
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Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



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

## State of Wisconsin Department of Corrections

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January 5, 1998

Ronald Sklansky, Director  
Administrative Rules Clearinghouse  
One East Main Street, suite 401  
Madison, WI 53701-2536

Re: Proposed Amendments to Ch. DOC 328 and 332, Wis. Adm. Code,  
relating to lie detector testing of probationers and parolees who are sex  
offenders

Dear Mr. Sklansky:

The enclosed form (Offender Notification of Required Lie Detector Test) was  
inadvertently omitted from the proposed rule which was submitted earlier today  
for review by Legislative Council.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathryn R. Anderson".

Kathryn R. Anderson  
Assistant Legal Council

Enclosure

Cc Michael J. Sullivan, Secretary



## OFFENDER NOTIFICATION OF REQUIRED LIE DETECTOR TEST

OFFENDER NAME		DOC NUMBER	DATE NOTIFICATION GIVEN OR MAILED TO THE OFFENDER
AGENT NAME		AGENT #	TELEPHONE NUMBER
TEST DATE	TIME	APPROXIMATE COST FOR THIS TEST WILL BE	
TYPE OF TEST			
<input type="checkbox"/> Disclosure / Sexual History - \$450.00	<input type="checkbox"/> Instant Offense - \$375.00	<input type="checkbox"/> Maintenance / Monitoring - \$300.00	
<input type="checkbox"/> Specific Issue - \$300.00	<input type="checkbox"/> Re-test - \$150.00	<input type="checkbox"/> Other _____ - \$ _____	
TEST LOCATION			

INSTRUCTIONS TO COMPLETE ANY PRELIMINARY QUESTIONNAIRES

The cost of the above scheduled lie detector test will be entered as an amount owed on your Lie Detector Fee account. Payment is required in accordance with the lie detector fee schedule and payment plan. You must have this form signed by the examiner and returned to your agent as soon as possible, but no later than five working days of taking the test.

**Note to Examiner:** Please sign this form verifying that the above offender appeared in person on this date and participated in the testing process.

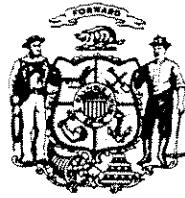
SIGNATURE OF EXAMINER

DATE SIGNED

F

Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



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

State of Wisconsin  
Department of Corrections

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January 5, 1998

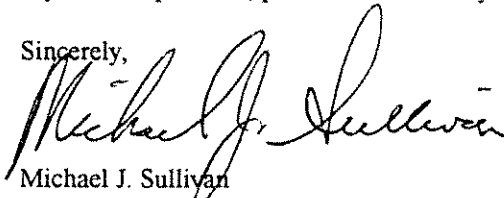
Bruce Munson, Revisor  
Revisor of Statutes Bureau  
131 West Wilson Street, Room 800  
Madison, Wisconsin 53703-3222

Dear Mr. Munson:

Pursuant to s. 227.14 (4m), Stats., please find attached the Notice of Submission of Administrative Rule, DOC 328 and 332 to the Wisconsin Legislative Council Staff. This rule relates to polygraph testing for sex offenders who are on probation or parole.

If you have questions, please contact Kathryn Anderson at 266-9281.

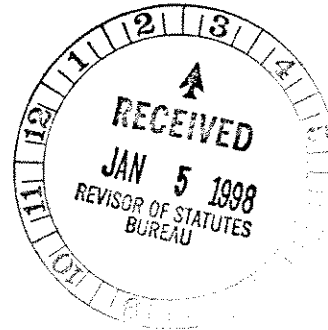
Sincerely,



Michael J. Sullivan  
Secretary

Attachment

cc: Richard G. Chandler  
State Budget Director  
DOA



NOTICE OF SUBMITTAL OF PROPOSED RULE OF THE  
DEPARTMENT OF CORRECTIONS  
DOC 328 and 332  
TO WISCONSIN LEGISLATIVE COUNCIL STAFF

NOTICE IS HEREBY GIVEN That pursuant to s. 227.14 (4m), Stats., the Department of Corrections submits proposed amendments to DOC 328 and 332 to the Wisconsin Legislative Council Staff.

SUBJECT MATTER OF THE PROPOSED RULE

Polygraph testing for sex offenders who are on probation or parole.

WHETHER PUBLIC HEARING THE PROPOSED RULE IS REQUIRED

Public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date.

ORGANIZATION UNIT THAT IS PRIMARILY RESPONSIBLE FOR PROMULGATION OF THE RULE

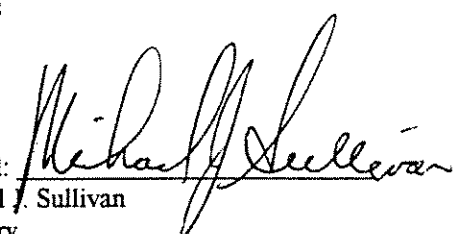
Division of Program Planning and Movement.

DATE SUBMITTED TO WISCONSIN LEGISLATIVE COUNCIL STAFF:

January 5, 1998.

APPROVAL BY SECRETARY OF THE DEPARTMENT OF CORRECTIONS

Date: January 5, 1998

Approved:   
Michael J. Sullivan  
Secretary

WISCONSIN LEGISLATIVE COUNCIL STAFF



***RULES CLEARINGHOUSE***

Ronald Sklansky  
Director  
(608) 266-1946



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

Richard Sweet  
Assistant Director  
(608) 266-2982

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

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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 98-002**

AN ORDER to create DOC 328.04 (3) (o) and (p), 332.015, 332.02 (6) to (11) and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders.

Submitted by **DEPARTMENT OF CORRECTIONS**

01-05-98 RECEIVED BY LEGISLATIVE COUNCIL.

02-02-98 REPORT SENT TO AGENCY.

RNS:DLS:jt;lah

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

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

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## 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  
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Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 98-002

### 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 October 1994.]**

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

Section DOC 332.17 (5), relating to assessment of fees, should just be a cross-reference to s. DOC 332.18, relating to the lie detector fee, and the substance of sub. (5) should be incorporated into s. DOC 332.18. If sub. (5) is kept, in par. (b), "under par. (a)" should be inserted after "payments."

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

In s. DOC 332.015, "These rules" should be "Sections DOC \_\_\_ to \_\_\_" or "This chapter" (i.e., reference should be made to the specific provisions that are being promulgated pursuant to s. 301.132 (3), Stats.) Also, in the first sentence, the authority provision is mistakenly listed as s. 301.13 (3), Stats., instead of s. 301.132 (3), Stats.

