

SECTION 1. DOC 302.01 through 302.14 are repealed and recreated to read:

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	Purposes of A&E
DOC 302.03	Definitions	DOC 302.12	Applicability of A&E process
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 classifications and relationship to custody classification	DOC 302.15	Purpose of program review
DOC 302.07	Factors in assigning a custody classification	DOC 302.16	Program review personnel
DOC 302.08	Requirements for assigning a minimum custody classification to an inmate serving a life sentence	DOC 302.17	Program review procedure
DOC 302.09	Program consideration	DOC 302.18	Appeals
		DOC 302.19	Transfer
		DOC 302.20	Informational program reviews
		DOC 302.205	Emergency suspension of rules

**DOC 302.01 Applicability.** Pursuant to authority vested in the department of corrections by ss. 227.11 (2), 301.02, 301.03 (2), and 302.07 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 purpose of this chapter is to provide procedures for custody classification, program or treatment assignments, and transfers.

(2) The goals and objectives of this chapter are all of the following:

(a) To classify every inmate based upon 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(e) To provide a documented current and historical reference of custody classification, program or treatment assignments, transfers and comments on each inmate.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 s. DOC 302.12.

(2) "Classification section chief" means the section chief of 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 ss. DOC 302.13 and 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 his or her designee.

(9) "Disciplinary hearing" means a hearing authorized under ch. DOC 303 for the discipline of inmates for misconduct.

(10) "Institution" means a correctional institution, correctional facility, or center or a prison defined under intensive sanctions in ch. DOC 333 or a facility that the department contracts with for services to inmates.

(11) "IS" means intensive sanctions administered by the department of corrections.

(12) "PRC" means the program review committee.

(13) "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.

(14) "Program review" or "PR" means the ongoing process of monitoring of custody classification, institution placement and program or treatment assignments as performed under s. DOC 302.17.

(15) "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, and clinical and social service counseling.

(16) "Secretary" means the secretary of the department of corrections, or his or her designee.

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

(18) "Superintendent" means a superintendent, or designee, at a correctional center as established under s. 301.13, Stats..

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

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

**DOC 302.04 Custody classification.** (1) The purpose of a custody classification is to determine the appropriate placement of an inmate in order to regulate the supervision and movement of inmates among institutions, and between institutions and community programs.

(2) Custody classification is determined by assessing the risk of each inmate regarding all of the following:

- (a) Assaultive or predatory behavior.
- (b) Escape, walk-away, and absconding occurrences.
- (c) Violation of inmate disciplinary rules under ch. DOC 303.
- (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.

(3) 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.

**DOC 302.05 Custody classification levels.** 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:

(1) Maximum custody requires very close monitoring of inmate conduct, behavior and activities.

(2) Medium custody requires moderate monitoring of inmate conduct, behavior and activities.

(3) Medium-out custody requires moderate monitoring of inmate conduct, behavior and activities inside the institution and permits placement outside the confines of the institution under supervision.

(4) Minimum custody requires general monitoring of inmate conduct, behavior and activities inside the institution and permits placement outside the confines of the institution.

(5) Community custody 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 inmates awaiting transfers, and institutions in which there is a declared emergency or disturbance, an inmate's custody classification shall be no greater than the designated security classification of the institution in which the inmate is placed.

(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 in assigning custody classification:

(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 in the commission of the offense for which the inmate was convicted.
  - (2) The inmate's criminal record and juvenile delinquency 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, IS, a mental health facility, a 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 where the offense was committed or where the institution is located, including the general attitude of the public as reflected by elected officials, judges, sheriffs, district attorneys, or a victim or witness. The risk to a victim or witness, the general public or the inmate of placing the inmate in the community where the offense was committed or where the institution is located. In determining this risk, the department may consider the general public's perception of the offense and the inmate as evidenced by statements of elected officials, judges, sheriffs, district attorneys, a victim, or a witness.~~
    - (4) Clarifies "Community Concerns" factor for custody classification
  - (10) The inmate's performance or refusal to participate 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 results 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 considered to be 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 who is serving a sentence of life imprisonment under that jurisdiction's laws.

(2) To be eligible for a minimum custody classification, an inmate serving a life sentence shall have:

- (a) Reached parole eligibility or be within five years of extended supervision eligibility as defined in ss. 304.06 (1) and 973.014, Stats.
- (b) A recommendation for minimum custody classification made by the PRC under s. DOC 302.17.
- (c) Director's approval for minimum 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 if all of the following conditions are met:

- (1) The inmate has a program or treatment need that the program being considered would meet.
- (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) 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 in assigning an inmate to a program or treatment component:

- (a) Factors under s. DOC 302.07.
  - (b) Program or treatment prerequisites.
  - (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 a refusal may affect custody classification and placement.

**DOC 302.11 Purposes of A&E.** The purposes of A&E shall be all of the following:

- (1) To assess an inmate's risk under s DOC 302.04 (2).
- (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 and program needs and priorities and coordinate these with custody classification and institution or program placement.

**DOC 302.12 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 shall be completed as expeditiously as possible not more than 8 weeks after the offender's arrival.

(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 302.13 Procedure for custody classification at conclusion of A&E.** (1) 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 information gathered through (a), (b) and (c).
  2. A recommendation of custody classification, program or treatment needs, institution placement, and a date for program review not to exceed 12 months.

(2) The director shall review the recommendations and make a the final custody classification, program, treatment and institution placement decision ~~decisions~~.

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

(3) Specifics that A&E must be completed within 8 weeks.

**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.

SECTION 2. DOC 302.145 is repealed.

SECTION 3. DOC 302.15 through 302.20 are repealed and recreated to read:

**DOC 302.15 Purpose of program review.** The purpose of program review is the following:

(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 the inmate's risk.

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

(9) To permit program review prior to the date set in (8) 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~~ A request by the director or warden.

(c) Referral by the institution adjustment committee as defined in s. DOC. 303.02(1).

(d) An inmate request for PRC, made to an assigned social worker, who shall deliver the request to the PRC.

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

6  
Permits  
to inmate  
to request  
an earlier  
program review  
via his or  
her social  
worker.

**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 <sup>shall</sup> ~~may~~ designate up to 2 staff members to represent their respective division on the committee.   
*at least least one staff member but no more than 2*  
minimum 2

**DOC 302.17 Program review procedure.** (1) Before the scheduled program review, an institution staff member, designated by the Warden or Superintendent, 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, including the inmate's opinion of the appropriate security classification, program assignment or assignment to an institution.

