

 <p style="text-align: center;"><b>DIVISION OF ADULT INSTITUTIONS</b></p> <p style="text-align: center;"><b>POLICY AND PROCEDURES</b></p>	<b>DAI Policy #:</b> 300.00.56	<b>Page</b> 1 of 7
	<b>Original Effective Date:</b> 01/11/99	<b>New Effective Date:</b> 08/20/18
	<b>Supersedes:</b> 300.00.56	<b>Dated:</b> 11/09/16
	<b>Administrator's Approval:</b> Jim Schwochert, Administrator	
<b>Required Posting or Restricted:</b>		
<input checked="" type="checkbox"/> <b>Inmate</b> <input checked="" type="checkbox"/> <b>All Staff</b> <input type="checkbox"/> <b>Restricted</b>		
<b>Chapter:</b> 300 Administration		
<b>Subject:</b> Notary Services to Inmates		

## POLICY

The Division of Adult Institutions shall designate facility staff to perform the duties of a commissioned notary to provide timely and appropriate notary services.

## REFERENCES

1997 Wisconsin Act 133 – State Prison Litigation Reform Act (PLRA)

Wisconsin Statutes s. 20.919 – Notary public

Wisconsin Statutes s. 244.61 – Wisconsin statutory power of attorney for finances and property

Wisconsin Statutes s. 706.07 – Uniform law on notarial acts

Wisconsin Statutes s. 782.04 – Petition; contents

Wisconsin Statutes s. 893.82(5) – Claims against state employees; notice of claim; limitation of damages

DAI Policy 300.00.78 – Name of Inmate and Changes to Name

Wisconsin Department of Financial Institutions

## DEFINITIONS, ACRONYMS, AND FORMS

Acknowledgment – A formal declaration made by a person, stating at the time that person signed a document, it was signed voluntarily and with an understanding of its nature and purpose.

Affidavit – A written document made by a person who swears, under oath or affirmation, the statements in the document are the truth. The person who makes and swears to the affidavit is an affiant.

Jurat – The name given to the notary's written certificate, which should appear after the signature of a person who has given an oath, or has made a sworn statement. The jurat should specifically recite the date it is completed, the location in which it is written, and the name of the person taking the oath, or swearing to a statement.

Notarial Act – Any act that a notary public is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument.

Notary Public – An individual issued an appointment by the Governor or Wisconsin Department of Financial Institutions to serve the public as an impartial witness, performing notarial acts as are allowed or required by law.

<b>DAI Policy #:</b> 300.00.56	<b>New Effective Date:</b> 08/20/18	<b>Page</b> 2 of 7
<b>Chapter:</b> 300 Administration		
<b>Subject:</b> Notary Services to Inmates		

Oath and Affirmation – Solemn pledges attesting to the truth of given statements. The difference is that an oath requires swearing, (and may be understood to call upon a Supreme Being as a witness), while an affirmation does not. Both oaths and affirmations are subject to penalties of perjury.

## **PROCEDURE**

### **I. General Guidelines**

- A. Wardens/Superintendents shall designate staff to perform notarial acts.
- B. Staff shall not advise inmates on legal matters.
- C. A notarial act does not require staff to validate the accuracy of the information in the document being notarized.

### **II. Designated Facility Notary Public:**

- A. Shall have an engraved official notary seal prior to submission of the application.
  1. The seal may be of any size or shape, but shall state only the words “Notary Public”, “State of Wisconsin” and the Notary Public’s name.
  2. Initials or a shortened first name may be used.
    - a. Current last name shall be in full.
    - b. When performing a notarial act staff shall always sign the name exactly as set forth on the seal.
  3. No titles such as Captain, Officer or Corrections Sentencing Associate shall appear before or after the person’s name.
- B. Shall complete the items found on the Wisconsin notary public website. Forward completed documents to the Business Office for processing:
  1. Four-year Notary Public Application.
  2. Bond form.
  3. Oath of Office form.
  4. Certificate from the Notary Public Tutorial and Exam.
- C. May not perform notarial acts until they have been notified by the Wisconsin Department of Financial Institutions that their commission has been issued.

### **III. Business Office Staff/Designee Shall:**

- A. Process the order for the seal.
- B. Upon receipt of the seal, process the completed Notary Public application.
- C. Make a check payable to the Wisconsin Department of Financial Institutions for filing fees.
- D. Obtain a \$500 bond from an insurance company for the applicant.

<b>DAI Policy #:</b> 300.00.56	<b>New Effective Date:</b> 08/20/18	<b>Page</b> 3 of 7
<b>Chapter:</b> 300 Administration		
<b>Subject:</b> Notary Services to Inmates		

- E. Forward the four-year Notary Public Application, the completed bond form, the Oath of Office form, Certificate of completion from the Notary Public Tutorial and filing fee to the Wisconsin Department of Financial Institutions, PO Box 7847, Madison, WI 53707-7847.

#### **IV. Notary Public Requirements**

- A. Perform notarial acts only after being notified by the Wisconsin Department of Financial Institutions the commission has been issued. A certificate will be forwarded to the mailing address listed on the application form.
- B. Perform notarial acts only in counties of the State of Wisconsin.
- C. Affix a clear impression of the official notarial seal every time a notarial act is performed.
- D. Notary publics shall sign documents. Signature stamps shall not be used.
- E. If there is not enough room at the end of a document to insert a jurat:
  - 1. May place the jurat on a separate sheet of paper and securely attach it to the sworn statement.
    - a. When the jurat is not written on the document it applies to, a statement on the document shall indicate that a jurat is attached.
    - b. The jurat shall bear a statement identifying the document to which it is attached.
  - 2. May place the jurat in the side margin.
- F. If the notary public does not understand the contents of the document because it is written in a foreign language, he or she may find another notary who does understand the document, contact a department approved translator or may refuse notarizing the document.

#### **V. Performance of Notarial Duties**

- A. Taking an acknowledgment
  - 1. Require the inmate be in the notary's presence.
  - 2. Satisfactorily identify inmate.
  - 3. Determine the inmate knew what kind of document was being signed and its intended purpose.
  - 4. Determine the inmate signed the document voluntarily of the inmate's own free will.
  - 5. Witness the inmate actually signing the document.
- B. Notarizing an unsworn signature
  - 1. Require the inmate be in the notary's presence.
  - 2. Satisfactorily identify the inmate.
  - 3. Witness the inmate actually signing the document.

<b>DAI Policy #:</b> 300.00.56	<b>New Effective Date:</b> 08/20/18	<b>Page</b> 4 of 7
<b>Chapter:</b> 300 Administration		
<b>Subject:</b> Notary Services to Inmates		

- C. Notarizing a statement sworn to, or taken under oath or affirmation, and providing a jurat:
  - 1. Require the inmate making the statement be in the notary's presence.
  - 2. Satisfactorily identify the inmate.
  - 3. Require the inmate specifically confirm that he or she swears or affirms under penalty of perjury that the statement in the document to be notarized is true.
  - 4. Witness the inmate actually signing the document.
  
- D. Language to use for notarial acts
  - 1. If the appropriate jurat is provided, complete the information requested in the jurat.
  - 2. If the jurat is not provided, then it is the responsibility of the Notary Public to stamp or write the jurat.
    - a. Administer an oath or affirmation
      - i. State of Wisconsin.
      - ii. County of (insert name of county where notarization is done).
      - iii. Signed and sworn to before me on (date) by (name of person making the statement).
      - iv. Notary's signature, expiration date and seal.
    - b. Acknowledge someone's signature
      - i. State of Wisconsin.
      - ii. County of (insert name of county where notarization is done).
      - iii. This signature was acknowledged before me on (date) by (name of person whose signature is acknowledged).
      - iv. Notary's signature, expiration date and seal.

## **VI. Documents Requiring Notary Services**

- A. Statutory items (shall administer an oath or affirmation)
  - 1. Affidavits to support or oppose a motion for summary judgment.
  - 2. Affidavits to establish indigence, for Petitions for Writs of Mandamus, Certiorari, or Prohibition.
  - 3. Filing a notice of claim with the Attorney General's Office under Wisconsin Statutes s. 893.82(5).
  - 4. Filing a lawsuit for money damages, return of property, etc. in circuit court or small claims courts.
  - 5. A petition for a Writ of Habeas Corpus under Wisconsin Statutes s. 782.04.
  - 6. Responses to discovery documents such as interrogatories or requests for admissions.
  - 7. Prisoner Litigation Reform Act forms CV-438 and CV-440 under 1997 Wisconsin Act 133.
  - 8. Statutory Form of Power of Attorney under Wisconsin Statutes s. 244.61.

