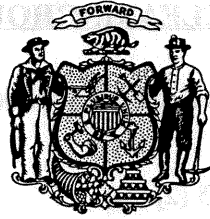


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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-140

AN ORDER to create chapter DOC 302, relating to classification, assessment and evaluation and program review.

Submitted by **DEPARTMENT OF CORRECTIONS**

09-25-00 RECEIVED BY LEGISLATIVE COUNCIL.

10-20-00 REPORT SENT TO AGENCY.

RNS:AS:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

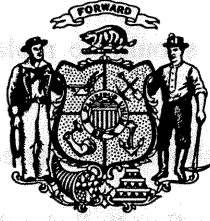
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-140

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. The terms defined in s. DOC 302.03 should be in alphabetical order. For example, the terms defined in subs. (11) and (12) should precede sub. (10). Also see subs. (13) and (14).
- b. In s. DOC 302.04, the introductory paragraph should be numbered sub. (1) because it does not introduce the subsequent subsections. The subsequent subsections should be renumbered accordingly. This comment also applies to s. DOC 302.16.
- c. In s. DOC 302.10 (2), "a" should replace "such."
- d. In s. DOC 302.15, there needs to be an introductory paragraph stating that the subsequent subsections list the purposes of the program review. The title is not part of the text of the rule, so the text must indicate what is being listed.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In s. DOC 302.01, the statutory citations should be listed in numerical order.
- b. In s. DOC 302.03 (1), "s." should be inserted before "DOC" and it appears that "302.14" should be replaced with "302.11."

c. In s. DOC 302.03 (4), “ss.” should be inserted before the first “DOC” and the second “DOC” should be deleted.

d. In s. DOC 302.03 (9), “s.” should be replaced with “ch.” Also, a more specific citation would be helpful.

e. In s. DOC 302.03 (13), “s.” should be inserted before “DOC.”

f. In s. DOC 302.08 (2) (a), the first “s.” should be replaced with “ss.” and the second “s.” should be deleted.

g. In s. DOC 302.08 (2) (b), it appears that the citation to s. DOC 302.18 should be to s. DOC 302.17.

h. In s. DOC 302.20 (1), the citation to s. DOC 302.16 (6) (a) is incorrect.

i. Please review the appendix and insert “s.” before citations to DOC rules, where needed.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DOC 302.02 (1), “The purposes of this chapter are” should be replaced with “The purpose of this chapter is.”

b. In s. DOC 302.02 (2) (intro.), “of this chapter are all of the following” should replace “are.”

c. In s. DOC 302.02 (2) (a), “for” should be replaced with “based upon.”

d. In s. DOC 302.02 (2) (b), in this provision and others that follow, “institution” is used to presumably refer to a correctional institution. Is this clear enough, or should “institution” be defined or “correctional institution” used?

e. In s. DOC 302.02 (2) (d), “match inmate need” should be replaced with “to match an inmate’s program and treatment needs.”

f. In s. DOC 302.03 (2), “within” should be replaced with “of.”

g. In s. DOC 302.03 (8), “his or her” should be inserted before “designee.” This comment also applies to subs. (15) and (17).

h. In s. DOC 302.03 (11), “within” should be replaced with “by.”

i. In s. DOC 302.03 (13), the comma between “custody” and “classification” should be deleted.

j. In s. DOC 302.03 (14), "and others" should be deleted and "and" should be inserted before "clinical."

k. In s. DOC 302.03 (17), what is a "correctional center"?

l. In s. DOC 302.03 (18), who are "program or treatment leaders"?

m. Custody classification is determined based upon each inmate's characteristics, but that is not directly stated in s. DOC 302.04. Therefore, in s. DOC 302.04 (intro.), a phrase such as "to determine the appropriate placement of an inmate in order" should be inserted after "The purpose of a custody classification is." Also, in sub. (1) (intro.), the sentence should be replaced with a sentence such as: "Custody classification is determined by assessing the risk of each inmate regarding all of the following:"

n. In s. DOC 302.04 (1) (c), "misconduct" should be more clearly defined. Does it mean misconduct in the institution?

o. In s. DOC 302.05 (intro.), the sentence should be replaced with a sentence such as: "An inmate is classified under one of the following 5 custody classification levels based upon the result of an assessment of the inmate's risk under the A&E or PRC process:"

p. In s. DOC 302.05, because the subsection titles are not considered to be text, each subsection should begin with a phrase such as: "Maximum custody requires . . ." Also in that section, the descriptions of several of the classifications are not helpful. Specifically, what is meant by "general monitoring" or "moderate monitoring." Also, the medium-out classification permits placement outside the facility, but it appears that the minimum classification does not. Is this correct?

q. In s. DOC 302.05 (3), "inmate may be placed" should be replaced with "permits placement."

r. In s. DOC 302.05 (5) (intro.), the sentence should end with a colon. Also, should all temporary releases be included or only those in pars. (b) and (c)?

