

**STATEMENT OF SCOPE
DEPARTMENT OF CORRECTIONS**

Rule Number: Chapter DOC 309

Relating to: Resources for inmates

Rule Type: Permanent

1. DETAILED DESCRIPTION OF THE OBJECTIVE OF THE PROPOSED RULE.

The objective of the rule is to review the entire chapter and update accordingly to reflect changes in the law and changes in operations and practices of the department as they affect inmate resources. Additionally, the proposed rule will eliminate outdated provisions and clarify language.

2. DESCRIPTION OF EXISTING POLICIES AND NEW POLICIES INCLUDED IN PROPOSED RULE AND AN ANALYSIS OF POLICY ALTERNATIVES.

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.

The last significant revision for this chapter was in 2013. Since that time there have been changes to the law and correctional practices which need to be addressed, such as 2017 Wisconsin Act 246. There have also been court decisions which address a variety of conditions of confinement issues including religious practices, inmate mail and inmate personal property. This rule needs to be reviewed taking the court rulings into consideration.

There is a need to review the current rule to reflect the changes in the law and correctional practices. The alternatives to the proposed review would result in the department continuing to have outdated policies which do not adequately reflect the current state of the law and a rule which needs clarification and reform.

3. STATUTORY AUTHORITY.

Section 227.11 (2)(a) – (c): Rule-making authority is expressly conferred 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 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.

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

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

Section 301.30: The department may pay a wage or an allowance and a release payment to inmates at its institutions. The department shall prescribe the amounts of pay and such hours, health and other conditions in connection with employment as are reasonable.

Section 301.31: The department may provide for assistance of prisoners on their discharge; for the support of their families while the prisoners are in confinement; or for the payment, either in full or ratably, of their obligations acknowledged by them in writing or which have been reduced to judgment by the allowance of moderate wages, to be paid from the operation, maintenance, farm and construction appropriations of the institution in which they are confined. Until the prisoner's final discharge, the funds arising from the wages shall be under the control of the officer in charge of the institution and shall be used for the benefit of the prisoner, the prisoner's family and other obligations specified in this section. Earnings by inmates working in the prison industries and the retention and distribution thereof shall be governed by ss. [303.01 \(4\)](#) and [\(8\)](#) and [303.06 \(2\)](#).

Section 301.32: (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT. All money and other property delivered to an employee of any state correctional institution for the benefit of a prisoner or resident shall be delivered to the warden or superintendent, who shall enter the property upon his or her accounts to the credit of the prisoner or resident. The property may be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. [973.045 \(4\)](#), the delinquency victim and witness assistance surcharge under s. [938.34 \(8d\) \(c\)](#), the deoxyribonucleic acid analysis surcharge under s. [973.046 \(1r\)](#), the child pornography surcharge under s. [973.042](#), the drug offender diversion surcharge under s. [973.043](#), victim restitution under s. [973.20 \(11\) \(c\)](#), or the benefit of the prisoner or resident. If the money remains uncalled for one year after the prisoner's or resident's death or departure from the state correctional institution, the superintendent shall deposit it in the general fund. If any prisoner or resident leaves property, other than money, uncalled for at a state correctional institution for one year, the superintendent shall sell the property and deposit the proceeds in the general fund, donate the property to a public agency or private, nonprofit organization or destroy the property. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. [20.913 \(3\) \(bm\)](#).

(2) CENTRAL RECEPTION UNIT; EXCEPTION. Notwithstanding sub. [\(1\)](#) and s. [302.13](#), an inmate account need not be opened or maintained for an inmate placed at the central reception unit at the Dodge Correctional Institution.

(3) PROPERTY DELIVERED TO EMPLOYEE. All money or other property paid or delivered to a probation, extended supervision and parole agent or other employee of the department by or for the benefit of any person on probation, extended supervision or parole shall be immediately transmitted to the department and it shall enter the same upon its books to his or her credit. The property shall be used only under the direction of the department.

Section 301.328: (1) In this section, "litigation loan" means a loan made to a prisoner by the department to pay for paper, photocopying, postage or other expenses associated with litigation commenced by the prisoner.

