



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 09-120

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **1. Statutory Authority**

In s. DOC 302.33 (1) (a), the department must determine that an inmate is not at a high risk of reoffending in order to be eligible to receive positive adjustment time. This is not a criterion for positive adjustment time under s. 304.06 (1) (bg), Stats. Therefore, it appears that the department does not have the statutory authority to impose this requirement. This comment also applies to s. DOC 302.34 (1) (a).

#### **2. Form, Style and Placement in Administrative Code**

a. In the introductory clause of the rule-making order, all of the sections being created should be listed together.

b. In the treatment clause for SECTIONS 1 and 3, “Sections” should be deleted. In the treatment clause of SECTION 3, all of the references to “DOC” should be deleted except the first one.

c. In section titles, only the first word is capitalized. [See s. 1.05 (2) (b), Manual.] For examples where titles need to be corrected, see the titles of ss. DOC 302.18 and 302.38.

d. In s. DOC 302.33 (2), par. (a) should begin on a new line.

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

- a. Throughout the rule summary, “§” should be replaced with “s.”
- b. In the rule summary, under “Statutes Interpreted,” “sections” at the beginning of the provision should be replaced with “ss.”
- c. In the rule summary, under “Statutory Authority,” “s.” should be replaced with “ss.”
- d. In the rule summary, under “Plain Language Analysis,” “chapter” should be replaced with “ch.” Also, “ss.” or “s.” should be inserted before the rule sections referenced as being created.
- e. In s. DOC 302.18 (1), “s.” should be inserted before “DOC 302.13 (2)” and the second “DOC” should be deleted.
- f. In s. DOC 302.18 (2), “(d)” should be inserted after “s. DOC 302.17 (11).”
- g. In s. DOC 302.18 (4) (a) and (b), the second instance of “s. DOC” should be deleted.
- h. In s. DOC 302.33 (1) (b), “(a)” should be inserted after “s. DOC 303.68 (1).”
- i. In s. DOC 302.33 (2) (intro.), “subsection” should be replaced with “section.”
- j. In s. DOC 302.34 (2), “s.” should be inserted before “DOC 302.33 (1) (a).”

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

- a. In the rule summary, under “Plain Language Analysis,” in item 4., in the last sentence, “codifies” should be replaced with “codify” and “update” should be replaced with “updates.” In item 5., “Court” should not be capitalized. In item 7., “Department” should not be capitalized.
- b. In the rule summary, under “Comparison of similar rules in adjacent states,” in item 1., “his sentence” should be replaced with “a sentence.”
- c. In s. DOC 302.03 (15g), “s. 302.113 (2) (b) and 304.06 (1) (bg) 1. and 2., Stats.” should be replaced with “s. 302.113 (2) (b) or 304.06 (1) (bg) 1. and 2., Stats.”
- d. In s. DOC 302.03 (15r), “under” should be replaced with “on which” and “his or her” should replace “their.”
- e. In s. DOC 302.18 (1), should “classification” be inserted after “custody”? Also, “made” should be inserted after “review of the decision.”
- f. In s. DOC 302.18 (4), the text of pars. (a) and (b) should end with a period. This comment also applies to ss. DOC 302.33 (1), 302.34 (1), 302.35 (1), 302.38 (4) (e), 302.39 (4), 302.40 (1) and (2), and 302.41 (1). Rule subunits should not end in a semicolon or a semicolon that is followed by “and” or “or.”

g. In s. DOC 302.33 (1) (intro.), “one (1)” should be replaced with “one” and “two (2)” should be replaced with “2”. Also, the text of pars. (a) to (c) should begin with a capital letter. These and similar changes should be made throughout the rule.

h. In s. DOC 302.33 (4), “will” should be replaced with “may.”

i. In s. DOC 302.34 (1) (intro.), “is ineligible” should be replaced with “are ineligible.”

j. In s. DOC 302.34 (4), “under PAC 1” should be replaced with “under this section as provided in ch. PAC 1.” This comment also applies to ss. DOC 302.35 (3), 302.36 (3), and 302.37 (2).

k. In s. DOC 302.36 (1), it appears that “as modified by the sentencing court under s. 302.045 (3m) (b) 1. or 302.05 (3) (c) 2. a., Stats., less any positive adjustment time he or she has earned” should be inserted at the end of the sentence to be consistent with s. 304.06 (1) (bg) 1., Stats. This comment also applies to s. DOC 302.37 (1).

l. In s. DOC 302.38 (2), “Inmate’s” should be replaced with “Inmates.” This comment also applies to s. DOC 302.39 (2).

m. In s. DOC 302.38 (4) (e) 2., “inmates” should be replaced with “inmate’s.”

n. In s. DOC 302.38 (6) and (9), “will” should be replaced with “shall.” This comment also applies to s. DOC 302.39 (6) and (9).

o. In s. DOC 302.39 (7), should “on or” be inserted before “after”?

p. In s. DOC 302.40 (1) (intro.), it appears that “for a felony under s. 973.01, Stats.” could be deleted.

q. In s. DOC 302.40 (2) (a), “The inmate’s” should be inserted at the beginning of the sentence.

r. In ss. DOC 302.38 (4) (e) 3. and 302.40 (2) (b), the sentence should end with a period.

s. In s. DOC 302.41, it is not clear what the purpose of sub. (5) is.