

Clearinghouse Rule 06-066

Report From Agency

WISCONSIN DEPARTMENT OF CORRECTIONS

**PROPOSED RULE MAKING ORDER
CR 06-066**

INTRODUCTORY CLAUSE

The Wisconsin Department of Corrections proposes an order to create a rule, relating to the establishment of an annual sex offender fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision.

TEXT OF RULE

SECTION 1. Section DOC 332.19 is created to read:

DOC 332.19 Sex offender registration fee.

- (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.
- (2) **DEFINITIONS.** In this section:
 - (a) "Custody" means being under the authority of the department as an inmate, a probationer, parolee, or person subject to extended supervision under s. 302.113, Stats.
 - (b) "Offender" means a person on probation, parole, or extended supervision under s. 302.113, Stats.
- (3) **FEE.** The sex offender registration fee shall be \$50.00 on an annual basis.
- (4) **RECORDING OF REGISTRATION FEE.** With reference to the sex offender registration fee under sub. (3), the department shall do the following:

- (a) Record all registration fees paid by an inmate or offender.
 - (b) Provide the inmate or offender access to a copy of the record of payments to verify receipt of payments.
 - (c) Advise the inmate or offender of nonpayment of registration fees.
 - (d) Audit the record of payment of registration fees.
- (5) COLLECTION OF REGISTRATION FEE. In collecting the sex offender registration fee, all of the following shall occur:
- (a) The department shall do the following:
 - 1. Establish a registration fee payment schedule including all of the following:
 - a. A grace period for the initial registration fee payment.
 - b. A deadline for payment for each subsequent year of registration.
 - 2. Approve procedures for the collection of registration fees.
 - 3. Provide the inmate or offender with a copy of the sex offender registration fee payment procedures.
 - 4. Credit those moneys collected to the appropriation account under s. 20.410 (1) (gd), Stats.
 - (b) The inmate or offender shall pay the sex offender registration fee to the department according to the procedures established by the department.
- (6) DEPARTMENT ACTION WHEN AN INMATE OR OFFENDER FAILS TO PAY REGISTRATION FEE. The department may use any of the following actions in any order when an inmate or offender fails to pay the sex offender registration 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 electronic monitoring or detention in a jail, correctional facility or house of corrections for those on probation, parole or extended supervision.
 - (d) Issue a recommendation for revocation of parole, probation or extended supervision for an offender's willful failure to pay the sex offender registration fee.
 - (e) Any other appropriate means of obtaining the sex offender registration 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) (intro.), Stats.

RULE SUMMARY

- A. Statute interpreted: s. 301.45(10), Stats.
- B. Statutory Authority to Promulgate the Rule: s. 227.11(2) and 301.45 (10), Stats.
- C. Explanation of agency authority:

The Department of Corrections is responsible for maintaining a registry of all persons subject to the registration requirements under s. 301.45 (1d), Stats. Recently under s. 301.45 (10), Stats., the Legislature authorized the Department to establish by administrative rule a sex offender registration fee to partially offset its costs in monitoring person on probation, parole, or extended supervision.

- D. Related statute or rule: s. 301.45 (8), Stats., and ch. DOC 332, Sex Offender Registration and Community Notification Requirements, Wis. Adm. Code
- E. Plain Language Analysis:

The rule establishes an annual fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision. Generally, the department has interpreted that all individuals who are subject to it supervision whether incarcerated or on probation, parole, or extended supervision, are under its custody. Because of the statutory language which seems to distinguish between those “in custody” and those on probation, parole, or extended supervision, the department has defined the term “custody” and used the terms “offender” and “inmate” to describe the individuals who are subject to this fee. The department has set the annual fee at \$50.00. The department also has established procedures for the collection and recording of the registration fee, as well as procedures for the failure of payment by an inmate or offender.

- 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).

- G. Comparison of similar rules in adjacent states (Michigan, Minnesota, Illinois, Iowa, Indiana)
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. 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 s. 692A.6 (2005))
 3. Michigan has established a \$35.00 initial registration fee. (MCLS s. 28.725a (2006))
 4. Neither Indiana nor Minnesota has 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 inmates and persons who are probation, parole and extended supervision and who are required to register 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, Assistant Legal Counsel, Department of Corrections,
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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 June 9, 2006.

