

Report From Agency

WISCONSIN DEPARTMENT OF CORRECTIONS PROPOSED RULE MAKING ORDER CR08-045

INTRODUCTORY CLAUSE:

The Wisconsin Department of Corrections proposes an order to amend DOC 332.19 (1), (3), (4) (a) to (c), (5) (a) 3. and (b) (intro); and to create DOC 332.19 (2) (c), relating to the sex offender registration fee to bring the rule into compliance with s. 301.45 (10), Stats., as amended by 2007 WI Act 20, section 3132.

TEXT OF RULE:

SECTION 1. Section DOC 332.19 (1) is amended to read:

DOC 332.19 (1) APPLICABILITY. A person who is required to register as a sex offender under s. 301.45, Stats., ~~and who is in the department's custody or who is on probation, parole, or extended supervision~~ shall be charged a registration fee to partially offset the costs of monitoring ~~offenders~~ registrants.

SECTION 2. Section DOC 332.19 (2) (c) is created to read:

DOC 332.19 (2) (c) "Registrant" means a person required to register as a sex offender under s. 301.45, Stats.

SECTION 3. Sections DOC 332.19 (3), (4) (a), (b), and (c), (5) (a) 3. and (b), and (6) (intro) are amended to read:

DOC 332.19 (3) FEE. The sex offender registration fee shall be ~~\$50.00~~ \$100.00 on an annual basis.

DOC 332.19 (4) (a) Record all registration fees paid by ~~an inmate or offender~~ a registrant.

(b) Provide the ~~inmate or offender~~ registrant access to a copy of the record of payments to verify receipt of payments.

(c) Advise the ~~inmate or offender~~ registrant of nonpayment of registration fees.

DOC 332.19 (5) (a) 3. Provide the ~~inmate or offender~~ registrant with a copy of the sex offender registration fee payment procedures.

DOC 332.19 (5) (b) The ~~inmate or offender~~ registrant shall pay the sex offender registration fee to the department according to the procedures established by the department.

DOC 332.19 (6) (intro) DEPARTMENT ACTION WHEN AN INMATE OR OFFENDER A REGISTRANT FAILS TO PAY REGISTRATION FEE. The department

may use any of the following actions in any order when ~~an inmate or offender a~~ registrant fails to pay the sex offender registration fee:

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (into.), Stats.

RULE SUMMARY:

- A. Statute interpreted: § 301.45 (10), Stats.
- B. Statutory Authority to Promulgate the Rule: §§ 227.11 (2) and 301.45 (10), Stats.

C. Explanation of agency authority

The Department of Corrections is responsible for the sex offender registration program. As part of that authority the Department is authorized to establish an annual fee to partially offset its costs.

- D. Related statute or rule: § 301.45, Stats.; §§ DOC 332.03 through DOC 332.13, Wis. Adm. Code

E. Plain Language Analysis

The purpose of the rule is to amend § DOC 332.19 to be consistent with § 301.45 (10), Stats., as amended by 2007 Wisconsin Act 20, section 3132. First, the newly amended § 301.45 (10) expands the persons whom the department of corrections may require to pay an annual sex offender registration fee. Previously, the department was limited to assessing the fee only against those persons who were required to register and who were in its custody or under its supervision as a person on probation, parole, or extended supervision. The newly amended law permits the department to require all persons who are required to register as a sex offender to pay an annual fee. The proposed rule expands the requirement to pay the sex offender registration fee to all persons who are required to register.

Second, the amended § 301.45 (10), Stats., limits the use of the collected sex offender fees to partially offset the costs of monitoring sex offenders. Previously, the department was authorized to use the collected fees to partially offset the costs of monitoring those persons on probation, parole, or extended supervision, regardless of whether they were required to register as sex offenders. The proposed rule limits the use of the collected sex offender registration fees to partially offset the costs of monitoring registrants.

Third, the legislature increased the maximum annual rate from \$50 to \$100. The proposed rule increases the annual fee to \$100.

- F. Summary of and Comparison with Existing or Proposed Federal Regulations that are intended to address the activities to be regulated by the proposed rule

The District of Columbia has a sex offender registration program but does not require a registration fee. (28 CFR Part 811) There is an entry in the Federal Register regarding the application of Megan's Law, in which states are encouraged to charge a registration fee to mitigate costs. 62 Fed. Reg. 39009 (03/08/2002). The federal government has a registration requirement but does not assess a fee. (Adam Walsh Child Protection and Safety Act of 2006 (PL 109-248, 2006 HR 4472); Sex Offender Registration and Notification Act, 42 USCA § 16901, et seq.)

- G. Comparison of similar rules in adjacent states (Illinois, Indiana, Iowa, Michigan, Minnesota)
1. Illinois has established a \$20.00 initial registration fee and a \$10.00 annual renewal fee. The fees are to be used by the registering agency "for official purposes." (730 ILCS 150/3(c)(6))
 2. Indiana has established a sex offender registration fee which the county of residence can assess. The fee cannot exceed \$50.00. (IC 36-2-13-5.6 (a) (1) A) In addition, a fee of \$5.00 is assessed each time the registrant changes addresses. (IC 36-2-13-5.6 (a) (1) B)
 3. Iowa has established a \$10.00 initial sex offender registration fee and a \$10.00 fee for each change of registration. Fees are paid to the sheriff to defray the costs of duties related to the registration of persons. (Iowa Code § 692A.6 (2005)) Also, Iowa assess a one time civil penalty of \$200.00 at the time of conviction. (Iowa Code § 692A.6 (1) & (2))
 4. Michigan has established a \$35.00 initial registration fee. (MCLS § 28.725a (2006)) In addition, Michigan requires individuals to carry a personal identification card for which a fee of \$12.00 is assessed. (MCLS § 28.292 (12))
 5. Minnesota has not established a sex offender registration fee.