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

- a. In s. DOC 332.02 (7), "baseline questions and" should be "baseline questions,".
- b. In s. DOC 332.16 (1) (intro.), the second sentence would be clearer if it read:

Testing may be used to achieve any of the following goals in supervising an offender who is a sex offender:

(a) Disclosing . . . ."

In sub. (2), "shall not" should be "may not."

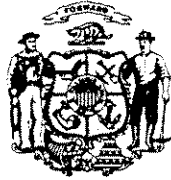
c. In s. DOC 332.17 (1) (a) (intro.), what does it mean to be "approaching release from confinement"? Can this be made more specific? In subd. 5. and par. (b) 4., "assessed" by whom and using what mechanism? Should this be specified? In par. (b) 2., does the term "recent" also modify "or consideration for alternatives to revocation"? If so, for clarity, "recent" should be inserted before "consideration." If not, what does that last phrase refer to? In par. (b) 3., "involvement" appears to be unnecessary. In sub. (2) (b) (intro.), for clarity, the clause could be divided into two sentences by substituting "test. The notice" for "test which".

d. In s. DOC 332.18 (3) (a) 4., "the offender" should be inserted before "is unable." Paragraph (b) refers to "within 10 working days of a reported change in the offender's financial or employment status." Is there a requirement somewhere that the offender report such a change within a certain time period? If so, could it be cross-referenced? If not, perhaps such a provision should be included in the rule.



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

February 13, 1998

Bruce Munson  
Revisor of Statutes  
Suite 800  
131 West Wilson Street  
Madison, Wisconsin 53703-3233

Re: Clearinghouse Rule 98-002, relating to the use of a lie detector test program in the supervision of probationers and parolees who are sex offenders

Dear Mr. Munson:

Enclosed for filing and publication in the Wisconsin Administrative Register is the Notice of Public Hearing in the emergency rule and the proposed permanent rule relating to the use of a lie detector test program in the supervision of probationers and parolees who are sex offenders. Also enclosed is a computer disk which contains the hearing notice.

If you have any questions, please call me at 266-9281.

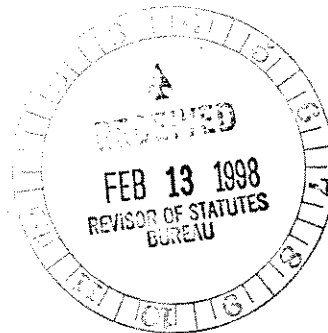
Sincerely,

*Kathryn R. Anderson*  
TAR

Kathryn R. Anderson  
Assistant Legal Counsel

Enclosures

Cc Anthony Streveler





NOTICE OF HEARING

DEPARTMENT OF CORRECTIONS

(Emergency rule and proposed permanent rule relating to the use of a lie detector test program in the supervision of probationers and parolees who are sex offenders)

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.11 (2) (a), 227.24 (4), and 301.132(3), Stats., the department of corrections will hold public hearings on the emergency rule and proposed permanent rule relating to establishing a lie detector test program for probationers and parolees who are sex offenders.

Hearing Information

<u>Date &amp; Time</u>	<u>Location</u>
March 16, 1998 Monday 10:00 A.M.	State Office Building Room 45 819 North 6 <sup>th</sup> Street Milwaukee, Wisconsin
March 16, 1998 Monday 3:00 P.M.	State Office Building - GEF III Room 585 125 South Webster Street Madison, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

EMERGENCY RULE

The following is the emergency rule adopted by the Department of Corrections, effective December 15, 1997.

ORDER OF THE  
DEPARTMENT OF CORRECTIONS  
CREATING RULES

FINDING OF EMERGENCY

The Department of Corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1995 Wis. Act 440, created s. 301.132, Stats., which directs the department to establish a sex offender honesty testing program. Section 301.132, Stats., became effective June 1, 1997. Lie detector testing of probationers and parolees is recognized as an effective supervision tool for determining the nature and extent of deviant sexual behavior and developing appropriate intervention strategies. In addition, it is anticipated that testing will improve treatment outcomes by overcoming offender denial and by detecting behaviors that lead to re-offending.

The testing program cannot be implemented without rules. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

This order:

1. Creates definitions for offender, probation and parole agent, and lie detector examination process.
2. Adopts the statutory definitions of lie detector, polygraph, and sex offender.
3. Establishes the authority, purpose and applicability of the lie detector examination process.
4. Requires an offender who is a sex offender to submit to a lie detector test if required by the department.
5. Establishes criteria for the selection of offenders who are required to participate in the lie detector examination process.
6. Requires that the department provide notice to the offender who is required to participate in the lie detector examination process of the lie detector program requirements, instructions to complete any necessary questionnaires and of the date, time and location of the scheduled test.
7. Provides that an agent and an examiner shall determine the questions the offender may be asked during the lie detector examination process.
8. Allows an agent to consult with a treatment provider regarding the questions the offender may be asked during the lie detector examination process.
9. Provides that the department may administer the lie detector tests or contract with an outside vendor to administer the tests.
10. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.
11. Provides that an offender's probation or parole may not be revoked based solely on a finding of deception as disclosed by a lie detector test.
12. Identifies the circumstances under which the department may disclose information regarding the lie detector tests or the information derived from the lie detector examination process.
13. Provides that the department may not use the lie detector examination process as a method of punishment or sanction.
14. Provides that an offender shall pay the costs of the lie detector test and a \$5.00 administrative fee with each payment. The cost of the lie detector test may vary depending on the type of test used.
15. Establishes procedures for the collection of lie detector fees.
16. Provides for sanctions for an offender's failure to pay the lie detector fees.
17. Provides the criteria for lie detector fee deferrals.
18. Provides for the reporting and notice to the offender when payment of lie detector fees is not received.

The order provides for including the rules for the lie detector program in the same chapter of the Wisconsin Administrative Code, ch.

DOC 332, as the rules for registration and community notification of sex offenders, which were published as emergency rules on June 1, 1997.

ORDER

Under the authority vested in the Department of Corrections by s. 301.132 (3), Stats., the Department of Corrections hereby creates rules interpreting s. 301.132, Stats, as follows:

SECTION 1. DOC 328.04 (3) (o) and (p) are created to read:

DOC 328.04 (3) (o) Submit to the lie detector examination process under s. DOC 332.14 as directed by the department.

(p) Pay fees for the lie detector examination process under ss. DOC 332.15 (3) and 332.18 and comply with any required department procedures regarding payment of fees.

SECTION 2. DOC 332.015 is created to read:

DOC 332.015 AUTHORITY AND APPLICABILITY OF LIE DETECTOR TESTING.  
These rules are promulgated under the authority of s. 301.13 (3), Stats., to establish a lie detector program for probationers and parolees who are sex offenders. The rules apply to the department and to probationers and parolees who are sex offenders.

