

Report From Agency

**WISCONSIN DEPARTMENT OF CORRECTIONS
REPORT FROM AGENCY**

RULEMAKING REPORT TO LEGISLATURE

BASIS AND PURPOSE OF PROPOSED RULE

The Wisconsin Department of Corrections proposes an order to amend DOC ss. 306.10 (3), 308.04 (12) (a), 309.466 (1), 313.02 (2) (c), 313.05 (2) (a), 313.07 (7), 324.04 (1), 324.05 (4), 324.13 (7), 325.07 (2) (d), 326.04 (1), 327.05 (4), 327.05 (8), 327.06 (8), 327.08 (4), 330.03 (4), 330.08, 333.04 (1) (d), 333.06 (2), 333.10 (2); and to repeal and recreate chapter DOC 302, relating to inmate classification, sentence and release provisions.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE TO THOSE COMMENTS, AND AN EXPLANATION OF ANY MODIFICATION MADE IN THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENTS OR TESTIMONY RECEIVED AT A PUBLIC HEARING

Public Comment or Testimony	Department Response
Change title "Ambiguity in Sentence" to "Sentence Clarification."	Accepted. Change made to 302.23.
Identify inmates eligible for compassionate release and assist them with the completion of the petition.	Rejected. Currently, inmates are advised of s. 302.113 (9g), Stats. upon admission to DOC. Inmates with extraordinary health conditions in the care of DOC health staff are routinely evaluated for application of s. 302.113 (9g), Stats. Direct assistance by DOC personnel in completion of a petition, presupposes the role of the program review committee in s. 302.113 (9g) (cm), Stats. Resources other than DOC personnel to assist in completion of a petition are available to the inmate.
Prioritize offenders for programming who are parole eligible.	Rejected. Priority for placement and programming for a single class of offender, for example, those who are "parole eligible" is not required by statute and is more appropriately addressed by DOC policy rather than in administrative rule. Justification for parole releases is not a subject of DOC 302
Complains regarding justification DOC uses for revocation of probation and resulting incarceration sentence imposed.	Rejected. Justification for revocation and sentencing is not a subject of the repeal and recreation of DOC 302. No specific suggestions provided relative to proposed DOC 302 repeal and recreation.
Suggests the Community Residential Confinement statute (Wis. S. 301.046(3)(d)/DOC 327) should be altered to apply inmates serving a bifurcated sentence -- not just	Rejected. Administrative Rule making does not permit changes to Wisconsin statute.

parole eligible.

Suggests early release from the confinement portion of a bifurcated sentence should be moved from the "trial courts" to "the Earned Release Review Commission and the DOC".

Rejected. Administrative Rule making does not permit changes to Wisconsin statute.

Suggests adding transition/educational programs, community, education, skills, rehabilitation.

Rejected. Establishment of new correctional programs is not a subject of DOC 302 or this process.

Various issues including tax payer funds, treatment alternatives, mass incarceration, human rights, public safety.

Rejected. No specific suggestions provided relative to proposed DOC 302 repeal and recreation.

Focus on DOC 303 and PAC 1. Various issues including overcrowding, availability of programming, Truth in Sentencing, rehabilitation, treatment, punishment for mentally ill, sex offenders.

Rejected. No specific suggestions provided relative to proposed DOC 302 repeal and recreation.

Seeking a change in laws to better support inmates and families, both within DOC and the community, more generally.

Rejected. No specific suggestions provided relative to proposed DOC 302 repeal and recreation.

Seeking work to be done to release inmates under the old law. Start programs today that will get these inmates ready for release tomorrow.

Rejected. Dissatisfaction with a Parole decision is not a subject of DOC 302.

Seeking a decrease in the prison population by facilitating early release programs, dispel program requirements such as SO-2 classes and the 10 modules for successful re-entry, do not place low level offenders on a public registry, make an effort to move low level offenders into minimum security facilities where job opportunities can be accomplished, reclassify low level sex offenders, notify all inmates what date they are eligible for early release, and employ additional social workers to facilitate positive movement instead of hiring unnecessary correctional officers

Rejected. The number of DOC program providers facilitating programming is not a subject of DOC 302. Disagreements with application of criteria utilized for early release mechanisms or placement are not supported. Who is required to register on the sex offender registry is not a subject of DOC 302.

Complains regarding TIS laws and "dysfunctional" parole system.

Rejected. No specific suggestions provided to proposed DOC 302 repeal and recreation.

Writer requests finding ways to ensure parole-eligible inmates complete their requirements for release and those who no longer are a threat to society are given compassionate release

Rejected. No specific suggestions provided relative to proposed DOC 302 repeal and recreation.

