doc309_EmR0920.pdf **Corrections – Revises Ch. DOC 309 – EmR0920**

Publication Date: **September 10, 2009**
Effective Dates: **September 10, 2009 through February 6, 2010**

DEPARTMENT OF CORRECTIONS
ORDER 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 ~~15~~ 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. 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 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

FISCAL ESTIMATE DOA-2048 N(R06/99)	**2009 Session** ☒ ORIGINAL ☐ UPDATED ☐ CORRECTED ☐ SUPPLEMENTAL	Administrative Rule Number **DOC 309**

Subject Changing existing DOC 309, Wis Adm Code related to funds collected for inmate release accounts.

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs
 ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
 ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
 ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
 ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
 ☐ Towns ☐ Villages ☐ Cities
 ☐ Counties ☐ Others _____
 ☐ School Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under the current administrative rule for inmate release accounts an inmate is required to deposit 15% of their earned or received income (received income is from a personal source) up to a maximum of $500. The Department uses a declining balance approach for all outstanding debt based on the order deductions are to be applied and the percentage used. However, if an inmate has a FIFO (first in/first out) noted on his or her account, those debts must be met prior to any other outstanding obligations, including an inmate's release account. FIFO covers over draft payments, institution loans, medical co-payments, and victim witness obligations. Also, inmates that receive income from a personal source are not always obligated to pay outstanding debt with these funds. In some court cases a judge orders that income received from a personal source cannot be used towards outstanding debt. If that happens, the inmate receives these funds in full without any deductions applied.

The new administrative rule reduces the required deduction from 15% to 10% and increases the maximum amount from $500 to $5,000. The new rule also expands what an inmate can request out of his or her release account prior to release. Currently an inmate can only request funds for street clothing and out-of-state travel. Under this rule an inmate will be able to request funds prior to release to be used for re-entry purposes into the community as well as reimbursement costs related to incarceration, such as legal loans or restitution. The release of these funds must be authorized by the Department; otherwise the funds will be distributed upon release from prison.

The new rule also provides an adjustment to the maximum savings every five years based on the consumer price index percentage. The consumer price index increase should increase the total amount an inmate can save into their release account.

<table>
<tr><td colspan="3">Long-Range Fiscal Implications</td></tr>
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Based on Department inmate release collection data from FY07-09 (3-years) an average of $210.65 was saved per inmate during that time period. The proposal reduces the savings percentage from 15% to 10% of an inmate's earned or received income .The result of this change would be reduced savings by ($10.53) or $200.12 per inmate over a three year period. Based on the new average savings amount it would take an inmate 75 years to accumulate $5,000. Currently, it takes 7 years of incarceration to reach $500.

The procedural changes are not expected to have any state fiscal impact.