SECTION 3. DOC 332.02 (6) to (11) are created to read:

DOC 332.02 (6) "Lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or other similar device, whether mechanical or electrical, that is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(7) "Lie detector examination process" means the entire process of lie detector testing, including completion of any preliminary questionnaires, pretest questions, baseline questions and the actual lie detector testing, and post-testing interrogation.

(8) "Offender" means a probationer or parolee.

(9) "Polygraph" means an instrument that fulfills all of the following requirements:

(a) Records continuously, visually, permanently and simultaneously any changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(b) Is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(10) "Probation and parole agent" or "agent" means an employe of the department who is assigned the duties and responsibilities of an agent under chs. DOC 328, DOC 331 and DOC 333.

(11) "Sex offender" means a person in the custody of the department who meets any of the criteria specified in s. 301.45 (1), Stats.

SECTION 4. DOC 332.15 to 332.18 are created to read:

DOC 332.15 LIE DETECTOR REQUIREMENT. The department may require an offender who is a sex offender to submit to the lie detector examination process in accordance with s. DOC 332.17 as a condition of supervision.

DOC 332.16 PURPOSE OF LIE DETECTOR PROGRAM. (1) The department may use the lie detector examination process as a supervision tool for offenders who are sex offenders. Testing may achieve the following in supervising an offender who is a sex offender:

- (a) Disclose offense pattern information for treatment purposes.
- (b) Hold the offender accountable for behaviors which occur while on supervision.
- (c) Verify the accuracy of self-reporting.
- (d) Assist in the monitoring and early identification of rule violations and other criminal behavior.
- (e) Provide a deterrent to re-offending.
- (f) Identify the offenders who need more intensive supervision or treatment.
- (g) Provide more information for purposes of assessment, treatment and monitoring.

(2) The department shall not use the lie detector examination process as a punishment or sanction.

DOC 332.17 OPERATION OF LIE DETECTOR PROGRAM. (1) SELECTION OF PARTICIPANTS. Upon the approval of an agent's supervisor, an agent may require an offender who is a sex offender to participate in the lie detector program. The agent may require an offender who is a sex offender to submit to the lie detector examination process based on the following:

- (a) For an offender who is a sex offender and who is approaching release from confinement:
  1. The offender's criminal record of sexual offenses.
  2. The offender's adjustment under previous supervision.
  3. The offender's participation in offense-related programming while incarcerated or institutionalized.
  4. The offender's motivation or refusal to participate in continued programming in the community.
  5. The assessed risk the offender poses to the public.
- (b) For an offender who is a sex offender and who is currently on probation or parole:
  1. The offender's criminal record of sexual offenses.
  2. The offender's adjustment under supervision, including recent rules violations or consideration for alternatives to revocation.
  3. The offender's compliance with current programming involvement.
  4. The assessed risk the offender poses to the public.

(2) NOTICE. (a) An agent shall provide an offender who is a sex offender and who is selected to participate in the lie detector examination process written notice of the lie detector program requirements. The department may require an offender who is a sex offender to participate in the lie detector examination process without the offender's informed consent.

(b) An agent shall provide written notice to an offender who is a sex offender and who is required to take a lie detector test which

shall include the following:

1. Date, time, and location of the scheduled test.
2. Instructions to complete any preliminary questionnaires.

(3) LIE DETECTOR TEST QUESTIONS. (a) The lie detector examiner shall determine the questions to be asked during the lie detector examination process and shall consult with the agent in determining the questions to be asked. If the offender who is a sex offender is receiving treatment, the examiner or agent may consult with the treatment provider regarding development of questions to be asked during the lie detector examination process.

(b) The agent or examiner may consider any of the following in determining the questions to be asked during the lie detector examination process:

1. The offender's involvement in current offense-related programming.
2. The offender's level of denial.
3. The offender's recent pattern of rules violations.
4. The offender's noncompliance with treatment.
5. The agent's need to verify the offender's compliance with supervision, treatment or self-reporting.
6. The agent's need to document and verify the extent of the offender's sexual history.

(4) TEST ADMINISTRATION. The department may administer lie detector tests or contract with an outside vendor to administer the tests.

(5) ASSESSMENT OF FEES. The department shall establish a schedule of fees to partially offset the costs of the program for offenders who are sex offenders and who are required to take a lie detector test.

(a) An offender shall pay for the costs of the test in accordance with a schedule of fees developed by the department. The costs of the tests may vary depending on the type of test used.

(b) An offender shall also pay a \$5 administrative fee with each payment.

(6) SANCTIONS. (a) If an offender who is a sex offender refuses to participate in any portion of the lie detector examination process or to pay a lie detector fee, the agent shall investigate the refusal as a violation of a rule or condition of supervision in accordance with ch. DOC 331.

(b) If an offender who is a sex offender discloses a violation of a rule or condition of supervision during the lie detector examination process, the agent shall investigate the disclosure as a violation of a rule or condition of supervision, in accordance with ch. DOC 331.

(c) If an offender who is a sex offender discloses criminal conduct during the lie detector examination process, the agent, with the approval of the agent's supervisor, shall refer the disclosure to law enforcement authorities.

(d) Revocation of probation or parole of an offender who is a sex offender may not be based solely on a finding of deception as disclosed by a lie detector test.

(7) DISCLOSURE OF TEST INFORMATION. The department may disclose information regarding a lie detector test or information disclosed

during the lie detector test examination process of an offender who is a sex offender only to the following and only for purposes relating to correctional programming, care and treatment of the offender:

- (a) Department employes.
- (b) Department vendors.
- (c) Another agency or person.
- (d) Law enforcement agencies.

DOC 332.18 LIE DETECTOR FEE. The department shall do all of the following in establishing a fee schedule for lie detector testing and in collecting lie detector fees:

(1) BASIS OF FEE. Base the lie detector fee payment schedule upon the offender's ability to pay with the goal of receiving payment for the costs of administering the test and a \$5 administrative fee with each payment.

(2) TIMING OF PAYMENTS. Permit payment of the fee to be paid in any of the following ways:

(a) Full payment of the fee within 30 days of the date the offender takes the lie detector test.

(b) Quarterly payment of the fee to be paid in full within one year of the date the offender takes the lie detector test.

(c) Monthly installment payments of the fee to continue until the fee is paid in full.

(3) DEFERRAL OF PAYMENTS. (a) Except if the offender has the present ability to pay the fee, permit deferral of payment if the offender meets one or more of the following conditions, until a time when the conditions no longer exist:

1. Has used all reasonable and appropriate means to obtain employment as determined by the offender's probation and parole agent, but has been unable to obtain employment which provides the offender sufficient income to pay the lie detector fee.

