

**Committee Name:**  
**Senate Committee –**  
**Judiciary, Corrections and Privacy**  
**(SC–JCP)**

**Appointments**

03hr\_SC–JCP\_Appt\_pt00

**Committee Hearings**

03hr\_SC–JCP\_CH\_pt00

**Committee Reports**

03hr\_SC–JCP\_CR\_pt00

**Clearinghouse Rules**

**03hr\_SC–JCP\_CRRule\_04–038**

**Executive Sessions**

03hr\_SC–JCP\_ES\_pt00

**Hearing Records**

03hr\_ab0000

03hr\_sb0000

**Misc.**

03hr\_SC–JCP\_Misc\_pt00

**Record of Committee Proceedings**

03hr\_SC–JCP\_RCP\_pt00



# Wisconsin State Public Defender

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PO Box 7923 Madison, WI 53707-7923  
Office Number: 608-266-0087 / Fax Number: 608-267-0584  
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Nicholas L. Chiarkas  
State Public Defender

Kelli S. Thompson  
Deputy State Public  
Defender

To: Legislative Committees  
From: Kellie M. Krake, Legal Counsel  
[krakek@mail.opd.state.wi.us](mailto:krakek@mail.opd.state.wi.us)  
267-0299  
Date: June 10, 2004  
Re: Report on Clearinghouse Rule 04-038

## Analysis and Need:

Wis. Stat. sec. 977.075 requires that the state public defender board establish by rule a program for repayment of the cost of legal representation, including reimbursement and prepayment options. Promulgated in 1995, PD 6.01 and PD 6.02(1) establish a payment schedule based on the type of case. The proposed rule changes will increase the repayment amounts by 20%. In January 2002, the state public defender board authorized a statewide pilot program increasing reimbursement and prepayment amounts by 20% to remain in effect until sufficient results were available to determine the fiscal effect. Fiscal analysis of data gathered from the pilot project estimates an increase in our collection revenues of approximately \$302,000 biennially. When promulgated in 1995, the payment schedule did not list petitions for supervised release (s. 980.08) and petitions for discharge from commitment (s. 980.09) under the sexual predator law as specific case types for purposes of determining repayment of the cost of legal representation, although these types of cases have been included under "commitment" since the law was enacted. The proposed rule change clarifies the classification of these cases for repayment purposes and reflects current practice. Partial indigency determination had been used as a criterion for determination of ability to pay has been replaced by the collection statute. The proposed rule change reflects current practice.

## Statutory authority:

sec. 977.02(4m), Stats.

## Statute(s) interpreted:

secs. 977.075(1),(3), Stats.

## Public Hearing

A public hearing was held on June 7, 2004. Paul Onsager from the Legislative Fiscal Bureau appeared and requested a copy of the rule. There were no registrations for or against the proposed rule. The agency did not receive any testimony or written comments on the proposed rule.

## Legislative Council Staff Recommendations

The Legislative Council staff made recommendations, which were adopted in whole.

## Flexibility Analysis

The proposed rule changes will not have a regulatory effect on small business.

## PROPOSED RULE CHANGE: Public Defender's Office

### Section 1. PD 6.01 is amended to read:

Except as provided in ss. PD 6.02 to 6.05, a person who is responsible for payment for legal representation provided by the state public defender shall reimburse the state public defender for the cost of the legal representation according to the following schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$7500	Misdemeanor	\$ 200 <u>\$ 240</u>
Other Class A or B Felony	<del>\$1000</del> <u>\$1200</u>	Parole/Probation Revocation	\$ 200 <u>\$ 240</u>
Sexual Predator (s. 980.02)	<del>\$1000</del> <u>\$1200</u>	Juvenile Felonies/TPRs	\$ 400 <u>\$ 480</u>
Other Felony	<del>\$ 400</del> <u>\$ 480</u>	Other Juveniles	\$ 200 <u>\$ 240</u>
Commitment (including ss. 980.08, .09)	<del>\$100</del> <u>\$120</u>	Special Proceeding	\$ 100 <u>\$ 120</u>
Chapter 55	<del>\$ 400</del> <u>\$ 480</u>	Paternity	\$ 200 <u>\$ 240</u>
Appellate/Trial	<del>\$1000</del> <u>\$1200</u>	Appellate/Plea	\$ 400 <u>\$ 480</u>

