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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2001-02

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on ... Corrections and Courts (AC-CC)

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

**PROPOSED ADMINISTRATIVE RULES – DOC 306,  
RELATING TO SECURITY.  
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES  
PURSUANT TO S. 227.19 (3) STATS.**

Need for Rule

DOC 306 governs security standards and practices at state correctional institutions. As technology, science, population and government evolve over time, security standards and practices must adapt to those changes. We ultimately grow wiser and more efficient based on new knowledge and procedures. What was thought routine, necessary or even effective correctional practice in 1980 may not be accurate today.

For example, our prison population has grown from 1,930 in 1976 to more than 20,000 currently. This enormous increase in prisoners, along with their increased level of sophistication, has placed a greater burden on correctional staff and has created the possibility for a more hazardous environment. In many ways, Wardens and staff no longer enjoy the luxury of time that once afforded them the ability to maneuver bureaucratic requirements. Correctional staff must now make urgent decisions regarding the best way to ensure staff, inmate and visitor safety and security. These situations and decisions are infinitely different from those of 20 years ago when the current rule was promulgated. The changes in this rule make it possible for inmate rights and needs to be protected without compromising institution security.

Responses to Clearinghouse Recommendations

This rule was originally submitted to Legislative Council on April 20, 2000. All but the following recommendations were accepted:

2(aa). In s. DOC 306.15(1), should “entire premises” be defined?

**RESPONSE:** The phrase “entire premises” was removed from the rule so a definition is not required.

2 (ad). In s. DOC 306.17 (1) (a), it is not clear why “including, but not limited to” is used rather than “means,” particularly given that a personal search is the least intrusive of the range of searches mentioned in this section. If the definition of “personal search” includes searches not specifically mentioned, those other types of searches should be specifically described in the definition.

**RESPONSE:** The language “including, but not limited to” is necessary to prevent staff from being denied the authority to conduct a personal search of the inmate with regard to anything not mentioned in an exclusive list. If the language “means” were used, then the list would be exclusive. In a prison situation, where the inmates are continually becoming more sophisticated and creating new methods of possessing contraband, this broad language is necessary in order to maintain security and prevent possible harm that

comes from contraband. Furthermore, should the search extend beyond a “personal search” it would arguably fall under the category of another type of search defined in this rule and become subject to the restrictions and rules relating to that specific search category.

2 (am). For consistency of terminology, should s. DOC 306.21 reference “body specimen searches and analyses”?

**RESPONSE:** The term “body specimen searches and analyses” is not used in the rule. Body “content” searches are defined and so the use of “body content specimen” as written in s. DOC 306.21 is consistent.

2 (ap). In DOC 306.23 (1), the introduction should read: “In this section, “disturbance” means any of the following:”. Section DOC 306.24 (1) also should be rewritten in this style. However, these suggestions leave the terms undefined in s. DOC 306.22. another approach is to define the terms in s. DOC 306.22 by stating: “In ss. DOC 306.22 to 306.24...”

**RESPONSE:** The definition of “disturbance” was moved to s. DOC 306.02 Definitions. This allows the definition to apply throughout the chapter.

5 (e). Does DOC 306.04 create a duty and potential liability beyond that which would otherwise exist?

**RESPONSE:** This language is in the current rule. Because this language is not an addition it does not create a duty beyond that which already exists.

5 (s). In the first paragraph of the note to s. DOC 306.08, should reference be made to the “next available” staff member in the line of succession?

**RESPONSE:** This language was deleted.

5 (t). In the second sentence, first paragraph in the note to s. DOC 306.11, is reference to “any other reason” included in the rule? The citation to s. DOC 302.10 in the next sentence appears to be incorrect (it appears that s. DOC 306.10 is the correct reference.)

**RESPONSE:** The language “any other reason” was deleted.

5 (x). Is the last paragraph of the note to s. DOC 306.17 reflected in the rule?

**RESPONSE:** The last paragraph of the note to DOC 306.17 was deleted.

## Public Hearings

This rule received four public hearings. Three hearings were held in November and another held in December at the request of Representative Coggs.

### FIRST HEARING

The first hearing was held on November 6, 2000, at 10:00 A.M. at 141 N.W. Barstow Street, Waukesha, Wisconsin.

The following is a summary of testimony/appearances/registrations and the Department's response:

One individual registered in favor of the changes:

1. Edward S. Friedrichs, M.D.

Two individuals registered for information only:

1. Peter Christianson, for Quarles & Brady, LLP.
2. Dwight Teel—noting his favor of adequate security measures for both inmates and staff in a humane manner, for adequate health care and for inmates to be treated with dignity and respect. Mr. Teel did not comment on anything specifically related to this administrative rule.

Nine individuals registered opposed to the proposed changes and either submitted written comments or gave oral testimony:

1. Gerhard Fischer Comments regarding prison health care system. Mr. Fischer was an inmate at the Federal Prison Camp at Oxford, Wisconsin and personally observed health crises in the institution. He urged DOC to be conscious of the potential for inept health care treatment and noted the need for outside scrutiny of prison health care.

**RESPONSE:** These comments appear to be “for information only” and do not reflect any concerns with or request any changes to the proposed rule.

2. Joan Olson  
Wis/Net Coalition of Hope-Inmate Support Group

Questions procedures of searches relating to confidentiality of legal papers; questions what property can be removed from the cell; questions whether inmates know they have a right to medical attention after incapacitating agent; feels guards have too much discretion with incapacitating agents; and questions the timing of lockdowns while realizing they are necessary.

