

01hr_AC-CC_CRule_02-093_pt01



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Corrections and Courts (AC-CC)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

Scott McCallum
Governor

Jon E. Litscher
Secretary



OFFICE OF LEGAL COUNSEL
149 East Wilson Street
Post Office Box 7925
Madison, Wisconsin 53707-7925

Writer's Direct Line: (608) 267-9839
Fax: (608) 267-3661

State of Wisconsin
Department of Corrections

August 29, 2002

Scott Jensen, Speaker
Wisconsin State Assembly
211 West, State Capitol
Madison, Wisconsin 53708

Fred Risser, President
Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

Re: Clearinghouse Rule 02-093
A proposed order repealing and amending chapter DOC 328 relating to adult field supervision.

Gentlemen:

As provided in s. 227.19 (2), Stats., notice is given that the above-mentioned rule is in final draft form. This notice and the report required under s. 227.19 (2) and (3), Stats., are submitted in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats.. A copy of the Council's report is also enclosed.

If you have any questions regarding the rule, please contact Julie Kane at (608) 240-5015.

Sincerely,

A handwritten signature in black ink that reads 'Jon E. Litscher'.

Jon E. Litscher
Secretary

Enclosures

Cc: Gary Poulson, Deputy Revisor of Statutes

**PROPOSED ADMINISTRATIVE RULES – DOC 328,
RELATING TO ADULT FIELD SUPERVISION.
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3) STATS.**

Need for Rule

2001 Wisconsin Act 109 requires the department to amend rules relating to supervision fees and provides, in relevant part, the following:

“...the department of corrections shall promulgate the rules that are required under section 304.074(5) of the statutes and that set rates under section 304.074(2) of the statutes. The rules shall take effect on July 1, 2002.”

“...the rules shall require the department to have a goal of receiving at least \$2 per day, if appropriate, from each person who is on probation, parole, or extended supervision and who is not under administrative supervision, as defined in section 304.74(1)(a) of the statutes, or minimum supervision, as defined in section 304.74(1)(b) of the statutes.”

2001 Wisconsin Act 109 doubles the amount the department may collect in supervision fees, while the current Administrative Code limits the department's efforts to do so.

Responses to Clearinghouse Recommendations

This rule was originally submitted to Legislative Council on June 27, 2002. All but the following recommendations were accepted:

1.a. Under s. 304.073(2), Stats., for an offender on administrative or minimum supervision, the department must charge the offender a fee that is sufficient to cover the cost of the offender's supervision. Other offenders on supervision are required to pay a fee that is based on the offender's ability to pay in order to partially reimburse the costs of supervision. [s/304.074(2), Stats.] The proposed rule eliminates this distinction and requires all offenders on supervision to pay a fee that is based upon their gross income. How does this change meet the current statutory fee requirements for offenders on administrative or minimum supervision?

RESPONSE: The proposed rule complies with statutory requirements. S. 304.073(2) Stats. requires the department to charge a fee to any probationer, parolee or person on extended supervision who is under minimum or administrative supervision and is supervised by the department. The fee shall be sufficient to cover the cost of supervision. The fee schedule in the proposed rule does just that. The fees established, at a rate of \$20 to \$60 per month, are set at an amount sufficient to cover the cost of supervising offenders on administrative or minimum supervision.

In addition, s. 304.074(2) Stats., requires the department to charge a fee to probationers, parolees, and persons on extended supervision to partially reimburse the department for the costs of providing supervision and services. Because it costs more to supervise offenders on medium, maximum and high risk supervision, the fee schedule of \$20 to \$60 per month is set at an amount that covers only a portion of the costs of supervision and services, as required by statute.

Public Hearings

This rule received two public hearings. The schedule and location is as follows:

Date & Time

Location

July 29, 2002
Monday
9:00 A.M.-11:00 A.M.

Wood County Courthouse
400 Market Street
Room 210B (Second Floor)
Wisconsin Rapids, Wisconsin

July 30, 2002
Tuesday
9:00 A.M.-11:00 A.M.

State Office Building
141 N.W. Barstow Street
Room 137 A
Waukesha, Wisconsin

There were no appearances at the public hearings.

Written Comments

One written comment was received and is summarized as follows:

Louie Aiello

Mr. Aiello states that this fee increase operates the same way a penalty does and should not be applied to a person who is released to supervision prior to enactment of the new fee. Mr. Aiello also requests the department to clearly spell out what "if appropriate" means by using clear and unambiguous language.

RESPONSE:

Supervision fees are not a penalty, they are a requirement for supervision. This concern is not properly addressed in this rule proposal. This rule proposal merely follows statutory guidelines and requirements. Any comments relate to the legality or legitimacy of the statutes is more appropriately addressed in other forums.