2. Is a student enrolled in a full-time course of instruction. In this subdivision, "full-time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full-time high school or full-time junior high school, and "school" means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no deferral may be given. The educational institution shall certify to the department that the offender is enrolled and attending a full-time course work at the educational institution.

3. Is undergoing psychological, chemical or medical treatment consistent with the supervision plan approved by the department and is unable to be employed. The treatment provider shall certify the status to the department.

4. Has a statement from a licensed physician excusing the offender from work for medical reasons and is unable to be employed because of the medical reasons.

(b) The agent shall make a determination concerning an offender's deferral of payment of the lie detector fee within 10 working days of determining that an offender is required to participate in the lie detector examination process or within 10

working days of a reported change in the offender's financial or employment status.

(c) The agent's supervisor shall review all decisions made by the offender's probation and parole agent to defer payment of the lie detector fee.

(4) COLLECTION. Develop procedures for the collection of lie detector fees. The offender who is a sex offender shall pay the lie detector fees to the department according to the procedures established by the department.

(5) COPIES OF FEE SCHEDULE AND PAYMENT PROCEDURES. Provide the offender who is a sex offender with copies of the lie detector fee schedule, administrative fee requirement, and lie detector fee payment procedures.

(6) RECORD OF PAYMENTS. Record all lie detector fees paid by the offender, and on request of the offender, provide the offender with a copy of the record of payments to verify receipt of the payments.

(7) NOTICE TO OFFENDER WHEN PAYMENT IS NOT RECEIVED. Advise the offender in writing if payment of the lie detector fee has not been made in accordance with the payment schedule.

(8) POSSIBLE ACTIONS IF FEE IS NOT PAID. Take action under s. DOC 332.17(6) (a), if an offender who is a sex offender fails to pay a lie detector fee. The department may use any of the following actions in any order when an offender who is a sex offender fails to pay the lie detector fee:

(a) Counseling.

(b) Wage assignment.

(c) Review of supervision level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, electronic monitoring or detention in a jail, correctional facility or house of correction.

(d) Issue a recommendation for revocation of parole or probation under the provisions of ch. DOC 331 for the offender's willful failure to pay the lie detector fee after the agent has taken action under sub. (1) and has determined that the offender has the ability to pay the lie detector fee.

(e) Any other appropriate means of obtaining the lie detector fee.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Corrections

Dated: \_\_\_\_\_

By: \_\_\_\_\_

MICHAEL J. SULLIVAN  
Secretary

SEAL:

PROPOSED PERMANENT RULE

In response to Legislative Clearinghouse Comments, the Department made several changes to clarify the meaning of the rule, specifically, the Department made changes to ss. DOC 332.015, 332.02(7), 332.16(1)(intro), (2), 332.17(1)(a)(intro), subd. 5, (1)(b)subd.2, 3, and 4, (2)(b)(intro), (5), and 332.18(2)(a)4 and (b).

In addition, the Department added a provision for requiring the Department to establish standards for the selection of lie detector test examiners (DOC 332.17(3)).

The above changes are reflected in the following proposed rule:

SECTION 1. DOC 328.04 (3) (o) and (p) are created to read:

DOC 328.04 (3) (o) Submit to the lie detector examination process under s. DOC 332.14 as directed by the department.

(p) Pay fees for the lie detector examination process under ss. DOC 332.15 (3) and 332.18 and comply with any required department procedures regarding payment of fees.

SECTION 2. DOC 332.015 is created to read:

DOC 332.015 AUTHORITY AND APPLICABILITY OF LIE DETECTOR TESTING.

Sections DOC 332.15 to DOC 332.18 are promulgated under the authority of s. 301.132(3), Stats., to establish a lie detector program for probationers and parolees who are sex offenders. The rules apply to the department and to probationers and parolees who are sex offenders.

SECTION 3. DOC 332.02 (6) to (11) are created to read:

DOC 332.02 (6) "Lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or other similar device, whether mechanical or electrical, that is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(7) "Lie detector examination process" means the entire process of lie detector testing, including completion of any preliminary questionnaires, pretest questions, baseline questions, and the actual lie detector testing.

(8) "Offender" means a probationer or parolee.

(9) "Polygraph" means an instrument that fulfills all of the following requirements:

(a) Records continuously, visually, permanently and simultaneously any changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(b) Is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(10) "Probation and parole agent" or "agent" means an employe of



the department who is assigned the duties and responsibilities of an agent under chs. DOC 328, DOC 331 and DOC 333.

(11) "Sex offender" means a person in the custody of the department who meets any of the criteria specified in s. 301.45 (1), Stats.

SECTION 4. DOC 332.15 to 332.18 are created to read:

DOC 332.15 LIE DETECTOR REQUIREMENT. The department may require an offender who is a sex offender to submit to the lie detector examination process in accordance with s. DOC 332.17 as a condition of supervision.

DOC 332.16 PURPOSE OF LIE DETECTOR PROGRAM. (1) The department may use the lie detector examination process as a supervision tool for offenders who are sex offenders. Testing may be used to achieve any of the following in supervising an offender who is a sex offender:

- (a) Disclosing offense pattern information for treatment purposes.
- (b) Holding the offender accountable for behaviors which occur while on supervision.
- (c) Verifying the accuracy of self-reporting.
- (d) Assisting in the monitoring and early identification of rule violations and other criminal behavior.
- (e) Providing a deterrent to re-offending.
- (f) Identifying the offenders who need more intensive supervision or treatment.
- (g) Providing more information for purposes of assessment, treatment and monitoring.

(2) The department may not use the lie detector examination process as a punishment or sanction.

DOC 332.17 OPERATION OF LIE DETECTOR PROGRAM. (1) SELECTION OF PARTICIPANTS. Upon the approval of an agent's supervisor, an agent may require an offender who is a sex offender to participate in the lie detector program. The agent may require an offender who is a sex offender to submit to the lie detector examination process based on the following:

(a) For an offender who is a sex offender and who is currently in prison but nearing the release date on mandatory or discretionary parole:

1. The offender's criminal record of sexual offenses.
2. The offender's adjustment under previous supervision.
3. The offender's participation in offense-related programming while incarcerated or institutionalized.
4. The offender's motivation or refusal to participate in continued programming in the community.

(b) For an offender who is a sex offender and who is currently on probation or parole:

1. The offender's criminal record of sexual offenses.
2. The offender's adjustment under supervision, including recent rules violations or recent consideration for alternatives to revocation.
3. The offender's compliance with current programming.

(2) NOTICE. (a) An agent shall provide an offender who is a sex

offender and who is selected to participate in the lie detector examination process written notice of the lie detector program requirements. The department may require an offender who is a sex offender to participate in the lie detector examination process without the offender's informed consent.

