



Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

October 12, 1999

TO: Members of the Assembly Committee on Corrections and the Courts
FROM: Rep. Scott Walker
RE: Clearinghouse Rule 97-067

The following clearinghouse rule has been referred to the Assembly Committee on Corrections and the Courts:

CR 97-067 An order to repeal and create sections of DOC 309, relating to inmate access to legal materials and legal services.

Committee jurisdiction ends Nov. 4. If you wish to obtain a copy of this rule, submit comments or request a hearing, please contact Missy in my office at 266-9180.

Thank you.



Tommy G. Thompson
Governor

Jon E. Litscher
Secretary

State of Wisconsin
Department of Corrections

Mailing Address

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

September 16, 1999

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

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

Re: Clearinghouse Rule 97-067
An order to repeal and create sections of DOC 309, Relating to Inmate Access to Legal Materials
and Legal Services

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 regarding the rule, please contact Julie Kane at (608) 267-9839.

Sincerely,

Jon E. Litscher
Secretary

Enclosures

Cc: Gary Poulson, Deputy Revisor of Statutes
Senator Judy Robson, JCRAR
Representative Glenn S. Grothman, JCRAR

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



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September 29, 1999

Bruce Munson
Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Re: Clearinghouse Rule 97-067
An order to repeal and create sections of DOC 309, Relating to Inmate Access to Legal
Materials and Legal Services

Dear Mr. Munson:

Enclosed is a notice that the above captioned proposed rule has been submitted in Final
Draft Form to the presiding officer of each house of the legislature on September 29,
1999.

If you have any questions, please call me at 267-9839.

Sincerely,

A handwritten signature in cursive script that reads "JMKane".

Julie M. Kane
Assistant Legal Counsel

Enclosure

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

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Madison, WI 53707-7925
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NOTICE

NOTICE that on September 29, 1999, the Department of Corrections submitted to the presiding officers of each house of the legislature in Final Draft Form, Clearinghouse Rule 97-067, an order to repeal and create sections of DOC 309, relating to inmate access to legal materials and legal services.

PROPOSED ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND RECREATING RULES

The Wisconsin department of corrections proposes an order to repeal, DOC 309.25, 309.26, 309.27, 309.28, and 309.29, and to create DOC 309.15, relating to inmate access to legal materials and legal services.

Statutory authority: s. 227.11 (2) (a), Stats.
Statutes interpreted: s. 301.03 (2), Stats.

Analysis Prepared by the Department of Corrections

Some provisions of the department of corrections administrative rules relating to legal materials and legal services for inmates have not been updated since the rules were created. With over 15 years of experience working with the rules, the department proposes to update the rules.

Inmates have a constitutional right of access to courts. Access to legal materials and services is an integral part of access to courts. Without such access, an inmate does not have meaningful access to courts. This rule, like the current rule, requires the department of corrections to provide an inmate with access to legal materials and services.

Each institution, except correctional centers and the Wisconsin Resource Center, shall maintain a law library and make legal materials available to inmates at reasonable times and for reasonable periods. The department shall make reasonable efforts to ensure that adequate legal services are available to indigent inmates.

Inmates may provide legal services to other inmates except that institutions may regulate the time and place of such legal services. Compensation of any kind for the provisions of such inmate to inmate legal services is strictly prohibited.

DOC 309 is being promulgated in sections due to the length and complexity of the rule. The current s. DOC 309.15 will be repealed in the ultimate promulgation of Clearinghouse Rule 97-014. Because it is intended that the legal services provision will be placed under s. DOC 309.15 at that time, it is so numbered in anticipation of CR 97-014.

SECTION 1: DOC 309.15 is created to read:

DOC 309.15 Legal Services. (1) POLICY. It is the policy of the department to permit inmates reasonable access to the judicial process and to legal materials, and to afford a reasonable opportunity to prepare legal documents. Such access serves important rehabilitative goals and ensures effective procedures for raising and resolving complaints about institution practices and policies.

