

Clearinghouse Rule 25-033

WISCONSIN DEPARTMENT OF CORRECTIONS PROPOSED RULE MAKING ORDER

INTRODUCTORY CLAUSE

The statement of scope for this rule was approved by the Governor on June 22, 2023, published as Scope Statement No. SS 046-23 in Register No. 811A3 on July 17, 2023, and approved by Secretary Kevin Carr on August 22, 2023.

The Wisconsin Department of Corrections proposes an order **to renumber and amend** DOC 328.27 (7) (d), **to amend** DOC 328.02 and **to create** DOC 328.04 (4) to (7), 328.27 (7) (d) 1. to 8., 328.27 (7) (e) and 328.29.

RULE SUMMARY

1. Statutes interpreted:

ss. 301.001, 301.03 (3), 301.068 (5), 301.08 (1) (c) 5., 301.08 (2) (em) 6., and 304.074, Stats.

2. Statutory authority to promulgate the rule: ss. 227.11 (2) (a) – (e), 301.03 (3), 301.068 (5), 301.08 (1) (c) 5. and 301.08 (2) (em) 6., Stats.

3. Explanation of agency authority: The department has responsibilities imposed by statute to administer parole, extended supervision, and probation matters. The department is further directed by statute to promulgate rules for defining and evaluating violation consequences, contracting with vendors to supervise certain individuals, contracting for services and providing agents with training.

4. Related statute or rule: s. 301, Stats. and ch. DOC 331.

5. Plain language analysis: This rulemaking order creates provisions to allow the department to contract for the supervision of probationers, parolees, or persons on extended supervision who are under minimum or administrative supervision and defines minimum and administrative supervision. This rulemaking order also creates provisions to allow vendors who are contracted for the supervision of probationers, parolees, or persons on extended supervision to charge for fee for this supervision and also specifies when these contractors cannot charge a fee. Additionally, this rulemaking order creates provisions to allow for service providers to retain from the surplus up to 5% of revenue from contracts made under s. 301.08 (2) (em), Stats. Lastly, this rulemaking order creates provisions that further define the department's evidence-based response to violations, requires the department to review and assess sanctions imposed and further delineates the training the department will provide to probation and parole agents.

6. Summary of, and comparison with, existing or proposed federal regulations that are intended to address the activities to be regulated by the proposed rule: There are no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

7. Comparison with similar rules in adjacent states:

a. **Illinois:** Per Illinois statute, released offenders must comply with the conditions of probation. The chief judge of each circuit shall adopt a system of structured, intermediate sanctions for violations of the terms and conditions of a sentence of probation, conditional discharge or disposition of supervision. 730 ILCS 5/5-6-1. The court shall impose as a condition of a sentence of probation, conditional discharge, or supervision, that the probation agency may invoke any sanctions from the list of intermediate sanctions

adopted by the chief judge of the circuit court for violations of the terms and conditions of the sentence of probation, conditional discharge, or supervision. 730 ILCS 5/5-6-1(a).

Additionally, the court shall impose upon an offender sentenced to probation after January 1, 1989 or to conditional discharge after January 1, 1992 or to community service under the supervision of a probation or court services department after January 1, 2004, as a condition of such probation or conditional discharge or supervised community service, a fee of \$50 for each month of probation or conditional discharge supervision or supervised community service ordered by the court, unless after determining the inability of the person sentenced to probation or conditional discharge or supervised community service to pay the fee, the court assesses a lesser fee. The court may only waive probation fees based on an offender's ability to pay and the probation department may reevaluate an offender's ability to pay every 6 months. 730 ILCS 5/5-6-3(i).

Lastly, Illinois statute prescribes that the division of probation services may establish a system of training and standards for personnel orientation and training. 730 ILCS 110/15(1)(f). The division shall also establish training standards for continuing education of probation officers and supervisors and broaden access to available training programs. 730 ILCS 110/15(1)(m).

b. **Iowa:** Per Iowa administrative code, the district department shall have uniform written policies and procedures governing the classification and supervision of probationers. 201 IAC 42.1(3). The department shall also have written policies and procedures governing the preparation, submission, review, modification, collection and retention of supervision enrollment fees. 201 IAC 42.1(13). A person placed on probation or parole and subject to supervision by a district department shall be required to pay an enrollment fee of three hundred dollars to the district department to offset the costs of supervision. Iowa Code § 905.14(1). The department shall also have written policies and procedures governing the waiver of collection of supervision enrollment fees for persons determined unable to pay. 201 IAC 42.1(14).