(2) Before the scheduled review, classification staff will inform the inmate of the following:

- (a) The program review date.
- (b) The inmate's option to waive the interview appearance.
- (c) That if the inmate disrupts the interview or refuses to attend the interview, staff shall conduct the review procedure without the inmate being present.
- (d) The criteria for the review and the facts to be considered.

(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

*Requires that staff comment to the PRC in preparation for a program review including the inmate's opinion of the appropriate classification assignment.*  
7.  
*Requires a staff member to inform the inmate of the criteria of the review and the facts to be considered before the review.*

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 institution placement requires a unanimous vote. If the vote is not unanimous, the classification specialist shall refer the decision to the classification section chief and the warden for a 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. A recommendation for program or treatment assignment requires a majority 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 other than those in ss. DOC 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) If an inmate is unavailable to appear in person, The the PRC may use written comments, telephone conference calls, video or other interactive electronic devices or medium for program review.

(10) 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 under either of the following circumstances:

(a) Permanent assignment pursuant to ss. DOC 302.13 and 302.17.

(b) Temporary placement due to clinical, medical or security emergency.

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

8. limits the use of written and comments forms of communication to program reviews the inmate cannot attend

9. allows an inmate to appeal any just procedural issues.

10. Specifies that a transfer may be made by A+E or by the PRC except in the case of a clinical, medical or security emergency.

(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 placement in an institution within the department.

(4) If an inmate is not transferred in accordance with s. DOC 302.17, the department shall review the custody and institution placement as provided under s. DOC 302.17 within 10 working days following the decision that prompted the transfer.

1. Except as provided in subd. 2, the department shall review an inmate's custody and institution placement as provided under s. DOC 302.17 within 10 working days following placement under par.(b). 10.
2. When temporary placement is made pursuant to a disciplinary infraction the department shall complete the PRC no later than 10 working days following the completion of the disciplinary process under Ch. DOC 303.

(5) <sup>shall</sup> ~~(2)~~ 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 department may notify the inmate is not entitled to know of the criteria ~~or~~ and factors upon which the decisions are based ~~if~~, unless the department determines that release of the criteria ~~such~~ information would threaten the security of the prison system. Dave - gang issue -

**DOC 302.20 Recordkeeping.**

(1) The director, section chief or a classification specialist may record information concerning an inmate between regularly scheduled PRC regarding:

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

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

Provides that following an emergency transfer, review of program disciplinary process must be completed within 10 days.

Permit Doc to notify inmate of reasons for a transfer unless there are security concerns.

break

3

SECTION 4. DOC 302.205 is created to read:

**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.

SECTION 5. DOC 302 Appendix is repealed and recreated to read:

## APPENDIX

Note: DOC 302.05. Section 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 s. DOC 302.04 and assessed on each of the factors presented in ss. DOC 302.07 and 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 302.11. 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 s. DOC 302.11.

Note: DOC 302.17. Section. 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 (s. 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:

**Scott McCallum**  
Governor

**Jon E. Litscher**  
Secretary



Mailing Address

3099 E. Washington Ave.  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 240-5000  
Fax (608) 240-3300

## State of Wisconsin Department of Corrections

---

August 31, 2001

Senator Bob Jauch  
Room 313 South, State Capitol  
Madison, Wisconsin 53707

Dear Senator Jauch:

In response to the Senate Corrections and Economic Development Committee's request, the Department agrees to make germane modifications to Clearinghouse Rule 00-140. The Department understands the need to work with the community and the Legislature in promulgating the most effective and appropriate administrative rules possible. This hearing process has afforded us further insight into the concerns raised by Senator Moore and other constituents.

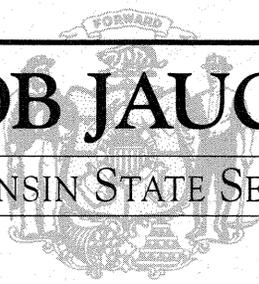
We look forward to working with you in developing appropriate modifications to this rule. Per your instruction, we will await contact from your office regarding scheduling a meeting as promptly as possible. Thank you.

Sincerely,

A handwritten signature in cursive that reads "Jon E. Litscher" with a small flourish below it.

Jon E. Litscher  
Secretary

Cc: Senator Moore  
Robert Margolies



---

# BOB JAUCH

---

WISCONSIN STATE SENATOR

---

August 30, 2001

TO: Senator David Zien, Member  
Economic Development and Corrections Committee

FROM: Senator Bob Jauch

RE: Clearinghouse Rule 00-140 paper ballot.

Attached please find copy of committee motion relating to Clearinghouse Rule 00-140 which relates to creating chapter DOC 302, relating to classification, assessment, and evaluation and program review. Please review the motion and send me your vote before 4:30 PM on August 31, 2001.

AYE

NAY

*David Zien*

**SENATE COMMITTEE ON  
CORRECTIONS AND  
ECONOMIC DEVELOPMENT**

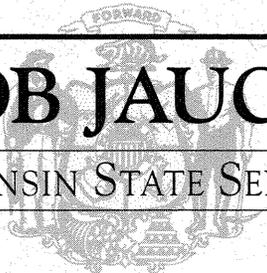
August 30, 2001

Moved that:

**A.** The Senate Committee on Corrections and Economic Development requests that the Department of Corrections modify Clearinghouse Rule 00-140 to take into account the concerns raised at the committee's August 30, 2001 hearing.

**B.** If the Department of Corrections does not respond in writing to the Office of the Chair by the close of business on Friday August 31, 2001, that it agrees to consider the requested modifications of Clearinghouse Rule 00-140, the Committee on Corrections and Economic Development objects to Clearinghouse Rule 00-140 in its entirety under s. 227.19 (4) (d) on the grounds that the rule fails to comply with legislative intent, and is arbitrary and capricious.

---



**BOB JAUCH**  
WISCONSIN STATE SENATOR

---

August 30, 2001

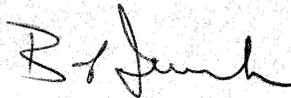
TO: Senator Bob Jauch, Member  
Economic Development and Corrections Committee

FROM: Senator Bob Jauch

RE: Clearinghouse Rule 00-140 paper ballot.

Attached please find copy of committee motion relating to Clearinghouse Rule 00-140 which relates to creating chapter DOC 302, relating to classification, assessment, and evaluation and program review. Please review the motion and send me your vote before 4:30 PM on August 31, 2001.

