

Clearinghouse Rule 23-029

WISCONSIN DEPARTMENT OF CORRECTIONS PROPOSED RULE MAKING ORDER

INTRODUCTORY CLAUSE

The statement of scope for this rule, SS 017-23, was approved by the Governor on February 2nd, 2023, published in Register No. 806A1 on February 6th, 2023, and approved by Secretary Kevin Carr on February 23rd, 2023. The emergency rule was approved by the Governor on April 13th, 2023 and became effective on May 3rd, 2023.

The Wisconsin Department of Corrections proposes an order **to amend** DOC 309.20(5).

RULE SUMMARY

1. Statutes interpreted:

ss. 46.07 and 301.32 Stats.

2. Statutory authority to promulgate the rule: Section 227.11 (2) (a) – (e): Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

Section 301.02: The department shall maintain and govern the state correctional institutions.

Section 301.03(2): The department shall supervise the custody and discipline of all prisoners and the maintenance of state correctional institutions and the prison industries under s. 303.01.

3. Explanation of agency authority: The department is directed by Wisconsin Statute § 301.02 to “maintain and govern the state correctional institutions” which includes providing access to property for inmates.

4. Related statute or rule: Wisconsin Statute § 46.07 and 301.32.

5. Plain language analysis: The Department is responsible for the care and custody of persons convicted and sentenced to state correctional facilities. As part of that responsibility, the Department provides inmates with access to a number of resources including mail, news media, publications, visitation, special events, access to the courts, personal property, food, personal hygiene, leisure time activities, telephone calls, clothing, canteen, inmate account funds, inmate compensation and religious practice.

Over the last several years, as a result of inflation and other economic realities outside of the control of DOC, costs have increased. These increased costs have impacted everyone including inmates but value limits for inmate personal property have not changed in almost a decade. Additionally, changes in technology provide electronics that meet security requirements but now cost more than the current value limit. Therefore, the DOC is seeking an emergency and permanent rule to increase property value limits in order to align with the overall increased costs of living.

6. 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 existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

7. Comparison with similar rules in adjacent states:

The adjacent states have similar rules to the proposed rule in Wisconsin. The adjacent states all have administrative rules, statutes or policies that set limits on the amount and value of personal property that inmates may possess. Wisconsin’s rule also sets limits on the amount and value of personal property that inmates may possess and the proposed rule amends the limits on the value of personal property that inmates may possess.

- a. **Illinois:** Illinois administrative rule provides that committed persons may acquire personal property in accordance with administrative rule or posted rules established by the Chief Administrative Officer where the committed person is assigned. Ill. Admin. Code tit. 20 § 535.17. The Chief Administrative may impose several different types of limits on personal property for committed persons such as requiring committed persons to obtain a permit for certain personal property items and limiting the quantity of outside vendor purchases. Ill. Admin. Code tit. 20 § 535.20 and 535.50. Other examples of limits on personal property for committed persons include limiting the amount and nature of jewelry and limiting the quantity and type of clothing permitted. Ill. Admin. Code tit. 20 § 535.60 and 535.70.

Illinois Department of Corrections Policy 5.10.110 sets further limits on personal property for committed persons. Committed persons may only possess a certain number of equipment items and publications. Additionally, committed persons may only possess a certain number of jewelry items and the item may not exceed a certain value limit. For example, committed persons may possess only one Department approved wrist watch that does not exceed \$50 in value. Lastly, there are limits on the amount of money that committed persons may spend on commissary items each month.

- b. **Iowa:** In Iowa, the superintendent of each institution shall receive and care for any property an inmate may possess on the inmate's person upon entering the institution and on discharge of the inmate. Iowa Code § 904.508(1). Per Iowa Administrative Code, the quantity of printed materials, as with other personal property, shall be controlled for safety and security reasons. IAC § 20.6(2). Each institution shall establish and communicate written procedures regulating allowable personal property, the storage of personal property and requiring a continuous inventory of allowable, non-consumable personal property. Allowable personal property may be further regulated at each institution consistent with security requirements or facility custody designation, sanitation, safety and health requirements. IDOC Policy IS-RO-03. Per Iowa Department of Corrections policy, there are limits on the quantity of different types of clothing, athletic equipment and electrical items. Additional limits on personal property include limits on writing/correspondence supplies and materials and an inmate may only possess one wristwatch with a maximum value of \$100. IDOC Policy IS-RO-03.
- c. **Michigan:** In Michigan, prisoners are permitted to use funds not designated for a specific purpose, such as court-ordered child support, to purchase merchandise as approved by the facility head or designee. Mich. Admin. Code R 791.6639(2). The amount of personal property an inmate may possess is determined by security classification and within that classification is limited by the size of the designated storage container. MCL 800.42(3). No item may exceed a limit of \$75 in retail value unless it is specifically exempted from that by Michigan Department of Corrections policy. MDOC Policy 04-07-112. Prescription eyeglasses and medically necessary items may exceed \$75 and winter coats and jackets shall not exceed \$150 in retail value. MDOC Policy 04-07-112. There are also limits on the quantity of certain items that prisoners may possess. MDOC Policy 04-07-112.
- d. **Minnesota:** In Minnesota, a facility must have a written policy and procedure that provides for the itemized inventory and secure storage of all personal property of a newly admitted inmate, including money and other valuables, that specifies any personal property an inmate may retain in the inmate's possession and that provides that the inmate shall sign a receipt for all property held until release. MINN R. 2911.2525(4). Offenders in general population are allowed to have in their possession only the amount of property per the allowable property list. MINNCOR Policy 302.250. Having objects that are authorized by the allowable property list but in excess of the allowed limits is considered contraband. MINNCOR Policy 301.030. Examples of these property limits include the amount of mail stored in an inmate's cell and that the value of hobby craft items in one's possession may not exceed \$100 in value. MINN R. 2911.3300(2) and MINNCOR Policy 204.047. Lastly, the canteen spending limit for each offender/resident at a facility is \$140 per week for adult facilities. MINNCOR Policy 302.010(b)(1)(a).

8. Summary of the factual data and analytical methodologies: 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.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis: Not applicable.

10. Effect on small businesses: Not applicable.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs. Not applicable.

12. Agency contact person: Caitlin Washburn, Administrative Rules Coordinator, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI, 53707-7925; by phone: (608) 240-5020; or by email: DOCAAdministrativeRulesCommittee@wisconsin.gov.

13. 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 a date to be determined. Written comments should be addressed to: Administrative Rules Committee, c/o Caitlin Washburn, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email: DOCAdministrativeRulesCommittee@wisconsin.gov.

TEXT OF RULE

SECTION 1. DOC 309.20(5) is amended to read:

DOC 309.20(5) Value of Property. The cost of a musical instrument or individual or combination electronic item may not exceed ~~\$350.00~~ \$500.00, excluding taxes and shipping costs. The cost of other items except those which are medically prescribed may not exceed ~~\$75.00~~ \$150.00 for each item, excluding taxes and shipping costs. Personal property shall require a receipt from the merchandise supplier. In case of loss or damage caused by the staff of an institution, the value of an inmate's personal property shall equal its value at the time of loss or damage, not to exceed its purchase price.

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.