Concern the language permits prison limits to be exceeded indefinitely under the auspice of an emergency. Wants to ensure emergencies 302.03(22) are not conflated with

Accepted, in part. This section is modified to include "disturbances" along with emergencies as this was overlooked by DOC as a reason to exceed prison

disturbances 302.03(20).

population limits. The DOC does not "continually remain under emergency status to exceed stated capacities...contrive emergencies...or intentionally create hostile work conditions."

Factors the department may consider in custody assignment: The writer asserts DOC and Parole do not act independently and parole decisions lack appropriate justification. The writer asserts that is the parole commission won't release and inmate, DOC should.

Rejected. Inmate Classification and Parole are administratively independent in their business process and decisions; and give due consideration to each other's assessments in their independent business processes. It is reasonable for inmate classification to include consideration parole commission decisions as one of the factors in assigning custody. DOC has limited statutory options for release of inmates that are described in other sections of this rule.

Factors the department may consider in custody assignment: The writer opines the External Classification Risk Tool alone determines custody.

Rejected. A variety of factors are used in assigning custody. Including use of assessments or instruments as one of the factors in custody assignment is reasonable.

Questions the validity of risk assessment instruments in identifying needs and associated treatment. Questions training staff utilizing these instruments.

Rejected. It is reasonable to utilize results of assessments and screening instruments to assist with identification of program needs.

"There is no opt out for those reassigned previously completed programs."

Rejected. Inmates may choose not to enroll [see 302.14(2)]

Opines inmates are not permitted minimum or community custody if they refuse a program.

Rejected. Inmate that refuse a program are not necessarily denied minimum or community custody. "Refusal may affect custody classification [see 302.14(2)].

Complains the administrative review request requires proof of the use of erroneous information during inmate classification and an original signature and limited to 500 words not to exceed 2 pages.

Rejected. Classification decisions are within the authority of DOC. A standard of requiring an allegation of the use of erroneous information in arriving at a classification decision to request an administrative is reasonable rather than allowing a review simply because of disagreement with a DOC inmate classification decision. Requiring an original inmate signature is reasonable in ensuring the identity of the submitter. The limit of 500 words and 2 pages provides sufficient room for alleging erroneous information.

The concern is that street time should count for offenders on extended supervision. The DOC should give credit for "Street Time" because not giving it leads to "Endless Supervision" time.

Rejected. Service of credit is determined by statute and not the DOC. Per statute 302.113(9)(am) If a person released to extended supervision under this section violates a condition of extended supervision, the reviewing authority may revoke the extended supervision of the person. If the extended supervision

of the person is revoked, the reviewing authority shall order the person to be returned to prison for any specified period of time that does not exceed the time remaining on the bifurcated sentence. The time remaining on the bifurcated sentence is the total length of the bifurcated sentence, less time served by the person in confinement under the sentence before release to extended supervision under sub. (2) and less all time served in confinement for previous revocations of extended supervision under the sentence. The order returning a person to prison under this paragraph shall provide the person whose extended supervision was revoked with credit in accordance with ss. 304.072 and 973.155. 302.113(9)(c) A person who is subsequently released to extended supervision after service of the period of time specified by the order under par. (am) is subject to all conditions and rules under sub. (7) and, if applicable, sub. (7m) until the expiration of the remaining extended supervision portion of the bifurcated sentence. The remaining extended supervision portion of the bifurcated sentence is the total length of the bifurcated sentence, less the time served by the person in confinement under the bifurcated sentence before release to extended supervision under sub. (2) and less all time served in confinement for previous revocations of extended supervision under the bifurcated sentence.

PERSONS SUBMITTING PUBLIC COMMENTS OR APPEARING/REGISTERING AT HEARING

A Public Hearing was held on October 23, 2017 from 9:00 a.m. – 11:00 a.m. at 819 North 6th Street Milwaukee, Wisconsin 53203.

LIST OF PERSONS WHO APPEARED OR REGISTERED FOR OR AGAINST THE PROPOSED RULE AT THE PUBLIC HEARINGS, OR SUBMITTED WRITTEN COMMENTS

Karen Much	Daniel Toth	Mary Corrigan	Cassie Nolterwyss
Alice Koepke	Deb Martin	Beverly Walker	Margery Clark
Stanley Whitters	David Liners	Bob Monahan	Juanita Flater
Baraba Pfarr	Jean Maas	Jackie Thiry	Bev J. Bradford
Diane Toth	Jennifer Tsuzuki-Korbar	Joseph Ellwanger	David Ely
Melonie Dent	Matthew Scholtes	Kathleen Hart	Carol Crawford
Cory Welch	Bill Sell	Carole Brinkman	Stephanie Mitchell
Karen Brubakken	Mary Musholt	Michael Bolden	Joel Gaughan
Frances Hoffman	Jerry Hancock	Peg Swain	Andrea Kaminski
Ron Lesiak	Geoffrey Swain	Raymond Woods	Ronald Alexander on behalf of NAOMI
Tonen O'Connor	John Gosling	S. Stephan	Organization
Jennifer Vallier	Sister Mary Jo Selins	Erika Voss	Michael Erwin
Juli Loker	Laura Rhyne	Shirley Stoll on behalf of	
Sura Farel	Sister Mary Jo Selinsky	Benjamin Lultrell	