(2) **ACCESS TO COURTS.** Inmates shall have access to courts and administrative agencies. Inmates' decisions to seek judicial or administrative relief shall not adversely affect their program, security classification or assignment to an institution.

(3) **ACCESS TO LEGAL MATERIALS.** Each institution, except correctional centers and the Wisconsin resource center, shall maintain a law library and make legal materials available to inmates at reasonable times and for reasonable periods. Special provisions shall be made to provide access to legal materials for inmates with a special legal need and for inmates with a special need, such as illiteracy. The department may employ the use of current technology in providing access to legal materials.

(4) **ACCESS TO LEGAL ASSISTANCE.** The department shall make reasonable efforts to ensure that adequate legal services are available to indigent inmates. These legal services need not be provided directly by the department, but may be provided by outside agencies. The legal services by these agencies may include services provided by lawyers, law students and aides supervised by lawyers. And paraprofessionals.

(5) **INMATE TO INMATE LEGAL SERVICES.** Inmates may provide legal services to other inmates except that institutions may regulate the time and place of such legal services. Compensation of any kind for the provisions of such inmate to inmate legal services is prohibited. The department is not responsible for legal materials not provided by the department that are given to other inmates.

SECTION 2. DOC 309.25 to 309.29 are repealed.

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..

Date: 9/17/99

Wisconsin Department of Corrections

By: Jon E. Litscher
Jon E. Litscher
Secretary

Seal:

**PROPOSED ADMINISTRATIVE RULES – DOC 309,
RELATING TO INMATE ACCESS TO LEGAL MATERIALS AND LEGAL SERVICES
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3) STATS.**

Need for Rule

Some provisions of the department of corrections' administrative rules relating to legal materials and legal services for inmates have not been updated since the rules were created. With over 15 years of experience working with the rules, the department proposed to update the rules.

Inmates have a constitutional right of access to courts. Access to legal materials and services is an integral part of access to courts. Without such access, an inmate does not have a meaningful access to courts. This rule, like the current rule, requires the department of corrections to provide an inmate with access to legal materials and services.

Each institution, except correctional centers and the Wisconsin Resource Center, shall maintain a law library and make legal materials available to inmates at reasonable times and for reasonable periods. The department shall make reasonable efforts to ensure that adequate legal services are available to indigent inmates.

Inmates may provide legal services to other inmates except that institutions may regulate the time and place of such legal services. Compensation of any kind for the provisions of such inmate to inmate legal services is strictly prohibited.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse Report were accepted, except the following:

2a. (in relevant part) Clearinghouse Rule 97-014 should be promulgated before Clearinghouse Rule 97-067 and this intention should be stated in the analysis to the latter rule.

Response: The reason behind promulgating Clearinghouse Rule 97-014 prior to Clearinghouse Rule 97-067 is to avoid additional renumbering of the rule. Clearinghouse Rule 97-067 creates section DOC 309.15 but it is Clearinghouse Rule 97-014 that actually repeals the current DOC 309.15. The department has spoken with the Revisor of Statutes and confirmed that it is not necessary to promulgate Clearinghouse Rule 97-014 first. The Revisor has been notified that Clearinghouse Rule 97-067 creates a temporary duplication of DOC 309.15. The department has been assured that the Revisor will resolve this issue under his editorial authority upon review.

5c. Given the statement in the analysis that inmates have a constitutional right of access to courts, why does s. DOC 309.15 (3) provide that neither correctional centers nor the Wisconsin Resource Center must maintain a law library and make legal materials available? See s. DOC 309.27 (2) which requires that effort must be made by correctional centers and the Wisconsin Resource Center to accommodate requests of inmates for legal services.

Response: Correctional centers are small facilities where it would be fiscally difficult to maintain a law library. There are 17 centers that would have to have duplicate libraries. Inmates who have a need to access a law library are given short-term transfers to institutions where libraries are available. Requests for law libraries in the correctional centers are very rare due to the fact that the average length of stay is less than two months. Nearly all inmates in correctional centers are preparing for release and this occupies most of their time.

The Wisconsin Resource Center does maintain a small law library and since it maintains Ch. 980 patients, it maintains a law library whose materials are consistent with Mendota Mental Health Institute. The primary reason it is exempted from this rule is that the average length of stay is only six or seven months, and the inmates are placed at the facility because they have high needs for mental health treatment. There are very few requests for legal materials. When inmates at the Wisconsin Resource Center make requests for additional legal materials, the librarian works with other institutions, primarily with the Oshkosh Correctional Institute to obtain copies of the requested legal materials.

Public Hearings

The department held three public hearings on the proposed rule. The public hearings were held in Waukesha on August 25, 1997; in Madison on August 26, 1997; and in Eau Claire on August 28, 1997. Nobody appeared to testify at the public hearings. The report on the public comments is attached to this analysis.

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 because no comments were received during the public review. One person registered against the rule as stated in the attached report.

Final Regulatory Flexibility Analysis

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

Attachment

DOC 309--Inmate Access to Legal Materials and Legal Services

Public hearings were held in Waukesha on August 25, 1997; Madison on August 26, 1997; and in Eau Claire on August 28, 1997.

Deborah Rychlowski, Office of Legal Counsel, attended all public hearings. Cynthia Schoenike, Assistant Administrator of the Division of Adult Institutions, attended the hearings held in Waukesha and Madison.

The hearing record was left open until September 5, 1997, for receipt of written comments.

Registered	1
Testified	0
Written Comments	0
Support the Rule	0
Oppose the Rule	1

One person registered against the rule, but did not testify or provide an written comments.

Registered Against:

Phoenix Milligan
WI CURE
2314 Upham Street
Madison, Wisconsin

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 97-067

AN ORDER to repeal DOC 309.26, 309.27, 309.28 and 309.29; and to repeal and recreate DOC 309.25, relating to inmate access to legal materials and legal services.

Submitted by **DEPARTMENT OF CORRECTIONS**

04-21-97 RECEIVED BY LEGISLATIVE COUNCIL.

05-19-97 REPORT SENT TO AGENCY.

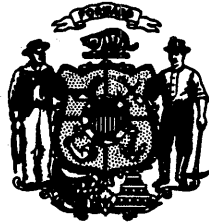
RS:AS:jt;ksm

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CLEARINGHOUSE RULE 97-067

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

a. The rule does not contain a treatment under enumerated SECTIONS. Further, because the Administrative Code currently contains s. DOC 309.15, it appears that the SECTIONS of the rule should read as follows:

SECTION 1. DOC 309.25 is repealed and recreated to read:

SECTION 2. DOC 309.26 to 309.29 are repealed.

However, it appears that s. DOC 309.15 may be repealed in the ultimate promulgation of Clearinghouse Rule 97-014. If so, and if it is intended to place a legal services provision under s. DOC 309.15, then two changes should be made in Clearinghouse Rule 97-067. First, Clearinghouse Rule 97-014 should be promulgated before Clearinghouse Rule 97-067 and this intention should be stated in the analysis to the latter rule. Second, the treatment clauses should read:

SECTION 1. DOC 309.15 is created to read:

SECTION 2. DOC 309.25 to DOC 309.29 are repealed.

b. An effective date clause should be inserted at the end of the rule-making order.

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

a. In s. DOC 309.15 (1), "of corrections" should be deleted since "department" is defined in s. DOC 309.02 (3) as the Department of Corrections. Also, the comma after "judicial process" should be deleted and "and" should be inserted.

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Relating to Inmate Access to Legal Materials and Legal Services

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

This administrative code change repeals DOC 309.25 through DOC 309.29, recreates and consolidates all information in a single section (309.15). It also deletes the minimum recommended list of law library materials for all DOC institutions except correctional centers and the Wisconsin Resource Center.

Potential savings exist if some currently named materials are no longer provided, although the Department of Corrections will continue to provide at least the minimum, constitutionally upheld, well-stocked law library.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Dept. of Corrections/C. Halpin 267-0934

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

Robert Margolies

Date
3-12-97