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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 18-068

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### **2. Form, Style and Placement in Administrative Code**

a. In the rule summary, a heading and entry should be inserted for the analysis and supporting documents used to determine the effect on small business, and the effect on small business. [s. 1.02 (2) (a) 9. and 10., Manual.]

b. In the heading for the text of the proposed rule, the department should remove the word “emergency”.

c. In s. Jus 19.04 (8), the phrase “shall not” should be revised to “may not”. This comment also applies to s. Jus 19.12 (5) (a) and (6). [s. 1.01 (2), Manual.]

d. In s. Jus 19.15, titles should be inserted for subs. (1), (3), and (4), or, alternatively, the title for sub. (2) could be removed. [s. 1.05 (1), Manual.]

e. In the effective date clause for the proposed rule, the reference to “these emergency rules” should be removed and the effective date should be corrected to the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats. [s. 1.02 (4) (a) and (Example), Manual.]

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. Jus 19.03 (13), the phrase “as defined” should be removed.

b. In s. Jus 19.03 (14), should the first instance of the word “and” be revised to “or”? Also, it appears that the word “or” should be inserted between the references to ss. 940.09 (1) and 940.25, Stats.; if so, the abbreviation “ss.” should be revised “s.”.

c. In s. Jus 19.03 (15), should both instances of the word “and” be revised to “or”? Also, review the phrase “statutes and other laws” and consider whether revising to the phrase “laws and local ordinances” would better match the intent of this provision. Lastly, it appears that the word “or” should be inserted between the references to ss. 940.09 (1) and 940.25, Stats.; if so, the abbreviation “ss.” should be revised “s.”.

d. In either s. Jus 19.04 (1) (c) or 19.12 (5) (a), a time period within which a participant is required to pay the testing fees should be specified, because the rule provides a consequence for a failure to pay the fees under s. Jus. 19.12 (7) and (8). For example, this could be specified as requiring payment within a certain number of days of signing the participation agreement.

e. In s. Jus 19.04 (2), it is unclear who a “testing site officer” may be. This term should be defined or spelled out in the provision.

f. In s. Jus 19.04 (3), it is unclear what type of personal information a participant must disclose to an agency and the department. The required personal information should be identified.

g. In s. Jus 19.07, consider replacing the phrase “A deferred prosecution agreement may include a provision requiring a defendant” with “A deferred prosecution agreement may require a defendant”.

h. In s. Jus 19.08, the proposed rule states that a court or the Department of Corrections may order a defendant to participate in the program if certain conditions are met at sentencing. However, the action being taken to order a person to participate in the program post-conviction will not always occur at a sentencing hearing. Consider revising both instances of the phrase “is being sentenced” to the phrase “has been sentenced”.

i. The proposed rule could make certain duties more clear. For example, s. Jus 19.11 (2) (d) require the agency to notify the court, the Department of Corrections, and the district attorney, “as applicable”. The rule could specify when an entity is an “applicable” party that must be notified. Other examples include ss. Jus 19.11 (1) and (3) (b), 19.12 (7) and (8), 19.14 (3), and 19.15 (1) (b), (c), and (3).

j. In s. Jus 19.11 (4), does the department intend for a testing site to notify the agency of any tampering with a test and for the agency to record any tampering? This could be specified more clearly.

k. In s. Jus 19.12, subs. (1) (a), (2), and (4) (a) each provide separate but overlapping lists for what constitutes “fees” or “program costs”. Consider consolidating and using a consistent definition of the fees or program costs.

l. Section Jus 19.12 (5) (a) prohibits an agency from administering a test “before payment is made”. The rule should specify to what payment it is referring. Is it payment for testing costs? Is it a payment for all fees owed by a participant under the program?

m. In s. Jus 19.12 (8), what is the standard under which termination from the program could be recommended? For example, must it be accompanied by other compliance infractions? A standard should be specified for consistent application of recommended termination.

n. In s. Jus 19.15 (1) (a), consider stating simply that, "The participant has successfully completed the program."

o. In s. Jus 19.15 (2) (intro.), the duration for which a participant must comply with the program requirements in order to complete the program should be identified. This could be accomplished, for example, by replacing "for the duration specified" with "for the duration specified in the participation agreement".