s. In s. DOC 302.06 (1), the sentence should be replaced with a sentence such as: "Except for inmates awaiting transfers and institutions in which there is a declared emergency or disturbance, an inmate's custody classification may be no greater than the designated security classification of the institution in which the inmate is placed."

t. In s. DOC 302.07 (intro.), the sentence should end with "in assigning custody classification:"

u. In s. DOC 302.07 (1) (d), "in the commission of the offense for which the inmate was convicted" should be inserted at the end of the sentence.

v. In s. DOC 302.07 (2), “, including” should be replaced with “and” because juvenile adjudications are not part of the criminal record. Also, “delinquency” should be inserted before “adjudications.”

w. In s. DOC 302.07 (6), “intensive sanctions” should be replaced with “IS.” Also, “a” should be inserted before “mental health facility” and “local jail.”

x. In s. DOC 302.07 (9), the subsection and paragraph texts should be combined to read: “The risk of placing an inmate in the community where the offense was committed or where the institution is located, including the general attitude of the public as represented by elected officials, judges, sheriffs, district attorneys or a victim or witness.”

y. In s. DOC 302.07 (10), “or refusal to participate” should be inserted after “performance.”

z. In s. DOC 302.07 (12), a comma should be inserted after “expectations and.”

aa. In s. DOC 302.07 (13), “use” should be replaced with “results.”

ab. In s. DOC 302.08 (1), should extended supervision, as well as parole, be discussed? This comment also applies to subs. (2) (a) and (3). Also, in the second sentence, “considered to be” should be inserted before “serving a life sentence.” Finally, in the last sentence, “who is” should replace “that is.”

ac. In s. DOC 302.08 (2), the title should be deleted since the other subsections do not have titles.

ad. In s. DOC 302.08 (2) (c), the sentence could be rewritten to read: “Approval by the director for minimum custody classification.”

ae. In s. DOC 302.08 (3), the community custody classification is referenced. Should this be included in other provisions of the section?

af. In s. DOC 302.09 (intro.), “provided” should be replaced with “if.”

ag. In s. DOC 302.09 (1), the sentence could be rewritten to read: “The inmate has a program or treatment need that the program being considered would meet.”

ah. Section DOC 302.09 (4) should be deleted because it is repetitive.

ai. In s. DOC 302.10 (1) (intro.), “in assigning an inmate to a program or treatment component” should be inserted before the colon.

aj. In s. DOC 302.10 (1) (a), “Those stated in” should be replaced with “Factors under.”

ak. In s. DOC 302.11 (1), “will” should be replaced with “shall.”

al. In s. DOC 302.11 (2), "Assessment and Evaluation" should not be capitalized.

am. In s. DOC 302.12 (title) and (intro.), "purpose" should be replaced with "purposes." Also, "all of" should be inserted after "be."

an. In s. DOC 302.12 (1), the sentence should state what type of risk is being assessed. Also, the sentence should end with a period.

ao. In s. DOC 302.12 (6), the comma after "treatment" should be replaced with "and."

ap. In s. DOC 302.13 (1), it is not clear what the assessment and evaluation (A&E) review is.

aq. In s. DOC 302.13 (2) (a), is the information discussed the information gathered through A&E? If so, this should be clarified.

ar. Section DOC 302.13 (2) (d) 1. should clarify what is meant by "the issues."

as. In s. DOC 302.13 (3), "custody classification" should be inserted before "decision."

at. In s. DOC 302.15 (1), a hyphen should be inserted between "offense" and "related." This comment also applies to the note to s. DOC 302.17 in the appendix.

au. In s. DOC 302.15 (7), what is the "risk rating"?

av. In s. DOC 302.15 (8) and (9), what is the "recall"?

aw. In s. DOC 302.15 (9) (a), "determine" should be replaced with "determined."

ax. In s. DOC 302.15 (9) (c), what is the institution adjustment committee?

ay. In s. DOC 302.17 (1), "program" should be inserted before "review." Also, may any institution staff member prepare the materials for the program review under sub. (1)?

az. In s. DOC 302.17 (2) (intro.), what is the program review office?

ba. In s. DOC 302.17 (2), the paragraphs' text should begin with capital letters. Also, in par. (c), "That" should be inserted at the beginning of the sentence.

bb. In s. DOC 302.17 (3) (intro.), it may be helpful to state that prior to the program review, the program review committee (PRC) shall conduct an interview of the inmate, unless the inmate has waived the interview.

bc. In s. DOC 302.17 (7), "outside" should be replaced with "other than those in ss. DOC."

bd. In s. DOC 302.17 (9), the slash should be replaced with "or" and the comma after "medium" should be deleted.

be. In s. DOC 302.17 (10), the second "unanimous" should be deleted.

bf. In s. DOC 302.19 (3), "arrangement of" in the last sentence should be replaced with "placement in."