(b) An agent shall provide written notice to an offender who is a sex offender and who is required to take a lie detector test. The notice shall include the following:

1. Date, time, and location of the scheduled test.
2. Instructions to complete any preliminary questionnaires.

(3) LIE DETECTOR TEST QUESTIONS. (a) The lie detector examiner shall determine the questions to be asked during the lie detector examination process and shall consult with the agent in determining the questions to be asked. If the offender who is a sex offender is receiving treatment, the examiner or agent may consult with the treatment provider regarding development of questions to be asked during the lie detector examination process.

(b) The agent or examiner may consider any of the following in determining the questions to be asked during the lie detector examination process:

1. The offender's involvement in current offense-related programming.
2. The offender's level of denial.
3. The offender's recent pattern of rules violations.
4. The offender's noncompliance with treatment.
5. The agent's need to verify the offender's compliance with supervision, treatment or self-reporting.
6. The agent's need to document and verify the extent of the offender's sexual history.

(4) TEST ADMINISTRATION. The department may administer lie detector tests or contract with an outside vendor to administer the tests. The department shall establish standards for the selection of lie detector examiners.

(5) ASSESSMENT OF FEES. The department shall establish a schedule of fees in accordance with s. DOC 332.18.

(6) SANCTIONS. (a) If an offender who is a sex offender refuses to participate in any portion of the lie detector examination process or to pay a lie detector fee, the agent shall investigate the refusal as a violation of a rule or condition of supervision in accordance with ch. DOC 331.

(b) If an offender who is a sex offender discloses a violation of a rule or condition of supervision during the lie detector examination process, the agent shall investigate the disclosure as a violation of a rule or condition of supervision, in accordance with ch. DOC 331.

(c) If an offender who is a sex offender discloses criminal conduct during the lie detector examination process, the agent, with the approval of the agent's supervisor, shall refer the disclosure to law enforcement authorities.

(d).Revocation of probation or parole of an offender who is a sex offender may not be based solely on a finding of deception as disclosed by a lie detector test.

(7) DISCLOSURE OF TEST INFORMATION. The department may disclose

information regarding a lie detector test or information disclosed during the lie detector test examination process of an offender who is a sex offender only to the following and only for purposes relating to correctional programming, care and treatment of the offender:

- (a) Department employes.
- (b) Department vendors.
- (c) Another agency or person.
- (d) Law enforcement agencies.

DOC 332.18 LIE DETECTOR FEE. The department shall establish a schedule of fees to partially offset the costs of the lie detector program for offenders who are sex offenders and who are required to take a lie detector test. The costs of the tests may vary depending on the type of test used. An offender shall also pay a \$5 administrative fee with each payment. The department shall do all of the following in establishing a fee schedule for lie detector testing and in collecting lie detector fees:

(1) BASIS OF FEE. Base the lie detector fee payment schedule upon the offender's ability to pay with the goal of receiving payment for the costs of administering the test and a \$5 administrative fee with each payment.

(2) TIMING OF PAYMENTS. Permit payment of the fee to be paid in any of the following ways:

(a) Full payment of the fee within 30 days of the date the offender takes the lie detector test.

(b) Quarterly payment of the fee to be paid in full within one year of the date the offender takes the lie detector test.

(c) Monthly installment payments of the fee to continue until the fee is paid in full.

(3) DEFERRAL OF PAYMENTS. (a) Except if the offender has the present ability to pay the fee, permit deferral of payment if the offender meets one or more of the following conditions, until a time when the conditions no longer exist:

1. Has used all reasonable and appropriate means to obtain employment as determined by the offender's probation and parole agent, but has been unable to obtain employment which provides the offender sufficient income to pay the lie detector fee.

2. Is a student enrolled in a full-time course of instruction. In this subdivision, "full-time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full-time high school or full-time junior high school, and "school" means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no deferral may be given. The educational institution shall certify to the department that the offender is enrolled and attending a full-time course work at the educational institution.

3. Is undergoing psychological, chemical or medical treatment consistent with the supervision plan approved by the department and is unable to be employed. The treatment provider shall certify the status to the department.

4. Has a statement from a licensed physician excusing the

offender from work for medical reasons and the offender is unable to be employed because of the medical reasons.

(b) The agent shall make a determination concerning an offender's deferral of payment of the lie detector fee within 10 working days of determining that an offender is required to participate in the lie detector examination process or within 10 working days of a change in the offender's financial or employment status as reported in accordance with s. DOC 328.04(3)(f).

(c) The agent's supervisor shall review all decisions made by the offender's probation and parole agent to defer payment of the lie detector fee.

(4) COLLECTION. Develop procedures for the collection of lie detector fees. The offender who is a sex offender shall pay the lie detector fees to the department according to the procedures established by the department.

(5) COPIES OF FEE SCHEDULE AND PAYMENT PROCEDURES. Provide the offender who is a sex offender with copies of the lie detector fee schedule, administrative fee requirement, and lie detector fee payment procedures.

(6) RECORD OF PAYMENTS. Record all lie detector fees paid by the offender, and on request of the offender, provide the offender with a copy of the record of payments to verify receipt of the payments.

(7) NOTICE TO OFFENDER WHEN PAYMENT IS NOT RECEIVED. Advise the offender in writing if payment of the lie detector fee has not been made in accordance with the payment schedule.

(8) POSSIBLE ACTIONS IF FEE IS NOT PAID. Take action under s. DOC 332.17(6) (a), if an offender who is a sex offender fails to pay a lie detector fee. The department may use any of the following actions in any order when an offender who is a sex offender fails to pay the lie detector fee:

(a) Counseling.

(b) Wage assignment.

(c) Review of supervision level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, electronic monitoring or detention in a jail, correctional facility or house of correction.

(d) Issue a recommendation for revocation of parole or probation under the provisions of ch. DOC 331 for the offender's willful failure to pay the lie detector fee after the agent has taken action under sub. (1) and has determined that the offender has the ability to pay the lie detector fee.

(e) Any other appropriate means of obtaining the lie detector fee.

#### Effective Date

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.

#### Fiscal Estimate

This rule requires most sex offender probationers and parolees to

repay the Department for the cost of the lie detector test and an administrative fee. The Department will slightly increase its workload and incur approximately \$2,200 in one-time computer development costs. The Department is able to absorb these costs.

Contact Person

Kathryn R. Anderson  
Office of Legal Counsel  
149 E. Wilson Street  
P.O. Box 7925  
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(608) 266-9281

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

Written Comments

Written comments on the proposed rules received at the above address no later than March 23, 1998, will be given the same consideration as testimony presented at the hearing.



Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



State of Wisconsin  
Department of Corrections

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March 24, 1998

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

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

Re: Clearinghouse Rule 98-0002, an order to create DOC 328.04(3)(o) and (p),  
332.015, 332.02(6) to (11) and 332.15 to 332.18, relating to lie detector testing of  
probationers and parolees who are sex offenders

Gentlemen:

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

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

If you have any questions about the rule, please contact Kathryn R. Anderson at (608) 266-9281.

Sincerely,

Michael J. Sullivan  
Secretary

Enclosures

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



**Tommy G. Thompson**  
Governor

**Michael J. Sullivan**  
Secretary



## State of Wisconsin Department of Corrections

Mailing Address  
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March 24, 1998

Clearinghouse Rule 98-0002

An Order to create DOC 328.04(3)(o) and (p), 332.015, 332.02(6) to (11) and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders

FINAL DRAFT FORM:

### Analysis Prepared by the Department of Corrections

A session law, 1995 Wis. Act 440, created s. 301.132, Stats., which directs the department to establish a sex offender honesty testing program. Section 301.132, Stats., became effective June 1, 1997. Lie detector testing of probationers and parolees is recognized as an effective supervision tool for determining the nature and extent of deviant sexual behavior and developing appropriate intervention strategies. In addition, it is anticipated that testing will improve treatment outcomes by overcoming offender denial and by detecting behaviors that lead to re-offending.

The testing program cannot be implemented without rules. This establishes the lie detector test program in permanent rule.

This rule:

1. Creates definitions for offender, probation and parole agent, and lie detector examination process.
2. Adopts the statutory definitions of lie detector, polygraph, and sex offender.
3. Establishes the authority, purpose and applicability of the lie detector examination process.
4. Requires an offender who is a sex offender to submit to a lie detector test if required by the department.
5. Establishes criteria for the selection of offenders who are required to participate in the lie detector examination process.
6. Requires that the department provide notice to the offender who is required to participate in the lie detector examination process of the lie detector program requirements, instructions to complete any necessary questionnaires and of the date, time and location of the scheduled test.
7. Provides that an agent and an examiner shall determine the questions the offender may be asked during the lie detector examination process.
8. Allows an agent to consult with a treatment provider regarding the questions the offender may be asked during the lie detector examination process.
9. Provides that the department may administer the lie detector tests or contract with an outside vendor to administer the tests.

10. Requires the department to establish standards for the selection of lie detector examiners.
11. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.
12. Provides that an offender's probation or parole may not be revoked based solely on a finding of deception as disclosed by a lie detector test.
13. Identifies the circumstances under which the department may disclose information regarding the lie detector tests or the information derived from the lie detector examination process.
14. Provides that the department may not use the lie detector examination process as a method of punishment or sanction.
15. Provides that an offender shall pay the costs of the lie detector test and a \$5.00 administrative fee with each payment. The cost of the lie detector test may vary depending on the type of test used.
16. Establishes procedures for the collection of lie detector fees.
17. Provides for sanctions for an offender's failure to pay the lie detector fees.
18. Provides the criteria for lie detector fee deferrals.
19. Provides for the reporting and notice to the offender when payment of lie detector fees is not received.

The order provides for including the rules for the lie detector program in the same chapter of the Wisconsin Administrative Code, ch. DOC 332, as the rules for registration and community notification of sex offenders.

Statutory Authority:

s. 301.132 (3), Stats.

Proposed Rule:

SECTION 1. DOC 328.04 (3) (o) and (p) are created to read:

DOC 328.04 (3) (o) Submit to the lie detector examination process under s. DOC 332.14 as directed by the department.

(p) Pay fees for the lie detector examination process under ss. DOC 332.15 (3) and 332.18 and comply with any required department procedures regarding payment of fees.

SECTION 2. DOC 332.015 is created to read:

DOC 332.015 AUTHORITY AND APPLICABILITY OF LIE DETECTOR TESTING. Sections DOC 332.15 to DOC 332.18 are promulgated under the authority of s. 301.132(3), Stats., to establish a lie detector program for probationers and parolees who are sex offenders. The rules apply to the department and to probationers and parolees who are sex offenders.

SECTION 3. DOC 332.02 (6) to (11) are created to read:



DOC 332.02 (6) "Lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or other similar device, whether mechanical or electrical, that is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(7) "Lie detector examination process" means the entire process of lie detector testing, including completion of any preliminary questionnaires, pretest questions, baseline questions, and the actual lie detector testing.

(8) "Offender" means a probationer or parolee.

(9) "Polygraph" means an instrument that fulfills all of the following requirements:

(a) Records continuously, visually, permanently and simultaneously any changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(b) Is used, or the results of which are used, to render a diagnostic opinion about the honesty or dishonesty of an individual.

(10) "Probation and parole agent" or "agent" means an employe of the department who is assigned the duties and responsibilities of an agent under chs. DOC 328, DOC 331 and DOC 333.

(11) "Sex offender" means a person in the custody of the department who meets any of the criteria specified in s. 301.45 (1), Stats.

SECTION 4. DOC 332.15 to 332.18 are created to read:

DOC 332.15 LIE DETECTOR REQUIREMENT. The department may require an offender who is a sex offender to submit to the lie detector examination process in accordance with s. DOC 332.17 as a condition of supervision.

DOC 332.16 PURPOSE OF LIE DETECTOR PROGRAM. (1) The department may use the lie detector examination process as a supervision tool for offenders who are sex offenders. Testing may be used to achieve any of the following in supervising an offender who is a sex offender:

(a) Disclosing offense pattern information for treatment purposes.

(b) Holding the offender accountable for behaviors which occur while on supervision.

(c) Verifying the accuracy of self-reporting.

(d) Assisting in the monitoring and early identification of rule violations and other criminal behavior.

(e) Providing a deterrent to re-offending.

(f) Identifying the offenders who need more intensive supervision or treatment.

(g) Providing more information for purposes of assessment, treatment and monitoring.

(2) The department may not use the lie detector examination process as a punishment or sanction.

DOC 332.17 OPERATION OF LIE DETECTOR PROGRAM. (1) SELECTION OF PARTICIPANTS. Upon the approval of an agent's supervisor, an agent may require an offender who is a sex offender to participate in the lie detector program. The agent may require an

offender who is a sex offender to submit to the lie detector examination process based on the following:

(a) For an offender who is a sex offender and who is currently in prison but nearing the release date on mandatory or discretionary parole:

1. The offender's criminal record of sexual offenses.
2. The offender's adjustment under previous supervision.
3. The offender's participation in offense-related programming while incarcerated or institutionalized.
4. The offender's motivation or refusal to participate in continued programming in the community.