**RESPONSE:** Individuals using incapacitating agents are given extensive training. This rule ensures safety and proper application by requiring that only such trained staff use

incapacitating agents. The rule does also grant general authority to use such agents under certain circumstances. This is not unlimited discretion.

All inmates have access to administrative rules, statutes, inmate handbooks and other resources available to provide information on issues such as internal procedures, institution rules and inmate rights. The Department informs inmates of changes when necessary and when required by law. It is the inmates' responsibility to be informed on the issues that directly affect them.

Lockdowns are a necessary prison security measure. Convenience of timing is not a luxury afforded in our prisons; lockdowns are used whenever necessary to control a situation that could breach security. This is done for the safety of staff as well as inmates.

3. John Quaal

President of the Waukesha Alliance of Mentally Ill, also works with Jail Ministry

Concerned this rule will cause less record-keeping in DOC. Thinks we need more oversight and not less.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

4. Mary La Branche Concerned that her partner's medical records are not given to her although she has signed the proper documents and concerned that the DOC operates under its own rules.

**RESPONSE:** Medical records should be requested under the Open Records section of the Wisconsin State Statutes. These records, however, are subject to confidentiality laws and may not be released to certain individuals without proper release and authorization.

5. Marge Soellner questions how these rules affect Whiteville, TN and other out of state prisons.

**RESPONSE:** This specific rule does not directly apply to inmates in facilities out of state. The current contract with out of state facilities provides that personnel in such facilities must receive training in accordance with American Correctional Association standards.

6. Brad Gamroth Keep the language detailing contents of incident reports. All staff should be trained in the use of chemicals and the side effects. All searches should be for probable cause. Opposed strip search of staff and visitors.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

The Department does not support the use of chemical agents by non-security staff. Security staff required to use incapacitating agents does receive proper training as specified under this chapter.

All searches cannot be based on probable cause. For example, random searches of the institution premises must occur without notice or probable cause. Also, searches conducted routinely as part of visitation and movement in and out of segregation are conducted in order to prevent the transfer of contraband into and within the institution. This is not intended to punish inmates, it is intended to protect them.

The Department's authority to strip search staff members is a condition of employment and is only conducted in rare instances and does require administrative approval.

When staff request a strip search of a visitor it is exactly that—a request. This is done to prevent the transfer of contraband into the institution and a breakdown of security. Visitors have the right to refuse the strip search.

7. Ruth Kressl—Concerned with quality of meals and health care.

**RESPONSE:** These comments do not reflect any concerns with or request any changes to the proposed rule.

8. Judy Semrau Concerned with medical treatment of out of state inmates.

**RESPONSE:** These comments do not reflect any concerns with or request any changes to the proposed rule.

9. Bernadine Lovelien-WI/NET Coalition of Hope-St. Vincent De Paul Jail Ministry She has visited two prisons, Dodge and Racine and was treated poorly throughout her visit. Concerns for medical treatment of her son who is in Minnesota.

**RESPONSE:** These issues should be addressed locally, most appropriately with the Warden. Furthermore, section 306.18(9) of this rule states the following: "Staff shall conduct all inspections and searches in a courteous manner. Staff shall strive to protect the dignity of visitors who are inspected or searched pursuant to this section."

While the Department recognizes the concern for the medical treatment of inmates in other institutions, that issue need not be addressed in this report as it does not relate to the changes in this rule and should be addressed directly to the institution in Minnesota. The Department does monitor medical facilities in out of state institutions where Wisconsin inmates are held.

Seven individuals registered opposed to the proposed changes

1. Reverend Dwain Olson
2. Lucille Fischer
3. Frank H. Urban, Representative from the 99<sup>th</sup> Assembly District
4. Ben Schulenburg, AIDS Resource Center of Wisconsin
5. Donald H. Schambow
6. Mardean Voigt
7. Rudolph Voigt

Following the official testimony, a lengthy discussion occurred among the attendees which was based almost completely on issues unrelated to this proposed rule. The attendees had much discussion among themselves on issues such as treatment of inmates in out of state facilities and the attendees' experiences as prison visitors. Because the discussion was based on issues unrelated to these proposed rule changes, those issues are not addressed in this report.

## SECOND HEARING

The second hearing was held November 7, 2000, at 12:00 P.M. at 125 S. Webster St., Madison, Wisconsin.

The following is a summary of testimony/appearances/registrations and the Department's response:

One individual registered for information only:

1. M. Colleen Wilson  
Wisconsin Catholic Conference

Four individuals registered opposed to the changes:

1. Jim Pepelnjak  
Journal Sentinel, Inc.      Opposed to the changes regarding incident reports.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and

plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

2. Todd Winstrom

Wisconsin Coalition for Advocacy

Concerned with the changes in record keeping and reporting. Concerned that Warden may override clinical staff in regard to restraints. Concerned that strip searches are traumatic for victims of sexual assault. Concerned that probable cause is removed for strip searches. Concerned that non-deadly force and incapacitating agents may be used on "disruptive" inmates, when disruptive could be a mentally ill inmate who is verbally agitated and this could be dangerous to a mentally ill inmate. The guidelines should be adapted to fit individual needs. Concerned that the Warden will have unilateral decision on the use of mechanical restraints. Concerned that "voluntary" confinement is removed and asserts that mentally ill need this option for safety.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

The Warden ultimately has statutory responsibility for the care and custody of inmates and therefore must bear ultimately responsibility for decisions, including decisions relating to the use of mechanical restraints.