bg. In s. DOC 302.19 (4), "an inmate is" should be inserted after "If." Also, "per" should be replaced with "as provided under" and "conclusions and decisions" should be replaced with "decision."

bh. In s. DOC 302.19 (5), ", in its sole discretion," should be deleted.

bi. In s. DOC 302.195 (2), "will" should be replaced with "shall." Also, who may review the description? Finally, "sub." should be inserted before "(1)."

bj. In s. DOC 302.20, it is not clear what the informational program review is. Please review the section.

bk. In s. DOC 302.20 (1), par. (a) should end in a period and "medical" and "clinical" in pars. (c) and (d) should be further qualified.

bl. In s. DOC 302.20 (2), the sentence should end with a period.

bm. In the appendix, the note for DOC 302.19 should not be underscored.

**PROPOSED ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND RECREATING RULES**

The Wisconsin department of corrections proposes an order to repeal DOC 302.01-302.20, and create DOC 302.01-302.205, relating to classification, assessment and evaluation, program review.

Statutory authority: ss. 301.02, 301.03 (2), 302.07 and 227.11 (2), Stats.

Statutes interpreted: ss. 301.046, 301.048, 302.045, 302.055, 302.07, 302.08, 302.15, 302.18, 302.27, 303.065 and 303.068, Stats.

Analysis by the Department of Corrections

After more than 20 years of experience with the rules related to classification, assessment and evaluation, and program review, the Department of Corrections proposes to update the rules.

NEED FOR REVISION

The need for these changes cannot be overstated. The current rule was written and enacted at a time when the classification unit was a part of the adult institution system and at a time when the entire adult institution population represented fewer than 4,500 inmates. That system included all maximum, medium and minimum security facilities. Personnel staffing committees and reviewing recommendations came from within the system and did not permit independent review or decision making. Often, conflicting program and custody decisions were settled by the same staff member affected by the outcome.

DOC 302 governs inmate classification, assessment and evaluation, and program review at state correctional institutions. As technology, science, population and government evolve over time, practices must adapt to those changes. We ultimately grow wiser and more efficient based on new knowledge and procedures. What was thought routine, necessary or even effective correctional practice in 1980 may not be accurate today.

For example, our prison population has grown from 1,930 in 1976 to more than 20,600 currently. This enormous increase in prisoners, along with their increased level of sophistication, has placed a greater burden on correctional staff. In many ways, Wardens and staff no longer enjoy the luxury of time that once afforded them the ability to maneuver bureaucratic requirements. The situations encountered and decisions that are

made are infinitely different from those of 20 years ago when the current rule was promulgated.

While addressing the needs of the Department, including internal restructuring and reorganization, this rule change also retains and strengthens inmate involvement in the classification processes including the assignment of custody, program and placement. In general, the processes are streamlined, require fewer mandatory reviews, and provide options for dealing with emergencies and situations when the offender is not accessible.

BACKGROUND

Classification provides the Department a process for determining custody classification, program or treatment assignment, and transfer decisions concerning inmates. The Department uses classification to regulate the level of supervision and movement of inmates within and outside of an institution.

Assessment and Evaluation provides the Department a process for conducting the initial assessment on risk, criminal and social background, sentence structure, academic and vocational requirements; conducting certain kinds of evaluations; determining custody classification; assessing the motivation of an inmate; and formulating an individualized plan to coordinate custody classification and recommended programs for an inmate on arrival to the Department.

Program Review provides the Department an ongoing process for review of the custody, program and treatment assignments and placement.

DEFINITIONS

This rule makes only the following definition change: "Security Classification" is changed to "Custody Classification."

This rule also changes "minimum security-community residential confinement (CRC)" to "community" custody.

CUSTODY CLASSIFICATION

Unlike the current rule, this rule clearly establishes that custody classification is defined by an inmate's level of risk. This rule specifically provides that custody classification function is to regulate the supervision and movement of inmates among institutions and between institutions and community programs and is defined by the risk associate with any of the following:

- Assaultive or predatory behavior;
- Escape, walk-away, or absconding;

Misconduct;
Disruption to the orderly processes of an institution;
Participation and progress in program or treatment;
Adjustment and history under community supervision; and
Pending legal processes.

The higher the risk, the higher the inmate's overall custody level. Custody level is evaluated using a minimum of 14 different factors that summarize an offender's history as best possible. This includes the use of an objective risk rating system. This rule also adds community concerns relating to an offender's risk as one of the factors considered when determining custody classification. This rule also allows parole commission actions and stated expectations such as the likelihood of release during review period to be considered as factors in assigning a custody classification

This rule establishes that program consideration is a right that offenders have if certain prerequisites are met and space is available. The rule clarifies that no offender can be forced into programming and that program refusal may have an impact on custody classification.

This rule condenses the current six custody classifications into five by combining "maximum security close" and "maximum security-general" to create "maximum."

