

NOTICE OF HEARING
DEPARTMENT OF CORRECTIONS
EMERGENCY RULE
and
PERMANENT RULE

NOTICE IS HEREBY GIVEN that pursuant to section 227.11(2), Stats., and interpreting § 301.32, Stats., the department of corrections will hold public hearings to consider:

Emergency rule, relating to inmate release accounts under § DOC 309.466; and

Proposed permanent rule, relating to inmate release accounts under § DOC 309.466.

Hearing information:

Date & Time

Location

October 14, 2009
10:00 a.m.

Conference Room 116
State Office Building
819 North 6th Street
Milwaukee, Wisconsin

October 14, 2009
2:30 p.m.

St. Croix Conference Room-First Floor
Department of Administration
101 East Wilson Street
Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by Friday, October 23, 2009. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, email kathryn.anderson@wisconsin.gov, telephone (608) 240-5049 by October 7, 2009.

EMERGENCY RULE

ORDER OF THE
DEPARTMENT OF CORRECTIONS
CREATING RULES

FINDING OF EMERGENCY

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Under 2009 WI Act 28, an increased number of inmates are being considered for release. In addition, the department has developed a number of release initiatives to address an inmate's successful transition from incarceration to community life. As part of those initiatives, there are costs associated with that transition, including acquiring housing, employment, and transportation. For example, an inmate must have a social security card, a driver's license or state identification card, the first months rent and security deposit for an apartment, and civilian clothing.

Under the current rule, an inmate may only use release account funds for "adequate clothing for release" and for "out-of-state release transportation." In addition, the rule limits the maximum amount of money which can be saved in the release account to \$500.00. The emergency rule immediately permits the use of release account money for a wide variety of purchases, including fees associated with obtaining a driver's license or state identification card, housing, and a mode of transportation (bus tickets, vehicle, bicycle, etc.). In the past the Department has borne some of these costs, despite an inmate having the money in his or her release account. Given the initiatives of reentry and release, an inmate should be responsible for these expenditures.

In addition, the emergency rule raises the limit on release accounts from \$500.00 to \$5,000.00. Since the current limit was established, the cost of living in the community has risen. The department seeks this change to reflect the significant costs of housing, transportation, and food and other necessities.

If the rule is not created promptly and immediately, the department will not be able to use inmate release account funds to pay for items which inmates need in preparation for their release to the community. The purpose of the emergency rule is to permit inmates to use release account funds for a greater range of expenditures related to their release from incarceration and transition back into the community. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the need to use inmate funds, not state funds, while permanent rules are being developed.

ORDER

Under the authority vested in the Department of Corrections by ss. 227.11(2), Stats., the Department of Corrections hereby promulgates an emergency rule relating to inmate release accounts under s. DOC 309.466 as follows:

STATUTE INTERPRETED: s. 301.32, Stats.

STATUTORY AUTHORITY: ss. 227.11 (2) and 301.03, Stats.

EXPLANATION OF AGENCY AUTHORITY:

The Department of Corrections has the authority to control an inmate's funds which are received during the inmate's period of incarceration. In addition, the Department has the responsibility of preparing inmates for their eventual release into the community, including assisting them in establishing a release account which can be used for a variety of purposes.

PLAIN LANGUAGE ANALYSIS:

The current rule prohibits the disbursement of funds from inmate release accounts, except for very limited purposes. Specifically, the rule limits the use of funds from inmate release accounts prior to release to the purchase of "adequate clothing for release" and for "out-of-state release transportation." The current rule provides for the Department to deduct fifteen percent (15 %) of all income earned by or received for the benefit of the inmate with the exception of work release or study release funds under ch. DOC 324. The current rule also has a limit on the amount which can be accumulated in the release account of \$500.00.

The rule proposal expands the purposes for which inmate release account funds can be used. Under the proposal, the Department may approve disbursement of funds for purposes which will aid in the inmate's reintegration into the community. The Department reduced the percentage of deduction to ten percent (10 %) but increased the amount which can be accumulated in the release account to \$5,000.00. The Department has also provided for the amount to be increased in accordance with the Consumer Price Index as defined in s. 16.004 (8) (e) 1., Stats., every five (5) years starting January 1, 2010. The increase in the limit and the process for a continued increase are in response to the increased living costs which inmates face upon release from prison.

TEXT OF RULE:

SECTION 1. DOC 309.466 (1) and (2) are amended to read:

DOC 309.466 (1) ~~After the crime victim and witness assistance surcharge has been paid in full, as provided for in s. DOC 309.465, and upon~~ Upon transfer of the inmate to the first permanent placement, following assessment and evaluation under s. DOC 302.12, and in all subsequent placements, the institution business office shall deduct ~~45~~ 10% of all income earned by or received for the benefit of the inmate, except from work release and study release funds under ch. DOC 324, until ~~\$500~~ \$5,000 is accumulated, and shall deposit the funds in a release account in the inmate's name. The department shall adjust the maximum release account amount every 5 years by multiplying \$5,000 by the percentage increase of the Consumer Price Index, as defined in s. 16.004 (8) (e)1., Stats., from January 1, 2010 to January 1 of the next fifth year [2015, 2020] and adding that amount to \$5,000, rounded to the nearest \$100 increment.

~~(2) Release account funds may not be disbursed for any reasons until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation. Prior to release, an inmate may request to have release account funds disbursed for purposes that are authorized by the department and that will aid the inmate's reintegration into the community or that will reimburse the department for incarceration costs, including legal loans and restitution. Following the inmate's release, these funds shall be disbursed in accordance with s. DOC 309.49 (5).~~

SECTION 2. DOC 309.466 (5) is created to read:

(5) The institution business office shall disburse release account funds in accordance with s. DOC 309.48.

