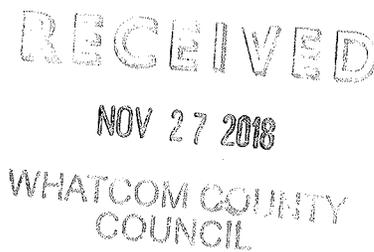


WHATCOM COUNTY COUNCIL AGENDA BILL

NO. _____ 2018-381

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	LR	11/21/18		12/4/18	Introduction
Division Head:	ufs	11/21/18		1/15/19	CJ&PS Comm.
Dept. Head:	Egy	11/21/18			Presentation
Prosecutor:	[Signature]	11-21-18			
Purchasing/Budget:					
Executive: [Signature]		11.27.18			

TITLE OF DOCUMENT: Request to repeal and replace Whatcom County Ordinance Chapter 1.28 "STANDARDS FOR CORRECTIONAL FACILITIES"

ATTACHMENTS: Memo, Draft Replacement Ordinance with Exhibit

SEPA review required? () Yes (X) NO SEPA review completed? () Yes (X) NO	Should Clerk schedule a hearing? () Yes () NO Requested Date:
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SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

With the enactment of Ordinance No. 87-85, the County adopted facility standards for the Whatcom County Jail. This ordinance was eventually codified under chapter 1.28 of the Whatcom County Code, *Standards for Correctional Facilities*. These standards were originally adopted to comply with RCW 70.48.071, a new state law requiring Counties to adopt standards for correctional facilities. At that time, Whatcom County elected to adopt existing state standards and, over time, those standards have changed, become outdated and/or have been repealed. The County is currently operating under WCC 1.28, a code with outdated standards that expose the County to the risk of civil liability. As a result, the Prosecutor Attorney's Office has recommended that the Sheriff request the County Council to adopt an ordinance repealing the current provisions in Chapter 1.28 of the Whatcom County Code in their entirety, and replacing it with the provisions in Exhibit "A."

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number:
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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

PROPOSED BY: Whatcom County Sheriff's Office _____
INTRODUCTION DATE: _____

ORDINANCE NO. _____

REPEAL WHATCOM COUNTY CODE 1.28 IN ITS ENTIRETY

WHEREAS, in 1987, Chapter 70.48 RCW, the City and County Jails Act, was adopted; and

WHEREAS, RCW 70.48.071 specifically provided that "...local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988..." and

WHEREAS, the state jail commission standards were adopted for correctional facilities in Title 289 WAC, *Corrections Standards Board*;

WHEREAS, to comply with RCW 70.48.071, the Whatcom County Council adopted the same state standards contained in Title 289 WAC in their entirety through its enactment of Ordinance No. 87-85, and this ordinance was ultimately codified in chapter 1.28 of the Whatcom County Code (WCC), *Standards for Correctional Facilities*; and

WHEREAS, in 2006 all sections of Title 289 WAC were repealed and decodified as they were outdated; and

WHEREAS, Whatcom County's identical standards are similarly outdated; and

WHEREAS, the Whatcom County Sheriff's Office is unable to comply with the standards and requirements under WCC 1.28 as codified, thus exposing Whatcom County to potential civil liability; and

WHEREAS, the Whatcom County Sheriff's Office requests the repeal of the current provisions in WCC 1.28 in their entirety, and replacing them with the provisions in Exhibit A, attached hereto.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the current WCC 1.28 be repealed and replaced with the language in Exhibit A.

ADOPTED this ____ day of November, 2018.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

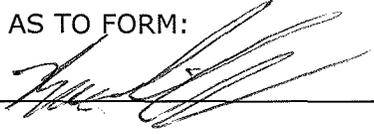
Dana Brown-Davis, Clerk of the Council

(Current Chair's Name), Council Chair

WHATCOM COUNTY EXECUTIVE

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APPROVED AS TO FORM:



Civil Deputy Prosecutor
Executive

WHATCOM COUNTY, WASHINGTON

(Current Executive's Name), County

() Approved () Denied

Date Signed: _____

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.

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.

WHATCOM COUNTY
SHERIFF'S OFFICE
BILL ELFO
SHERIFF



PUBLIC SAFETY BUILDING
311 Grand Avenue
Bellingham, WA 98225-4038
(360) 778-6600

MEMORANDUM

RECEIVED

NOV 21 2018

JACK LOUWS
COUNTY EXECUTIVE

TO: County Executive
County Council

FROM: Bill Elfo, Sheriff

A handwritten signature in blue 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.