For each custody level, this rule requires certain levels of monitoring relating to conduct, behavior and activities and removes restrictions in the current rule regarding inmate supervision, movement and programs. This change helps to more clearly separate institutional issues from classification issues. It is the institution's responsibility to determine housing, supervision and movement methods and policies. Classification is responsible for designating the level of custody.

Specifically, this rule provides that community custody requires limited monitoring of conduct, behavior and activities and removes restrictions regarding residence, placement, purpose, allowing more flexibility within the custody classification. Provides that community custody is used for the following inmates who are in the community without Department of Corrections escort:

- Work or study release;
- Off-grounds projects under supervision of non-correctional staff;
- Driving institution vehicles;
- Leave for qualified inmates;
- Community residential confinement;
- Intensive sanctions; and
- Other programs which the department may establish.

This rule also guarantees that an inmate's custody classification shall be no greater than the institution's designated security classification except for pending transfers, declared emergencies or disturbances.

This rule removes the 10 year old chart of institutions and their designated classifications because this information is continually changing due to new or altered institutions within the system.

This rule applies a consistent procedure for custody classification at the conclusion of A & E and deletes language distinguishing procedures at Waupun, Green Bay and Taycheedah.

LIFE SENTENCES

This rule simplifies the process for determining minimum custody eligibility for inmates serving life sentences. Offenders with life sentences are no longer designated as one of four life categories. The current rule divides life sentence inmates into four categories based on various factors surrounding the nature of the crime, the inmate and the victim. This process is tedious, difficult, and uncertain at best. This new rule will simplify that process and treat all inmates according to the same standards for determining eligibility for minimum custody. Inmates serving a life sentence who have reached the parole eligibility date will now be treated with the same procedures used for all other inmates.

This rule provides that an inmate serving a life sentence without the possibility of parole is not eligible for minimum or community custody classification.

ASSESSMENT AND EVALUATION

Requires that the A & E process be done as "expeditiously as possible" and removes the arbitrary timeframe of 6 weeks after arrival. Obtaining certain information, such as sentencing transcripts and Pre-Sentence Investigation reports, often takes longer than six weeks. Without this change, inmates that do not have these necessary documents would have to be staffed and transferred. When these documents become available, the PRCs would need to conduct an early recall to consider the information. It is more efficient to permit the A & E process to complete the review even though it may take longer than the currently prescribed six week time period.

This rule extends the time period to no more than 12 months for A&E review. This will reduce the number of frivolous reviews and enable staff to set recall dates to correspond to significant changes in offender plans.

Because housing, movement and supervision are institutional issues and should not be confused with classification issues, this rule removes language specifically authorizing restricted movement during the A & E process. Institutions maintain discretionary authority to separate an inmate from the general resident population via custody classification. See 302.07 and 302.11.

Provides that A & E reviews be conducted by a classification specialist with the assistance of other staff as needed and removes requirement that A & E be conducted by a committee comprised of not less than 3 permanent members. This change is necessary because the increased number of admissions add a tremendous burden on the limited resources of the institution to perform committee work. This change permits the classification specialist to work directly with the inmate in the process rather than relying on a second or third party that may not know anything about the case. This change will increase the A & E efficiency.

PROGRAM ASSIGNMENT

This rule allows inmates to be considered for school assignments, vocational programs, or treatment assignments provided the following conditions are met:

- Inmate has an A & E or program review need in the area considered;
- Space available in the program;
- Inmate attains necessary and appropriate custody classification;
- State or federal laws do not exclude the inmate from participation; and
- Inmate meets program or treatment prerequisites.

This rule allows the department to consider more than the currently limiting list of factors regarding criteria for program assignment.

PROGRAM REVIEW

This rule provides a simplified program review process by reducing the committee membership and allowing the offender to deal directly with the committee rather than a social worker. The current rule requires the social worker to make comments to an inmate regarding a process they have very little knowledge about. Often, the time between the social worker's interview with the inmate and the actual PRC date may be several weeks, requiring information to be updated for the committee. Further, the social worker's comments may not clearly reflect the inmate's comments. This rule change reduces the duplication of work, shortens the time between the social worker's comments and the PRC date, and permits the inmate to discuss issues directly with the committee.

This rule allows for alternative forms of communication including telephone conference calls, video, written comments and other electronic devices to greater involve the inmate and ensure that program review is completed in a more timely manner.

This rule creates "informational" program reviews by allowing the director, section chief or a classification specialist to record information concerning an inmate between regularly scheduled PRC's.

APPEALS

This rule creates a process whereby an inmate may appeal procedural issues relating to custody classification, transfer, institution placement, and program or treatment assignment.

ORIENTATION

Removes language allowing orientation sessions to be conducted by inmates. Orientation is an administrative process and should clearly be presented by staff so that policies, procedures and descriptions of the system are accurately stated. Inmates should not be in a position to explain these issues to other inmates. It is unmistakably the responsibility of the Department of Corrections.