Staff is trained to use only such force as is necessary to control a situation and to treat each inmate with dignity and respect.

Secretary Litscher has personally met with representatives from the Wisconsin Coalition for Advocacy, including Mr. Winstrom. The Department continues to work with the Wisconsin Coalition for Advocacy to address the needs of mentally ill inmates. Protective confinement, as operated under this rule, replaces voluntary confinement under the current rules as an effective means to ensure the safety of all inmates.

3. Ed Steichen

Money, Education and Prisons Task Force

We need more openness and accountability from the Department. Concerned that this rule will make it more difficult to obtain information from the Department. Removing requirements from rule and placing them in training manuals reduces accountability.



**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

4. Esther Heffernan  
Edgewood College

Overcrowding is an issue and concerned that these changes permit greater discretion in the areas of chemical agents, shackling, and searches and that this may produce an even more dangerous environment. Reducing requirements for written reports may create a more hazardous environment by increasing tension among staff and inmates.

**RESPONSE:** The Department has engaged in a higher level of staff training so as to allow supervisory staff the ability to make necessary decisions on the use of incapacitating agents. This rule ensures that the staff member actually administering or using the agent is properly trained, thereby ensuring greater safety to those involved in the situation. In addition, staff members are trained to use the lowest level of force necessary to control and de-escalate a situation and prevent a dangerous situation from arising. This rule provides for more secure institutions, which ultimately provides a less hazardous environment for staff and inmates.

After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

### **THIRD HEARING**

The third hearing was held November 8, 2000, at 11:00 A.M. at 1681 2<sup>nd</sup> Avenue South, Wisconsin Rapids, Wisconsin.

The following is a summary of testimony/appearances/registrations and the Department's response:

One individual registered for information only:

1. Maria Edelstein

One individual spoke in opposition to the changes:

1. Dennis McFarlin, Attorney Encouraged Department to keep accountability to public. The DOC has a greater burden to inform the public, than do other agencies, because the general public does not get the opportunity to see what happens in the DOC or in our prisons. Public needs more information, not less.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

Three individuals registered opposed to the proposed changes:

1. Scott Peebles
2. Mr. And Mrs. Ronald Post

#### **FOURTH HEARING**

The fourth hearing was held December 13, 2000, at 6:00 P.M at the University of Wisconsin-Milwaukee Alumni Fireside Lounge, 2200 E. Kenwood Blvd., Milwaukee, Wisconsin.

One individual spoke in opposition to the changes:

1. G. Spencer Coggs  
Representative from the 17<sup>th</sup> Assembly District  
Public has a right to details in an incident report. This rule denies public accountability for the DOC. If technology is more advanced then the Department should not have any trouble or real burden in supplying more information in incident reports, not less. Opposed the removal of the 72-hour limit on protective confinement. He believes this gives the Security Director "undo power over inmates." Concerned that the list of incapacitating agents is removed and that this will allow other devices to be used.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

This rule allows the Department to take advantage of technological advances in chemical agents and other non-lethal materials that are actually less harmful to inmates and more effective in controlling threatening situations and inmates.

Removing the arbitrary 72- hour timeframe is not intended to punish inmates. It is the Department's intent to confine inmates no longer than necessary and only to the extent necessary to protect the inmate from known risks. The Department needs authority and ability to provide for the safety and protection of individual inmates through the use of protective confinement.

One individual registered opposed to the proposed changes:

1. Melissa Froiland  
Wisconsin Coalition to Stop Control Unit Prison

### WRITTEN COMMENTS

The following is a summary of written comments received:

1. Ms. Becky L. Strey      Encouraged mandatory full, detailed written incident reports in penal institutions.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

2. Ron and Sandra Post      Opposes the removal of specific language in incident reports/records/plans. Language should remain as is. Would like to know what is in the incapacitating agents, how they work and what the effects are. Should be able to get this information upon request.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

Subject to security restrictions, information regarding incapacitating agents may be requested via the Open Records laws as well as obtained from the commercial industries that provide the Department with the materials.

3. Jack Murtaugh

Executive Director, Interfaith Conference of Greater Milwaukee

Opposed the removal of language in 306.03 “the opportunity to participate in a safe setting in activities that equip them to be successfully reintegrated into the community.” DOC should articulate a commitment to help inmates reintegrate into the community. Oppose removal of definition of “non-deadly force” and the addition of “to control a disruptive inmate” as an allowable reason for using non-deadly force. Believes this is too vague and will lead to confusion and subjective use of force. Opposes removal of “enumerated contents” of incident reports.

**RESPONSE:** Removing the language in DOC 306.03 as noted above has not removed the Department’s intent to assist offenders in rehabilitation. The Department’s mission, as stated in the Mission Statement, is to protect the public through the constructive management of offenders placed in its charge. This mission is accomplished, in part, by “providing and managing resources to promote successful offender integration within the community.” Furthermore, the Department’s Vision Statement similarly states that the Department will reduce criminal behavior and restore a sense of safety to victims and the community by “promoting the integration of offenders into the community so that they become valued and contributing members.” Clearly the Department has not abandoned the language in 306.03, it is just more appropriately stated outside of the Administrative Code.