Persons committed to the director of the department of corrections and granted parole by the Iowa board of parole shall be supervised by the judicial district departments of correction services. The district departments shall impose conditions of parole as established and approved by the board of parole. 201 IAC 45.1(1). The district department shall have written policies and procedures governing the preparation, submission, review, modification, collection and retention of supervision enrollment fees. 201 IAC 45.7(1). The district department shall also have written policies and procedures governing the waiver of collection of supervision enrollment fees for persons determined to be unable to pay, in accordance with Iowa code section 905.14(3). 201 IAC 45.7(2).

Lastly, per Iowa Code, the director of the department of corrections shall establish standards of mental fitness which shall govern the initial recruitment, selection, and appointment of correctional officers and establish and maintain a correctional training program. Iowa code § 904.108(1)(f) and (o). The director shall provide training to all new officers or employees of the department free of charge. Iowa code § 904.303A. The department shall also offer in-service training which shall include classes for officers and employees in the areas of safety, first aid, emergency preparedness, and any other appropriate class determined by the director. Iowa code § 904.303A.

c. **Michigan:** Per Michigan statute, the state community corrections advisory board shall evaluate the community corrections program and adopt minimum program standards, policies, and rules for community corrections programs. MCL 791.404(1)(a) and (b). The program standards must include evidence-based practices. MCL 791.404(1)(b). The board shall also research, review, and make recommendations regarding the use of performance-based contracts within community corrections. MCL 791.404(1)(f).

Based on these standards, Michigan administrative code sets out conditions of parole, including that a person on parole shall pay a parole oversight fee. R 791.7730(3)(b). Michigan administrative code also includes the standards and procedures for offenders on probation. R. 791.9910. When an offender is placed on probation, the supervising probation agent shall provide the offender with a copy of the order and inform the offender of the statutory conditions, as well as all of the terms and conditions contained in the order, and the possible consequences of a failure to adhere to the conditions of probation. R. 791.9920(1).

The Michigan Department of Corrections is required to provide its employees and supervising agents with intensive initial and ongoing training and professional development services to support the implementation of evidence-based practices. MCL 798.34(1). The training and professional development services provided must include assessment techniques, case planning, risk reduction and intervention strategies, effective communication skills, substance abuse intervention information, and other topics identified by the agency or its employees and supervising agents. MCL 798.34(2).

d. **Minnesota:** In Minnesota, the responsibility for correctional planning and implementation is at the local level of government. Minn. R. 2905.0200(3). Each county or group of counties participating in community corrections must implement training programs necessary to meet the needs of line staff, administrative staff, the local corrections advisory board, major components of the local criminal justice system, and the community at large. Minn. R. 2905.0700(1).

The commissioner of corrections shall adopt standards and procedures for the establishment of conditions of release and the revocation of supervised or conditional release, and shall specify the period of revocation for each violation of release. Minn. Stat. § 244.05(2)(a). The commissioner may impose several interventions if a supervised individual violates the conditions of supervised release including modifying or enlarging the conditions imposed on the individual and transferring the individual's case to a specialized caseload. Minn. Stat. § 244.05(3). The commissioner of corrections may establish and operate community correctional programs or contract with existing public and private agencies for separate control or specialized care and treatment of persons under the commissioner's custody and control or on conditional release under section 241.26. Minn. Stat. § 241.32(1).

The commissioner of corrections or a probation agency may also establish a schedule of correctional fees to charge individuals under supervision. The correctional fees on an agency's and commissioner's schedule must be reasonably related to defendants' abilities to pay and the actual cost of correctional services. Minn. Stat. § 244.18(2). Lastly, the commissioner of corrections shall establish a training program including but not limited to in-service, preservice, internship and scholarship programs, and an operational research program for personnel. Minn. Stat. § 241.01(5).

8. Summary of the factual data and analytical methodologies: 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.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis: Not applicable.

10. Effect on small businesses: Not applicable.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs. Not applicable.

12. Agency contact person: Caitlin Washburn, Administrative Rules Coordinator, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI, 53707-7925; by phone: (608) 240-5020; or by email: DOCAAdministrativeRulesCommittee@wisconsin.gov.

13. Place where comments are to be submitted and deadline for submission: Written comments on the proposed rule will be accepted and receive consideration if they are received by a date to be determined. Written comments should be addressed to: Administrative Rules Committee, c/o Caitlin Washburn, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email: DOCAAdministrativeRulesCommittee@wisconsin.gov.

