



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-026

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 December 2014.]

1. Statutory Authority

a. 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.]

b. 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.

2. Form, Style and Placement in Administrative Code

a. 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.]

b. 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?

c. 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.]

d. In SECTION 7, the strikethrough of the reference to s. DOC “302.31 (4) to (6)” is incomplete and should be corrected.

e. 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 DOC 324.03 (4) and 333.03 (11) are being repealed and recreated.

f. 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 determined by the sentencing court?

g. 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.

h. 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.]

4. References to Related Statutes, Rules and Forms

a. 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.

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

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

a. 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).

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

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

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

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

f. In s. DOC 302.03 (49), the line should end with a period.

g. In s. DOC 302.03 (50), the definition of “restrictive housing” is housing in which the movement, property, or programming of an inmate may be limited. Is this a sufficient definition? The definition appears to include all housing in a correctional institution.

h. 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”.

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

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

k. 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.

l. 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?

m. 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.

n. 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?

o. 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?

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

q. In s. DOC 302.17 (5), the provision should read “a” unanimous recommendation, rather than “an”.

r. 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”?

s. 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?

t. 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.

u. In s. DOC 302.25 (1), the provisions in pars. (b) to (d) should be preceded by “the inmate”. For example, par. (b) should read: “The inmate did not choose to have 1983 Wis. Act 528 apply”, to mirror the formatting in par. (a). Paragraph (c) should state that the inmate “was” released, instead of “were”.

v. In s. DOC 302.25 (2), the provision needs a period after “sub” and a space after “(1) (d)”.

w. In ss. DOC 302.25 (4) and 302.26 (4), the provisions state that “the reviewing authority shall consider all of the following...statutory and extra good time may be forfeited...”. This construction is awkward and should be rephrased.

x. In s. DOC 302.26 (1) (b), the provision should be revised to form a complete sentence.

y. In s. DOC 302.26 (3), the space after “custody” should be deleted, and there should be a period after “sub”.

z. 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”.

aa. In s. DOC 302.35 (2), pars. (f) and (g) should begin with “The inmate is”, similar to the preceding paragraphs.

bb. 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...”.

cc. In s. DOC 302.35 (7), the first word should be capitalized, “the” should be lowercase, and the line should end with a period.

dd. In s. DOC 302.26, 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.

ee. In s. DOC 302.26 (2), should the provision refer to the number of “days of” positive adjustment time earned?

ff. In s. DOC 302.39 (1), the space appearing within the reference to s. “948.05 1”, Stats., should be deleted. In sub. (3) (c), the word “the” should be inserted before “inmate”.

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

hh. 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”.

ii. 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”?