

WISCONSIN DEPARTMENT OF CORRECTIONS

PROPOSED RULE MAKING ORDER CR 09-075

I. 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.

II. 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, 2015 and every 5 years thereafter and adding that amount to \$5,000, rounded to the nearest \$100 increment. If the Consumer Price Index reflects a percentage decrease, the maximum release account amount will not be reduced but remain the same.

(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, the department may authorize the disbursement of release account funds for purposes 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.

III. PREFACE

A. Statutory Authority to Promulgate the Rule: ss. 227.11 (2) and 301.03, Stats.

B. Statute interpreted: s. 301.32, 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 also 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 after the inmate has paid the crime victim and witness assistance surcharge. The current rule also has a limit on the amount which can be accumulated in the release account of \$500.00. Finally, the current rule requires an inmate to completely pay the crime victim and witness assistance surcharge before any money can be allocated toward release account funds.

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 or which will reimburse the Department for costs of incarceration, including legal loans and restitution.

The proposal reduces the percentage of deduction from fifteen percent (15%) to ten percent (10 %). At the same time the proposal increases the amount which can be accumulated in the release account from \$500.00 to \$5,000.00. The proposal also provides 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.

The rule proposal permits the department to start withholding a portion of an inmate's income for release and reentry needs at the same time that it is allocating a portion of his or her income to pay the crime victim and witness assistance surcharge.

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:

1. Illinois—There are no administrative code provisions which address inmate release accounts.
2. Iowa-- There are no administrative code provisions which address inmate release accounts.
3. Michigan-- There are no administrative code provisions which address inmate release accounts.
4. 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. This rule requires inmates to set money aside for eventual release to the community.

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. Fiscal Estimate: See attachment.

L. Agency contact person:

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M. Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule were accepted and received consideration if they were received by Friday, October 23, 2009. The Department actually accepted and considered any written comments received before the submission of the rule in final draft form to the Legislature. Written comments were to be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email kathryn.anderson@wisconsin.gov.

IV. APPLICABLE FORMS: There are no applicable forms.

V. STATEMENT EXPLAINING THE NEED FOR THE PROPOSED RULE:

Under the current rule after other deductions are taken, inmates are required to save 15 percent of their income in anticipation of release. However, the rule significantly limits the purposes for which the funds can be used. Under the current rule an inmate is only permitted to expend funds for "adequate clothing for release" and for out-of-state release transportation. In addition, the maximum amount that an inmate can be required to save is \$500.00. The department recognized the need to expand the array of items for which the funds could be used and to raise the maximum dollar amount required to be accumulated to reflect the cost of living in the community. This section of the rules has not been reviewed since 1986.

VI. STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE.

There is a significant policy initiative to facilitate the reentry of inmates back into the community. As the department has been working with inmates as they leave prison, it is clear that there are expenditures which need to be made prior to release. For example, it is beneficial for inmates to have a drivers license or a state identification card. Under the current rule, inmate release account funds could not be expended for that purpose. In addition, as an inmate leaves prison, he or she needs a place to live. The release account funds could not be used towards rent or a security deposit in advance of release. Also, the release account fund was capped at \$500.00. Given the current cost of living, that dollar figure is not sufficient. The department reviewed these issues and proposes to allow inmates to use release account funds for a broad array of expenses related to their reentry into the community. In addition, the department lifted the cap on the maximum amount to more fairly reflect the actual cost of living in the community. Finally, if there are sufficient funds available and the inmate has outstanding obligations due to the department for expenses incurred while he or she was incarcerated, the department proposes that it be able to divert the funds to pay those obligations. For example, an inmate may have incurred legal loans while pursuing the appeal of his or her conviction or the inmate may owe the department restitution for property damage

done while incarcerated. Finally, the department changed the rule to permit the collection of inmate income for this purpose once the inmate is in his or her first placement. To address the longer time of collection and the larger amount, the department reduced the percentage taken from 15% to 10%.

VII. LIST OF PERSONS WHO APPEARED OR REGISTERED FOR OR AGAINST THE PROPOSED RULE AT THE PUBLIC HEARINGS.

Public Hearings:

State Office Building, Milwaukee

No one appeared or registered.

Department of Administration Building, Madison

No one appeared or registered.

Written Comments:

The Department received a total of 152 responses. There were several major areas of concern which have been identified below. The Department's response is shown below the statement of concern. The number next to the statement of concern reflects the number of times the concern was raised by the public through the written comments. In some situations, an author raised more than one concern in one letter. Thus, the sum of the numbers next to the statements of concern is greater than the number of letters received.

Major areas of concern:

Issue 1: Objecting to the new \$5000 limit – 104

DOC's response: While the release account increase to \$5,000 may be difficult to reach, the current cost of living in the community has risen. After careful review and study, it is felt that this amount is more realistic in today's economy with the increased cost of living in the community for lodging, transportation, documents required for job search, food, clothing and other expenses necessary to begin a new life as a sustaining member of the community.

Issue 2: Objecting to having family contributions taken or those who believe families will have to contribute more because of the new rule – 73

DOC's response: The department has long deducted monies from inmate income, regardless of source, to pay for inmate obligations. This use, including using monies sent to inmates by family and friends, is not a change to this rule.

Issue 3: Objecting to the medical co-pay of \$7.50 – 41

DOC's response: This proposed rule does not relate to co-pay issues. However, under the proposed rule, the percentage of inmate funds that is allocated to the release

account has been reduced. The maximum dollar amount was substantially increased to reflect significant increases in the present day cost of living. The concerns regarding the cost of medical and dental co-pays are noted but are established by the legislature.