AYE  \_\_\_\_\_



NAY \_\_\_\_\_

**SENATE COMMITTEE ON  
CORRECTIONS AND  
ECONOMIC DEVELOPMENT**

August 30, 2001

Moved that:

**A.** The Senate Committee on Corrections and Economic Development requests that the Department of Corrections modify Clearinghouse Rule 00-140 to take into account the concerns raised at the committee's August 30, 2001 hearing.

**B.** If the Department of Corrections does not respond in writing to the Office of the Chair by the close of business on Friday August 31, 2001, that it agrees to consider the requested modifications of Clearinghouse Rule 00-140, the Committee on Corrections and Economic Development objects to Clearinghouse Rule 00-140 in its entirety under s. 227.19 (4) (d) on the grounds that the rule fails to comply with legislative intent, and is arbitrary and capricious.

---

# BOB JAUCH

---

WISCONSIN STATE SENATOR

---

August 30, 2001

TO: Senator Mark Meyer, Member  
Economic Development and Corrections Committee

FROM: Senator Bob Jauch

RE: Clearinghouse Rule 00-140 paper ballot.

Attached please find copy of committee motion relating to Clearinghouse Rule 00-140 which relates to creating chapter DOC 302, relating to classification, assessment, and evaluation and program review. Please review the motion and send me your vote before 4:30 PM on August 31, 2001.

AYE

NAY

*Mark Meyer*

**SENATE COMMITTEE ON  
CORRECTIONS AND  
ECONOMIC DEVELOPMENT**

August 30, 2001

Moved that:

**A.** The Senate Committee on Corrections and Economic Development requests that the Department of Corrections modify Clearinghouse Rule 00-140 to take into account the concerns raised at the committee's August 30, 2001 hearing.

**B.** If the Department of Corrections does not respond in writing to the Office of the Chair by the close of business on Friday August 31, 2001, that it agrees to consider the requested modifications of Clearinghouse Rule 00-140, the Committee on Corrections and Economic Development objects to Clearinghouse Rule 00-140 in its entirety under s. 227.19 (4) (d) on the grounds that the rule fails to comply with legislative intent, and is arbitrary and capricious.

TESTIMONY OF MICABIL DIAZ-MARTINEZ, ESQ.  
LEGAL DIRECTOR  
AMERICAN CIVIL LIBERTIES UNION  
OF WISCONSIN FOUNDATION

AUGUST 30, 2001

Members of this Committee:

Thank you for allowing me the opportunity to testify today with respect to Senate Clearing House Rule 00-140 which will rewrite Chapter DOC 302, relating to classification, assessment and program review of state's prisoners. I come to you today in my capacity as the Legal Director of the ACLU of Wisconsin Foundation. The ACLU of Wisconsin is the state's affiliate of the National American Civil Liberties Union. Over 4,000 Wisconsinites are members of the ACLU in our state. The purpose of the ACLU of Wisconsin is to defend and promote the civil liberties and civil rights of Wisconsin.

While changes in the methodology used by a State in classifying its prisoners are generally not objectionable, the changes to program review and assessment give great cause of concern to us. Under the proposed new rules an incoming inmate's assessment and evaluation would be extended up to a year instead of the current time of six weeks. This new time line will create a situation whereby an incoming prisoner will not be able to receive adequate medical, psychiatric, rehabilitative, and educational programs for a whole year. In addition, the proposed new rules will reduce the role the prisoner's social worker has in making recommendations regarding the

custody and placement of the inmate. In our view, this change, will seriously undermine the basis of our criminal justice system. The role of the social worker is to effectively provide the court and prison officials with an overall picture of the prisoner by means of the PSI or pre-sentence investigation and report. This report is an essential tool in categorizing an individual's rehabilitative potential. The report includes the prisoner's criminal background, family history, educational history, psychiatric makeup, and social demeanor. Absence of this report and its recommendations will seriously lead to inadequate care by the institution based on an incomplete assessment and classification.

Furthermore, the proposed rules will include "community concerns" as one of the factors to be considered in determining custody classification. Although an interesting idea, the application of it may be more problematic than we expect. By allowing a greater role for the recommendations of "elected officials, judges, sheriffs, district attorneys, victims, and witnesses," we are creating a punitive system rather than a rehabilitative one. It is a well-known fact that at election times candidates always use crime statistics as a red herring. They want us to see them as being "tough on criminals" . To allow elected officials the ability to influence the custody of a prisoner is paramount, in our view, to a form of double jeopardy. Many prisoners convicted of non-violent offenses will now find themselves being placed in maximum security prisons as the result of this "tough on crime" philosophy. In my opinion, we are determining a prisoner's status solely on retribution and not rehabilitation. Based on this philosophy, we as a society, have lost the ability to properly measure the offense with the punishment.

The time between program reviews for every prisoner will be lengthened from six months to one year under the new rules. This means that a prisoner will have to wait an additional six months for a different treatment program to be decided by the Program Review Committee and implemented by the institution.

The proposed new rules also will eliminate a prisoners ability to challenge his transfer to the Program Review Commission, in clear violation of his due process rights. Under the changes the inmate will be allowed to appeal only procedural issues relating to his or her custody classification, transfer and placement. We view this change as an arbitrary deprivation of the prisoner's liberty interest by DOC or its representatives.

Finally, DOC Section 302.19, raises the greatest concern to the ACLU of Wisconsin. This particular section gives the director the unchecked authority to transfer an inmate solely on the availability of beds and security needs of the department. This means that any current prisoners in Wisconsin may end up in SMCI if space is available. It is a well-known fact that we are one of a group of attorneys currently challenging the conditions of Wisconsin's Supermax. Although I am not authorized at this time to comment on the details of this lawsuit, the facts regarding this institution are public nonetheless. This facility is considered one of the worst in the United States by Amnesty International. The inmates are kept in solitary confinement for 23 hours a day, with prison officials monitoring every detail of their lives via cameras in the cells. They are allowed only four hours of exercise in a windowless concrete cell with no exercise equipment. Face to face visits with family members and friends are prohibited. The transfer of any inmate to

Supermax based solely on the bed availability shocks my conscience and should shock yours too. The conditions of this institution can be only described as an experiment in sensory deprivation and any exposure, even for a short period will result in irreparable emotional and psychiatric harm to anyone.

Our society claims not to abide by the "Hammurabian Code", that is an eye for an eye. Our society claims to be a civilized and humane one where all its citizens are treated with dignity and respect regardless of an individual's history and background. We advocate for justice and human rights whenever one of our citizens is accused of a crime overseas and berate other systems of justice as "barbaric". Allowing this change to occur, will bring out the worst in all of us and will make our system of justice no different from those we call barbaric. Revenge for the sake of revenge is not what we want or expect from our justice system. The cornerstone of our corrections system is to allow an individual to reform his or her life, to "turn his or her life around", and become once again a productive member of our society. I hope you continue to see the wisdom of this philosophy and oppose these proposed changes.