The proposed rule uses the language "if appropriate" as it is used in the statute. In fact, s. 304.074(3) Stats. does add circumstances under which the department may decide that it is not appropriate to charge a supervision fee, including when an offender is unemployed, in school,

undergoing treatment or medically unable to work. The department also maintains internal policy related to establishing guidelines for setting supervision fees.

Modifications Made as a Result of Public Hearings

No modifications were made as a result of public hearings.

Final Regulatory Flexibility Analysis

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1.)

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS
REPEALING AND AMENDING RULES**

The Wisconsin department of Corrections proposes an order repealing DOC 328.043, and amending DOC 328.045(1), (2) (intro) and (2)(c), relating to adult field supervision.

Statutory Authority: ss.301.02, 301.03 (1) (2), and 227.11(2), Stats.
Statutes Interpreted: ss.304.073 and 304.074, Stats.

Analysis Prepared by the Department of Corrections...

Pursuant to sec. 304.074(2) Stats., the department has authority to collect "at least \$1 per day, if appropriate" from offenders on supervision. However, 2001 Wisconsin Act 109 directs the department to amend supervision fees and provides, in relevant part, the following:

"...the department of corrections shall promulgate the rules that are required under section 304.074(5) of the statutes and that set rates under section 304.074(2) of the statutes. The rules shall take effect on July 1, 2002."

"...the rules shall require the department to have a goal of receiving at least \$2 per day, if appropriate, from each person who is on probation, parole, or extended supervision and who is not under administrative supervision, as defined in section 304.74(1)(a) of the statutes, or minimum supervision, as defined in section 304.74(1)(b) of the statutes."

The department published an emergency rule on July 1, 2002 in anticipation of the fore-mentioned statutory requirements. This permanent rule proposal follows.

While 2001 Wisconsin Act 109 doubles the amount the department may collect in supervision fees, the current Administrative Code limits the department's efforts to do so. The current DOC 328 establishes a set fee schedule with a maximum collection of \$45 per month.

This rule:

- Raises the department's supervision fee goal to at least \$2 per day, if appropriate, from all offenders under supervision by the department.

- Eliminates the distinction between offenders supervised by the department on administrative and minimum supervision and offenders who are deemed medium, maximum and high risk as it relates to supervision fees. All offenders under supervision by the department will pay, based on their ability, according to one supervision-fee scale. Offenders on minimum supervision will ultimately pay the cost of supervision while offenders on medium and maximum supervision will pay a portion of the cost of supervision.

SECTION 1. DOC 328.043 is repealed.

SECTION 2. DOC 328.045(1) , (2) (intro) and (2)(c) are amended to read:

DOC 328.045 ~~Medium, maximum and high risk~~ Offenders under supervision by the department.

- (1) ~~OFFENDER PAYMENT. An offender on medium supervision as defined under s. DOC 328.04(4) (b) or maximum supervision as defined under s. DOC 328.04(4)(a) or high risk~~ who is under supervision by the department shall pay a supervision fee.
- (2) SUPERVISION FEE. The department shall set a supervision fee for an offender based on the offender's ability to pay with the goal of receiving at least \$1-2 per day, if appropriate, and shall do all of the following:
 - (c) Charge a supervision fee according to the following table:

Table DOC 328.045

Category	Gross Monthly Income	Supervision Fee	Maximum Rate
I	\$0-599.99 <u>799.99</u>	\$10.00 <u>20.00</u>	\$30.00
II	\$600.00 or more <u>800.00-1,499.99</u>	\$30.00 <u>40.00</u>	\$45.00
III	<u>\$1,500.00 or more</u>	<u>\$60.00</u>	

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) Stats

Dated: _____

Agency: _____
Jon E. Litscher, Secretary



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-093

AN ORDER to repeal DOC 328.043; and to amend DOC 328.045 (1) and (2) (intro.) and (c), relating to adult field supervision.

Submitted by **DEPARTMENT OF CORRECTIONS**

06-27-2002 RECEIVED BY LEGISLATIVE COUNCIL.

07-02-2002 REPORT SENT TO AGENCY.

RS:AS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Skjansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-093

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Under s. 304.073 (2), Stats., for an offender on administrative or minimum supervision, the department must charge the offender a fee that is sufficient to cover the cost of the offender's supervision. Other offenders on supervision are required to pay a fee that is based on the offender's ability to pay in order to partially reimburse the costs of supervision. [s. 304.074 (2), Stats.] The proposed rule eliminates this distinction and requires all offenders on supervision to pay a fee that is based upon their gross income. How does this change meet the current statutory fee requirements for offenders on administrative or minimum supervision?