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

No changes were made to the rule analysis or the fiscal estimate and economic impact analysis.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

Legislative Council Comment/Suggestion	Department Response
The rule summary should cite any specific statutory authority the department has for promulgating the rule, such as ss. 301.055 and 302.04 (2), Stats., in addition to the general statutory authority provided under s. 227.11 (2), Stats. [s. 1.02 (2m), Manual.]	Agree. Corrected.
Section DOC 302.05 should be revised to specify a formula or some other method of identifying applicable prison population limits in the rule, as required by s. 301.055, Stats.	Rejected. The Department carefully considered this suggestion, but determined a formula would be best dealt with in policy.
Statutory citations appearing throughout the rule should be checked for punctuation and capitalization, so that they uniformly appear as “s. 123.45, Stats.”. See, for example, ss. DOC 302.03 (32), 302.34 (3) (d), and 302.40 (2). [s. 1.07 (2) (Table), Manual.]	Agree. Corrected.
In s. DOC 302.17 (5) and (6), the provisions relate to recommendations by the reclassification committee (presumably at the conclusion of the hearing), while subs. (7) to (9) relate to running the hearing itself. Should subs. (5) and (6) be moved after sub. (9) so that provisions regarding the hearing can be grouped together and actions will be chronological?	Agree. Corrected.
In s. DOC 302.20 (4), the references to “sub. 1” and “sub. 2” should include parentheses, as they do in sub. (3). [s. 1.03 (1) (Example), Manual.]	Agree. Corrected.
In SECTION 7, the strikethrough of the reference to s. DOC “302.31 (4) to (6)” is incomplete and should be corrected.	Agree. Corrected.
In SECTIONS 8 and 20, the SECTIONS state they are “amending” ss. DOC 324.03 (4) and 333.03 (11). However, SECTIONS 8 and 20 substitute an entirely new definition for the existing definition with no strikethroughs or underscoring. The SECTIONS should each be changed to state the action is one to “repeal and recreate”. The introductory clause should also be changed to reflect that ss. DOC 324.03 (4) and 333.03 (11) are being repealed and recreated.	Agree. Corrected.
Section DOC 302.24 (2) requires the sentencing court to determine sentence credit, but the department does not have the authority to require another agency to take any action. Is it intended that the department must apply to the sentencing court for a determination of sentence credit, or will in some other manner apply a sentence credit as	Agree. Corrected.

determined by the sentencing court?

The use of subsection titles within lengthier code provisions would make the provisions more readable. For example, s. DOC 302.34 could include subsection titles like “(1) RELEASE OF INMATES TO RELIEVE OVERCROWDING. In accordance with s. 304.02...”, (2) ELIGIBILITY. To be eligible for special action release consideration...”, (3) EXCEPTIONS TO ELIGIBILITY CRITERIA. An inmate is eligible..., (4) WAIVER OF SAR. An inmate may waive eligibility..., and (5) REQUIREMENTS FOR SAR REFERRAL. The following steps shall be taken in preparing a SAR referral...”. See also, in particular, ss. DOC 302.17 and 302.35.

Agree.

306.16,302.17, 302.34 and 302.35 changed.

The effective date provision should be revised to adequately inform a reader how to determine the date upon which the proposed rule will be effective. The effective date could be identified in one of the following manners: as the first day of the month following publication; as a specifically identified later date; or as a date to be identified in a statement that will be filed with the final rule when the final rule is submitted for publication in the Administrative Register. [s. 227.22 (2) (b), Stats.; s. 1.02 (4), Manual.]

This is how it is identified.

In s. DOC 302.34 (5) (d), the reference to “under sub. (5)” is not clear and should be more specifically identified. Also, in sub. (5) (i), it appears that a reference is missing and should be added.

Agree. Corrected.

In s. DOC 302.35 (4), the word “subsection” should replace the word “paragraph”. [s. 1.03 (1) (Example), Manual.]

Agree. Corrected.

The word “their” appearing throughout the rule is used to refer to a singular inmate, and should be changed to “his or her”. See, for example, ss. DOC 302.03 (19) and 302.27 (1) (a).

Agree. Corrected.

In s. DOC 302.02 (2), the word “includes” should be singular (“include”).

Agree. Corrected.

In s. DOC 302.03 (1), the line should end with a period.

Agree. Corrected.

In s. DOC 302.03 (3), the comma following “DAI” should be deleted.

Agree. Corrected.

In s. DOC 302.03 (29), the definition of “in custody” means any time an offender spent confined in connection

Agree. Corrected.

with “the violation”. Does “the violation” refer to the course of conduct (the language in s. 973.155 (1), Stats.), or does it refer to something else?