- H. Summary of the factual data and analytical methodologies that DOC used in support of its determination of the rule's fiscal effect on small businesses under s. 227.114, Stats.

This rule does not affect small businesses. The rule imposes a registration fee on persons who are required to register as a sex offender to partially offset the department's costs in monitoring them as sex offenders.

- I. Any analysis and supporting documents that DOC used in support of DOC's determination of the proposed rule's effect on small businesses or that was used when the DOC prepared an economic impact report.

No economic impact report was required.

- J. Effect on small businesses: There is no expected effect on small businesses under s. 227.114, Stats.

- K. Agency contact person (including email and telephone):

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections, 3099 E. Washington Avenue, P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5049, kathryn.anderson@wisconsin.gov.

Comments on the proposed rule which were received through the hearing process, including written, oral, and testimony were considered if they were received by July 31, 2008.

EFFECTIVE DATE: The permanent rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats. Emergency Rule DOC 332.19 went into effect May 15, 2008.

FINAL REGULATORY FLEXIBILITY ANALYSIS: There is no expected effect on small businesses under s. 227.114, Stats.

FISCAL ESTIMATE: See attached.

STATEMENT EXPLAINING THE NEED FOR THE PROPOSED RULE: The legislature amended § 301.45 (10) to permit the department to require all persons who are required to register as sex offenders to pay an annual fee to partially offset the costs of monitoring those persons, not just those individuals who were incarcerated or on probation, parole or extended supervision. In addition, the legislature limited the use of the fees to monitoring sex offenders, instead of those persons on probation, parole or extended supervision. Finally, the legislature also increased the maximum annual fee from \$50.00 to \$100.00 per registrant. The legislative changes require the department to amend its current rule to bring it into compliance with the revised statute.

STATEMENT OF THE BASIS AND PURPOSE OF THE RULE INCLUDING HOW THE RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES: The purpose of the proposed rule is to amend § DOC 332.19 to bring it into compliance with § 301.45 (10), Stats., as amended by 2007 Wisconsin Act 20, section 3132.

PUBLIC HEARINGS:

- A. Two public hearings were held on July 24, 2008, one at the Milwaukee State Office Building, Milwaukee, WI and one at the Department of Administration Building, Madison, WI.
- B. List of persons who appeared or registered for or against the proposed rule at the public hearings:

Milwaukee State Office Building: David Geboy, 8309 West Dana Street, registered against the rule. Mr. Geboy indicated that the fee was too high for his income.

Department of Administration Building, Madison: No one attended, appeared or registered at the public hearing.

C. Summary of public comments on the rule and DOC responses to those comments:

Amended DOC 332.19 went into effect as an Emergency Rule (EmR 0812) on May 15, 2008. The Department notified registrants who were covered by the registration fee requirement that they were required to pay the annual fee of \$100.00. As a result, 58 registrants or their family members wrote to the department to ask questions or express concern about the fee. In addition, the department received over 94 telephone calls expressing concern about the new rule. A summary of the public inquiry and Department of Corrections response follows:

Approximately 10 individuals who were under the custody of the department of health services as chapter 980 offenders questioned why they were being assessed a fee when in the past they were not. The department informed the individuals that the statute was amended to authorize the department to assess the fee against all registrants, not just those under the supervision of the department of corrections.

Approximately 18 individuals complained that they should not be required to pay because they no longer were under the supervision of the department or that they no longer lived in the state of Wisconsin. Again, the department informed these individuals that the revised statute does not differentiate among registrants. The statute authorizes the department to assess a fee for all individuals who are required to register in Wisconsin, regardless of their current residence or the existence of a custodial or supervision relationship between the individual and the department.

Approximately 30 individuals expressed concern because they had very limited funds or no funds to pay the annual fee. The department informed the individuals that they could make multiple small payments until the fee was paid off.

The individuals who called expressed similar concerns as described above in the written comments. The department provided oral responses to their concerns, consistent with the information above.

D. Modifications made in the proposed rule as a result of the testimony received at public hearings or public comments made: No modifications to the proposed rule were made as a result of the public comments made during the public hearing and public comment period.

LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT: See attached.

RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS IN THE REPORT: The Department accepted all of the recommendations made by the Legislative Council staff.

2. Form, Style and Placement in Administrative Code

Recommendation a. The introductory clause should list the affected individual provisions of s. DOC 332.19. Accepted.

Recommendation b. The rule summary include information under each of the following headings: statute interpreted; statutory authority; explanation of agency authority; related

statute or rule; plain language analysis; summary of, and comparison with, existing or proposed federal regulations; comparison with rules in adjacent states; summary of factual data and analytical methodologies; analysis and supporting documents used to determine effect on small business or in preparation of economic impact report; effect on small business; agency contact person; and place where comments are to be submitted and deadline for submission. Accepted.

Recommendation c. In the provisions amending s. DOC 332.19 (4) (a) and (5) (a) 3., the titles of the subsections should be deleted. Accepted.

Recommendation d. The order should include an effective date clause. Accepted.

4. Adequacy of References to Related Statutes, Rules and Forms

Recommendation a. In s. DOC 332.19 (1), the comma after “Stats.” should not be stricken. Accepted.

Recommendation b. In the treatment clause for Section 3, all references to DOC 332.19 except the first one should be deleted. Also, a period should be inserted after “(5) (a) 3”. Accepted.

EXPLANATION OF ANY CHANGES THAT HAVE BEEN MADE TO THE PLAIN LANGUAGE ANALYSIS OR THE FISCAL ESTIMATE: No changes were made to either the plain language analysis or the fiscal estimate.

FINAL REGULATORY FLEXIBILITY ANALYSIS. The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

FISCAL ESTIMATE. See attached.

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