

Clearinghouse Rule 08-105

WISCONSIN DEPARTMENT OF CORRECTIONS

**PROPOSED RULE MAKING ORDER
DOC 332.20**

INTRODUCTORY CLAUSE:

The Wisconsin Department of Corrections proposes an order to create DOC 332.20, relating to establishing a reimbursement fee to offset the costs of monitoring persons subject to global positioning system tracking or passive positioning system tracking.

STATUTORY AUTHORITY: § 227.11 (2), Stats.

STATUTE INTERPRETED: § 301.48 (4), Stats.

EXPLANATION OF AGENCY AUTHORITY:

Under § 301.48, Stats., the department of corrections is responsible for the program of tracking by global positioning system or passive positioning system the location of persons who have committed a serious child sex offense.

PLAIN LANGUAGE ANALYSIS:

The rule establishes a fee to recover the costs of tracking a person subject to global positioning system (GPS) tracking or passive positioning system (PPS) tracking under § 301.48, Stats., based on the person's ability to pay. The department has established a tracking fee which is based on the gross household monthly income and the person's ability to pay. The fee structure is similar to the one used by the department for assessing monthly supervision fees under § DOC 328.045, Wis. Adm. Code. Specifically, for persons who have a gross household monthly income of less than \$800.00, there is no monthly fee; for persons who have a gross household monthly income from \$800.00 to \$1,500.99, the monthly fee is \$50.00; for persons who have a gross household monthly income from \$1,501.00 to \$2,400.00, the monthly fee is \$120.00; and for persons who have a gross household monthly income greater than \$2,400.00, the monthly fee is \$240.00.

Persons subject to GPS tracking or PPS tracking are required to produce financial information about their gross household income, including financial institution statements, wage statements, and tax returns. The department will use this financial information to determine the appropriate fee. If a person fails to provide the requested documentation, the department may assess a fee up to and including the full cost of tracking the person.

The department will review the tracking fee determination at least annually. Each time the department performs a review, it may request financial information.

The department has set forth the tracking fee structure in a table which will be published as part of the rule. The department recognizes that the table may need to be revised periodically. In the proposed rule the department will publish adjustments to the table in the Wisconsin Administrative Register if the adjustments constitute less than a ten (10) percent increase. If the increase is ten (10) percent or greater, the department will promulgate an administrative rule to make the necessary adjustments.

The department will establish procedures for notifying persons subject to the tracking fee of the procedures relating to the assessment and collection of fees. The department will record all tracking fees which are paid and provide the person making the payment a record of the payment.

The department has identified methods it can use to collect tracking fees in the case that a person fails to make payments when required to do so. For example, if the person is on probation, parole, or extended supervision, the methods include counseling, wage assignment and steps which might affect the level of supervision. If the person is not on community supervision, the methods include wage assignment, use of a collection agency, and tax refund intercept.

TEXT OF RULE:

SECTION 1. Section DOC 332.20 is created to read:

DOC 332.20 Tracking fee. (1) APPLICABILITY. A person who is subject to GPS tracking or PPS tracking under s. 301.48, Stats. shall be charged a fee to offset the costs of the tracking, based on the person's ability to pay.

(2) DEFINITIONS. In this section:

(a) "Global positioning system tracking" or "GPS tracking" has the meaning given in s. 301.48 (1) (b), Stats.

(b) "Passive positioning system tracking" or "PPS tracking" has the meaning given in s. 301.48 (1) (dm), Stats.

(c) "Tracking cost" means the monthly cost for tracking a person subject to GPS tracking or PPS tracking.

(d) "Tracking fee" means the fee which a person who is subject to either GPS tracking or PPS tracking is required to pay to offset the costs of tracking.

(3) TRACKING FEE. (a) A person who is subject to either GPS tracking or PPS tracking shall pay the tracking fee in accordance with procedures established by the department.

(b) The department shall set a tracking fee for a person who is subject to either GPS tracking or PPS tracking, based on the person's ability to pay, and shall do all of the following:

1. Determine the person's ability to pay the tracking fee. The department will base the determination on the person's documented monthly gross household income.

The department may require the person to produce financial documentation to establish household income, including tax returns, financial institution account statements, and wage information.

a. The department will review the determination of the person's ability to pay the tracking fee at least annually. The department may require production of financial information for each review.

b. If a person fails to provide the requested financial documentation, the department may assess the person a tracking fee up to and including the full tracking cost.

