

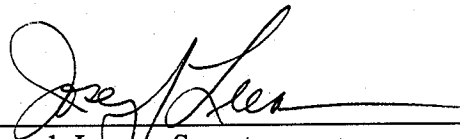
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND FAMILY SERVICES)

I, Joseph Lekan, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to lie detector testing of sex offenders who are in community placements were duly approved and adopted by this Department on April 12, 1999.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy 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 at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 12th day of April, 1999.



Joseph Lekan, Secretary
Department of Health and Family Services

SEAL:



ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
RENUMBERING, AMENDING AND CREATING RULES

To renumber HSS 98.03 (23g) to (27) ; to amend HSS 98.01 (intro.) and 98.04 (3) (L); and to create HSS 98.03 (16m), (16r), (17m) and (24), 98.04 (3) (m) and (n), subch. V (title) and 98.28 to 98.32, relating to lie detector testing of sex offenders who are in community placements.

Analysis Prepared by the Department of Health and Family Services

Section 51.375 (3), Stats., directs the Department of Health and Family Services to establish a lie detector testing program for sex offenders who are in community placements. Lie detector testing of clients who are sex offenders and are on conditional or supervised release 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 client denial and by detecting behaviors that lead to re-offending.

This order does all of the following:

1. Creates a definition for lie detector examination process.
2. Adopts the statutory definitions for lie detector, polygraph and sex offender.
3. Establishes the authority, purpose and applicability of the lie detector examination process.
4. Requires a client who is a sex offender to submit to a lie detector test if required by the Department.
5. Establishes criteria for the selection of clients who are required to participate in the lie detector examination process.
6. Requires that the Department provide notice to the client 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 will determine the questions the client may be asked during the lie detector examination process.
8. Allows an agent to consult with a treatment provider regarding the questions the client 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 or the Department of Corrections to administer the tests.
10. Provides for sanctions if a sex offender refuses to participate in the lie detector examination process.
11. Provides that a client's conditional release or supervised release may not be revoked based solely on a finding of deception as disclosed by a lie detector test.
12. 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.
13. Provides that the Department may not use the lie detector examination process as a method of punishment or sanction.
14. Provides that a client 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.
15. Establishes procedures for the collection of lie detector fees.
16. Provides for sanctions for a client's failure to pay the lie detector fees.
17. Provides criteria for lie detector fee deferrals.
18. Provides for the reporting and notice to the client when payment of lie detector fees is not received.

The order inserts the rules for the lie detector testing program in ch. HFS 98, the Department's rules for field supervision of persons committed to the Department for treatment.

The Department's authority to renumber, amend and create these rules is found in ss. 51.37 (9), 51.375 (3), 971.17 (3) (e), 980.06 (2) (d) and 980.08 (6), Stats. The rules interpret ss. 51.37 (9), 51.375, 971.17 (3) to (6), 980.06 (2) (c) and (d) and 980.08 (5) and (6), Stats.

SECTION 1. HSS 98.01 (intro.) is amended to read:

HSS 98.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 51.37 (9), 51.375 (3), 971.17 (3) (e), 980.06 (2) (d) and 980.08 (6), Stats., to provide rules for supervision in communities of persons who are committed to

the department and placed under its control after being found not guilty by reason of mental illness or defect of having committed a crime or after being found to be sexually violent persons or who are otherwise sex offenders. Supervision is intended to provide for the public's safety, promote social reintegration, reduce repetition of crime and carry out the statutory directives under s. 46.03 (1) and (5), Stats. The following goals and objectives are relevant for fulfillment of these purposes:

SECTION 2. HSS 98.03 (16m), (16r) and (17m) are created to read:

HSS 98.03 (16m) "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.

(16r) "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, and post-testing interrogation.

(17m) "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.

SECTION 3. HSS 98.03 (23g) to (27) are renumbered 98.03 (25) to (30).

SECTION 4. HSS 98.03 (24) is created to read:

HSS 98.03 (24) "Sex offender" means a person committed to the department who meets any of the criteria specified in s. 301.45 (1), Stats.

SECTION 5. HSS 98.04 (3) (L) is amended to read:

HSS 98.04 (3) (L) ~~A client~~ If committed under s. 971.17 or 980.06, Stats., may have his or her conditional or supervised release revoked only by the releasing court.

SECTION 6. HSS 98.04 (3) (m) and (n) are created to read:

HSS 98.04 (3) (m) Submit to the lie detector examination process under s. HSS 98.31 as directed by the department.

(n) Pay fees for the lie detector examination process under ss. HSS 98.31 (5) and 98.32 and comply with any required department procedures regarding payment of fees.