TEXT OF RULE

SECTION 1. DOC 328.02 is amended to read:

DOC 328.02 This chapter applies to the department and to offenders under the division's custody and supervision for correctional purposes. It implements ss. 165.76, 301.001, 301.03, 301.068 (5), 301.08, 301.45, 301.46, 302.11, 302.113, 302.114, 302.14, 302.19, 302.31, 302.335, 304.06 (3), 304.072, 304.074, 304.12, 304.13, 304.135, 304.137, 304.14, 939.615, 941.29, 961.47, 971.17, 972.15, 973.01, 973.04, 973.06, 973.07, 973.08, 973.09, 973.10, 973.125, and 973.20, Stats., and chs. 950 and 980, Stats.

SECTION 2. DOC 328.04 (4) to (7) are created to read:

DOC 328.04 (4) (a) In this subsection:

1. "Administrative supervision" means the supervision of a probationer or parolee in which the department requires that a minimum of one face-to-face contact occur every 6 months between the probationer or parolee and a representative of the department and that the probationer or parolee submit a monthly report to the department.
2. "Minimum supervision" means supervision of a probationer or parolee in which the department requires that a minimum of one face-to-face contact occur every 90 days between the probationer or parolee and a representative of the department and that the probationer or parolee submit a monthly report to the department.

(b) The department may contract with public, private, or voluntary vendors for the supervision of any component of the supervision of probationers, parolees, and persons on extended supervision who are under minimum supervision or administrative supervision.

(5) (a) Except as provided in par. (b), for contracts made under sub. (4), a vendor is authorized to charge a fee to probationers, parolees, and persons on extended supervision to cover the cost of supervision and administration of the contract.

1. The cost of the fee must not exceed the set maximum monthly amount as outlined in s. DOC 328.07 (2).
2. The vendor may collect the established fee amount per month from probationers, parolees, and persons on extended supervision in the form of cash, check, or card per an agreed payment plan with the offender.
3. The vendor shall record all supervision fees paid by a probationer, parolee or person on extended supervision and shall provide the probationer, parolee, or person on extended supervision and the department access to a copy of the record payments to verify the receipt of payment monthly.

(b) For contracts made under sub. (4), a vendor may not charge a fee to a probationer, parolee, or person on extended supervision if the probationer, parolee or person on extended supervision demonstrates that they are unable to pay the fee because of any of the following:

1. The probationer, parolee, or person on extended supervision is undergoing treatment approved by the department and is unable to work.
2. The probationer, parolee, or person on extended supervision has a statement from a physician certifying to the department that the probationer, parolee, or person on extended supervision

should be excused from working for medical reasons.

(6) For contracts made under s. 301.08 (2) (em), Stats., if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the contract shall allow the provider to retain from the surplus up to 5 percent of the revenue received under the contract.

(7) The department shall review the rate-based service contracts under s. 301.08 (2) (em), Stats., on an annual basis to determine whether the contract complies with the provisions of s. 301.08 (2) (em), Stats.

SECTION 3. DOC 328.27 (7) (d) is renumbered DOC 328.27 (7) (d) (intro.) and amended to read:

DOC 328.27 (7) (d) (intro.) Consistent with goals and requirements set forth in s. 301.03 (3) (b), Stats., the department ~~will~~shall adopt an evidence-based response to violations that satisfies all of the following:

SECTION 4. DOC 328.27 (7) (d) 1. to 8. are created to read:

DOC 328.27 (7) (d) 1. Takes into account the objective to be accomplished by imposing the sanction, considers the level of intensity necessary to achieve the objective, and considers the extent to which sanction imposition is likely to accomplish the objective.

2. Takes into account the goals of protecting the public, correcting the offender's behavior, and holding the offender accountable.

3. Determines when revocation is the required response to the violation.

4. Provides flexibility in imposing sanctions but also provides offenders with clear and immediate consequences for violations.

5. Provides examples of high-, medium-, and low-level sanctions and what factors to consider when determining which level of sanction to apply.

6. Determines how to reward offenders for compliance with conditions of parole, of probation, of extended supervision, or of the agreement.

7. Ensures that efforts to minimize the impact on an offender's employment are made when applying sanctions.

8. Ensures that efforts to minimize the impact on an offender's family are made when applying the sanctions.

SECTION 5. DOC 328.27 (7) (e) is created to read:

DOC 328.27 (7) (e) The department shall review sanctions imposed under the system to assess disparities among sanctions, to evaluate the effectiveness of sanctions, and to monitor the impact of sanctions on the number and type of revocations for violations.

SECTION 6. DOC 328.29 is created to read:

DOC 328.29 **DCC agent training.** The department shall provide annual training to probation and parole agents in risk reduction, intervention techniques, and skill development in evidence-based practices.

SECTION 7. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.