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

In the analysis, Assembly Bill 1 should be referred to as 2002 January Special Session Assembly Bill 1.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In current s. DOC 328.045 (2) (a), "fee" is bracketed. This could be corrected in the proposed rule.

b. In Table DOC 328.045, "800.00" could be replaced with "799.99" and "801.00" could be replaced with "800.00" so that the income guidelines are more specific. If this change is made, it should also be made for the next income level.

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DOC 328.043, 328.045(1)&(2)

Subject
Supervision Fees

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

- | | |
|--|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
§20.410(1)(gf)

Assumptions Used in Arriving at Fiscal Estimate

The Department of Corrections (DOC), under §304.074(2), is required to set supervision fee rates for probationers, parolees, or persons on extended supervision with the goal of receiving at least \$1 per day, if appropriate, from each probationer, parolee, and person on extended supervision. In addition, §304.074(2) requires that DOC promulgate rules establishing supervision fee rates and providing the procedure and timing for collecting fees charged. In response to this directive, DOC Administrative Code 328.043, 328.045(1) and 328.045(2) were established which set a fee schedule of \$10 to \$45 per month depending upon an offender's monthly income. DOC may exempt offenders from the fee schedule if the offender meets certain criteria.

In FY01, the DOC collected \$5,884,800 in supervision fees. This revenue is used to provide a variety of essential Division of Community Corrections (DCC) services including rent, vehicles for home visits, extradition of absconders, and upgrading computers utilized by DCC staff.

The proposed budget reform bill (AB 1) directs DOC to increase the amount collected from supervision fees from at least \$1 per day to at least \$2 per day. In the bill, DOC is required to promulgate emergency rules by July 1, 2002 in order to increase the supervision fee rate. Although AB 1 has not yet passed the Legislature, the provision is included in all versions of AB 1. The Department needs to change the administrative rule immediately in order that supervision fee collections can reach the levels estimated in AB 1.

According to the new rule, offenders at all supervision levels will pay according to one supervision-fee scale. The new fee schedule will range from \$20 to \$60 per month depending on an offenders monthly income. DOC may exempt offenders from the fee schedule if the offender meets certain criteria. It is estimated that the new fee schedule will generate an additional \$5,884,800 annually in supervision fee revenue.

Long-Range Fiscal Implications

Increase supervision fee revenue annually by \$5,884,800.

Prepared By: Jason Gherke	Telephone No. 240-5423	Agency DOC
Authorized Signature <i>Robert M. ...</i>	Telephone No. 240-5056	Date (mm/dd/ccyy) 06/27/02

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DOC 328.043, 328.045(1)&(2)

Subject
Supervision Fees

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ -	\$ -
(FTE Position Changes)		(FTE)	(FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$ -	\$ -
B. State Costs by Source of Funds			
GPR		\$ -	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$ -	\$ -
GPR Earned			-
FED			-
PRO/PRS		5,884,800	-
SEG/SEG-S			-
Total State Revenues		\$ 5,884,800	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ -	\$ -
Net Change in Revenues	\$ 5,884,800	\$ -

Prepared By: Jason Gherke	Telephone No. 240-5423	Agency DOC
Authorized Signature <i>Alta Mowmi</i>	Telephone No. 240-5056	Date (mm/dd/ccyy) 06/27/2002



DATE: September 10, 2002

TO: Melissa Gilbert

Committee on Corrections and the Courts

FROM: Patrick Fuller, Assembly Assistant Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 02-093

AN ORDER to repeal DOC 328.043; and to amend DOC 328.045 (1) and (2) (intro.) and (c), relating to adult field supervision.

Submitted by **Department of Corrections.**

Report received from Agency on **August 29, 2002.**

To committee on **Corrections and the Courts.**

Referred on **Tuesday, September 10, 2002.**

Last day for action - **Thursday, October 10, 2002.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. **(Please note that the text of Clearinghouse Rules beginning with the prefix "01" is now available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



TO: Members of the Assembly Committee on Corrections and the Courts
FROM: Melissa Gilbert, Clerk
DATE: Sept. 11, 2002
RE: Clearinghouse Rule 02-093

The following clearinghouse rule has been referred to the Assembly Committee on Corrections and the Courts:

CR 02-093 An order to repeal DOC 328.043; and to amend DOC 328.045 (1) and (2) (intro.) and (c), relating to adult field supervision.

The committee's jurisdiction over CR 02-093 ends Thursday, Oct. 10. If you wish to receive a copy of this rule or submit comments, please contact me at 266-9180. If you want to request a hearing, please contact Anne in Vice Chairman Scott Suder's office at 7-0280.

Thank you.