Non-deadly force is defined in this rule as the following: “force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury.” This definition was moved from section 306.06 to section 306.02. Disruptive inmates are a severe security threat as they can incite other inmates and create hostile, dangerous situations for staff and inmates. Non-deadly force, as opposed to the only other logical option of deadly-force, is exactly what should be used to control a disruptive inmate.

After analyzing public input and assessing legislative concern over the Department’s proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

4. Sara O’Connor    Oppose elimination of language in 306.01 “establishing guidelines which permit inmates to participate in activities within a secure surrounding that may assist them in a successful reintegration into the community.” Opposes the lack of definition of non-deadly force. DOC ought to retain the current version. Concerned that the definition of incapacitating agent does not set parameters on what can be used. Current rule says incapacitating agents are to be used only as a last resort and she believes we should retain this language. Opposes the removal of contents of incident reports.

**RESPONSE:** Removing the language as noted above has not removed the Department's intent to assist offenders in rehabilitation. The Department's mission, as stated in the Mission Statement, is to protect the public through the constructive management of offenders placed in its charge. This mission is accomplished, in part, by "providing and managing resources to promote successful offender integration within the community." Furthermore, the Department's Vision Statement similarly states that the Department will reduce criminal behavior and restore a sense of safety to victims and the community by "promoting the integration of offenders into the community so that they become valued and contributing members." Clearly the Department has not abandoned the language in 306.01 or 306.03, it is just more appropriately stated outside of the Administrative Code.

Non-deadly force is defined in this rule as the following: "force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury." This definition was moved from section 306.06 to section 306.02.

Only staff members trained according to the requirements of this rule may use incapacitating agents. Incapacitating agents are not enumerated in this rule because enumerating them could reduce the Department's ability to take advantage of continual technological advances in chemical agents and other non-lethal materials that are actually less harmful to inmates and more effective in controlling threatening situations and inmates.

After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

5. M. Colleen Wilson

Wisconsin Catholic Conference

Opposes removal of language regarding inmates participating in activities that may assist them in successful reintegration into the community. Opposed to the removal of specific contents of reports.

**RESPONSE:** Removing this language from the rule has not removed the Department's intent to assist offenders in rehabilitation. The Department's mission, as stated in the Mission Statement, is to protect the public through the constructive management of offenders placed in its charge. This mission is accomplished, in part, by "providing and managing resources to promote successful offender integration within the community." Furthermore, the Department's Vision Statement similarly states that the Department will reduce criminal behavior and restore a sense of safety to victims and the community by "promoting the integration of offenders into the community so that they become valued and contributing members." Clearly the Department has not abandoned the language in 306.01 or 306.03, it is just more appropriately stated outside of the Administrative Code.

After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

6. Kathryn Johnson  
League of Women Voters of Wisconsin, Inc.  
Opposes the removal of contents of incident reports.

**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.

The following 14 written comments came from current inmates. Because the comments were all very similar, they are summarized below:

1. Michael Johnson
2. Fernando Escobar
3. Harlan Richards
4. Vincent Whitaker
5. Eugene Cherry
6. John Bacher
7. Marcus Porter
8. William Medina
9. Jonathan Cole
10. Ronald C. Jackson
11. Javier Aguilera
12. Parish Golden
13. Victor Kennedy
14. Sammy Gates

Summary of inmate concerns:

- Oppose changing "chemical agent" to "incapacitating agent" because it removes a definition of what agent may be used.

**RESPONSE:** Only staff members trained according to the requirements of this rule may use incapacitating agents. Incapacitating agents are not enumerated in this rule because enumerating them could reduce the Department's ability to take advantage of continual technological advances in chemical agents and other non-lethal materials that are actually less harmful to inmates and more effective in controlling threatening situations and inmates.

- Oppose removal of contents of reports/records/plans.  
**RESPONSE:** After analyzing public input and assessing legislative concern over the Department's proposal to repeal language specifying contents of certain reports, records and plans, the Department has returned nearly all portions of the currently existing language to the rule. The following areas of the proposed rule were changed to reflect the current language: incident reports or records regarding escape, search, and the use of mechanical restraints.
  - Oppose removal of mandatory release from protective confinement after 72 hours in order to ensure that protective confinement does not become punitive. This gives too much discretion to the security director. Protective confinement should be completely voluntary.  
**RESPONSE:** Removing the arbitrary 72- hour timeframe is not intended to punish inmates. It is the Department's intent to confine inmates no longer than necessary and only to the extent necessary to protect the inmate from known risks. The Department needs authority and ability to provide for the safety and protection of individual inmates through the use of protective confinement.
  - Oppose requirement that inmates in protective confinement are allowed at least the privileges and property allowed in temporary lock up (TLU) because this is a lower standard than those in program segregation. This punishes inmates in need of protection.  
**RESPONSE:** The Department has amended this proposed rule to allow inmates in protective confinement at least the privileges and property allowed in program segregation.
  - Oppose changes to issuance of firearms. Believe that this might lead to inexperienced staff handling dangerous weapons. Believe DOC does a good job now and no need to change this rule.  
**RESPONSE:** Under the restrictions of this rule, only staff trained in the use of firearms are allowed to use them. This rule will allow the Department to continue present practice concerning firearms.
  - Oppose changes to searches because this will allow unwarranted and unjustified searches to harass inmates. There should be criteria or standards to guide officers when searching living quarters.  
**RESPONSE:** Searches are a regular, necessary, and fundamental part of maintaining institution security and for that reason, even when conducted randomly, can never really be unwarranted. Search discretion is absolutely necessary in order to facilitate effective and efficient operation of security measures in our prisons. This rule allows staff to address potentially dangerous situations more expediently.
- Staff is guided by section 306.16 "Search of inmate living quarters" when searching inmate living quarters.