This rule change removes language requiring specific orientation procedures, including those for handicapped and non-English speaking inmates, as these requirements are a part of the Department's continuing mission to provide resources consistent with state and federal laws and regulations including fundamental fairness and due process.

This rule removes requirement that each inmate, during A & E or transfer from another institution, receive written copy of the rules of conduct. DOC 303 already provides for this.

CHAPTER DOC 302

CLASSIFICATION, ASSESSMENT AND EVALUATION, PROGRAM REVIEW

DOC 302.01	Applicability	DOC 302.10	Factors in assigning a program or treatment component
DOC 302.02	Purpose of classification	DOC 302.11	Applicability of A&E process
DOC 302.03	Definitions	DOC 302.12	Purpose of A&E
DOC 302.04	Custody classification	DOC 302.13	Duration of A&E process
DOC 302.05	Custody classification levels	DOC 302.14	Applicability of program review
DOC 302.06	Institutional security	DOC 302.15	Purpose of program review
	classifications and relationship to custody classification	DOC 302.16	Program review personnel
DOC 302.07	Factors in assigning a custody classification	DOC 302.17	Program review procedure
DOC 302.08	Requirements for assigning a minimum custody classification to an inmate serving a life sentence	DOC 302.18	Appeals
		DOC 302.19	Transfer
		DOC 302.195	Process and procedural pilots
		DOC 302.20	Informational program reviews
DOC 302.09	Program consideration	DOC 302.205	Emergency suspension of rules

DOC 302.01 Applicability. Pursuant to authority vested in the department of corrections by ss. 301.02, 301.03 (2), 302.07 and 227.11 (2), Stats, the department adopts this chapter which applies to the department and all inmates in its legal custody for implementation of ss. 301.046, 301.048, 302.045, 302.055, 302.07, 302.08, 302.15, 302.18, 302.27, 303.065 and 303.068, Stats

DOC 302.02 Purpose of classification. (1) The purposes of this chapter are to provide procedures for custody classification, program or treatment assignments, and transfers.

(2) The goals and objectives are:

(a) To classify every inmate for risk factors relative to public safety, institutional security, and staff and inmate safety.

(b) To establish and review the custody classification, program or treatment assignments, and institution placement that ensures public, staff, and inmate safety.

(c) To involve inmates in the processes for custody classification, program or treatment assignments, and transfer consideration.

(d) To the extent possible, match inmate need to institution resources.

(e) To provide a documented current and historical reference of custody classification, program or treatment assignments, transfers and comments on each inmate.

DOC 302.03 Definitions. In this chapter:

- (1) "A&E" or "assessment and evaluation" means assessment and evaluation as performed under DOC 302.14.
- (2) "Classification section chief" means the section chief within the bureau of offender classification and movement.
- (3) "Classification specialist" means the A&E or program review staff person from the bureau of offender classification and movement.
- (4) "Custody classification" means the security rating applied to an inmate based on the procedures of DOC 302.13 and DOC 302.17.
- (5) "DAI" means the division of adult institutions, department of corrections.
- (6) "DCC" means the division of community corrections, department of corrections.
- (7) "Department" means the department of corrections.
- (8) "Director" means the director of the bureau of offender classification and movement, department of corrections, or designee.
- (9) "Disciplinary hearing" means a hearing authorized under s. DOC 303 for the discipline of inmates for misconduct.
- (10) "Program needs" means the program or treatment needs of an individual inmate which reduce the risk to re-offend, escape, or be a security problem during confinement and promote readiness for community reintegration.
- (11) "IS" means intensive sanctions administered within the department of corrections.
- (12) "PRC" means the program review committee.
- (13) "Program review" or "PR" means the ongoing process of monitoring of custody, classification, institution placement and program or treatment assignments as performed under DOC 302.17.

before (13)
(14) "Program or treatment" means the programs, treatment and services provided by an institution or the department such as education, alcohol and drug abuse treatment, sex offender treatment, clinical and social service counseling and others. ✓

(15) "Secretary" means the secretary of the department of corrections, or designee. ✓

(16) "Security classification" means the security level of an institution based upon the physical plant characteristics, staff resources and degree of supervision of inmates. ✓

(17) "Superintendent" means a superintendent at a correctional center, or designee. ✓

(18) "Treatment provider" means the program or treatment leaders who determine program criteria, eligibility, service delivery and the extent to which the inmate completed the program. ✓

(19) "Warden" means the warden at an institution, or designee. ✓

(20) "Working days" means all days except Saturday, Sunday, and state legal holidays.

DOC 302.04 Custody classification. The purpose of a custody classification is to regulate the supervision and movement of inmates among institutions, and between institutions and community programs.

