

**WISCONSIN DEPARTMENT OF CORRECTIONS
REPORT FROM AGENCY**

**RULEMAKING REPORT TO LEGISLATURE
for
CR 18-062**

BASIS AND PURPOSE OF PROPOSED RULE

The Wisconsin Department of Corrections proposes an order to repeal DOC 328.10 (4), DOC 328.17 (4); amend DOC 328.04 (2) (i), DOC 328.14 (1), DOC 328.17 (2), DOC 328.27 (7); repeal and recreate DOC 328.07, DOC 328.11, DOC 328.17 (1); and create DOC 328.17 (1m), and DOC 328.27 (7) (d), relating to adult field supervision.

GERMANE MODIFICATIONS TO PROPOSED RULES

Under s. 227.19(4)(b)4, Stats., an agency may modify a proposed rule following the committee review period if the modification is germane to the subject matter of the proposed rule. DOC has made two such modifications.

First, in Wis. Admin. Code DOC 328.07(2), which enumerates the provisions related to supervision fees, the maximum fee of \$60 per month has been added to explain what the supervision fee parameters will be for probationers, parolees, and persons on extended supervision to partially reimburse the Department for the costs of providing supervision and services, with the exact modified language being “fee not to exceed \$60 per month.” This germane modification simply adds the fee parameters whereas the prior proposed rule draft submitted to the Legislature did not include such parameters.

Second, in Wis. Admin. Code DOC 328.14(1), which enumerates the provisions related to interstate transfer request, the maximum application fee of \$150 per application has been added to explain what the interstate application fee will be for offenders to submit an application for an interstate transfer, with the exact modified language being, “The fee shall not exceed \$150 per application.” This germane modification simply adds the fee parameters and criterion, which is a fee charged per application, whereas the prior proposed rule draft submitted to the Legislature did not include the fee parameters and criterion.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE TO THOSE COMMENTS, AND AN EXPLANATION OF ANY MODIFICATION MADE IN THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENTS OR TESTIMONY RECEIVED AT A PUBLIC HEARING

Public Comment or Testimony

Department Response

Three members of the public attended the public hearing held on October 1, 2018 in Milwaukee, Wisconsin. No hearing comments were made related to the proposed rule-making order, CR 18-062, by these attendees. Rather, the attendees made inquiries into the statutes and corrections in general.

No response.

One written letter was received by the Department of Corrections regarding CR 18-062. The individual expressed being in favor of the rule change concerning monitoring offender compliance through the use of tracking technology (SECTION 1. DOC 328.04 (2) (i) of proposed rule-making order). The letter also indicates that the writer is in favor of the repeal of DOC 328.10 (4) (SECTION 4

No response.

of the proposed rule-making order) concerning emergency loans to offenders.

PERSONS SUBMITTING PUBLIC COMMENTS OR APPEARING/REGISTERING AT HEARING

A Public Hearing was held on October 1, 2018 from 1:00 p.m. – 3:00 p.m. at 819 North 6th Street Milwaukee, Wisconsin 53203.

LIST OF PERSONS WHO APPEARED OR REGISTERED FOR OR AGAINST THE PROPOSED RULE AT THE PUBLIC HEARINGS, OR SUBMITTED WRITTEN COMMENTS

Alan Schultz Melissa Ludin
Heather Burnnet Joshua Sherin

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

No changes were made to the rule analysis or the fiscal estimate and economic impact analysis.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

Legislative Council Comment/Suggestion

Department Response

The “Explanation of Agency Authority” in the rule summary cites to s. 303.03 (3), Stats., for the department’s authority to administer parole, extended supervision, and probation. The citation should be corrected to s. 301.03 (3), Stats.

Accepted. Reference to agency authority corrected to read s. 301.03 (3).

SECTION 2 of the proposed rule repeals and recreates s. DOC 328.07. In that section, sub. (3) (a) requires the assigned agent to establish the offender’s supervision fee or exemption “pursuant to department policy”. The rule summary’s plain language analysis explains that 2015 Wisconsin Act 55 amended s. 304.074 (2), Stats., to direct the department to make determinations of supervision fees by department policy. However, Act 55 amended sub. (3), rather than sub. (2) of that section, to allow the department to waive for a period a fee “for reasons established under department policy”, including if the person is unemployed, has a health issue or is disabled, or is participating in education or treatment-related programming. In other words, s. 304.074 (3), Stats., grants the department explicit authority to establish reasons for waiving supervision fees by department policy, but does not grant explicit authority to determine the supervision fee pursuant to policy. The department should explain its authority to establish supervision fees by policy, rather than through promulgation of an administrative rule.

Accepted. Revised Section 2 of proposed rule to comport with this direction.

SECTION 5 of the proposed rule adds an alternative criterion under s. DOC 328.14 which would allow an offender under supervision in another state to transfer supervision to Wisconsin. The newly added criterion would allow an offender to transfer to Wisconsin if the offender meets the criteria established “by departmental policy, which includes payment of application fee prior to application submission”.

Accepted. Revised SECTION 5 of proposed rule.

The rule summary's plain language analysis cites to s. 20.410 (1) (gn), Stats., as authority for charging an application fee. The appropriation provision reads as follows:

(gn) Interstate compact for adult offender supervision. The amounts in the schedule to provide supervision of probationers, parolees, and persons on extended supervision. All moneys received from an offender submitting an interstate compact application to transfer supervision to another state, as prescribed by rule in accordance with s. 304.16 (1) (b) 1. and (5) (b), shall be credited to this appropriation account.

The statute does not provide authority for the department to establish transfer criteria by policy, nor does it provide authority for the department to receive application fee monies established by policy. The department should explain its authority to establish transfer of supervision criteria, including payment of an application fee, by policy, rather than through promulgation of an administrative rule.

The introductory clause for the proposed rule should include the phrase "relating to adult field supervision", as listed on the statement of scope. [s. 1.02 (1) (a), Manual.]

Accepted.

The rule summary's explanation of agency authority does not appear to be complete. Each of the provisions cited in the rule summary's listing of statutory authority should be described.

Accepted. Summary explanation was revised as requested.

In s. DOC 328.14 (3) (am), the word "an" should be inserted before the phrase "application fee".

SECTION 5 was revised as stated above. Proposed DOC 328.14 (3) (am) was removed.

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. 227.1145, Stats.