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 authorized the Department to establish a sex offender registration fee. In anticipation of the Department's collection of fees under the program, the Legislature reduced the Department's budget. The annual fee which cannot exceed \$50.00 per registrant is to be used to offset the costs of supervising probationers, parolees, and persons on extended supervision.

STATEMENT OF THE BASIS AND PURPOSE OF THE RULE INCLUDING HOW THE RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES: The Legislature authorized the Department to establish a sex offender registration fee to partially offset the costs of supervising probationers, parolees, and persons on extended supervision. The Legislature limited the annual fee to \$50.00 per registrant. The Legislature also limited those who were required to pay the fee to those registrants who are in the Department's custody (inmates) or who are on probation, parole or extended supervision. The proposed rule complies with the Legislative authorization. The proposed rule also requires the Department to maintain a record of payments. It addresses the procedure for the collection of fees and methods the Department may use to collect the fees if not paid.

PUBLIC HEARINGS:

- A. Two public hearings were held on July 18, 2006, 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: No one attended, appeared or registered at the public hearings.
- C. Summary of public comments on the rule and DOC responses to those comments:

Section DOC 332.19 went into effect as an Emergency Rule on June 9, 2006. The Department notified registrants who were covered by the registration fee requirement that they were required to pay the annual fee of \$50.00. As a result, over 40 inmates and some inmate family members wrote to the Department to ask questions or express concern about the fee. A summary of the public inquiry and Department of Corrections response follows:

Approximately three individuals who are under the custody of the Department of Health and Family Services as a chapter 980 offenders were inadvertently charged the annual fee. The error was corrected.

Approximately 11 offenders attempted to pay the fee by personal check. The Department only accepts payment in the form of a money order, cashier's check or credit card. Clarification of the requirement was sent and the offenders' voided checks returned to them.

Approximately four offenders attempted to pay by credit card but the payment was rejected by the credit card company. The Department notified the offenders that they needed to resubmit payment in the form of a money order or cashier's check.

Approximately three offenders who are under Wisconsin custody but have been sent to another state under the interstate compact questioned whether they were required to pay the annual fee. Under the interstate compact, the sending state cannot charge offenders supervision fees. The Department informed the offenders that they were required to pay the fee. Since the offenders remained under the custody of the Department and the fees were a registration fee, not a supervision fee, they were still responsible for payment.

Approximately 20 inmates acknowledged their responsibility to pay but expressed concern because they had very limited funds or no funds to pay the annual fee. The Department informed the inmates that they could make multiple small payments until the fee was paid off. The Department also informed the inmates that it would accept an institution check in lieu of a money order or credit card.

Approximately 17 inmates questioned the assessment of the fee against them based on their not being required to report on an annual basis. The Department informed the inmates that under s. 301.45 (1g) (b), Stats., inmates are covered by the registration requirements. Under s. 301.45 (2) (b), Stats., the Department of Corrections is required to place the names and other required information on the registry for inmates under its custody. While under s. 301.45 (3), Stats., inmates are not required to comply with the annual registration requirements until the time of their release from prison on parole or extended supervision or discharge, they are required to be registered and appear on the registry. Section 301.45 (10) authorizes the Department to establish the fee to cover those individuals “who must register as a sex offender and who [are] in [the department’s] custody or on probation, parole, or extended supervision.” Inmates are required to register as sex offenders but they are not required to comply with the annual registration requirement since the Department is responsible for keeping the information on inmates current.

Approximately 73 inmates questioned the basis for the Division of Community Corrections to assess a fee against them when they were still incarcerated. In addition, they expressed concern about the amount of funds they had available to pay the fee. The Department explained that section 301.45 (10), Stats., authorized the establishment of the sex offender registration fee. Under the statute the individuals covered by the fee were those who were required to register and were under the custody of the Department or on probation, parole, or extended supervision. The Department also explained that by rule it had specifically included inmates as being responsible for the fee.

- 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.

Recommendation a. The staff recommended that the Department format the rule proposal in conformance with 1.02 (2) of the Administrative Rules Procedures Manual. Accepted.

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

Recommendation c. The title for s. DOC 332.19 should be written in bold letters. Accepted.

Recommendation d. "In this section:" should be inserted after the title of s. DOC 332.19 (2). Accepted.

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