(1) Custody classification is defined by the risk associated with any of the following:

- (a) Assaultive or predatory behavior.
- (b) Escape, walk-away, and absconding occurrences.
- (c) Misconduct.
- (d) Disruption to the orderly processes of an institution.
- (e) Participation and progress in program or treatment.
- (f) Adjustment and history under community supervision.
- (g) Pending legal processes.

(2) The department initiates custody classification at A&E and changes it by an individualized assessment through the program review process using factors identified in s. DOC 302.07.

An inmate is classified

DOC 302.05 Custody classification levels. The following 5 custody classification levels are designated as a result of the A&E or PRC processes based on assessment of an inmate's risk.

(1) **MAXIMUM:** Requires very close monitoring of inmate conduct, behavior and activities.

(2) **MEDIUM:** Requires general monitoring of inmate conduct, behavior and activities.

(3) **MEDIUM-OUT:** Requires general monitoring of inmate conduct, behavior and activities and inmate may be placed outside the facility's physical structure under supervision.

(4) **MINIMUM:** Requires moderate monitoring of inmate conduct, behavior and activities.

(5) **COMMUNITY:** Requires limited monitoring of inmate conduct, behavior and activities. This classification is used for the following activities:

- (a) Work or study release under ch. DOC 324.
- (b) Off-grounds projects under the supervision of non-correctional staff under ch. DOC 325.
- (c) Driving institution vehicles under ch. DOC 325.
- (d) Leave for qualified inmates under ch. DOC 326.
- (e) Community residential confinement under ch. DOC 327.
- (f) Intensive sanctions under ch. DOC 333.
- (g) Other programs which the department may establish.

DOC 302.06 Institutional security classifications and relationship to custody classification. (1) Except for pending transfers, and declared emergencies or disturbances, an inmate's custody classification shall be no greater than the institution's designated security classification.

(2) Segregation units at any facility are considered maximum security.

DOC 302.07 Factors in assigning a custody classification. The department may consider factors that include but are not limited to the following:

(1) The nature and seriousness of the offense the inmate was convicted of. In evaluating the seriousness of the offense, the department may consider the following:

- (a) Potential of physical danger to another.
- (b) Harm done to the victim in the commission of the offense.
- (c) Whether the inmate exhibited physical aggressiveness that exposed another to harm. ✓

(d) Aggravating or mitigating factors.

(2) The inmate's criminal record, including juvenile adjudications. ✓

(3) The length of sentence being served.

(4) The inmate's motivation for the crime convicted of.

(5) The inmate's attitude regarding the offense and sentence.

(6) The inmate's record of adjustment and misconduct including any record of escape from a department facility, intensive sanctions, mental health facility, local jail or any other confinement facility, or absconding from probation, parole, or extended supervision.

(7) The length of time the inmate has been in a particular custody classification and overall time served during the current period of incarceration.

(8) The inmate's medical and clinical needs, including physical or psychological treatment and observation.

(9) The risk of placing an inmate in the community including: *all*

(a) The community where the offense was committed.

(b) The community where the institution is located, including the potential reaction of the public to a custody reduction.

(c) The general attitude of the public as reflected by elected officials, judges, sheriffs, district attorneys, or a victim or witness.

(10) The inmate's performance in programs or treatment

(11) A pending legal process, notification or detainer.

(12) Parole commission actions and stated expectations and, in the absence of any stated expectations, the likelihood of a release during the review period.

(13) The use of specially designed and researched risk rating instruments developed to assist with the individualized and objective assessment of a custody classification or program and treatment assignments and placements.

(14) The inmate's vulnerability to physical assault by other inmates.

DOC 302.08 Requirements for assigning a minimum custody classification to an inmate serving a life sentence. (1) In this section, "life sentence" means a sentence of life imprisonment. An inmate sentenced to life imprisonment who is released on parole, violates a condition of parole and is returned to a state correctional institution with or without a new sentence is serving a life sentence. If the governor pardons or commutes a life sentence, it is no longer a life sentence. The life sentence definition also applies to an inmate from another jurisdiction that is serving a sentence of life imprisonment under that jurisdiction's laws.

(2) **ELIGIBILITY FOR MINIMUM CUSTODY CLASSIFICATION.** To be eligible for a minimum custody classification, an inmate serving a life sentence shall have:

- (a) Reached parole eligibility as defined in s. 304.06 (1) and s. 973.014, Stats.
- (b) Had a recommendation for minimum custody classification made by the PRC under s. DOC 302.18.
- (c) Had a final decision by the director approving the inmate's minimum custody classification.

(3) An inmate serving a life sentence without the possibility of parole is not eligible for minimum or community custody classification.

DOC 302.09 Program consideration. Unless otherwise specified by the rules of the department or by state and federal law, inmates may be considered for school assignments, vocational programs or treatment assignments within the Wisconsin correctional system provided all of the following conditions are met:

- (1) The inmate has an A&E or program review need in the area considered.
- (2) There is space available in the program.
- (3) The inmate attains the custody classification needed for transfer to the site where the program is available.