In closing, our organization emphatically opposes the proposed new rules. We will continue to be vigilant wherever civil rights are interfered with and reserve the right to take appropriate action. Thank you for your time.

Contact:

Telephone (414) 272-4032

Fax (414) 272-0182

email:liberty@aclu-wi.org



## WISCONSIN CATHOLIC CONFERENCE

**TO:** State Senator Robert Jauch, Chair  
Members, Senate Committee on Economic Development and Corrections

**FROM:** M. Colleen Wilson, Associate Director

**RE:** DOC 302 – Proposed Revisions

**DATE:** August 30, 2001

The Wisconsin Catholic Conference greatly appreciates the opportunity to provide testimony for information only with regard to the proposed revisions to Wis. Admin. Code DOC 302 relating to classification, assessment and evaluation and program review.

The bishops' interest in this subject stems from a statement they issued in 1999 entitled *Public Safety, the Common Good and the Church: A Statement on Crime and Punishment in Wisconsin*. In that document, the bishops identify principals to guide public policy responses to crime to ensure that our societal responses are redemptive rather than vengeful. Corrections policies must convey respect for human persons, serve the common good – measured in terms of the welfare of all persons, exercise an option for the poor and marginalized, serve the end of restoration, and foster solidarity among all in the community.

It is with these principles in mind that we offer the following comments on the rules as proposed by the Department of Corrections.

The proposed rules address programming for inmates for purposes of education, treatment, and preparation for reintegration into the community. The Catholic Conference strongly supports effective rehabilitation and education programming within the correctional institutions. We encourage Corrections officials to place inmates in programming as expeditiously as possible so that the offender can prepare for their return to the community upon completion of their sentence. We also encourage Corrections to allocate resources in such a way so as to assure that space in these programs is available for those inmates who are seeking assistance in their rehabilitation.

The Conference requests that Committee members carefully review the language in proposed DOC 302.19(2), which provides that an inmate may be transferred to any facility based solely on the availability of beds and security needs of the department. We have concerns related to this provision in that inmates could be assigned to the Supermax facility solely for space considerations of the department. Given the myriad of concerns that already have been raised about Supermax, and the lack of information on the effects of that institution on the mental health of both inmates and staff, the Committee should consider revising the language to reflect that an inmate may not be assigned to Supermax simply because of space considerations.

Finally, we request that the Committee consider a revision to the proposed rules whereby inmates continue to have a right to appeal decisions related to custody classification, transfer and placement, as opposed to only due process issues permitted by the rule as currently drafted. If indeed, an inappropriate decision has been made, there should be an opportunity for the mistake to be rectified. The rehabilitative journey of the inmate could be adversely affected by an improper decision, which ultimately affects the taxpayers who are paying for the inmate's rehabilitation.

Thank you for your consideration of our comments.

S:\wctestimony/doc302

WISCONSIN ADMINISTRATIVE CODE S.302  
RELATING TO THE ASSESSMENT & EVALUATION, CLASSIFICATION, AND  
PROGRAM REVIEW OF ADULT INMATES  
BRIEFING SUMMARY

One of the major reasons Wisconsin's prisons are as safe as they are is that we have an excellent classification system to assess and evaluate the risks and needs of inmates. The current administrative code in DOC 302 has been in existence for more than twenty years. The proposed revisions are necessary to more effectively and efficiently address, modern correctional practice, inmate population growth, and ultimately the security and safety of the inmates and staff.

The inmate classification process determines the appropriate custody classification, program and treatment needs, in addition to transfer/movement decisions for all adult male and female inmates. There are approximately 7,500 new admissions to the system each year and tens of thousands of reviews/year to manage a population of more than 22,000 inmates.

This rule is based on two major components of the classification system: 1) Assessment and Evaluation (A&E) ensures timely assessment of inmates into the prison system; and 2) Program Review provides an ongoing review of their progress and participation in activities designed to reduce their security risk. In both instances, the emphasis is on balancing the operational and security needs of the institution and the opportunities for inmates to participate in programs and work assignments at the least restrictive site consistent with the risks they pose.

The rule ensures that each inmate participates in the Assessment and Evaluation process upon their reception into the system and that this process be completed *as expeditiously as possible*. This is a change from the requirement that the process be completed in 6 weeks. Recent experience shows that this process is, in fact, being completed within 35-45 days of admission to Dodge Correctional Institution. It is in the Department's best interest to expedite the A&E process. We have over 600 admissions to A&E every month. We do not have the space at A&E to retain offenders for lengthy periods of time. In some instances, it takes longer to complete the assessment process because the offender may have

pending charges or we may be waiting for more information about the case.

The current rule's 6-week limit simply does not allow for certain extenuating circumstances that may delay information necessary to make the most informed and accurate assessment for the inmate.

The rule provides each inmate with an opportunity for a regularly scheduled Program Review at an interval no greater than every twelve months. Unlike the current code, the revised code provides additional opportunities for earlier program reviews. Reviews can now be requested by any institutional staff member on behalf of the inmate, rather than just the assigned social worker as previously provided. For example, if the offender successfully completes a specific program that reduces their risk, a treatment provider can request that the offender be seen by Program Review for possible movement to a less secure facility.

It is the mission of the Department of Corrections to ensure the safety and security of the public. In doing so, the Department must ensure that the rights of victims, the interests of the sentencing judge, and the needs of the community are addressed in the most responsible and sensitive way when inmates are classified and assigned to specific levels of custody and security. Often the only way of assessing community concerns is through reviewing the comments of elected officials such as the judge, sheriff, district attorney, and victims. Sometimes these concerns are very positive for the inmate, such as a request by the judge to permit the inmate to be retained at the lowest possible custody or participate in a specific program or treatment.

This rule provides a new opportunity for inmates to appeal any procedural issues they believe may have adversely affected the outcome of the program review process. Under the current rule, inmates may appeal program assignments to the Warden, but not custody, movements or placements. However, the Department, although not required by statute or code, currently allows inmates to appeal procedural issues created by errors, omissions and mistakes in custody, movement or placement. The proposed rule codifies the current administrative practice.

