

WHATCOM COUNTY  
SHERIFF'S OFFICE  
BILL ELFO  
SHERIFF



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MEMORANDUM

RECEIVED

NOV 21 2018

JACK LOUWS  
COUNTY EXECUTIVE

TO: County Executive  
County Council

FROM: Bill Elfo, Sheriff

A handwritten signature in black ink that reads "Bill Elfo".

DATE: November 21, 2018

SUBJECT: Request to Repeal and Replace Whatcom County Ordinance Chapter 1.28 "STANDARDS FOR CORRECTIONAL FACILITIES"

I am writing to you today to provide some explanation regarding an ordinance repeal request submitted to you via the County Executive, and in consultation with the Whatcom County Prosecutor's Office. The reason for the proposed ordinance repeal and replace action is that the current Chapter 1.28 of the Whatcom County Code (WCC) is obsolete, inconsistent with best practices and ineffective. The current ordinance should be replaced in its entirety, and replacing it with the provisions contained in Exhibit A, attached hereto. Day to day procedures and operations and the standards for those operations and procedures should reside in the written regulations, policies and procedures of the Sheriff's Office. Otherwise it is too cumbersome to revise, update and manage those critical policies as practices change and case law evolves. This would exclude, however the facility standards that are contained in the applicable building codes.

You may question as to why we are now requesting to repeal and replace a long-outdated section of the Code. Previously the legal advice we had received was that there is a provision in the code that allows the standards to be suspended during times of over-crowding. Since the main jail has had a long, ongoing status of being overcrowded, the standards were considered to be suspended. With the recent strategy of population draw down, new jail use agreements, and contracting with outside correctional facility for placement of Whatcom County and local City inmates, we have stabilized the population to an acceptable level and the argument that overcrowding suspends the obsolete code no longer suffices. Legal analysis has confirmed this and we concurred with the Prosecuting Attorney's Office that work should commence to review our body of policy and standards (outside of the code) to assure that existing policies, guidelines, procedures and requirements sufficiently exist. We prepared a spreadsheet to cross reference all the code sections and requirements with current sections of our various policies to assure that all applicable areas are covered by a policy or other written standards.

**History of the County Code, Chapter 1.28** Upon 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, a then new state law requiring Counties to adopt standards for correctional facilities. At that time, Whatcom County elected to adopt existing state standards. These standards expired in 2006 along with the elimination of the State Jail Commission.

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

Some examples of serious 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, these 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 regulating the types of restraints used on pregnant women and those used in strip searches, the prevention of prison rape, the required level of medical care to be provided to offenders, and the evolution of electronics. WCC 1.28 was adopted in 1987, has never been amended, and is now outdated and no longer compliant with new legislation or modern standards we use today.

2) WCC 1.28 is too narrowly written:

WCC 1.28 is narrowly written to address specific contexts and does not provide any flexibility for change. The standards for correctional facilities are continuously changing and our code fails to reflect the standards set by new legislation, case law or national standards for best practices as they currently exist. WCC 1.28 must be repealed as the standards are narrowly written and cannot be changed without rewriting the entire code.

3) WCC 1.28 conflicts with 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. For example, the old standards provide for the type of wall finishing and the type of sink and faucet required to be used in a corrections facility infirmary, along with the number of foot-candles for lighting in each housing unit. These standards conflict with current building and safety codes and are in violation of federal, state and national safety standards.

**Current Practice in other WA Counties:** 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 adopted their own standards, the state standards, or have referenced the policy and procedure manuals they have utilized in developing their own standards for correctional facilities.
- The counties that adopted the state standards have either rewritten their entire code, repealed their code, or their code remains outdated and unchanged like ours.

**Proposed alternative to current code language:** Replace the current code sections and language with the following simplified sections specifying the responsibility to maintain current operational standards, rules, policies and procedures to conform with legal requirements.