(4) State or federal laws do not exclude the inmate from participation.

(5) The inmate meets program or the treatment prerequisites.

DOC 302.10 Factors in assigning a program or treatment component. (1) The department may consider factors including but not limited to the following:

(a) ~~Those stated in~~ s. DOC 302.07.

(b) Program or treatment prerequisites required by the treatment provider.

(c) The inmate's past performance in programs.

(d) Federal or state law requirements.

(2) The inmate may choose not to participate in program and treatment with an understanding that such refusal may affect custody classification and placement.

DOC 302.11 Applicability of the assessment and evaluation. (1) Every inmate shall participate in an assessment and evaluation or an alternative process as approved by the department. This process will be completed as expeditiously as possible.

(2) The director may alter the scope, purpose and duration of the Assessment and Evaluation process to meet security and bed needs of the department.

DOC 302.12 Purpose of A&E. The purpose of A&E shall be the following:

(1) To assess an inmate's risk

(2) To determine an inmate's custody classification.

(3) To provide an inmate with orientation to the department.

(4) To assess an inmate's criminal and social background, sentence structure, and academic and vocational requirements.

(5) To evaluate an inmate's academic, vocational, medical, social, and treatment needs.

(6) To determine an inmate's treatment, program needs and priorities, and coordinate these with custody classification and institution or program placement.

DOC 302.13 Procedure for custody classification at conclusion of A&E. (1) A classification specialist shall conduct the A&E review with input from other staff as needed.

(2) The classification specialist shall do all of the following:

(a) Collect and review information pertaining to the inmate such as offense history, adjustment, risk factors, program goals and other relevant concerns.

(b) Interview the inmate and afford the inmate an opportunity to provide information.

(c) Document the inmate's views.

(d) Prepare a report that includes all of the following:

1. A summary of the issues

2. A recommendation of custody classification, program or treatment needs, institution placement, and a date for the next review. The time until the next review shall not exceed 12 months.

(3) The director shall review the recommendations and make a final decision.

(4) The department shall make available to the inmate a written copy of the decision.

DOC 302.14 Applicability of program review. The department shall monitor custody classification, risk rating, institution placement and program or treatment assignments for every inmate.

DOC 302.15 Purposes of the program review. (1) To provide systematic review of the inmate's needs relating to education, medical, clinical, social, offense related and other treatment needs.

(2) To assess the inmate's custody classification.

(3) To assess the inmate's motivation to become involved in treatment and programs.

(4) To secure program or treatment space as needed to permit the inmate to complete an assignment.

(5) To provide the inmate with supplemental or alternative treatment or program assignments.

(6) To provide a review of the inmate's adjustment, conduct and program participation.

(7) To evaluate and adjust the inmate's risk rating as needed.

(8) To establish a recall date not to exceed 12 months for the next program review.

(9) To permit an early recall when one of the following occur:

(a) A significant change affecting custody, program or treatment assignments, or institution placement as determined by the classification specialist.

(b) An order of the director or warden.

(c) Referral by the institution adjustment committee.

(10) To recommend placement changes to accommodate program objectives.

DOC 302.16 Program review personnel. Every correctional institution and center shall have a program review committee.

(1) The director shall designate a classification specialist as the chairperson of the program review committee in a correctional institution.

(2) The superintendent shall designate a staff member to serve as the chairperson of the program review committee in a community correctional center.

(3) The warden or superintendent may designate up to 2 staff members to represent their respective division on the committee.

DOC 302.17 Program review procedure. (1) Before the scheduled review, an institution staff member shall do all of the following:

(a) Investigate and document the inmate's adjustment and conduct, program or treatment assignments and other relevant factors to make a determination of progress and accomplishments.

(b) Make written comments to the program review committee regarding custody classification, program or treatment assignment, and institution placement.

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(2) Before the scheduled review, the program review office will inform the inmate of the following:

(a) the program review date.

(b) the inmate's option to waive the interview appearance.

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(c) if the inmate disrupts the interview or refuses to attend the interview, staff shall conduct the review procedure without the inmate being present.

(3) At the program review committee interview, staff shall inform the inmate of the following:

(a) The purpose of the review.

(b) The staff comments regarding custody classification, program or treatment assignments, and institution placement.

(4) The inmate may present additional information and state an opinion about the custody classification, program or treatment assignment, or institution placement at the PRC interview. The inmate may present the additional information in writing if the inmate is unavailable for the PRC interview.

(5) The program review chairperson may suspend the program review in order to investigate any issue affecting custody classification, institution placement and program or treatment assignment.

(6) Each member of the committee shall have one vote. A recommendation for a change in custody classification, transfer, or program or treatment assignment requires a unanimous vote.