This proposed rule provides the department with authority to transfer an inmate based solely on the availability of beds and security needs of the department, while ensuring efficient use of the most costly prison space, consistent with the

risk posed by the inmate. The Department is committed to placing offenders in institutions that best meet the needs of the inmate, his/her custody, available bed space and safety concerns of the public. It is not in our best interest to place lower custody offenders in higher custody, higher cost institutions. Such a practice is expensive and a poor use of resources. While a bed may be available at the Supermax facility, every placement is reviewed to ensure its appropriateness. Further, the Department interest to maintain a safe and secure environment requires the latitude to respond to security and safety threats and emergencies.

Prepared by Department of Corrections  
8/29/01

Jahr, Dave

**From:** Clark, Jessica  
**Sent:** Monday, August 20, 2001 3:45 PM  
**To:** Jahr, Dave  
**Subject:** DOC 302

Dear Dave,

Here are some of the initial concerns that have been raised about DOC 302 for you to share with Senator Jauch:

**Concerns Raised About DOC 302 Rule Change:**

- The time frame for DOC to complete an incoming inmate's assessment and evaluation (A&E) is changed from 6 weeks to up to 1 year. A&E includes both custody classification and program placement, which means that an inmate could be without a treatment program for up to one year.
- 
- "Community concerns" will be one of the factors considered in determining custody classification. This means that the "general attitude of the public as reflected by elected officials, judges, sheriffs, district attorneys, or a victim or witness" will now play a role in determining whether someone is classified as "maximum", "medium", or "minimum".
- 
- The time between program reviews for every inmate is lengthened from 6 months to 1 year. Program reviews are held by an institution's Program Review Committee (PRC) to monitor each inmate's custody classification, institution placement, and program or treatment assignments. Under this rule, an inmate requiring a different treatment program would have to wait a full year before such changes could be made.
- 
- Under current rule, a program review can be initiated by the institution or by a social worker on behalf of an inmate. The proposed rule deletes the option for an inmate-initiated program review via a social worker.
- 
- Under the proposed rule, an institutional staff member, rather than the social worker, initiates the program review process and collects the information for the program review hearing. This staff person could have a personal history with the inmate and seek retaliation (such as a transfer or removal from a program) through the program review procedure.
- 
- An inmate will not be provided information pertaining to the subject matter of the program review hearing before the hearing occurs, which means that the inmate may not even know the reason for the hearing before he/she goes before the PRC.
- 
- An inmate is allowed to appeal only *procedural* issues relating to custody classification, transfer, placement, etc. The inmate could not appeal the actual reason for the transfer, any errors made in risk assessment that led to the transfer, etc.

Current practice allows a rather broad appeal of the full PRC decision, where the inmate can challenge the reasoning for the transfer, etc.

- The director is granted the authority to transfer an inmate "*based solely on the availability of beds and security needs of the department*". This means that a minimum security inmate, due to a lack of available beds, could potentially be transferred to the Supermax facility, for example. This section further eliminates the inmate's right to know why he or she was transferred. According to the proposed 302.19(5), "*...the inmate is not entitled to know the criteria or factors upon which the decisions are based if the department determines that release of the criteria would threaten the security of the prison system.*"

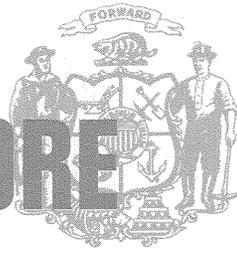
I think that these points touch on the major issues raised by our advocates. Please let me know if you need any additional information.

Thanks!

*Jessica L. Clark*

Policy Analyst  
Office of State Senator Gwendolynne S. Moore  
State Capitol  
409 South  
Madison, WI 53707  
(608)266-5810 (phone)  
(608)267-2353 (fax)

# State Senator GWENDOLYNNE MOORE



**Capitol Office:**  
P. O. Box 7882, Madison, WI 53707-7882  
Phone: (608) 266-5810 Fax: (608) 267-2353

**District Telephone:** (414) 442-3080

**Toll-free Legislative Hotline:** 1-800-362-9472

**E-Mail:** sen.moore@legis.state.wi.us

**Member:** Joint Finance Committee

**Board Member:** Wisconsin Housing and Economic Development Authority

August 30, 2001

## Senator Moore's testimony regarding Clearinghouse Rule 00-140, the repeal and recreation of Chapter DOC 302 relating to inmate classification, assessment, evaluation, and program review

I would like to thank Senator Jauch and the Senate Committee on Corrections and Economic Development for calling today's hearing on Clearinghouse Rule 00-140. While I do not purport to be an expert on the intricacies of these procedures, it is apparent that the DOC has proposed a sweeping reform of its internal administrative rules relating to inmate classification, assessment, evaluation, and program review procedures. For this reason, I requested that this public hearing be held in order to give community advocates who *are* experts on these matters an opportunity to voice their opinion on this important matter. I will therefore keep my remarks brief.

While the DOC may be attempting to move in a positive direction regarding an inmate's right to treatment and rehabilitation in this proposed rule, certain aspects of the changes are cause for concern. The following is a list of my own concerns and some of the concerns that have been shared with my office by others familiar with the proposal:

- There is nothing in the rule that specifies under which circumstances a person could be placed in the Supermax facility, other than those criteria listed for "maximum" security classification. It is a critical flaw of current DOC administrative rules that specific criteria are not outlined for Supermax placement, and any new DOC rules should address the absence of such language. It is appropriate for the DOC to promulgate "supermaximum" placement criteria to ensure that the original goal of the prison- to house the "worst of the worst", those persons who are so violent that they cannot be housed elsewhere - is embodied. **The fact that non-violent offenders - including car thieves and petty crooks - are currently housed in this facility is abhorrent.**
- The rule is also silent on the needs of mentally ill inmates. According to the Legislative Audit Bureau's May 2001 report on the Prison Health Care System, "*When Supermax was planned, the Department adopted a policy that no mentally ill inmates would be transferred to Supermax. However, the Department indicated that policy was changed in 2000.*" Furthermore, "... approximately 15% of the inmates currently at Supermax are receiving medication for a diagnosed mental illness, which is approximately the same percentage as the prison population as a whole" (pg. 59). The new administrative rules should be strengthened by adopting specific policies pertaining to mental health issues and reinstating the prior DOC policy which forbade mentally ill inmates from Supermax placement.
- The time frame for DOC to complete an incoming inmate's assessment and evaluation (A&E) is changed from 6 weeks to up to 1 year. A&E includes both custody classification and program placement, which means that an inmate could be without a treatment program for up to one year. For an inmate with a drug addiction and/or mental illness, one year is far too long to wait for treatment.

