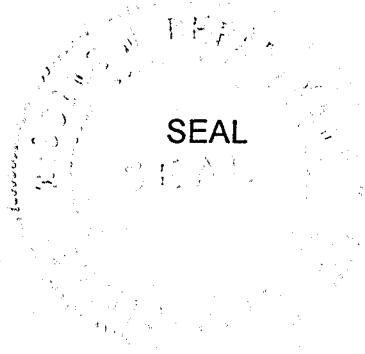


STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF CORRECTIONS )

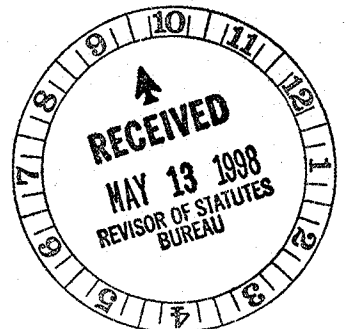
I, Michael J. Sullivan, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rule, relating to lie detector testing of probationers and parolees who are sex offenders, was duly approved and adopted by the Department on May 13, 1998.

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections 149 E. Wilson Street in the City of Madison, this 13th day of May, 1998.



*Michael J. Sullivan*  
\_\_\_\_\_  
Michael J. Sullivan  
Secretary



ORDER OF THE  
DEPARTMENT OF CORRECTIONS  
AMENDING AND CREATING RULES

An Order to create DOC 328.04(3)(o) and (p), 332.015, 332.02(2) to (7) and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders

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 332.15 as directed by the department.

(p) Pay fees for the lie detector examination process under ss. DOC 332.17 (5) 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 (2) to (7) are created to read:

DOC 332.02 (2) "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.

(3) "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.

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

(5) "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.

(6) "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.

(7) "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.

WISCONSIN DEPARTMENT OF CORRECTIONS

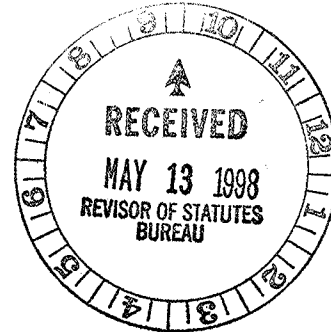
Date:

5/13/98

By:

Michael J. Sullivan  
MICHAEL J. SULLIVAN, Secretary

Seal:





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

May 13, 1998

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

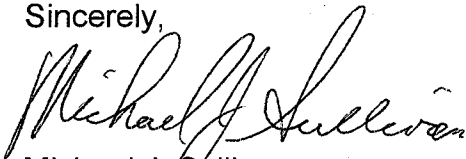
Re: Clearinghouse Rule 98-0002, relating to lie detector testing of  
probationers and parolees who are sex offenders

Dear Mr. Munson:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified  
and uncertified copy of the Order of the Department of Corrections promulgating  
Clearinghouse Rule 98-0002. Enclosed is also a computer disk which contains  
the rule.

If you have any questions, please contact Kathryn Anderson, Office of Legal  
Counsel, at (608) 266-9281.

Sincerely,

  
Michael J. Sullivan

Enclosures