Issue 4: Asking for an increase in salary to offset the new limit – 55

DOC's response: During these days of budget constraints, it is difficult to foresee an increase in inmate wages. The level of inmate wages is not relevant to the subject of the proposed rule. The rule expands the use of accrued release account funds for reentry purposes and raises the maximum limit which can be collected.

Issue 5: Objecting to the 5 year consumer price index review – 55

DOC's response: The Department of Corrections has the authority to change the maximum release account every five years pursuant to the percentage increase of the Consumer Price Index as defined in Wis. Stats. §16.004(8). The purpose of this portion of the rule is to permit increases in the maximum amount to reflect increases in the cost of living without having to go through a rule making process to reflect readily recognized measures of such increase.

Issue 6: Objecting on the basis that the new rule is unconstitutional, no notice – 9

DOC's response: Statutorily required notice was given to all interested parties regarding the rule change. The Department of Corrections held two public hearings, one in Milwaukee, the other in Madison. In addition, the Department received over 150 letters from interested parties, including many from inmates or their families. Hence, the public did indeed take the opportunity to write and register their opinions about the proposed rule.

Issue 7: Objecting on the grounds that DOC is receiving more interest than the inmates – 37

DOC's response: The Department of Corrections uses U.S. Bank in accordance with state established policies and procedures.

Issue 8: Objecting on the grounds that the new rule is not an emergency – 9

DOC's response: Use of the emergency rule statute is appropriate and necessary in order to facilitate an inmate's successful transition from incarceration to community. The proposed rule permits broader use of the release account funds for reentry purposes, for example, to pay for fees associated with obtaining a driver's license or state identification card and housing. Given the increased emphasis on reentry and the potential increase in inmates approaching release under 2009 Wis. Act 28, the need to be able to use accrued funds for a broader array of purposes merits an emergency rule.

Issue 9: Objecting on the grounds that the new rule should not be imposed on lifers – 50

DOC's response: The current rule applies to all inmates, regardless of the length of their sentence. The proposed rule does not change that application. As recently seen with the passage of 2009 Wisconsin Act 28, there have been significant changes the statutes which regulate sentence modification resulting in an increased number of inmates being

eligible for release consideration. In response to that change, the Department of Corrections has developed several release initiatives whose primary purpose is to increase an inmate's successful reentry into the community.

Issue 10: Objecting on the grounds that if DOC can change the rule and access the account, the inmate should be allowed to do the same – 25

DOC's response: The Department of Corrections has the authority to control an inmate's funds during the period of the inmate's confinement, and it also has the responsibility of preparing the inmate for release into the community. While the primary purpose of the new rule is to increase an inmate's successful chance for reentry, the rule also permits the Department to utilize the inmate's release account for other limited purposes.

Issue 11: Objecting on the grounds that inmates should be allowed to place their funds, or transfer their funds from their general funds to outside savings, certificates of deposit, bonds, etc. – 25

DOC's response: The current rule proposal does not address inmate accounts in general. The purpose of the proposed rule as discussed above is to broaden the purposes for which release account funds can be used and to raise the maximum amount that can be accrued.

Issue 12: Questioning whether the increase to \$5000 is to be used for a larger burial account – 4

DOC's response: It is possible that release account funds could be used to offset the cost of an inmate's burial if the Department pays such cost. However, the purpose of the proposed rule as discussed above is to broaden the purposes for which release account funds can be used and to raise the maximum amount that can be accrued in order to facilitate a successful reentry into the community.

IX. MODIFICATIONS MADE IN THE PROPOSED RULE AS A RESULT OF THE TESTIMONY RECEIVED AT THE PUBLIC HEARINGS OR PUBLIC COMMENTS MADE.

No modifications were made.

X. LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT.

See attached.

XI. RESPONSE TO LEGISLATIVE COUNCIL RECOMMENDATIONS IN THE CLEARINGHOUSE REPORT.

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

- a. In the plain language analysis in the rule summary, beginning in the middle of the second paragraph, the text should clarify that the proposed rule decreases the percentage deduction and raises the amount that may be

accumulated in the release account by referring to the proposal instead of the department and by using present tense. This comment also applies to the description of how the amount that may be accumulated may be increased every five years.

Department response: Accepted.

- b. The rule preface comparison of similar rules in adjacent states includes a statement about Indiana law. While the department is free to describe comparable rules in any state, it is not required to include any state other than Illinois, Iowa, Michigan, and Minnesota.

Department response: Accepted.

- c. In s. DOC 309.466 (1), the requirement that the crime victim and witness assistance surcharge be paid in full before creating an inmate's release account is stricken. It would be helpful to explain this change in the plain language analysis. Also in that subsection, it may be clearer to replace "from January 1, 2010 to January 1 of the next fifth year [2015, 2020]" with from January 1, 2010 to January 1, 2015, and every 5 years thereafter."

Department response: Accepted.

XII. 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.

XIII. ECONOMIC IMPACT REPORT.

Not applicable.

XIV. REPORT PREPARED BY THE DEPARTMENT OF ADMINISTRATION REGARDING AN ECONOMIC IMPACT REPORT.

Not applicable.

XV. CHANGES IN THE PROPOSED RULES'S PLAIN LANGUAGE ANALYSIS OR FISCAL ESTIMATE.

The Department clarified that the current rule requires an inmate to pay the entire crime victim and witness assistance surcharge before any money can be allocated towards the inmate's release account. Further, the Department added to the second paragraph of the analysis that under the rule proposal inmate funds can be used to reimburse the Department for obligations incurred during the inmate's period of incarceration, including legal loans and restitution. Finally, the Department added a final paragraph to clarify that the Department will begin deducting from all inmate income upon the transfer of the inmate to the first placement following assessment and evaluation.