**Section 2. PD 6.02 (1) is amended to read:**

(1) A client may elect to prepay, within 60 days of appointment of counsel by the state public defender, the optional prepayment amount for the cost of representation specified in the following prepayment fee schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	<del>\$ 500</del> <u>\$ 600</u>	Misdemeanor	<del>\$ 50</del> <u>\$ 60</u>
Other Class A or B Felony	<del>\$ 100</del> <u>\$ 120</u>	Parole/Probation Revocation	<del>\$ 50</del> <u>\$ 60</u>
Sexual Predator (s. 980.02)	<del>\$ 100</del> <u>\$ 120</u>	TPR	<del>\$ 50</del> <u>\$ 60</u>
Other Felony	<del>\$ 50</del> <u>\$ 60</u>	Special Proceeding (including ss. 980.08.,.09)	<del>\$ 25</del> <u>\$ 30</u>
Commitment	<del>\$ 25</del> <u>\$ 30</u>	Paternity	<del>\$ 50</del> <u>\$ 60</u>
Chapter 55	<del>\$ 50</del> <u>\$ 60</u>	Appellate/Plea	<del>\$ 50</del> <u>\$ 60</u>
		Appellate/Trial	<del>\$ 100</del> <u>\$ 120</u>

**Section 3. PD 6.025 (2) is amended to read:**

(2) The state public defender may determine that a person has the ability to pay under any of the following circumstances:

~~(a)~~ The person is determined to be indigent in part.

~~(b)~~(a) The person is determined to have family income and assets in excess of the payment amount specified in s. 49.19 (11) (a) 1., Stats.

~~(c)~~(b) The person does not notify the state public defender by the date specified in the notice sent to them under s. PD 6.015 that they are unable to pay the specified periodic payments.

~~(d)~~(c) The person does not comply with a request of the state public defender for information necessary to verify their financial circumstances.



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State Public Defender

Kelli S. Thompson  
Deputy State Public  
Defender

To: Senate and Assembly Chief Clerks  
Date: June 10, 2004  
From: Kellie M. Krake Legal Counsel  
Re: Notice of Rule in Final Draft Form

Pursuant to s. 227.19(2), Stats., please provide notice to the presiding officers of the Senate and the Assembly that the attached proposed rule changes relating to the repayment of cost of legal representation is in final draft form and is hereby accompanied by a report, as specified in s. 227.19(3), Stats.

Please contact me at 267-0299 if you have any questions. Thank you.



# STATE SENATOR DAVE ZIEN

**CHAIRPERSON**

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

**VICE CHAIRPERSON**

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

**MEMBER**

COMMITTEE ON SENATE ORGANIZATION

COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

**ASSISTANT MAJORITY LEADER**

## MEMORANDUM

**TO:** Members, Senate Committee on Judiciary, Corrections & Privacy

**FROM:** Senator Dave Zien, Chair

**DATE:** June 18, 2004

**RE:** Clearinghouse Rule 04-038

The following Clearinghouse Rule was referred to the Senate Committee on Judiciary, Corrections & Privacy:

Clearinghouse Rule 04-038      A proposed order to amend PD 6.01 and 6.025, relating to reimbursement of legal fees.

A copy of the rule is attached. The deadline for committee action on this rule is July 16, 2004. If you are interested in requesting a hearing and/or submitting comments, please do so prior to that date.



CHR 04-038 Kelly-

1995 - Collections program in response to  
2 pay-Stub = Pay Receipts (prior) vs. pre-  
PD (6.01) - 977.0

Fee may be waived  
"indig in part" everyone

3 levels of Indigent  
1 - Indigent  
2 - Indigent in  
3 - Not Indigent

#1 was eliminated years ago  
#2 now eliminated

Has the effect that a  
to be found indigent  
regardless.



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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**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 04-038**

AN ORDER to amend PD 6.01, 6.02 and 6.025, relating to reimbursement of legal fees.

Submitted by **PUBLIC DEFENDER BOARD**

04-28-2004 RECEIVED BY LEGISLATIVE COUNCIL.

05-20-2004 REPORT SENT TO AGENCY.

RNS: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



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Clearinghouse Director

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Legislative Council Deputy Director

### CLEARINGHOUSE RULE 04-038

#### 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 October 2002.]

#### 2. Form, Style and Placement in Administrative Code

The text of the rule needs to be divided into SECTIONS with the following treatment clauses:

- SECTION 1. PD 6.01 is amended to read:
- SECTION 2. PD 6.02 (1) is amended to read:
- SECTION 3. PD 6.025 (2) is amended to read:

The remaining text should be deleted.

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

a. Please review the plain language analysis. It should briefly describe the content of the rule, as well as the anticipated effect of the rule. [See Manual, s. 1.02 (2).]

b. In s. PD 6.01, there appear to be underscored hyphens following the stricken fees for commitments and misdemeanors.