- “Community concerns” will now be one of the factors considered in determining custody classification. This means that the “general attitude of the public as reflected by elected officials, judges, sheriffs, district attorneys, or a victim or witness” will now play a role in determining whether someone is classified as “maximum”, “medium”, or “minimum”. Community concerns, which can be biased and political, should not affect a person’s custody classification or program placement while under the jurisdiction of the DOC.
- The time between program reviews for every inmate is lengthened from 6 months to 1 year. Program reviews are held by an institution’s Program Review Committee (PRC) to monitor each inmate’s custody classification, institution placement, and program or treatment assignments. Under this rule, an inmate requiring a different treatment program would have to wait a full year before such changes could be made.
- Under current rule, a program review can be initiated by the institution or by a social worker on behalf of an inmate. The proposed rule deletes the option for an inmate-initiated program review via a social worker familiar with the inmate’s individual circumstances, history, and treatment or programming needs. Further, under the proposed rule, an institutional staff member, rather than the social worker, initiates the program review process and collects the information for the program review hearing. This staff person could have a personal history with the inmate and seek retaliation (such as a transfer or removal from a program) through the program review procedure.
- An inmate will not be provided information pertaining to the subject matter of the program review hearing before the hearing occurs, which means that the inmate may not even know the reason for the hearing before he/she goes before the PRC. This change would deny the inmate the opportunity for proper self-representation.
- An inmate is allowed to appeal only *procedural* issues relating to custody classification, transfer, placement, etc. The inmate could not appeal the actual reason for the transfer, any errors made in risk assessment that led to the transfer, etc. Current practice allows a rather broad appeal of the full PRC decision, where the inmate can challenge the reasoning for the transfer, etc.
- The director is granted the authority to transfer an inmate "*based solely on the availability of beds and security needs of the department*". This means that a minimum security inmate, due to a lack of available beds, could potentially be transferred to the Supermax facility, for example.
- This section further eliminates the inmate's right to know why he or she was transferred. According to the proposed 302.19(5), "*...the inmate is not entitled to know the criteria or factors upon which the decisions are based if the department determines that release of the criteria would threaten the security of the prison system.*" It is certainly difficult to imagine circumstances under which an individual inmate’s transfer criteria would threaten the security of the prison system. An inmate should not be denied the right to information surrounding the circumstances of those factors that are affecting his or her livelihood in the correctional system. This proposed rule change, if it were to pass, would only further the impression that the DOC operated under a code of silence – from the media, the public, and the people for whom they are charged with rehabilitating.

This short summary lists a few of the items that are cause for concern. I urge the DOC to work with myself and the other community advocates present today to restructure the rule in order to strengthen the prison system on the whole. I thank Senator Jauch and Committee members for their time today.

## Responses to Senator Moore's comments/questions

1. *The timeframe for DOC to complete an incoming inmate's assessment and evaluation (A&E) is changed from 6 weeks to up to 1 year. A&E includes both custody classification and program placement, which means that an inmate could be without a treatment program for up to one year.*

It is in the Department's best interest to expedite the Assessment and Evaluation process. Currently we process the majority of inmates in 35-45 days or less. We have over 600 admissions to A&E every month. We do not have the space at A&E to retain offenders for lengthy periods of time. In some instances, it takes longer to complete the assessment process because the offender may have pending charges or we may be waiting for more information about the case. At the conclusion of the process inmates are given a custody/security rating and their program needs are identified and given a priority. Based on this information the A&E classification specialist will designate the first classification recall period not to exceed one year.

2. *"Community concerns" will be one of the factors considered in determining custody classification. This means that the "general attitude of the public as reflected by elected officials, judges, sheriffs, district attorneys, or a victim or witness" will now play a role in determining whether someone is classified as "maximum", "medium", or "minimum."*

It is the mission of the Department of Corrections to ensure the safety and security of the public. It is imperative for the Department to ensure that the rights of crime victims, the interests of the sentencing judge, and the needs of the community are responsibly addressed when inmates are classified and assigned to specific levels of custody. Often the only way of knowing what the community concerns are by reviewing the comments of elected officials such as the judge, sheriff, district attorney, and others. Sometimes these concerns are very positive, such as a request by the judge to permit the inmate to be retained at the lowest possible custody or be given a priority for a program.

3. *The time between program reviews for every inmate is lengthened from 6 months to 1 year. Program reviews are held by an institution's Program Review Committee (PRC) to monitor each inmate's custody classification, institution placement, and program or treatment assignments. Under this rule, an inmate requiring a different treatment program would have to wait a full year before such changes could be made.*

Twelve months is the outside limit for when another PRC can be held. The classification process is expected to identify the next scheduled hearing date not to exceed 12 month. If something happens to the plan of action after this date is established, an early recall is permitted. This is intended in 302.15 (9) of the rule. It is intended that the inmate may initiate a request for a recall through any number of staff persons, not just the social worker

4. *Under current rule, a program review can be initiated by the institution or by a social worker on behalf of an inmate. The proposed rule deletes the option for an inmate-initiated program review via a social worker.*

The new rule expands the number of staff that can initiate an early recall for program review. Unit management permits any staff that have regular contacts with offenders to request an early recall. For example, the new rule allows for someone like a teacher, unit manager, or program provider as well as a social worker to initiate a recall.

5. *Under the proposed rule, an institutional staff member, rather than the social worker, initiates the program review process and collects the information for the program review hearing. This staff person could have a personal history with the inmate and seek retaliation (such as a transfer or removal from a program) through the program review procedure.*

As stated above, the proposed rule doesn't limit other professionals from acting on behalf of the inmate and request an early recall to program review. There are safeguards in place to prevent retaliation. These include the use of the program review committee, the inmate's comments, whether written or verbal to the committee, the committee's unanimous requirement for a decision, and the oversight by classification supervisors and the Director. Inmates may also appeal the outcome of their program review and have other remedies for addressing perceived retaliation.

6. *An inmate will not be provided information pertaining to the subject matter of the program review hearing before the hearing occurs, which means that the inmate may not even know the reason for the hearing before he/she goes before the PRC.*

Classification and its processes are explained during the A&E orientation period. Further, information concerning the processes and procedures are posted in the institutional libraries and are often found within the housing units for reference. Inmates will receive written notice of the hearing and its purpose prior to the hearing. Each subsequent classification hearing will go over the processes and what the inmate can do to be informed and share information that he/she wants the committee to take under consideration. After the hearing, each inmate will receive a written copy of the outcome. This outcome can be appealed to the director and even then used as a court reference document.