(7) The committee shall consider as factors in assigning custody classification those stated in s. DOC 302.07. In addition, the criteria under s. DOC 302.08 shall apply to the custody classification of inmates serving a life sentence. Factors outside 302.07 and 302.08 may be considered to preserve the security and safety needs of inmates, staff, facilities or community.

(8) The committee's recommendation for custody or transfer requires approval of the director.

(9) The PRC may use written comments, telephone conference calls, video or other electronic devices/medium, for program review.

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(10) If the PRC vote is not unanimous, the classification specialist shall refer the decision to the classification section chief and the warden for a unanimous recommendation. If they are not able to agree, the classification section chief shall refer the case with comments to the director, who will make the decision.

(11) The classification specialist shall give the program review decision to the inmate in writing.

DOC 302.18 Appeals. (1) An inmate may appeal procedural issues relating to custody classification, transfer, institution placement, and program or treatment assignment to the director within 30 days of the inmate's receipt of the written decision.

(2) The director shall respond to an appeal within 30 days following written receipt of the appeal.

DOC 302.19 Transfers. (1) The director may transfer an inmate to any facility authorized by the department.

(2) The director may transfer an inmate based solely on the availability of beds and security needs of the department.

(3) When an inmate is removed from an institution for a medical, clinical, or security emergency, the inmate may be segregated from the general inmate population. If the department is unable to do so, the inmate may be transferred to a county jail or other confinement facility pending the results of the disciplinary hearing or review of the inmate's custody classification and program assignment. If the jail or other facility is unable or unwilling to retain an inmate, the inmate may be transferred to another placement pending the arrangement of an institution within the department.

(4) If not transferred in accordance with s. DOC 302.17, the department shall hold the review of custody and institution placement per s. DOC 302.17 within 10 working days following the conclusions and decisions that prompted the transfer.

(5) Notwithstanding s. DOC 302.17, when the PRC screens an inmate to determine eligibility for transfer to another institution, or decides to transfer the inmate to another institution, the inmate is not entitled to know the criteria or factors upon which the decisions are based if the department determines, in its sole discretion, that release of the criteria would threaten the security of the prison system.

DOC 302.195 Process and procedural pilots. (1) Subject to the approval of the secretary, the director may modify procedures relating to custody classification, program or treatment assignments, or transfers to enable research and demonstration pilots to be implemented and to test the effectiveness and efficiency of alternative procedures.

(2) When the director implements pilots under (1), a written description of the procedures will be made available for review.

DOC 302.20 Informational program reviews. (1) The director, section chief or a classification specialist may record information concerning an inmate between regularly scheduled PRC's pursuant to s. DOC 302.16 (6) (a) that affect:

- (a) Program or treatment assignments
- (b) Progress of program or treatment assignment.
- (c) Medical.
- (d) Clinical.
- (e) Conduct and adjustment.
- (f) Placement.
- (g) Custody level.

(2) An information program review does not require committee membership under s. DOC 302.16

(3) The classification specialist shall provide the inmate a copy of the informational program review and shall permit the inmate to provide information at the next regularly scheduled program review.

DOC 302.205 Emergency suspension of rules. The secretary may temporarily suspend the rules specified in this chapter if the warden determines that there is a disturbance or an emergency.

APPENDIX

Note: DOC 302.05. DOC 302.05 identifies the five custody classifications used in Wisconsin. Each of the five categories reflect the different level of risk portrayed by the inmate based on the purpose of custody classification as explained in DOC 302.04 and assessed on each of the factors presented in DOC 302.07 and DOC 302.08. Each

institution determines its own method for day to day supervision to respond to the risk presented by the inmate's behavior, conduct and activities.

Note: DOC 302.12. Among the objectives of the correctional system are protection of the public through appropriate correctional supervision and the reassimilation of the inmate into the community. These require an assessment of the inmate's needs and objectives, assignment to an appropriate institution and program, motivation of the inmate, and periodic review of the inmate's progress. The A&E process is the initial effort to orient, classify and assign inmates in the Wisconsin correctional system. Its purposes are stated in DOC 302.12.

Note: DOC 302.17. DOC 302.17 states the procedure and decision making authority for decisions concerning the ongoing academic, vocational, medical, clinical, social, offense related or other treatment needs of an inmate. The authority of staff to classify and transfer inmates is broad.

To ensure a fair, informed decision, the process has the following elements:

1. A decision-making process that involves staff who are most informed about the inmate.
2. Centralized decision-making for the whole correctional system.
3. An opportunity for the inmate to be heard on the issues being addressed.
4. A written explanation of the decision provided to the inmate.
5. An appeal process (DOC 302.18).

Note: DOC 302.19. This section is intended to cover inmate transfers among state prisons, federal institutions, or a facility otherwise deemed appropriate, as well as inmate transfers to facilities located outside the state of Wisconsin.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

Date: _____

By: _____

Jon E. Litscher
Secretary

Seal: _____

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