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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 18-062

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

a. The “Explanation of Agency Authority” in the rule summary cites to s. 303.03 (3), Stats., for the department’s authority to administer parole, extended supervision, and probation. The citation should be corrected to s. 301.03 (3), Stats.

b. SECTION 2 of the proposed rule repeals and recreates s. DOC 328.07. In that section, sub. (3) (a) requires the assigned agent to establish the offender’s supervision fee or exemption “pursuant to department policy”. The rule summary’s plain language analysis explains that 2015 Wisconsin Act 55 amended s. 304.074 (2), Stats., to direct the department to make determinations of supervision fees by department policy. However, Act 55 amended sub. (3), rather than sub. (2) of that section, to allow the department to waive for a period a fee “for reasons established under department policy”, including if the person is unemployed, has a health issue or is disabled, or is participating in education or treatment-related programming. In other words, s. 304.074 (3), Stats., grants the department explicit authority to establish reasons for **waiving** supervision fees by department policy, but does not grant explicit authority **to determine** the supervision fee pursuant to policy. The department should explain its authority to establish supervision fees by policy, rather than through promulgation of an administrative rule.

c. SECTION 5 of the proposed rule adds an alternative criterion under s. DOC 328.14 which would allow an offender under supervision in another state to transfer supervision to Wisconsin. The newly added criterion would allow an offender to transfer to Wisconsin if the offender meets the criteria established “by departmental policy, which includes payment of application fee prior

to application submission”. The rule summary’s plain language analysis cites to s. 20.410 (1) (gn), Stats., as authority for charging an application fee. The appropriation provision reads as follows:

**(gn)** *Interstate compact for adult offender supervision.* The amounts in the schedule to provide supervision of probationers, parolees, and persons on extended supervision. All moneys received from an offender submitting an interstate compact application to transfer supervision to another state, as prescribed by rule in accordance with s. 304.16 (1) (b) 1. and (5) (b), shall be credited to this appropriation account.

The statute does not provide authority for the department to establish transfer criteria by policy, nor does it provide authority for the department to receive application fee monies established by policy. The department should explain its authority to establish transfer of supervision criteria, including payment of an application fee, by policy, rather than through promulgation of an administrative rule.

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

a. The introductory clause for the proposed rule should include the phrase “relating to adult field supervision”, as listed on the statement of scope. [s. 1.02 (1) (a), Manual.]

b. The rule summary’s explanation of agency authority does not appear to be complete. Each of the provisions cited in the rule summary’s listing of statutory authority should be described.

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

In s. DOC 328.14 (3) (am), the word “an” should be inserted before the phrase “application fee”.