In s. DOC 302.03 (54), there appear to be extraneous words at the end of the definition of “security classification”. The definition refers to “degree of supervision of inmate supervision”.

Agree. Corrected.

In s. DOC 302.03 (55), the second period should be deleted

Agree. Corrected.

In s. DOC 302.03 (59), the definition of “staff” should refer to “a” permanent, project, contract, or limited-term employee.

Agree. Corrected.

In s. DOC 302.05, the provision states that requirements regarding establishing, computing, and exceeding system-wide limits and individual prison limits will be addressed in department policy. The term “system-wide” should be consistent in either using a hyphen or not using a hyphen.

Agree. Corrected.

In s. DOC 302.10 (1), the provision refers to “restrictive status housing”. Should this merely refer to “restrictive housing”, using the defined term in the chapter?

Agree. Corrected.

In ss. DOC 302.16 and 302.17, are inmates supposed to have the opportunity to attend the initial classification hearing? The sections do not state this explicitly, though several subsections refer to the presence of the inmate. For example, s. DOC 302.16 (5) allows use of technology if an inmate is unable to be physically present for an initial classification hearing and s. DOC 302.17 (4) (f) requires the report to note the reason for the inmate’s absence from the hearing.

Rejected. This concern is handled in DOC302.16 (3) (d) and 302.17(4)(c).

In s. DOC 302.16 (3), is the classification specialist supposed to complete the listed tasks before an initial classification hearing is conducted (similar to s. DOC 302.17 (3)), or simply complete the tasks at some unspecified point in time?

These are the chronological tasks of a classification specialist conducting a classification hearing. (7) to (9) completes the initial classification process.

In s. DOC 302.16 (3) (c), the provision requires the classification specialist to ensure that the inmate was informed of the reason “for review”. Does this apply to the initial classification?

Yes. If you mean "reclassification", this is addressed in DOC 302.17 (4) (a)

In s. DOC 302.16 (3) (f) 1., the line should end with a period.

Agree. Corrected.

In s. DOC 302.17 (5), the provision should read “a” unanimous recommendation, rather than “an”.	Agree. Corrected.
In s. DOC 302.20 (1) (b), the line should include the word “or” between “dental” and “mental health need”. Also, in sub. (4), should the phrase “clinical of medical” be “clinical or medical”?	Agree. Corrected.
In s. DOC 302.22 (3) (a) 3., should the provision refer to good time being credited beginning on the “day” following the inmate’s date of arrival?	Agree. Corrected.
In s. DOC 302.22 (3) (b) 1., the provision is phrased to state that “the projected mandatory release date shall be subject to...statutory or extra good time may not be earned”. This construction is awkward and should be rephrased.	Agree. Corrected.
In s. DOC 302.26 (1) (b), the provision should be revised to form a complete sentence.	Agree. Corrected.
In s. DOC 302.26 (3), the space after “custody” should be deleted, and there should be a period after “sub”.	Agree. Corrected.
In s. DOC 302.27 (3), the space after “custody” should be deleted, and there should be a period and comma following “s. 973.155, Stats”.	Agree. Corrected.
In s. DOC 302.35 (2), pars. (f) and (g) should begin with “The inmate is”, similar to the preceding paragraphs.	Agree. Corrected.
In s. DOC 302.35, sub. (3) should begin on its own line and par. (e) should also begin on its own line. It appears that pars. (a) to (h) should begin with “Whether the inmate...”.	Agree. Corrected.
In s. DOC 302.35 (7), the first word should be capitalized, “the” should be lowercase, and the line should end with a period.	Agree. Corrected.
In s. DOC 302.236, the provision states that “Inmates who are eligible to earn positive adjustment time between may petition the sentencing court...”. There appear to be dates missing after the word “between”. Alternatively, the word “between” could be deleted.	Agree. Corrected.
In s. DOC 302.236 (2), should the provision refer to the number of “days of” positive adjustment time earned?	Agree. Corrected.
In s. DOC 302.39 (1), the space appearing within the reference to s. “948.05 1”, Stats., should be deleted. In	Agree. Corrected.

sub. (3) (c), the word “the” should be inserted before “inmate”.

In s. DOC 302.40 (3), pars. (a) to (i) should each begin with the phrase “The inmate...”.

Agree. Corrected.

In s. DOC 302.41 (8), there should be a comma after the phrase “During the hearing”. In sub. (9), there should be an “or” following “ in person”.

Agree. Corrected.

In SECTIONS 21 and 23, the SECTIONS amend the term “PRC” so that it reads “RC”. However, under the newly created definition, “RC” is a process and not an entity. Should these references to “RC” be replaced with “reclassification committee”?

Agree. Corrected.

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. 227.1145, Stats.