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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-097

#### 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 2002.]**

#### 1. Statutory Authority

Section 440.03 (13) (c), Stats., as created by 2003 Wisconsin Act 151, provides that the department *shall* require an applicant for a private detective license or a private security permit to be photographed and fingerprinted on two fingerprint cards. In contrast, s. RL 4.08 provides that the department *may* require an applicant for any of the credentials set forth in s. RL 4.07, including a private detective and a private security person, to be photographed and fingerprinted as part of the credentialing process, if there exists reason to believe that the applicant has failed to accurately describe his or her conviction record. It appears that the statute provides no discretion to the department on this matter with respect to an applicant seeking to be credentialed as a private detective or a private security person.

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

a. The April 13, 2004, memorandum from the Director of the Wisconsin Legislative Council Rules Clearinghouse regarding new rule-making requirements imposed by 2003 Wisconsin Acts 118 and 145 suggests, on page 2, a format for an analysis that prefaces a rule. The format lists 13 statutorily required items. The preface of this rule should be compared to the list of items to determine which items have yet to be completed.

b. On the second page of the analysis, the reference to “SECTIONS 4 and 5” in the second paragraph should be replaced by a reference to “SECTIONS 3 and 4.”

c. In s. RL 4.07 (intro.), a colon should follow the first sentence and the second sentence should be placed elsewhere (for example, in a separate subsection of s. RL 4.07). Also, the first sentence of s. RL 4.07 should be compared to the definition of “investigate” in s. RL 4.01 (5m) for consistency and for unnecessary repetition of provisions of the definition.

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

a. In the second paragraph of the analysis, the phrase “to determine” should be inserted before the word “whether.” On the second page of the analysis, the word “regarding” in the third paragraph should be deleted.

b. The rule is inconsistent and confusing in its references to “arrests” and “charges.” An arrest does not necessarily lead to a charge and a charge does not necessarily lead to a conviction. Will an arrest that does not result in a conviction ever be the subject of an investigation? Will a charge, other than a pending charge, that does not lead to a conviction ever be the subject of an investigation? Consideration should be given to defining “arrest and conviction record” or similar term for enhanced clarity and consistency.

c. In s. RL 4.01 (5m) (b), “criminal charges” and “convictions” should be in the singular.

d. The use of “may investigate” in ss. RL 4.07 (intro.) and 4.09 (1) implies that there is discretion whether the department conducts an investigation. However, there is no standard in those provisions specifying under what circumstances an investigation may be triggered.

e. In s. RL 4.09 (2), does the department wish to include notification of felony or misdemeanor charges?

f. In s. RL 4.09 (3), there is no standard to trigger the requirement that the credential holder be photographed and fingerprinted. Compare s. RL 4.08.