(b) For an offender who is a sex offender and who is currently on probation or parole:

1. The offender's criminal record of sexual offenses.
2. The offender's adjustment under supervision, including recent rules violations or recent consideration for alternatives to revocation.
3. The offender's compliance with current programming.

(2) NOTICE. (a) An agent shall provide an offender who is a sex offender and who is selected to participate in the lie detector examination process written notice of the lie detector program requirements. The department may require an offender who is a sex offender to participate in the lie detector examination process without the offender's informed consent.

(b) An agent shall provide written notice to an offender who is a sex offender and who is required to take a lie detector test. The notice shall include the following:

1. Date, time, and location of the scheduled test.
2. Instructions to complete any preliminary questionnaires.

(3) LIE DETECTOR TEST QUESTIONS. (a) The lie detector examiner shall determine the questions to be asked during the lie detector examination process and shall consult with the agent in determining the questions to be asked. If the offender who is a sex offender is receiving treatment, the examiner or agent may consult with the treatment provider regarding development of questions to be asked during the lie detector examination process.

(b) The agent or examiner may consider any of the following in determining the questions to be asked during the lie detector examination process:

1. The offender's involvement in current offense-related programming.
2. The offender's level of denial.
3. The offender's recent pattern of rules violations.
4. The offender's noncompliance with treatment.
5. The agent's need to verify the offender's compliance with supervision, treatment or self-reporting.
6. The agent's need to document and verify the extent of the offender's sexual history.

(4) TEST ADMINISTRATION. The department may administer lie detector tests or contract with an outside vendor to administer the tests. The department shall establish standards for the selection of lie detector examiners.

(5) ASSESSMENT OF FEES. The department shall establish a schedule of fees in accordance with s. DOC 332.18.

(6) SANCTIONS. (a) If an offender who is a sex offender refuses to participate in any

portion of the lie detector examination process or to pay a lie detector fee, the agent shall investigate the refusal as a violation of a rule or condition of supervision in accordance with ch. DOC 331.

(b) If an offender who is a sex offender discloses a violation of a rule or condition of supervision during the lie detector examination process, the agent shall investigate the disclosure as a violation of a rule or condition of supervision, in accordance with ch. DOC 331.

(c) If an offender who is a sex offender discloses criminal conduct during the lie detector examination process, the agent, with the approval of the agent's supervisor, shall refer the disclosure to law enforcement authorities.

(d) Revocation of probation or parole of an offender who is a sex offender may not be based solely on a finding of deception as disclosed by a lie detector test.

(7) DISCLOSURE OF TEST INFORMATION. The department may disclose information regarding a lie detector test or information disclosed during the lie detector test examination process of an offender who is a sex offender only to the following and only for purposes relating to correctional programming, care and treatment of the offender:

- (a) Department employees.
- (b) Department vendors.
- (c) Another agency or person.
- (d) Law enforcement agencies.

DOC 332.18 LIE DETECTOR FEE. The department shall establish a schedule of fees to partially offset the costs of the lie detector program for offenders who are sex offenders and who are required to take a lie detector test. The costs of the tests may vary depending on the type of test used. An offender shall also pay a \$5 administrative fee with each payment. The department shall do all of the following in establishing a fee schedule for lie detector testing and in collecting lie detector fees:

(1) BASIS OF FEE. Base the lie detector fee payment schedule upon the offender's ability to pay with the goal of receiving payment for the costs of administering the test and a \$5 administrative fee with each payment.

(2) TIMING OF PAYMENTS. Permit payment of the fee to be paid in any of the following ways:

- (a) Full payment of the fee within 30 days of the date the offender takes the lie detector test.
- (b) Quarterly payment of the fee to be paid in full within one year of the date the offender takes the lie detector test.
- (c) Monthly installment payments of the fee to continue until the fee is paid in full.

(3) DEFERRAL OF PAYMENTS. (a) Except if the offender has the present ability to pay the fee, permit deferral of payment if the offender meets one or more of the following conditions, until a time when the conditions no longer exist:

1. Has used all reasonable and appropriate means to obtain employment as determined by the offender's probation and parole agent, but has been unable to obtain employment which provides the offender sufficient income to pay the lie detector fee.

2. Is a student enrolled in a full-time course of instruction. In this subdivision, "full-time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full-time high school or full-time junior high

school, and "school" means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no deferral may be given. The educational institution shall certify to the department that the offender is enrolled and attending a full-time course work at the educational institution.

3. Is undergoing psychological, chemical or medical treatment consistent with the supervision plan approved by the department and is unable to be employed. The treatment provider shall certify the status to the department.

4. Has a statement from a licensed physician excusing the offender from work for medical reasons and the offender is unable to be employed because of the medical reasons.

(b) The agent shall make a determination concerning an offender's deferral of payment of the lie detector fee within 10 working days of determining that an offender is required to participate in the lie detector examination process or within 10 working days of a change in the offender's financial or employment status as reported in accordance with s. DOC 328.04(3)(f).

(c) The agent's supervisor shall review all decisions made by the offender's probation and parole agent to defer payment of the lie detector fee.

(4) COLLECTION. Develop procedures for the collection of lie detector fees. The offender who is a sex offender shall pay the lie detector fees to the department according to the procedures established by the department.

(5) COPIES OF FEE SCHEDULE AND PAYMENT PROCEDURES. Provide the offender who is a sex offender with copies of the lie detector fee schedule, administrative fee requirement, and lie detector fee payment procedures.

(6) RECORD OF PAYMENTS. Record all lie detector fees paid by the offender, and on request of the offender, provide the offender with a copy of the record of payments to verify receipt of the payments.

(7) NOTICE TO OFFENDER WHEN PAYMENT IS NOT RECEIVED. Advise the offender in writing if payment of the lie detector fee has not been made in accordance with the payment schedule.

(8) POSSIBLE ACTIONS IF FEE IS NOT PAID. Take action under s. DOC 332.17(6) (a), if an offender who is a sex offender fails to pay a lie detector fee. The department may use any of the following actions in any order when an offender who is a sex offender fails to pay the lie detector fee:

(a) Counseling.

(b) Wage assignment.

(c) Review of supervision level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, electronic monitoring or detention in a jail, correctional facility or house of correction.

(d) Issue a recommendation for revocation of parole or probation under the provisions of ch. DOC 331 for the offender's willful failure to pay the lie detector fee after the agent has taken action under sub. (1) and has determined that the offender has the ability to pay the lie detector fee.

(e) Any other appropriate means of obtaining the lie detector fee.

Effective Date

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.

