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CLEARINGHOUSE RULE 94-207

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.]

1. Statutory Authority

a. Section JUS 8.07 (1) (b) provides that, in certain circumstances, a court having jurisdiction of a prospective registrant must notify the person that he or she must provide the Department of Justice with the information required under s. JUS 8.04 (2). What statutory authority exists for the department to mandate that a court do anything with regard to sex offender registration? [See also s. JUS 8.10 which provides an extensive list of agencies and individuals who, according to the rule, must fully cooperate with the Department of Justice regarding the registration of sex offenders.]

b. The department should carefully review and compare s. 175.45 (6), Stats., and s. JUS 8.11 (2) to (4). Is it clear, as the Note to s. JUS 8.11 suggests, that provisions in 1993 Wisconsin Act 98 authorize penalties for violation of ch. JUS 8 to the extent that the rule subjects more conduct to penalty than the statutory provisions?

2. Form, Style and Placement in Administrative Code

a. In s. JUS 8.03 (intro.), “, the following definition shall apply” may be deleted.

b. It is suggested that ss. JUS 8.03 and 8.04 (1) be redrafted as follows. First, eliminate the definitions of “discharge” and “terminated.” The substance of those definitions can be stated in the conditions listed in s. JUS 8.04 (1); there appears to be no utility in defining the terms rather than putting the substance of the terms directly into s. JUS 8.04 (1). Second, define “sex

offender” as any person who meets any of the criteria in s. 174.35 (1), Stats. The term “sex offender” would replace “person” in the definition of “registrant” and would also be used in s. JUS 8.04 (1) (intro.). Third, while the definition of “registrant” and the title of s. JUS 8.04 imply that a sex offender is required to register under s. JUS 8.04 (1), the registration requirement is never explicitly mentioned in the substance of s. JUS 8.04 (1). [If the suggested changes are not made, the use of “discharged” in s. JUS 8.04 (1) (b) in a manner other than its definition in s. JUS 8.03 (2) needs attention. Also, if s. JUS 8.04 (1) (b) is retained, it appears that the citation to “971.17 (6)” should be replaced by a citation to “971.17 (5) and (6)” in accordance with s. 175.45 (3) (a) 3, Stats.]

c. Section JUS 8.04 (1) (intro.) refers to “any of the following conditions.” Consequently, the paragraphs following the introduction all should conclude with a period. Also, the first word of each paragraph following the introduction should begin with a capital letter. [See also s. JUS 8.04 (2).]

d. The Note to s. JUS 8.04 (2) contains substantive material that should be included in the text of the rule. [See also the Note to s. JUS 8.05.]

e. In s. JUS 8.06, the phrase “and then mail to the department” may be eliminated as redundant, given the substance of the third sentence. The substance of the second sentence should be integrated into the first sentence. The department may wish to insert the address for obtaining the form in the Note to the section. [See s. 1.09 (2), Manual.] Finally, it is presumed that the P.O. Box number referred to in the rule will be supplied prior to final promulgation of the rule.

f. In s. JUS 8.07 (2) (intro.), “orally” should be relocated to immediately precede “informing.”

g. In s. JUS 8.07 (2) (a), the word “must” should be replaced by the word “shall” and the second “that” should be revised to “the.”

h. It is suggested that the substance of s. JUS 8.07 (3) be relocated into sub. (2).

i. In s. JUS 8.07 (4), both the first and last sentences appear to be redundant and unnecessary.

j. In s. JUS 8.08 (2), “registrant’s” should precede “most” and “for a registrant” should be deleted.

k. In s. JUS 8.08 (3), “registrant” can replace “person required to register under this chapter.” Also, the notation “Stats.” should conclude the statutory reference.

l. It is suggested that s. JUS 8.09 (1) (b) be recast as a definition for the entire section as follows: “(1) DEFINITION. In this section, ‘law enforcement purposes’ includes investigation, crime prevention or protection of the public.” [The use of “includes” means that the definition is not limited to the enumerated examples. See s. 1.01 (7) (c), Manual.] Current subs. (1) and (2) should be renumbered accordingly and “law enforcement purposes” can replace “the purposes identified in sub. (1)” in current sub. (2) of s. JUS 8.09.

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

a. While the Note to s. JUS 8.02 is helpful, the department may wish to consider giving a brief description, title or relating clause for the various statutory sites, in order to make the Note even more helpful. Also, all of the statutory references should include the notation “Stats.”

b. The first comma in s. JUS 8.07 (1) (b) should be deleted.

c. In s. JUS 8.09 (2), it appears that “or to other law enforcement agencies” should follow “department.”

d. Section JUS 8.11 (1) is confusing. First, the reference to s. 175.45 (2), Stats., is unclear, since this statutory provision has no relation to the acknowledgement of a receipt of notice. Second, the subsection appears to be redundant in light of the provisions in other sections of ch. JUS 8. Third, no penalties are provided in sub. (1), yet the title of s. JUS 8.11 refers to penalties.

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

The reference in the department’s cover letter to the Violent Crime Control and Law Enforcement Act of 1994, Title XVII, Subtitle A, Conference Report on HR 3355, 103rd Congress, 2nd Session (1994), is noted. The state has three years from the effective date of the new federal law to comply with the provisions of Title XVII, Subtitle A. Presumably, any conflicts between the federal law and Act 98 will be resolved, in the first instance, through legislation and not the rule-making process. [The Clearinghouse appreciates the department’s mention of the federal law.]