- Opposed to strip search of visitors.

**RESPONSE:** When staff request a strip search of a visitor it is exactly that—a request. This is done to prevent the transfer of contraband into the institution and a breakdown of security. Visitors have the right to refuse the strip search.

- Oppose changes that allow the reading of legal materials.

**RESPONSE:** Section 306.16(5) of this rule states: “Staff shall read only that part of the inmate’s legal materials as necessary to determine that the item is legal material and does not contain contraband.” This rule does not allow staff to fully read legal material, but grants the authority to adequately assess whether something is, in fact, legal material. The current rules effectively allow inmates to conceal contraband under the guise of “legal material” by forbidding staff to read and review this alleged legal material. This rule will allow staff, during a living quarters search, to examine legal materials to the extent necessary to determine that the item is, in fact, legal material and does not contain contraband.

- Definition of “disturbance” is too broad so as to allow the Warden to suspend administrative rules virtually anytime.

**RESPONSE:** This definition was not changed in this proposed rule.

- Oppose the removal of language “establishing guidelines which permit inmates to participate in activities within a secure surrounding that may assist them in a successful reintegration into society.” Removing this proves DOC intent to punish and not rehabilitate.

**RESPONSE:** : Removing this language from the rule has not removed the Department’s intent to assist offenders in rehabilitation. The Department’s mission, as stated in the Mission Statement, is to protect the public through the constructive management of offenders placed in its charge. This mission is accomplished, in part, by “providing and managing resources to promote successful offender integration within the community.” Furthermore, the Department’s Vision Statement similarly states that the Department will reduce criminal behavior and restore a sense of safety to victims and the community by “promoting the integration of offenders into the community so that they become valued and contributing members.” Clearly the Department has not abandoned the language in 306.01 or 306.03, it is just more appropriately stated outside of the Administrative Code.

- Body cavity search is a violation of a prisoner’s manhood and is unjust and immoral.

**RESPONSE:** This is not an added search. The current rule was not changed in this proposal. Body cavity searches are limited by this rule as they are only conducted by medical staff and only at the direction of the Warden and only when probable cause exists to believe contraband is hidden in a body cavity. The rule also states in section 306.17(5) that staff “shall strive to preserve the dignity of inmates in all searches conducted under this section.”



- DOC should not be allowed to conduct Biological Specimen Analysis without the issuance of a court order.

**RESPONSE:** The Department is required by law to conduct biological specimen sampling. See, for example, ss. 973.047, 980.063, and 165.76 Wis. Stats.

- Oppose changes to authority of the department in relation to persons under the influence of intoxicating substances. Believe this will be enforced in a discriminatory manner and embarrass visitors.

**RESPONSE:** Occasionally, visitors are found with drugs, or become disruptive due to apparent influence of intoxicating substances. The Warden currently has statutory authority to arrest and detain under sec. 301.29(2) Wis. Stats. In practice, the Department does not have arresting protocols and therefore handles these procedures through law enforcement. This rule allows the Warden to deny a visit and to detain a visitor and inform law enforcement if the visitor appears to be under the influence of an intoxicating substance. This rule also allows the Warden to detain staff members who appear to be under the influence of an intoxicating substance, and to notify law enforcement.

#### Modifications Made as a Result of Public Hearings

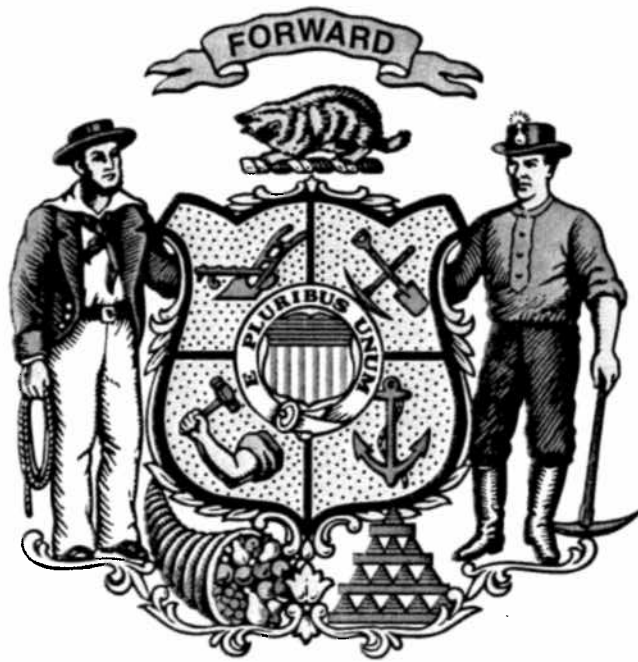
Modifications made as a result of the public hearing process are explained in the responses above. Generally, the Department proposed removal of the specific contents of numerous incident reports and this language has been restored to the rule. The following sections were amended accordingly:

306.08(6)	Firearms
306.09(7)	Incapacitating agents
306.11(3)	Mechanical restraints
306.13(2)	Escapes
306.16(2)	Search of inmate living quarters
306.17(6)	Search of inmates
306.18(5)	Search of visitors

306.05(4)(a) Protective confinement was amended to reflect inmates' right to property and privileges consistent with program segregation rather than TLU.