SECTION 3. DOC 309.48 (title) is amended to read:

DOC 309.48 Procedure for inmate requests for disbursements of general inmate account funds.

SECTION 4. DOC 309.49 (title) is amended to read:

DOC 309.49 (title) Disbursement of general inmate account funds.

SECTION 5. DOC 309.49 (4m) is created to read:

DOC 309.49 (4m) An inmate may request that the institution business office disburse release account funds. The institution business office shall disburse release account funds only for reasons consistent with the purposes under s. DOC 309.466 or subject to a lawful court order.

SECTION 6. EFFECTIVE DATE: The emergency rule shall take effect upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

FINAL REGULATORY FLEXIBILITY ANALYSIS. The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

FISCAL ESTIMATE. See attached.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Corrections

Dated: _____ By: _____
RICK RAEMISCH
Secretary

SEAL:

PERMANENT RULE: CLEARINGHOUSE RULE

WISCONSIN DEPARTMENT OF CORRECTIONS
PROPOSED RULE MAKING ORDER

Introductory Clause

The Wisconsin Department of Corrections proposes an order to amend DOC 309.466 (1) and (2), create DOC 309.466 (5), amend DOC 309.48 (title), amend DOC 309.49 (title), and create DOC 309.49 (4m), relating to inmate release accounts.

Rule Summary

- A. Statute interpreted: s. 301.32, Stats.
- B. Statutory Authority to Promulgate the Rule: ss. 227.11 (2) and 301.03, Stats.
- C. Explanation of agency authority:

The Department of Corrections has the authority to control an inmate's funds which are received during the inmate's period of incarceration. In addition, the Department has the responsibility of preparing inmates for their eventual release into the community, including assisting them in establishing a release account which can be used for a variety of purposes.

D. Related statute or rule: ch. DOC 309, Wis. Adm. Code, Resources for Inmates

E. Plain Language Analysis:

The current rule prohibits the disbursement of funds from inmate release accounts, except for very limited purposes. Specifically, the rule limits the use of funds from inmate release accounts prior to release to the purchase of "adequate clothing for release" and for "out-of-state release transportation." The current rule provides for the Department to deduct fifteen percent (15 %) of all income earned by or received for the benefit of the inmate with the exception of work release or study release funds under ch. DOC 324. The current rule also has a limit on the amount which can be accumulated in the release account of \$500.00.

The rule proposal expands the purposes for which inmate release account funds can be used. Under the proposal, the Department may approve disbursement of funds for purposes which will aid in the inmate's reintegration into the community. The Department reduced the percentage of deduction to ten percent (10 %) but increased the amount which can be accumulated in the release account to \$5,000.00. The Department has also provided for the amount to be increased in accordance with the Consumer Price Index as defined in s. 16.004 (8) (e) 1., Stats., every five (5) years starting January 1, 2010. The increase in the limit and the process for a continued increase are in response to the increased living costs which inmates face upon release from prison.

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

There are no federal regulations which address inmate release accounts.

G. Comparison of similar rules in adjacent states (Michigan, Minnesota, Illinois, Iowa, Indiana)

1. Illinois—There are no administrative code provisions which address inmate release accounts.
2. Indiana-- There are no administrative code provisions which address inmate release accounts.
3. Iowa-- There are no administrative code provisions which address inmate release accounts.
4. Michigan-- There are no administrative code provisions which address inmate release accounts.
5. Minnesota-- There are no administrative code provisions which address inmate release accounts.

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.

- 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, Chief Legal Counsel, Department of Corrections
3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707-7925
(608) 240-5049; FAX (608) 240-3306
Kathryn.Anderson@Wisconsin.gov

- L. Place where comments are to be submitted and deadline for submission

Written comments on the proposed rule will be accepted and receive consideration if they are received by Friday, October 23, 2009. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

Text of Rule

Section 1. DOC 309.466 (1) and (2) are amended to read:

DOC 309.466 (1) ~~After the crime victim and witness assistance surcharge has been paid in full, as provided for in s. DOC 309.465, and upon~~ Upon transfer of the inmate to the first permanent placement, following assessment and evaluation under s. DOC 302.12, and in all subsequent placements, the institution business office shall deduct 45 10% of all income earned by or received for the benefit of the inmate, except from work release and study release funds under ch. DOC 324, until \$500 \$5,000 is accumulated, and shall deposit the funds in a release account in the inmate's name. The department shall adjust the maximum release account amount every 5 years by multiplying \$5,000 by the percentage increase of the Consumer Price Index, as defined in s. 16.004 (8) (e)1., Stats., from January 1, 2010 to January 1 of the next fifth year [2015, 2020] and adding that amount to \$5,000, rounded to the nearest \$100 increment.

(2) ~~Release account funds may not be disbursed for any reasons until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation. Prior to release, an inmate may request to have release account funds disbursed for purposes that are authorized by the department and that will aid the inmate's reintegration into the community or that will reimburse the department for incarceration costs, including legal loans and restitution. Following the inmate's release, these funds shall be disbursed in accordance with s. DOC 309.49 (5).~~

Section 2. DOC 309.466 (5) is created to read:

(5) The institution business office shall disburse release account funds in accordance with s. DOC 309.48.

Section 3. DOC 309.48 (title) is amended to read:

DOC 309.48 Procedure for inmate requests for disbursements of general inmate account funds.

Section 4. DOC 309.49 (title) is amended to read:

DOC 309.49 (title) Disbursement of general inmate account funds.

Section 5. DOC 309.49 (4m) is created to read:

DOC 309.49 (4m) An inmate may request that the institution business office disburse release account funds. The institution business office shall disburse release account funds only for reasons consistent with the purposes under s. DOC 309.466 or subject to a lawful court order.

Section 6. Effective date: The 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.

Fiscal Estimate: See attached.