(1m) No prisoner may receive more than \$100 annually in litigation loans, except that any amount of the debt the prisoner repays during the year may be advanced to the prisoner again without counting against the \$100 litigation loan limit. No prisoner may receive a litigation loan in any amount until he or she has repaid a prior loan in full or has made arrangements for repayment.

Section 301.33: (1) Subject to reasonable exercise of the privilege, members of the clergy of all religious faiths shall have an opportunity, at least once each week, to conduct religious services within the state correctional institutions. Attendance at the services is voluntary.

(2) Every inmate shall receive, upon request, religious ministrations and sacraments according to the inmate's faith.

(3) Every inmate who requests it shall have the use of the Bible.

Section 302.12(1): The department may provide by rule for the payment of money to inmates. The rate may vary for different prisoners in accordance with the pecuniary value of the work performed, willingness, and good behavior. The payment of money to inmates working in the prison industries shall be governed by s. [303.01 \(4\)](#).

Section 302.13: The department shall preserve money and effects, except clothes, in the possession of an inmate when admitted to the prison and, subject to the crime victim and witness assistance surcharge under s. [973.045 \(4\)](#), the deoxyribonucleic acid analysis surcharge under s. [973.046 \(1r\)](#), the child pornography surcharge under s. [973.042](#), the drug offender diversion surcharge under s. [973.043](#), and victim restitution under s. [973.20 \(11\) \(c\)](#) shall restore the money and effects to the inmate when discharged.

Section 303.065(5): The salaries or wages of any employed inmates shall be disbursed by the department in the order stated:

- (a) The board of the prisoner including food and clothing and any fee charged under s. [301.135](#);
- (b) Necessary travel expense to and from work and other incidental expenses of the prisoner;
- (bn) Payment of the crime victim and witness assistance surcharge under s. [973.045 \(4\)](#);
- (bp) Payment of the deoxyribonucleic acid analysis surcharge under s. [973.046 \(4\)](#);
- (c) Support of the prisoner's dependents, if any;
- (cg) Payment of the child pornography surcharge under s. [973.042](#).
- (cm) Payment of the drug offender diversion surcharge under s. [973.043](#).
- (d) A reasonable room charge as determined by the department;
- (dm) Payment for legal representation under s. [977.075](#) or [977.076](#);
- (e) Payment, either in full or ratably, of the prisoner's obligations acknowledged by the prisoner in writing or which have been reduced to judgment;
- (f) The balance, if any, to the prisoner upon the prisoner's discharge.

Section 973.042(6): If an inmate in a state prison or a person sentenced to a state prison has not paid the child pornography surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected under this subsection shall be transmitted to the secretary of administration.

Section 973.043(4): If an inmate in a state prison or a person sentenced to a state prison has not paid the drug offender diversion surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

Section 973.045(4): If an inmate in a state prison or a person sentenced to a state prison has not paid the crime victim and witness assistance surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

Section 973.046(4): If an inmate in a state prison or a person sentenced to a state prison has not paid the deoxyribonucleic acid analysis surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

4. ESTIMATE OF AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OTHER RESOURCES NECESSARY TO DEVELOP THE RULE.

The Department estimates that it will take approximately 400 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

5. LIST WITH DESCRIPTION OF ALL ENTITIES THAT MAY BE AFFECTED BY THE PROPOSED RULE.

This rule will affect inmates, families of inmates, visitors, attorneys who represent inmates, volunteers, publishers of periodicals, representatives of the media, the public, victims and DOC staff.

6. SUMMARY AND PRELIMINARY COMPARISON WITH ANY EXISTING OR PROPOSED FEDERAL REGULATION THAT IS INTENDED TO ADDRESS THE ACTIVITIES TO BE REGULATED BY THE PROPOSED RULE.

The federal regulations that address the activities to be regulated by the proposed rule are the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 USC § 2000cc and the Prison Rape Elimination Act (PREA) of 2003. This chapter is already compliant with these regulations.

7. ANTICIPATED ECONOMIC IMPACT OF IMPLEMENTING THE RULE. NOTE IF THE RULE IS LIKELY TO HAVE AN ECONOMIC IMPACT ON SMALL BUSINESSES.

Rule changes will likely have no economic impact on DOC or its county stakeholders.

CONTACT PERSON:

Caitlin Washburn, Office of Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Ave, P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5020, DOCAdministrativeRulesCommittee@wisconsin.gov.