2. Charge a tracking fee in accordance with the following table:

Table DOC 332.20

| INCOME CATEGORY | TRACKING FEE |
|-----------------------|--------------|
| <\$800.00 | \$00.00 |
| \$800.00 - \$1500.99 | \$50.00 |
| \$1501.00 - \$2400.00 | \$120.00 |
| >\$2400.00 | \$240.00 |

a. The department shall publish adjustments to Table DOC 332.20 in the Wisconsin administrative register.

b. If the department proposes to make adjustment to the tracking fee by ten (10) percent or more, the department shall promulgate an administrative rule to make the adjustments. The department will not issue an emergency rule to implement the adjustments under this subsection before providing advance public notice of at least one month.

3. Establish a tracking fee schedule including the following:

a. A grace period for the initial tracking fee payment.

b. A deadline for receipt of each monthly tracking fee payment.

4. Approve procedures for the collection of tracking fees.

5. Provide the person who is required to pay a tracking fee with a copy of the tracking fee payment procedures.

6. Record all costs incurred as part of the tracking cost for monitoring a person on GPS tracking or PPS tracking.

7. Record all tracking fees paid by a person.

8. Provide the person with access to a copy of the record of payments to verify receipt of the payments.

9. Advise the person of nonpayment of tracking fees.

10. Credit the moneys collected to the appropriation account under s. 20.410 (1) (gk), Stats.

11. Audit the record of payments of tracking fees.

(4) DEPARTMENT ACTION WHEN A PERSON ON PROBATION, PAROLE, OR EXTENDED SUPERVISION FAILS TO PAY TRACKING FEE. The department may use any of the following actions in any order when a person who is required to pay a tracking fee and who is on probation, parole, or extended supervision fails to pay the tracking fee:

(a) Counseling.

(b) Wage assignment.

(c) Review of supervision or custody level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, increase in the security level of custody, or detention in a jail, correctional facility or house of correction.

(d) Issue a recommendation for revocation of parole, probation, or extended supervision for the person's willful failure to pay the tracking fee.

(e) Any other appropriate means of obtaining the tracking fee.

(5) DEPARTMENT ACTION WHEN A PERSON NOT ON PROBATION, PAROLE OR EXTENDED SUPERVISION FAILS TO PAY TRACKING FEE. The department may use any of the following actions in any order when a person who is required to pay a tracking fee but who is not on probation, parole, or extended supervision fails to pay the tracking fee:

(a) Wage assignment.

(b) Intercept of the person's Wisconsin income tax refund or Wisconsin lottery winnings.

(c) Submission of the debt to a state contracted collection agency.

(d) Any other appropriate means of obtaining the tracking fee.

SECTION 2. 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.

SUMMARY OF, AND COMPARISON WITH, EXISTING OR PROPOSED FEDERAL REGULATIONS.

Under 42 USC § 16981 the US Department of Justice may award grants to states, local governments, and Indian tribal government to establish a GPS monitoring program for sex offenders. There are no federal regulations which address the issue of assessing a fee for the costs of electronic monitoring or global positioning system tracking.

COMPARISON WITH RULES IN ADJACENT STATES.

1. Illinois: Illinois State law sections 730 ILCS 5/5-6-3.1 (persons on community supervision), 730 ILCS 5/5-7-1 (persons subject to periodic imprisonment), and 725 ILCS 207/40 (Sexually Violent Persons Commitment Act) provide for the Chief Judge of the county where the person was convicted or committed to assess reasonable fees for all costs incidental to electronic monitoring in accordance with the person's ability to pay. The fees are paid to the county clerk to defray the costs of the monitoring program. There are no state administrative regulations which address this issue.

2. Iowa: Iowa does not have either statutory or regulation provisions assessing a fee for electronic monitoring or global positioning system tracking of sex offenders.

3. Michigan: Under MCLA 791.285, Michigan statutes establish a lifetime electronic monitoring program for certain offenders. Under MCLA 791.285 (2), an individual who receives a sentence which includes lifetime electronic monitoring is required to reimburse the State of Michigan for the costs related to the program. The MI Department of Corrections has not developed rules concerning the lifetime electronic monitoring program.

4. Minnesota: Under MSA § 631.425 subd. 4, Minnesota statutes provide that a sheriff may assess the cost of electronic monitoring when an offender is released for work. There is not a similar statute for the electronic monitoring of sex offenders.

SUMMARY OF FACTUAL DATA AND ANALYTICAL METHODOLOGIES.

This rule does not affect small businesses. The rule imposes a fee on persons whom the Department monitors under GPS tracking or PPS tracking.

ANALYSIS AND SUPPORTING DOCUMENTS USED TO DETERMINE EFFECT ON SMALL BUSINESS OR IN PREPARATION FO ECONOMIC IMPACT REPORT.

The department is not required to prepare an economic impact report.

EFFECT ON SMALL BUSINESS.

The department does not anticipate any effect on small businesses.

FISCAL ESTIMATE. See attachment.

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