7. *An inmate is allowed to appeal only **procedural** issues relating to custody classification, transfer, placement, etc. The inmate could not appeal the actual reason for the transfer; any errors made in the risk assessment that led to the transfer, etc. Current practice allows a rather broad appeal of the full PRC decision where the inmate can challenge the reasoning for the transfer, etc.*

Under the current rule, inmates can appeal program assignments to the Warden, but not custody, movements or placements. The proposed rule codifies the current

administrative practice, which allows inmates to appeal procedural issues created by errors, omissions and mistakes. It does not allow inmates to appeal their individual preferences as these preferences are expected to be discussed within the classification committee hearing. The classification processes will do its best to match inmate's needs, custody and preferences with the best site available in the Department. When an inmate's preference cannot be met, program need and custody take precedent. The preference is understood, but not appealable.

8. *The director is granted the authority to transfer an inmate "based solely on the availability of beds and security needs of the department." This means that a minimum security inmate, due to a lack of available beds, could potentially be transferred to the Supermax facility, for example. This section further eliminates the inmate's right to know why he or she was transferred. According to the proposed 302.19(5), "...the inmate is not entitled to know the criteria or factors upon which the decisions are based if the department determines that release of the criteria would threaten the security of the prison system."*

The Department is committed to placing offenders in institutions that best meet the needs of the inmate, his/her custody, available bed space and safety concerns of the public. It is not in our best interest to place lower custody offenders in higher custody, higher cost institutions. Such a practice is expensive and a poor use of resources. While a bed may be available at the Supermax facility, every placement is reviewed to ensure its appropriateness. Further, the Department interest to maintain a safe and secure environment requires that it be given the latitude to respond to security and safety threats and emergencies. This means moving inmates quickly and without telling them why they are being moved so as not to diminish security protocols and investigations that may occur.



## WISCONSIN CATHOLIC CONFERENCE

**TO:** State Senator Robert Jauch, Chair  
Members, Senate Committee on Economic Development and Corrections

**FROM:** M. Colleen Wilson, Associate Director

**RE:** DOC 302 – Proposed Revisions

**DATE:** August 30, 2001

The Wisconsin Catholic Conference greatly appreciates the opportunity to provide testimony for information only with regard to the proposed revisions to Wis. Admin. Code DOC 302 relating to classification, assessment and evaluation and program review.

The bishops' interest in this subject stems from a statement they issued in 1999 entitled *Public Safety, the Common Good and the Church: A Statement on Crime and Punishment in Wisconsin*. In that document, the bishops identify principals to guide public policy responses to crime to ensure that our societal responses are redemptive rather than vengeful. Corrections policies must convey respect for human persons, serve the common good – measured in terms of the welfare of all persons, exercise an option for the poor and marginalized, serve the end of restoration, and foster solidarity among all in the community.

It is with these principles in mind that we offer the following comments on the rules as proposed by the Department of Corrections.

The proposed rules address programming for inmates for purposes of education, treatment, and preparation for reintegration into the community. The Catholic Conference strongly supports effective rehabilitation and education programming within the correctional institutions. We encourage Corrections officials to place inmates in programming as expeditiously as possible so that the offender can prepare for their return to the community upon completion of their sentence. We also encourage Corrections to allocate resources in such a way so as to assure that space in these programs is available for those inmates who are seeking assistance in their rehabilitation.

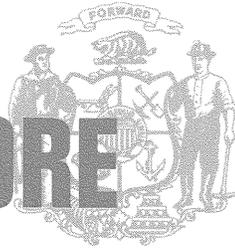
The Conference requests that Committee members carefully review the language in proposed DOC 302.19(2), which provides that an inmate may be transferred to any facility based solely on the availability of beds and security needs of the department. We have concerns related to this provision in that inmates could be assigned to the Supermax facility solely for space considerations of the department. Given the myriad of concerns that already have been raised about Supermax, and the lack of information on the effects of that institution on the mental health of both inmates and staff, the Committee should consider revising the language to reflect that an inmate may not be assigned to Supermax simply because of space considerations.

Finally, we request that the Committee consider a revision to the proposed rules whereby inmates continue to have a right to appeal decisions related to custody classification, transfer and placement, as opposed to only due process issues permitted by the rule as currently drafted. If indeed, an inappropriate decision has been made, there should be an opportunity for the mistake to be rectified. The rehabilitative journey of the inmate could be adversely affected by an improper decision, which ultimately affects the taxpayers who are paying for the inmate's rehabilitation.

Thank you for your consideration of our comments.

S:wccetestimony/doc302

*State Senator*  
**GWENDOLYNNE MOORE**



**Capitol Office:**  
P. O. Box 7882, Madison, WI 53707-7882  
Phone: (608) 266-5810 Fax: (608) 267-2353  
**District Telephone:** (414) 442-3080  
**Toll-free Legislative Hotline:** 1-800-362-9472  
**E-Mail:** sen.moore@legis.state.wi.us  
**Member:** Joint Finance Committee  
**Board Member:** Wisconsin Housing and  
Economic Development Authority

**Memorandum**

**To:** State Senator Bob Jauch, Chair  
Committee on Economic Development and Corrections

**From:** State Senator Gwendolynne S. Moore

**Date:** August 1, 2001

**Re:** DOC Proposed Rule Change, Deadline August 7, 2001

---

I would like to request that you hold a meeting or a hearing on the Department of Corrections proposed rule change relating to classification, assessment, and evaluation, and program review. The proposed rule change is quite extensive and deserves a substantive review by the committee.

Three independent community-based groups which deal with prisoner-related issues have contacted me with their concerns about this rule change: Wisconsin Correctional Services, the Benedict Center, and from Ed Steichen on behalf of Money, Education and Prisons and the Coalition to Stop Control Unit Prisons. They have each indicated a willingness to testify on behalf of their positions, which are attached to this document. I share some of the same concerns raised by these groups, and have other concerns of my own, as well.

It is my understanding that, if no hearing is called by August 7, 2001, this rule will automatically be approved. I respectfully request that, as Committee Chairperson, you consider providing a review of this rule and allowing public input as to the strengths and weaknesses of its extensive changes, before the rule is approved. Such input will certainly make this proposal a better one.

Thank you in advance for your time and consideration of this request.

To: State Senator Gwen Moore  
From : Wisconsin Correctional Service  
Steve Swigart Executive Director  
Mike Glabere Development Director  
Date : Tuesday, July 31, 2001  
RE : Proposed DOC Rule Change

After reviewing the proposed rule changes, we not only have major concerns about the proposed changes, but also about some of the established rules and their impact on equity and justice. Here is an outline of our concerns. We have outlined them based on the analyses by the department of corrections that you provided and also the legislative attachment.

