

### ADMINISTRATIVE RULES – FISCAL ESTIMATE

**1. Fiscal Estimate Version**

Original    Updated    Corrected

**2. Administrative Rule Chapter Title and Number**

Wisconsin Administrative Code Chapter PD 8 Discovery Payments

**3. Subject**

Maximum amounts payable by the State Public Defender for discovery materials

**4. State Fiscal Effect:**

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Decrease Costs

**5. Fund Sources Affected:**

GPR    FED    PRO    PRS    SEG    SEG-S

**6. Affected Ch. 20, Stats. Appropriations:**

**7. Local Government Fiscal Effect:**

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

**8. Local Government Units Affected:**

Towns    Villages    Cities    Counties    School Districts    WTCS Districts    Others:

**9. Private Sector Fiscal Effect (small businesses only):**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No   May have significant economic impact on a substantial number of small businesses
	<input type="checkbox"/> Yes <input type="checkbox"/> No   May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

**10. Types of Small Businesses Affected:**

**11. Fiscal Analysis Summary**

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal proceedings. The SPD plays a major role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation that creates a new criminal offense or expands the definition of an existing criminal offense has the potential to increase SPD costs.

These administrative rules do not create a new offense, expand the scope of any criminal offense, or change any criminal penalties. The rules provide maximum rates that the SPD will pay for discovery materials, such as photocopies of police reports and audio or video recordings of interrogations. In the vast majority of cases in which the SPD provides representation, the appointed attorney must obtain and review discovery materials as part of adequate case preparation.

The SPD does not anticipate any significant fiscal impact from these rules. The SPD has a separate appropriation for discovery, interpreters, and transcripts. For the last few years, this appropriation has been

insufficient to pay the necessary costs incurred by the SPD in the course of providing representation. The deficit in this appropriation has been growing, as more counties and municipalities have been recording interrogations of defendants and then billing the SPD for copies of the recordings. In some counties, these rules will lower the costs of each individual recording; however, the number of jurisdictions providing the recordings may continue to increase.

The SPD has been paying all counties \$0.20 per page for photocopies provided as discovery materials. The SPD has been paying varying amounts for other forms of discovery, such as DVDs and CDs. Some bills for recordings come from municipalities and others from counties. The SPD does not have data to estimate the specific impact of these rules on individual municipalities and counties. However, because the SPD's annual appropriation for transcript, discovery and interpreter payments was not changed as a result of this provision of 2009 Wis Act 28, the biennial budget bill, it appears that the legislative intent is that these rules will neither increase nor decrease the SPD's total payments for discovery materials.

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## 12. Long-Range Fiscal Implications

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The rules provide a mechanism for the SPD Board to reduce the maximum rates if the appropriation in question is depleted in two consecutive years (following adoption of the rules). Thus, the rules arguably provide a safety valve to limit the total payment obligations of the SPD for discovery. The rules may also help to resolve issues that might otherwise arise regarding the rates that counties and municipalities may charge for new formats in which they provide discovery materials.

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