SECTION 7. Subchapter V (title) of ch. HSS 98 and HSS 98.28 to 98.32 are created to read:

SUBCHAPTER V -
LIE DETECTOR TESTING

HSS 98.28 PURPOSE, AUTHORITY AND APPLICABILITY. This subchapter is promulgated under the authority of s. 51.375 (3), Stats., to establish a lie detector program for clients who are sex offenders. This subchapter applies to the department and to clients who are sex offenders.

HSS 98.29 LIE DETECTOR REQUIREMENT. The department may require a client who is a sex offender to submit to the lie detector examination process in accordance with s. HSS 98.31 as a condition of supervision.

HSS 98.30 PURPOSE OF LIE DETECTOR PROGRAM. (1) The department may use the lie detector examination process as a supervision tool for clients who are sex offenders. Testing may be used to achieve any of the following goals in supervising a client who is a sex offender:

- (a) Disclosing offense pattern information for treatment purposes.
- (b) Holding the client 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 clients 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.

HSS 98.31 OPERATION OF LIE DETECTOR PROGRAM. (1) SELECTION OF PARTICIPANTS. Upon the approval of an agent's supervisor, an agent may require a client who is a sex offender to participate in the lie detector program. The agent may require a client who is a sex offender to submit to the lie detector examination process based on the following:

(a) For a client who is a sex offender and who is approaching release from confinement:

1. The client's criminal record of sexual offenses.
2. The client's adjustment under previous supervision.
3. The client's participation in offense-related programming while incarcerated or institutionalized.
4. The client's motivation or refusal to participate in continued programming in the community.

(b) For a client who is a sex offender and who is currently under field supervision:

1. The client's criminal record of sexual offenses.
2. The client's adjustment under supervision, including recent rules violations or recent consideration for alternatives to revocation.
3. The client's compliance with current programming.

(2) NOTICE. (a) An agent shall provide a client 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 a client who is a sex offender to participate in the lie detector examination process without the client's informed consent.

(b) An agent shall provide written notice to a client 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 client 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 client's involvement in current offense-related programming.
2. The client's level of denial.
3. The client's recent pattern of rules violations.
4. The client's noncompliance with treatment.
5. The agent's need to verify the client's compliance with supervision, treatment or self-reporting.
6. The agent's need to document and verify the extent of the client's sexual history.

(4) TEST ADMINISTRATION. The department may administer lie detector tests or contract with an outside vendor or the department of corrections to administer the tests.

(5) ASSESSMENT OF FEES. The department shall establish a schedule of fees in accordance with s. HSS 98.32.

(6) SANCTIONS. (a) If a client 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 s. HSS 98.04 (3).

(b) If a client 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 s. HSS 98.04 (3).

(c) If a client 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 conditional or supervised release of a client 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 a client who is a sex offender only to the following and only for purposes relating to supervision programming, care and treatment of the client:

- (a) Department employes.
- (b) Department of corrections employes.
- (c) Department vendors.
- (d) Another agency or person.
- (e) Law enforcement agencies.

HSS 98.32 LIE DETECTOR FEE. The department shall establish a schedule of fees to partially offset the costs of the lie detector program for clients who are sex offenders and who are required to take a lie detector test. A client shall pay for the costs of the test in accordance with the schedule of fees. The costs of the tests may vary depending on the type of test used. A client 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 client'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 client takes the lie detector test.
- (b) Quarterly payment of the fee to be paid in full within one year of the date the client 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 client has the present ability to pay the fee, permit deferral of payment if the client meets one or more of the following conditions, until a time when the condition or conditions no longer exist:

1. Has used all reasonable and appropriate means to obtain employment as determined by the client's agent, but has been unable to obtain employment which provides the client 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 client shall provide a release of information to verify enrollment and registration of credits. If the client 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 client from work for medical reasons and the client is unable to be employed because of the medical reasons.

(b) The agent shall make a determination concerning a client's deferral of payment of the lie detector fee within 10 working days of determining that a client is required to participate in the lie detector examination process or within 10 working days of a change in the client's financial or employment status as reported in accordance with s. HSS 98.04 (3) (f).

(c) The agent's supervisor shall review all decisions made by the client's agent to defer payment of the lie detector fee.

(4) COLLECTION. Develop procedures for the collection of lie detector fees. The client 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 client 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 client and, on request of the client, provide the client with a copy of the record of payments to verify receipt of the payments.

(7) NOTICE TO CLIENT WHEN PAYMENT IS NOT RECEIVED. Advise the client 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. HSS 98.31(6) (a), if a client 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 a client 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) Issuance of a recommendation for revocation of conditional or supervised release under the provisions of s. HSS 98.16 for the client's willful failure to pay the lie detector fee after the agent has taken action under sub. (1) and has determined that the client has the ability to pay the lie detector fee.

(e) Any other appropriate means of obtaining the lie detector fee.

The rules contained in this order shall take effect the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and
Family Services

Dated: April 12, 1999

By: 

Joseph Leean
Secretary

SEAL: