

 <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> 309.51.01	<b>Page</b> 1 of 8
	<b>Original Effective Date:</b> 11/01/91	<b>New Effective Date:</b> 03/16/20
	<b>Supersedes:</b> 309.51.01	<b>Dated:</b> 01/01/13
	<b>Administrator's Approval:</b> Makda Fessahaye, 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> 309 Resources for Inmates		
<b>Subject:</b> Legal Loans		
<b>Guidance Document</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>Posting date</b> 03/09/20

**POLICY**

The Division of Adult Institutions (DAI) shall loan inmates without sufficient funds in their regular account up to \$100 annually to access the courts.

**REFERENCES**

28 U.S.C. § 1915 Proceedings in forma pauperis

§ 115.401 Frequency and scope of PREA audits

Wisconsin Statutes s. 301.32 – Property of Prisoners, Residents, and Probationers

Wisconsin Statutes s. 301.328 – Judgment for Litigation Loans to Prisoners and limitations on Litigation Loans to Prisoners

Wisconsin Statutes s. 809.30 – Rule (Appeals in s. 971.17 proceedings and in criminal, Ch. 48, 51, 55, 938, and 980 cases)

Wisconsin Statutes s. 809.32 – Appellate Claims (Rule-No merit reports)

Wisconsin Statutes s. 809.62 – Rule (Petition for review)

Wisconsin Statutes s. 814.29 – Security for costs, service and fees for indigents, also commonly referred to as the “Prison Reform Litigation Act” (PLRA).

Wisconsin Statutes s. 893.82(5) – Claims Against State Employees; Notice of Claim Limitations of Damages

Wisconsin Statutes s. 971.17 – Commitment of persons found not guilty by reason of mental disease or mental defect

Wisconsin Statutes s. 973.195 – Appellate Claims (Sentence Adjustment)

Wisconsin Statutes s. 974.06 – Post conviction Procedure

Wisconsin Statutes s. 974.07 – Appellate Claims (Motion for post conviction DNA testing for certain evidence)

Wisconsin Administrative Code s. DOC 309.04(3) – Inmate Mail

Wisconsin Administrative Code s. DOC 309.155 – Legal Services

Wisconsin Administrative Code s. DOC 309.49 – Disbursement of General Account Funds

Wisconsin Administrative Code s. DOC 309.51 – Funds for Legal Correspondence and Copying

Wisconsin Administrative Code Ch. DOC 310 – Complaint Procedures

DAI Policy 309.04.01 – Inmate Mail

DAI Policy 309.15.01 – Institution Law Library

DAI Policy 309.45.02 – Inmate Trust System Deductions

Executive Directive 72- Sexual Abuse and Sexual Harassment in Confinement

**DEFINITIONS, ACRONYMS AND FORMS**

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BOCM – Bureau of Offender Classification and Movement

Calendar Year- A calendar year is January 1 to December 31

CCE – Corrections Complaint Examiner

DAI – Division of Adult Institutions

DOC – Department of Corrections

DOC-184 – Disbursement Request

Data Storage Device – Instrument in various formats to facilitate transfer or storage of computer generated documents and media. Often a portable/removable device commonly known as a USB drive, flash drive, jump drive, thumb drive, USB key, USB stick, memory stick or USB portable hard drive. Other formats may include read only computer disks (CD, CD-ROM, DVD-ROM) and ‘floppy’ disks.

DOC-1290 – Loan Application and Repayment Agreement

DOC-1292 – Administrative Review of Initial Classification (IC) or Re-Classification (RC) Decision

ICE – Institution Complaint Examiner

ICRS – Inmate Complaint Review System

Inmate Monies – All funds, including but not limited to awards, allowances, compensation, institution inmate payroll, gifts, hobby sales, or from any other source that comes under the control of a Wisconsin facility disbursed by the facility for the benefit of an inmate.

Inmate Personal Legal Documents – Documents created by the court, the inmate, or opposing counsel that directly relate to the case, plus necessary exhibits, which may or may not include documents in the social services file, education file, etc. Also, these are legal documents that pertain to an inmate’s own case, rather than a different inmate’s case.

Legal Loan – Lending of funds or supplies by the DOC to an inmate for the purpose of litigation expenses, with the expectation and requirement that the inmate repay the loan or subsidy.

PACER – Public Access to Court Electronic Records

PREA – Prison Rape Elimination Act

TRIP -Tax Refund Intercept Program

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WCCA – Wisconsin Circuit Court Access

WICS– Wisconsin Integrated Corrections System

## **PROCEDURE**

### **I. General**

- A. Legal loan can be used for correspondence to courts, Attorney General for Notice of Claims, attorneys, parties' in litigation, inmate complaint review system under ch. 310 or the parole commission related to themselves.
- B. Legal loans shall be provided to an inmate without sufficient funds in his/her regular account up to \$100 annually to purchase:
  1. Supplies to include paper, writing utensil and data storage device.
  2. Photocopies.
  3. Postage for correspondence.
- C. Funds in an inmate's regular account at the time of purchase shall be utilized prior to the loan being charged.
- D. Inmates who are represented by an attorney are not eligible for legal loan funds in that case except in order to respond to a no-merit brief in a criminal appeal.
- E. Legal loan shall not be used to pay for legal services, public records requests, federal or state filing fees or personal use.
- F. Legal loan may be used for copies from the inmate's own social service file if the documents are related to the case.
- G. Legal loan may be used to send confidential information or correspondence to the institution's identified PREA auditor within 6 weeks' notice of an audit.
- H. Inmate monies shall be applied as outlined in DAI Policy 309.45.02 for repayment of unpaid legal loans.
- I. The facility shall charge the amount loaned under this subsection to the inmate's general account for future repayment.
- J. Inmates shall only use the legal loan supplies provided to him/her for their own legal work.
- K. Inmates shall reapply for each legal loan at the beginning of each calendar year and also if transferred to another facility.

### **II. Loan Approval and Denial**

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- A. Inmates applying for a legal loan shall fully complete and submit a DOC-1290 for each matter a loan is requested.
- B. Consideration for legal loan eligibility may include but not be limited to the following factors:
1. The nature of pending litigation and current legal needs identified by the court, (i.e. a Schedule Order or court imposed deadlines).
  2. The failure to provide realistic estimates of the cost of the documented current legal needs.
  3. The failure to provide requested supporting documentation of a current legal need.
  4. The refusal to allow facility staff to open an envelope in their presence to verify the contents are entirely legal mail shall be denied access to legal loan funds for that mailing.
  5. The failure to use the legal supplies in the manner pursuant to the legal loan application.
  6. If the Security Director has reason to believe the mail contains contraband for mail addressed to an ICE or CCE, the inmate shall allow facility staff to open the envelope in the inmate's presence or the inmate shall be denied access to legal loan funds for that mailing.
- C. Inmates may not exceed an open legal loan amount of \$100 annually without Warden's approval and demonstrates an extraordinary need in one of the following areas:
1. The inmate is defending himself or herself against a pending criminal charge and is unrepresented by counsel in that case. WCCA/PACER may be utilized to verify assigned counsel.
  2. The inmate has challenged or seeks to challenge his or her underlying criminal conviction and/or sentence in a first appeal as of right under Wisconsin Statutes s. 809.30 and is unrepresented by counsel in that appeal.
  3. The inmate seeks to file a petition for review in the Supreme Court, pursuant to Wisconsin Statutes s. 809.62, of an adverse decision in the Court of Appeals on a case pertaining to proceedings under Wisconsin Statutes s. 971.17, Chapters 48, 51, 55, 938, or 980, or a criminal conviction or sentence, and is unrepresented by counsel.
  4. The inmate needs to respond to a no-merit report pursuant to Wisconsin Statutes s. 809.32(1)(e) or to respond to a no-merit petition for review pursuant to Wisconsin Statutes s. 809.32(4)(c).
  5. The inmate seeks to file his or her first post-conviction motion under Wisconsin Statutes s. 974.06 in a given case and is unrepresented by counsel in that proceeding.
  6. The inmate has filed or seeks to file a motion under Wisconsin Statutes s. 974.07 for post-conviction DNA testing and is unrepresented by counsel in that proceeding.

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7. The inmate has filed or seeks to file a petition for sentence adjustment under Wisconsin Statutes s. 973.195 and is unrepresented by counsel in that proceeding.
8. The inmate seeks to file a motion for sentence credit.
9. The inmate is defending himself or herself against a pending termination of parental rights case and is unrepresented by counsel in that case.
10. The inmate is representing himself or herself in a first appeal of a termination of parental rights and is unrepresented by counsel in that appeal.
11. The inmate is named as an active defendant or respondent in a case commenced by someone other than the inmate, and the inmate's rights of a significant constitutional magnitude are at stake.
12. The inmate has requested a certified copy of his/her trust account statement per 28 U.S.C. § 1915(a) (2) and Wis. Stat. § 814.29(1m)(h).
13. The inmate seeks to access the ICRS under Wisconsin Administrative Code Ch. DOC 310.
14. The inmate seeks to submit a DOC-1292 to the BOCM Director.
15. The inmate seeks to submit documents or correspondence to the Parole Commission.
16. The inmate is filing his/her first federal habeas case for a state court conviction.
17. Court order requiring submission of specified documents.
18. The inmate is mailing a "Notice of Claim" to the Attorney General.

D. If a loan is denied, staff shall inform the inmate of the reason for the decision in writing.

### **III. Appropriate Use of Legal Loan Funds for Supplies, Postage, Printouts and Photocopies**

- A. Legal supplies issued to inmates under a loan agreement shall be charged to their account.
- B. Supplies shall be limited to 8 ½" X 11" paper, 9" X 12" or 10" X 13" manila envelopes, 4 1/8" X 9 ½" (#10) letter envelopes, carbon paper, pens and data storage device.
- C. Postage covered under legal loans includes first class mail addressed to courts, sheriff departments, clerk of courts, authorized attorneys, parties in litigation, the ICRS, the parole commission and DOC-1292 to the BOCM Director.
  1. Inmates may use legal loan funds for postage by attaching a DOC-184 to the unsealed envelope. The DOC-184 shall contain the complete mailing address and case and/or complaint number, if applicable.
  2. The envelope may be sealed only if it is clearly addressed to an ICE, a CCE, an attorney, the Attorney General or Assistant Attorney General of Wisconsin, or the clerk or judge of any state or federal court.

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3. Certified mail is only allowed for "Notice of Claims" to the Attorney General's office.

D. Legal loan funds may be used to copy inmate personal legal documents.

E. Inmates shall not use legal loan funds for copies of documents in their Health Care Records, except when an inmate can demonstrate a clear need for the records for the litigation for which the loan has been approved.

F. Photocopying of legal research materials is prohibited under this procedure.

**IV. Facilities Shall:**

A. Witness and process the DOC-1290.

B. Establish and maintain a file of the processed DOC-1290s.

C. Enter legal loan transactions in WICS and apply inmate funds toward repayment of legal loans in accordance with DAI Policy 309.45.02.

D. Track amount of legal loans annually.

E. Pursue repayment of legal loan balances pursuant to Wisconsin Statutes s. 301.328.

F. Pursue repayment of legal loan balances via TRIP.

**V. Inmates Shall:**

A. Complete and submit a DOC-1290 for each legal loan each calendar year.

B. Provide any additional documentation requested by the Warden/designee.

C. Keep track of the amount remaining of their legal loan in anticipation of reaching the \$100 cap, inform the court and opposing counsel, if necessary.

**Administrator's Approval:** \_\_\_\_\_



**Date Signed:** 02/28/20

Makua Pessanaye, Administrator

**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

<b>Facility:</b> Kettle Moraine Correctional Institution		
<b>Original Effective Date:</b> 5/29/09	<b>DAI Policy Number:</b> 309.51.01	<b>Page</b> 7 of 8
<b>New Effective Date:</b> 12/14/20	<b>Supersedes Number:</b> 309.51.01	<b>Dated:</b> 3/16/20
<b>Chapter:</b> 309 Resources for Inmates		
<b>Subject:</b> Legal Loans		
<b>Will Implement</b> <input type="checkbox"/> As written <input checked="" type="checkbox"/> With below procedures for facility implementation		
<b>Warden's/Center Superintendent's Approval:</b> Warden Jon Noble		

**FACILITY PROCEDURE****DEFINITIONS, ACRONYMS, AND FORMS**DOC-2386 - Legal Supplies Requisition**RESPONSIBILITIES**

- I. Inmate
  - A. Indigent inmates may apply for a legal loan by submitting an interview request to the Business Office.
  - B. Complete a Form DOC-1290 for each case. Form must be signed by inmate in the presence of the unit officer. Inmate must send completed DOC-1290 to the Business Office along with your court documents to support legal needs.
  - C. To obtain writing supplies, inmates must submit a completed DOC-184 request itemizing the legal supplies/cost of each item to the Business Office. Unit officer needs to initial the disbursement. The "Legal Loan" and "Other" boxes should be checked on the DOC-184 and list the case number.
  - D. After receiving DOC-2386 the inmate must complete and send back to the Canteen Staff for request to be fulfilled.
  - E. To obtain postage, inmates must attach a completed DOC-184 to the envelope, have the unit officer initial it and forward to the Business Office. The "Legal Loan" and "Postage" boxes should be checked on the DOC-184, list the case number, and the envelope must have a complete address.
  - F. To obtain photocopies, inmates must complete a DOC-184, initialed by the unit officer, and present it to library staff along with documents to be copied. The "Legal Loan" and "Copies" boxes should be checked on the DOC-184 and list the case number.
- II. Unit Officer
 

When inmate submits completed DOC-1290 forms, officer needs to witness inmate's signature and complete staff witness name and date sections on forms.
- III. Business Office
  - A. Provide the inmate with a copy of DAI Policy and Procedure 309.51.01 with Kettle Moraine Correctional Institution's facility procedure.

**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

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- B. Review completed DOC-1290 forms to determine if the inmate is eligible for a legal loan.
  - C. Maintain a file of signed DOC-1290 forms.
  - D. Maintain an approved legal loan list, updating as required, and provide copies to the School, Library, ICE, Records and Business Office staff.
  - E. Review the DOC-184 and inmate accounts, approving or denying requests according to this policy.
  - F. Notify the Canteen Staff of approved supplies request.
  - G. Process the approved DOC-184, entering transactions in WICS as legal loan transactions.
- IV. Canteen Staff
- A. After receiving approved supplies notice from Business office forward DOC-2386 to inmate.
  - B. Receive completed DOC-2386 from inmate.
  - C. Review and fulfill the DOC-2386 request.
  - D. Notify the business Office of order fulfillment
- V. School Library Staff
- A. Verify the inmate is on the current Approved Legal Loan list.
  - B. Verify the documents requested to be copied are legal in nature, pertain to an actual case the inmate is part of, and are necessary or required per the court.
  - C. Forward the completed DOC-184 to the Business Office.
- VI. Mailroom Staff
- A. Forward all mail with DOC-184 for additional postage to the Business Office for status check on the inmate's account.
  - B. Process mail with the approved DOC-184, weighing and affixing postage.
  - C. Document the cost on the DOC-184 and forward to the Business Office for posting.