Fiscal Estimate

This rule requires most sex offender probationers and parolees to repay the Department for the cost of the lie detector test and an administrative fee. The Department will slightly increase its workload and incur approximately \$2,200 in one-time computer development costs. The Department is able to absorb these costs.



**Tommy G. Thompson**  
Governor

**Michael J. Sullivan**  
Secretary



## State of Wisconsin Department of Corrections

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March 24, 1998

Clearinghouse Rule 98-0002

An Order to create DOC 328.04(3)(o) and (p), 332.015, 332.02(6) to (11) and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders

ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES UNDER SECTION 227.19(3), STATS.

### Need for Rule

Session law, 1995 Wis. Act 440, created s. 301.132, Stats., which directs the department to establish a sex offender honesty testing program. Section 301.132, Stats., became effective June 1, 1997. Lie detector testing of probationers and parolees is recognized as an effective supervision tool for determining the nature and extent of deviant sexual behavior and developing appropriate intervention strategies. In addition, it is anticipated that testing will improve treatment outcomes by overcoming offender denial and by detecting behaviors that lead to re-offending.

The lie detector program cannot be implemented without rules. The department promulgated an emergency rule, effective December 15, 1997. The proposed rule implements the lie detector program through a permanent rule.

This rule:

1. Creates definitions for offender, probation and parole agent, and lie detector examination process.
2. Adopts the statutory definitions of lie detector, polygraph, and sex offender.
3. Establishes the authority, purpose and applicability of the lie detector examination process.
4. Requires an offender who is a sex offender to submit to a lie detector test if required by the department.
5. Establishes criteria for the selection of offenders who are required to participate in the lie detector examination process.
6. Requires that the department provide notice to the offender who is required to participate in the lie detector examination process of the lie detector program requirements, instructions to complete any necessary questionnaires and of the date, time and location of the scheduled test.
7. Provides that an agent and an examiner shall determine the questions the offender may be asked during the lie detector examination process.
8. Allows an agent to consult with a treatment provider regarding the

questions the offender may be asked during the lie detector examination process.

9. Provides that the department may administer the lie detector tests or contract with an outside vendor to administer the tests.
10. Requires the department to establish standards for the selection of lie detector examiners.
11. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.
12. Provides that an offender's probation or parole may not be revoked based solely on a finding of deception as disclosed by a lie detector test.
13. Identifies the circumstances under which the department may disclose information regarding the lie detector tests or the information derived from the lie detector examination process.
14. Provides that the department may not use the lie detector examination process as a method of punishment or sanction.
15. Provides that an offender shall pay the costs of the lie detector test and a \$5.00 administrative fee with each payment. The cost of the lie detector test may vary depending on the type of test used.
16. Establishes procedures for the collection of lie detector fees.
17. Provides for sanctions for an offender's failure to pay the lie detector fees.
18. Provides the criteria for lie detector fee deferrals.
19. Provides for the reporting and notice to the offender when payment of lie detector fees is not received.

#### Response to Clearinghouse Recommendations

All comments and recommendations of the Legislative Council's Rules Clearinghouse Report were accepted.

#### Public Hearings

The Department held two public hearings on the Emergency rule and proposed rule. The public hearings were held on March 16, 1998, in Milwaukee and Madison. No one from the public appeared to testify at the public hearings. No one submitted written comments during the open comment period.

#### Modifications Made as a Result of Public Hearing Testimony

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

#### Final Regulatory Flexibility Analysis

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



**Tommy G. Thompson**  
Governor

**Michael J. Sullivan**  
Secretary



**State of Wisconsin**  
**Department of Corrections**

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March 24, 1998

Clearinghouse Rule 98-0002

An Order to create DOC 328.04(3)(o) and (p), 332.015, 332.02(6) to (11) and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders

**PUBLIC HEARING REPORT:**

Public hearings were held in Milwaukee and Madison on March 16, 1998.

Kathryn R. Anderson, Office of Legal Counsel, was present and conducted the public hearings.

The hearing record was left open until March 23, 1998, for receipt of written comments.

Registered	0
Testified	0
Written Comments	0
Support the Rule	0
Opposed the Rule	0



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## CLEARINGHOUSE RULE 98-002

### 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 October 1994.]

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

Section DOC 332.17 (5), relating to assessment of fees, should just be a cross-reference to s. DOC 332.18, relating to the lie detector fee, and the substance of sub. (5) should be incorporated into s. DOC 332.18. If sub. (5) is kept, in par. (b), "under par. (a)" should be inserted after "payments."

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

In s. DOC 332.015, "These rules" should be "Sections DOC \_\_\_ to \_\_\_" or "This chapter" (i.e., reference should be made to the specific provisions that are being promulgated pursuant to s. 301.132 (3), Stats.) Also, in the first sentence, the authority provision is mistakenly listed as s. 301.13 (3), Stats., instead of s. 301.132 (3), Stats.

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

- a. In s. DOC 332.02 (7), "baseline questions and" should be "baseline questions,".
- b. In s. DOC 332.16 (1) (intro.), the second sentence would be clearer if it read:

Testing may be used to achieve any of the following goals in supervising an offender who is a sex offender:

(a) Disclosing . . . .”

In sub. (2), “shall not” should be “may not.”

c. In s. DOC 332.17 (1) (a) (intro.), what does it mean to be “approaching release from confinement”? Can this be made more specific? In subd. 5. and par. (b) 4., “assessed” by whom and using what mechanism? Should this be specified? In par. (b) 2., does the term “recent” also modify “or consideration for alternatives to revocation”? If so, for clarity, “recent” should be inserted before “consideration.” If not, what does that last phrase refer to? In par. (b) 3., “involvement” appears to be unnecessary. In sub. (2) (b) (intro.), for clarity, the clause could be divided into two sentences by substituting “test. The notice” for “test which”.

d. In s. DOC 332.18 (3) (a) 4., “the offender” should be inserted before “is unable.” Paragraph (b) refers to “within 10 working days of a reported change in the offender’s financial or employment status.” Is there a requirement somewhere that the offender report such a change within a certain time period? If so, could it be cross-referenced? If not, perhaps such a provision should be included in the rule.

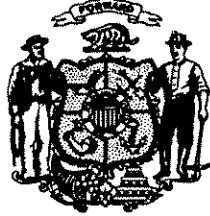
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

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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 98-002**

AN ORDER to create DOC 328.04 (3) (o) and (p), 332.015, 332.02 (6) to (11) and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders.

Submitted by **DEPARTMENT OF CORRECTIONS**

01-05-98 RECEIVED BY LEGISLATIVE COUNCIL.

02-02-98 REPORT SENT TO AGENCY.

RNS:DLS;jt;lah

**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