<b>DAI Policy #:</b> 300.00.56	<b>New Effective Date:</b> 08/20/18	<b>Page</b> 5 of 7
<b>Chapter:</b> 300 Administration		
<b>Subject:</b> Notary Services to Inmates		

- a. If is determined the appointment may be for illegal purposes, may jeopardize the security of the facility or the safety of the public, staff, or other inmates, shall not be notarized.
  - b. Staff shall not notarize Power of Attorney where one inmate names another inmate as Power of Attorney.
- B. Official Wisconsin State document (shall administer an oath)
1. AP-011 – Prisoner’s Petition for Waiver of Fees/Costs – Affidavit of Indigency.
  2. AP-012 – Prisoner’s Petition for Waiver of Fees/Costs – Affidavit of Indigency; Allegation of Imminent Danger.
  3. CV-405 – Petition for Temporary Restraining Order and/or Petition and Motion for Injunction Hearing.
  4. CV-410 – Petition for Waiver of Fees and Costs – Affidavit of Indigency and Order.
  5. CV-438 – Prisoner’s Petition for Waiver of Prepayment of Fees/Costs – Affidavit of Indigency.
  6. CV-440 – Prisoner’s Petition for Waiver of Prepayment of Fees/Costs Based on Imminent Danger – Affidavit of Indigency.
  7. CV-450 – Petition for Name Change (Adult or Minor 14 or Older).  
After notarizing a CV-450 or similar form requesting a name change, facility notaries shall provide inmate name and DOC number along with the County of Petition on the notarized form to Records Office staff.
  8. DCF-F (CFS-0142) – Affidavit.
  9. DPH 5024 – Voluntary Paternity Acknowledgment.
  10. FA-4108V – Petition with Minor Children for Divorce or Legal Separation.
  11. FA-4110V – Joint Petition with Minor Children for Divorce or Legal Separation.
  12. FA-4171V – Order to Show Cause and Affidavit to Change: Legal Custody, Physical Placement, Child Support, Maintenance, Other.
  13. GF-150 – Uniform Child Custody Jurisdiction and Enforcement Act Affidavit.
  14. GF-152 – Petition for Appointment of Counsel, Affidavit of Indigency and Order.
  15. IW-1630 – Petition for Termination of Parental Rights: Indian Child Welfare Act.
  16. JC-1630 – Petition for Termination of Parental Rights.
  17. PR-1817 – Affidavit of Service (Probate).
  18. SC-5130V – Affidavit of Mailing.
- C. United States Department of State documents (signature acknowledgement)  
DS-3053 – Statement of Consent or Special Circumstances: Issuance of a Passport to a Minor Under Age 16.

<b>DAI Policy #:</b> 300.00.56	<b>New Effective Date:</b> 08/20/18	<b>Page</b> 6 of 7
<b>Chapter:</b> 300 Administration		
<b>Subject:</b> Notary Services to Inmates		

- D. If an inmate requests additional notary services, the inmate shall produce written verification of its requirement before such additional service is allowed to be rendered. Written verification may include:
  - 1. Statute.
  - 2. Court Order.
  - 3. Attorney correspondence.
  - 4. Official state or federal form with preprinted notary jurat.
  
- E. There may be situations where an insurance company, a bank, a real estate company, tribal government or some other entity may require a document be notarized. Such a requirement shall be stated in writing, and the inmate shall be required to produce it.

**VII. Notary Services Not Required**

- A. DOC policy states employees shall not witness inmate wills because of potential litigation regarding contesting of wills and competency of the testator and witnesses.
  
- B. Affidavits are not required to file standard state or federal summons and complaint lawsuits.

**Administrator's Approval:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
Jim Schwochert, Administrator

**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

<b>Facility:</b> Name		
<b>Original Effective Date:</b>	<b>DAI Policy Number:</b> 300.00.56	<b>Page</b> 7 of 7
<b>New Effective Date:</b> 00/00/00	<b>Supersedes Number:</b>	<b>Dated:</b>
<b>Chapter:</b> 300 Administration		
<b>Subject:</b> Notary Services to Inmates		
<b>Will Implement</b> <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
<b>Warden's/Center Superintendent's Approval:</b>		

**REFERENCES**

**DEFINITIONS, ACRONYMS, AND FORMS**

**FACILITY PROCEDURE**

- I.
  - A.
  - B.
    - 1.
    - 2.
      - a.
      - b.
      - c.
    - 3.
  - C.

II.

III.

**RESPONSIBILITY**

I. Staff

II. Inmate

III. Other