

WHATCOM COUNTY SHERIFF'S OFFICE

MEMORANDUM

DATE: 01/10/23

TO: Whatcom County Council

FROM: Sheriff Bill Elfo, Undersheriff Doug Chadwick and Chief Wendy Jones

RE: Ordinance to Repeal WCC 1.28 - Standards for Correctional Facilities

PURPOSE: The purpose of this ordinance is to repeal the current Chapter 1.28 of the Whatcom County Code (WCC) in its entirety, and replace it with the provisions contained in Exhibit A, attached hereto.

With its enactment of Ordinance No. 87-85, the County Council adopted facility standards for the Whatcom County Jail in 1987. This ordinance was eventually codified as chapter 1.28 WCC, *Standards for Correctional Facilities*. This was done to comply with RCW 70.48.071, then a new state law requiring Counties to adopt standards for correctional facilities. At that time, Whatcom County elected to adopt existing state standards; these are still in effect today.

Over the course of the past thirty-six years, new legislation and case law have invalidated the standards contained in our existing code. WCC 1.28 is currently outdated and no longer compliant with the law. To avoid significant exposure to civil liability, the County must repeal WCC 1.28 and bring the County into compliance with current law.

The following is a list of the primary problems with WCC 1.28:

1) WCC 1.28 contains outdated standards:

In 1987, WCC 1.28 reflected the most recent standards, laws and best practices. Over time, the principles underlying the standards were changed, amended and/or repealed. For example, the old standards provide for "choke holds" as a method of restraint. Today, this practice is no longer an acceptable form of restraint. New standards, not provided for in our code, include items such as regulating the types of restraints used on pregnant women, criteria used for strip searches, the prevention of prison rape, the level of medical care to be provided to offenders, and the use of digital records. WCC 1.28 has never been amended or revised, and is no longer compliant with new legislation case law or modern correctional standards.

2) WCC 1.28 is too narrowly written:

WCC 1.28 was narrowly written to address specific circumstances and does not provide any flexibility for change. National guidelines and standards for correctional facilities are continuously changing, and our current code fails to reflect the evolution of correctional practices over the past 36 years. As a result, WCC 1.28 must be repealed.

3) WCC 1.28 conflicts with other standards/laws:

WCC 1.28.030 provides “physical plant standards” that conflict with existing building codes, and national standards developed by the American Corrections Association for correctional facilities and the Uniform Building Code. For example, the old standards provide for the type of wall finishing, the type of sink and faucet required to be used in a corrections facility infirmary, and the specific number of foot-candles for lighting in each housing unit. They fail to include items such as mandatory smoke evacuation systems or adequate Seismic reinforcements. The current standards conflict with modern building and safety codes and are in violation of federal, state and national safety standards.

WHAT ARE OTHER COUNTIES DOING?

An electronic search of county codes related to correctional facilities within Washington State produced the following information:

- A majority of counties (27) in Washington do not have code provisions governing their correctional facilities. The counties that have codes governing their corrections facilities elected to: adopt their own standards, adopt the state standards, or have referenced the agency policy and procedure manuals as the basis for their standards for correctional facilities.
- The counties that adopted the state standards have either rewritten their entire code, repealed their code, or, like ours, their code remains outdated and unchanged.

PROPOSED ACTION:

The Sheriff’s Office, upon the advice of legal counsel, is respectfully requesting the County Council to repeal the current Chapter 1.28- *Standards for Correctional Facilities* of the Whatcom County Code in its entirety, and replacing it with the following provisions:

Exhibit “A”

Chapter 1.28

STANDARDS FOR CORRECTIONAL FACILITIES

1.28.010 General

A. The rules in this chapter shall apply to “Adult Correctional Facilities” within Whatcom County. “Adult Correctional Facilities” shall be defined as facilities used for housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction and rehabilitation following conviction of a criminal offense, and/or facilities used for housing adult persons being held while awaiting adjudication of a criminal offense.

B. When the word “shall” is used in this chapter, it is used as an imperative and must be considered mandatory. When the term “may” is used in this chapter, it is used as directory only and is not mandatory but rather permissive.

1.28.11 Operational standards

A. The Whatcom County Sheriff shall have the express authority to adopt any and all operational standards, rules, and procedures for the Whatcom County Sheriff’s Office Corrections Bureau as needed. The Sheriff may adopt, revise, implement and/or update these standards at any time and as needed to conform with federal, state, and local laws and regulations.

B. These standards are collectively established within the *Sheriff’s Office General Policies*, the *Sheriff’s Office Corrections Bureau Operational Policies and Procedures*, and the *Medical Policies and Procedures* of the Jail Health Program. All operational standards and any amendments thereafter shall be retained by the Whatcom County Sheriff’s Office.

The policies that codify the new standards will be published and regularly updated on the Sheriff’s Office page on the Whatcom County web site.

C. All operational standards related to the physical plant, regulated by the International Building Code and/or federal, state or local laws, shall be maintained and enforced by County Administrative Services.