#### Final Regulatory Flexibility Analysis

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

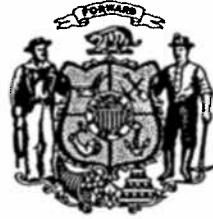


WISCONSIN LEGISLATIVE COUNCIL STAFF



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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 00-079**

AN ORDER to repeal and recreate chapter DOC 306, relating to security.

Submitted by **DEPARTMENT OF CORRECTIONS**

04-24-00      RECEIVED BY LEGISLATIVE COUNCIL.  
05-22-00      REPORT SENT TO AGENCY.

RS:DD:jal;wu

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

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

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

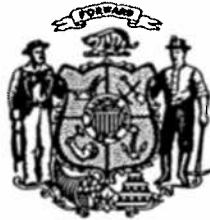
Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 00-079

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

a. As the department's analysis indicates, the rule removes a number of current provisions of ch. DOC 306 and contemplates including many of these deleted provisions in the department's plans, internal management procedures, emergency preparedness manual and similar internal documents. In addition, the notes to the rule make reference to a protocol to be developed by the Division of Adult Institutions. The department is urged to carefully review the definition of "rule" in s. 227.01 (13), Stats., and the internal management exception to the definition in s. 227.01 (13) (a), Stats. Because a number of the deleted provisions affect private rights or interests, they arguably should be in the form of a rule rather than internal management policies. In general, it is not clear why rules providing general principles and standards cannot be drafted in such a way that the desired flexibility, described in the department's analysis, is achieved in contrast to relying so heavily on internal policies, plans, procedures, protocols, etc.

b. The department's analysis only cites s. 227.11 (2), Stats., under "statutory authority." Compare the references in s. DOC 306.01.

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

a. The rule repeals and recreates ch. DOC 306. However, the organization of the chapter is substantially unchanged and large portions of the substance of the chapter remain unchanged or are changed in a relatively minor way. It would be much easier to compare the

proposed rule with the current rule if the department were to amend existing rule sections rather than repealing and recreating the rule chapter.

b. In s. DOC 306.01, "of corrections" may be deleted because the term "department" is defined.

c. In s. DOC 306.05 (4) (a), there appears to be no reason to include the acronym "TLU." (If the acronym is used, it should be in a definition provision.) The comma preceding the administrative code citation in that paragraph should be deleted and replaced by "under."

d. In s. DOC 306.05 (4) (b), the comma before the administrative code citation should be deleted and replaced by "under."

e. If the definitions in s. DOC 306.07 (1) are indeed intended to apply to the entire chapter, they should be included in the general definitions section, s. DOC 306.02.

f. In s. DOC 306.07 (1) (intro.), "the following definitions apply" may be deleted.

g. In s. DOC 306.07 (1) (a), (c), (d), (e) and (g), "is" should be replaced by "means."

h. It appears that the definition in s. DOC 306.07 (1) (f) is not directly used in the rule. Consideration should be given to including the substance of that definition in s. DOC 306.08.

i. Section DOC 306.07 (3) (c) and (d) could be combined for consistency with sub. (5) (d).

j. In s. DOC 306.08 (1), reference to "warden or next authority" should be compared with the definition of "authority" in s. DOC 306.07 (1) (a). Reference to "weapons" in the subsection should be reviewed; pertinent related provisions refer to "firearms."

k. Section DOC 306.08 (2) references "disturbances or emergencies" without defining the terms; definitions of those terms in the rule are included for purposes of other sections only and do not apply to this section.

l. Should s. DOC 306.08 (3) begin: "An authority may issue . . ." ? The subsection references "training programs" in sub. (4). Subsection (4), however, refers to "program" in the singular.

m. In s. DOC 306.08 (4) (intro.), it is suggested that "provide" replace "have." [See also s. DOC 306.09 (5).]

n. In s. DOC 306.08 (5) (d) (intro.), last sentence, "The" should replace "This."

o. In s. DOC 306.08 (5) (e), "states" should be deleted.

p. Section DOC 306.09 (3) (c) and (d) should be reviewed for possible consolidation; see s. DOC 306.07 (5) (d).

q. It is suggested that consideration be given to revising s. DOC 306.09 (4) to read: "Only a staff member trained under sub. (4) may use an incapacitating agent."

r. It is not clear how s. DOC 306.10 (intro.) relates to the rest of that section and the provisions of s. DOC 306.11. If retained, this material should be a numbered subsection since it does not grammatically lead into following subunits.

s. In s. DOC 306.10 (2) (a), is there a need to define "institution" as used here and elsewhere in the rule?

t. In s. DOC 306.10 (2) (b) and (c), "TLU" should be deleted and replaced with "temporary lock-up" (unless, as suggested previously, "TLU" is defined).

u. In s. DOC 306.10 (3), "commercially manufactured" is unnecessary and should be deleted. [See the definition of "mechanical restraint" in s. DOC 306.10 (1) and see s. DOC 306.11 (4).]

v. In s. DOC 306.11 (2) (intro.), "may not" should replace "shall never."

w. In s. DOC 306.11 (3) (intro.), "all of the following" should replace "these." In addition, "restraints" should be replaced by "a mechanical restraint."

x. In s. DOC 306.12, the phrase "have the duty to" should be replaced by the word "shall."

y. Section DOC 306.13 (3) should be relocated to a more appropriate place, such as the provision on issuance of firearms.

z. The note to s. DOC 306.13 duplicates the corresponding note in the appendix.

aa. In s. DOC 306.15 (1), should "entire premises" be defined?

ab. If the second sentence of s. DOC 306.16 (1) is necessary, it should be reworded as follows: "Entry into the living quarters of an inmate by a staff member to retrieve state property does not constitute a search of the living quarters of an inmate."

ac. The (intro.) clause of s. DOC 306.17 should be deleted and the opening phrase of each subsection should be a title.

ad. In s. DOC 306.17 (1) (a), it is not clear why "including, but not limited to" is used rather than "means," particularly given that a personal search is the least intrusive of the range of searches mentioned in this section. If the definition of "personal search" includes searches not specifically mentioned, those other types of searches should be specifically described in the definition.

ae. In s. DOC 306.17 (2) (b), "pursuant to a strip search" should be inserted after "inspection." Should "is limited to" replace "includes"?

af. In s. DOC 306.17, the relationship of subs. (4) and (5) should be clarified. Subsection (5) contains a definition, but no substantive content. It appears to be linked to sub. (4), but the exact nature of the link is unclear.

ag. In s. DOC 306.17 (4) (b), the use of "for" is not clear. Is "as part of" intended instead? A "body content search" is defined as a search in which the inmate is required to supply specified specimens. In addition, it appears that "may" should be substituted for "shall."

ah. In s. DOC 306.18 (3), all plural references to "visitor" should be in the singular, with appropriate adjustments made to corresponding language.

ai. In s. DOC 306.18 (8), it appears that reference in the first sentence should be made to finding "an unauthorized object pursuant to a search under this section . . . ." [Compare s. DOC 306.19 (2).] Further, the use of "and or" in the sentence should be reviewed. [See s. 101 (9), Manual.] It appears that "local" should precede "law enforcement agency."

aj. In s. DOC 306.19 (1), the phrases "staff members'" and "a staff members'" should be replaced by the phrase "a staff member's." In sub. (2), "local" should precede "law enforcement agency."

ak. In s. DOC 306.19 (3), it appears that "inspected or" should precede "searched."

al. Consideration should be given to rewriting s. DOC 306.20 along the following lines: "Contraband that is seized during a search which violates this chapter may be used as evidence by the institution at a disciplinary hearing conducted under ch. DOC 303."

am. For consistency of terminology, should s. DOC 306.21 reference "body specimen searches and analyses"?

an. Does s. DOC 306.22 (4) refer to both a plan under sub. (2) and a plan under sub. (3)? In any case, sub. (2) (d) (last sentence) and sub. (4) appear to be redundant and unnecessary.

ao. In the last sentence of s. DOC 306.23 (4), "the" should replace "this."

ap. In s. DOC 306.23 (1), the introduction should read: "In this section, "disturbance" means any of the following:". Section DOC 306.24 (1) also should be rewritten in this style. However, these suggestions leave the terms undefined in s. DOC 306.22. Another approach is to define the terms in s. DOC 306.22 by stating: "In ss. DOC 306.22 to 306.24 . . . ."

aq. Section DOC 306.24 (1) (intro.) should be drafted in the standard definition form. The second sentence of the (intro.) clause should read: "An emergency" includes any of the following:". The reference in sub. (4) should be to "the" panel rather than "this" panel.

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

a. In the department's analysis, s. DOC 306.11 (2), Stats., is listed as one of the statutes interpreted by the rule. Is that the correct citation?



- b. Section DOC 306.05 (3) cross-references s. DOC 306.12 (1) (a). Note that there are two classifications in the cited provision rather than one, as implied in the cross-reference.
- c. In s. DOC 306.05 (4) (b), the cross-reference to s. DOC 303.70 should be more specific.
- d. In s. DOC 306.08 (5) (c), the internal references in the last sentence should be to “par. (b)” and “this paragraph.”
- e. In s. DOC 306.08 (5) (e), reference to “these rules” should be more specific. For example, the phrase “this chapter” could be used. [See also ss. DOC 306.22 (2) (d) and 306.23 (4).]
- f. In s. DOC 306.16 (4), “searches under this section” should replace “these searches.”
- g. In s. DOC 306.18 (8), first sentence, it appears that reference should be made to a “search under s. DOC 306.17 (1) or a search under this section.” The suggested references should be reviewed to ensure that they are complete and accurate.
- h. To which searches does s. DOC 306.18 (9) refer?
- i. In ss. DOC 306.23 (4) and 306.24 (4), reference to s. DOC 306.08 (5) (e) does not appear appropriate. The latter provision appears to assume the use of firearms.

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

- a. In the last sentence of the third paragraph of page 3 of the department’s analysis, “ensure” should be “ensures.”
- b. In the sentence at the bottom of page 4 of the department’s analysis, “the” should precede “requirement”; “that” should be substituted for “for”; and “to” before “submit” should be deleted.
- c. In the first sentence of the first full paragraph on page 5 of the department’s analysis, “the” should precede “option” and an apostrophe should be placed after the “s” in visitors.
- d. In the last sentence of the analysis, the word “an” should precede the word “intoxicating.”
- e. Does s. DOC 306.04 create a duty and potential liability beyond that which would otherwise exist?
- f. In s. DOC 306.08 (5) (intro.) and (d), it is not specified when or where the firearm is discharged or the injury or death occurs.
- g. Section DOC 306.09 (1) makes reference to incapacitating agents “authorized by the department.” What are the criteria for such authorization?

h. In s. DOC 306.11 (3) (d) and (e) and (4), specified individuals should be given the listed duties rather than the "institution."

i. The duty specified in s. DOC 306.12 should be reviewed, particularly in light of s. DOC 306.07 (5) (d), which authorizes use of deadly force to prevent an escape. Does the duty *require* the use of deadly force if staff reasonably believes it immediately necessary to prevent the escape?

j. Section DOC 306.14 does not specify when a search may be made or what constitutes the grounds of a correctional institution. The relationship of this section and DOC 306.15 and 306.16 should be clarified.

k. It is not clear why DOC 306.15 (2) is contained in the chapter. Is there a more appropriate place for the provision? Further, it is awkwardly drafted.

l. In s. DOC 306.17 (1) (b) 2., the second "or" should be replaced by a comma.

m. In s. DOC 306.17 (1) (b) 4., it appears that "status" will suffice; i.e., it is not necessary to refer to "statuses." See, also, par. (c) 2., in this regard.

n. To what type of visit does s. DOC 306.17 (2) (c) 3., refer?

o. Section DOC 306.18 (5) should conclude with a period.

p. The second sentence of s. DOC 306.24 (4) is awkwardly drafted and it appears that the reference to s. DOC 306.05 (5) (e) may not be appropriate. Reference should be made to "the" panel in the last sentence of that section.

q. Is the sixth paragraph to the note to s. DOC 306.07 reflected in the substance of the rule? In the sixth paragraph on page 18, which continues the note to s. DOC 306.07, reference in the second sentence should be made to preventing "an" escape. What is the significance of the subsequent reference to "some" escapees?

r. Regarding the last sentence of the last paragraph of the note on page 18, should a corresponding substantive provision or a cross-reference to ch. DOC 303 be included in the rule?

s. In the first paragraph of the note to s. DOC 306.08, should reference be made to the "next available" staff member in the line of succession?

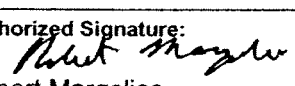
t. In the second sentence, first paragraph in the note to s. DOC 306.11, is reference to "any other reason" included in the rule? The citation to s. DOC 302.10 in the next sentence appears to be incorrect (it appears that s. DOC 306.10 is the correct reference.)

u. In the fifth paragraph of the note to s. DOC 306.11, the comma after "restraints" should be removed. The seventh paragraph of the note to s. DOC 306.11 should be reviewed for placement of commas and for consistency with provisions of the rule (it appears, for example, that crisis intervention worker is not used in the rule).

v. In the second paragraph of the note to s. DOC 306.13, the word "effect" should be replaced by the word "affect."

w. The note to s. DOC 306.15 indicates that the rule "permits" each institution to be completely searched periodically. However, the rule "requires" each institution to be completely searched periodically.

x. Is the last paragraph of the note to s. DOC 306.17 reflected in the rule?

<b>1999 Session</b>		LRB Number
<b>FISCAL ESTIMATE</b> DOA-2048 N(R06/99)		Bill Number
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		
<b>Subject Relating to institution security standards and practices</b>		Amendment No. if Applicable
		Administrative Rule Number <b>DOC 306</b>
<b>Fiscal Effect</b>		
State: <input type="checkbox"/> No State Fiscal Effect		
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
Local: <input type="checkbox"/> No local government costs		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		<b>Affected Chapter 20 Appropriations</b>
<b>Assumptions Used in Arriving at Fiscal Estimate</b>		
<p>Administrative Rule 306 pertains to institution security standards and practices. This rule was created in 1980, and has not been updated since then. Due to various changes in correctional terminology, practices, and technological changes, the department proposes to update the rule.</p> <p>The changes are basically in three categories: (1) definitions and terminology, (2) use of various levels of force and restraints, and (3) search procedures.</p> <p>(1) Changed definitions include various staff titles to reflect current organization charts, changing the term "voluntary confinement" to "protective confinement," and changing the definition of "chemical agent" to "incapacitating agent." It is not believed that these and other similar changes will have a fiscal effect on the department.</p> <p>(2) A number of changes are made to procedures that are acceptable for staff to use in various situations where some degree of force is needed. Generally, more discretion is permitted. Reporting requirements are maintained, but with less detail required in some cases. These changes could possibly result in a saving of staff time in filling out more detailed reports.</p> <p>(3) Search procedures are modified in some cases. In general, the effect of the changes is to permit increased use of search procedures in various circumstances. One example is the deletion of the enumeration of criteria staff should consider in determining reasonable grounds for a search. Another removes the requirement for a housing unit supervisor or shift supervisor to approve a search of inmate living quarters. These procedural changes are not estimated to have a fiscal impact on the department.</p> <p>Overall, the revisions to DOC 306 are not expected to have any significant fiscal impact on the department.</p>		
<b>Long-Range Fiscal Implications</b>		
Prepared by: Barbara Carlson		Agency Corrections
Telephone No. 266-9340		Date January 31, 2000
Authorized Signature:  Robert Margolies		Telephone No. 266-2931