#### Analyses

- Custody Classification (page 2) What is the objective risk rating system that is used? How has it been validated? What are the cultural biases of it?
- Custody Classification (page 2) What is the rationale for adding community concerns, often irrational and highly political, to the list of factors that may be considered when determining custody classification? Who defines what is a legitimate concern and what isn't?
- Custody Classification (page 3) "program refusal may have an impact on custody classification" Where is the review of the reason for the refusal?
- Custody Classification (page 3) Does the merger of the two maximum security classifications make it easier to send anyone to the super max?
- Custody Classification (page 3) Community custody restrictions regarding residence, placement, and purpose are removed. We can't tell if this is a good thing or a bad thing as it refers to the placement of individuals who are not a risk.
- Assessment and Evaluation
  - Since Dodge has no programming, inmates would not get treatment, education, or vocational training for up to one year!
  - Does the removal of restricted movement during the A&E process mean that unclassified, un-assessed people can be placed wherever the department wants for whatever reason?
  - Moving from a committee of people to one specialist removes any safeguards of biases.
- Program Assignment
  - No programming without an A&E..see above for the problem!
  - Why evaluate for a program if space is never available during term of sentence?
  - What percentage of people actually get into programs that they are eligible for e.g. drug treatment, anger management etc.?
- Program Review
  - Who will explain the process to the inmate?
  - Where is the room for an advocate or ombudsmen to assist in the process if needed?
- Orientation
  - If the rules on specific orientation procedures are part of their mission then why not leave them in?
  - Do they only do them now because they are specifically written in?

#### Chapter DOC 302

- DOC 302.04 Custody Classification... What is disruption to the orderly processes of an institution? How could this be misused? Why are pending legal processes a part of the analyses of custody classification?
- DOC 302.07 Factors in assigning a custody classification
  - #4) Who determines what an inmate's motivation for the crime convicted of is?
  - #5) How is an inmate's attitude regarding offense and sentence demonstrated?
  - #9) What is the relevance of including the "general attitude of the public as reflected by elected

officials, judges, sheriffs, district attorneys, or a victim or witness?

#11) how does a pending legal process, notification or detainer affect a classification?

- DOC 302.12 Applicability of the assessment and evaluation Does this change mean that someone could be denied programming of any kind for up to a year? Will we be placing people in maximum security without any evaluation and then finding out later that they were minimum risk? When will we find out that people are mentally ill or addicted? Or at risk to themselves or others? This is probably the worst of the rule changes that have been proposed. We should have a finite time to complete assessments and they should be overseen by someone outside of the institution.
- DOC 302.13 Procedures for custody classification at conclusion of A&E  
Information should be reviewed for accuracy with the inmate  
There should be a notation of inmate disagreement to factual information  
There should be a timeline for providing the written decision to the inmate
- DOC 302.15 Purpose of the program review  
How can an inmate demonstrate motivation to become involved in treatment or programs? Is there still a bias in how this is measured?  
Where is the opportunity to call a program review when program or treatment are not available?
- DOC 302.17 Program Review Procedures  
Where is the inmate informed of the process and allowed statements that they can make?  
Inmate has no opportunity to challenge or correct information prior to the review
- Doc 302.18 Appeals How soon does an inmate receive the written decision? What is the appeal after the director? Shouldn't there be oversight somewhere?

Overall we see an urgent need to call for a public hearing, and to work to rewrite many of these rules. We thank you for informing us and support you in your actions to correct these problems

Peace and Justice

Mike Glabere

# benedict center memo

---

**Date:** 7/31/2001

**To:** State Senator Gwen Moore

**From:** Kit Murphy McNally

**RE:** Proposed DOC Rule Change

---

Thank you for the opportunity to comment on the proposed DOC rules. Institutional operations are admittedly not my area, but after reviewing the proposed changes on offender assessment, evaluation, and classification, I find the changes to appear rational and potentially conducive to fairer process within the institutions as it affects the inmate.

However, I cannot reconcile all statements in the narrative with wording in the rules. For example, the narrative states in paragraph 3 under Custody Classification that "this rule establishes that program consideration is a *right* [italics mine] that offenders have if certain prerequisites are met and space is available. But DOC 302.09 Program consideration states, "Unless otherwise specified by the rules of the department or by state and federal law, inmates *may* [italics mine] be considered for school assignments, vocational programs or treatment assignments within the Wisconsin correctional system if all of the following conditions are met . . . "

This seems to me to be pretty weak language for a right. It is a concern because we hear from inmates that they are told they have no right to be in a program.

A greater concern is what is not addressed in the rules by my reading. It is my understanding that inmates are currently not being recommended for parole review at their eligibility date because they have not yet completed required programming. It is the institutional process, not their choice, which has kept them from the programming. This is a very longstanding problem, but with overcrowded prisons, thousands still out of state, and virtually no parole hearings taking place at eligibility dates, it should be addressed. I believe prisoners should have a *right* to access programs necessary for parole review at the earliest date as long as they have met the personal requirements for participation.

One other area I found unclear between the narrative and the rule falls under Program Review. The narrative states, "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." On the face, the direct contact is quite good (and appears to be a positive change in other sections of the rules). But under DOC302.17 Program review Procedure, it states "(1) Before the scheduled program review, an institution staff member, designated by the Warden or Superintendent, shall do all of the following. . ." This sounds to me as though an "institution staff member" of undetermined credentials will actually be doing what a social worker would previously have done to prepare for the program review, which is a very critical process since it affects level of custody and placement decisions as well as access to programs. I believe a social worker has more professional knowledge to prepare for this review than a corrections officer or janitor, who are certainly institutional staff members.

For whatever they are worth, those are my thoughts from an initial study of the professed intention and actual wording of the rules. I found the analysis to be more positive than the actual rules, which I suppose reflects the intent of the current administration to move in the right direction.

The access to programs before parole, or extended supervision release, is however a huge concern of the Benedict Center's.

KMM

**Clark, Jessica**

---

**From:** efsajf@mail.tds.net  
**Sent:** Wednesday, August 01, 2001 9:36 AM  
**To:** Moore, Sen. Gwen  
**Subject:** Administrative Rules DOC 302

The following observations on DOC 302 were made by a representative of the Coalition to Stop Control Unit Prisons. We hope to have additional comments by the time a hearing is scheduled.

Ed Steichen  
6451 Hyslop Rd  
Waunakee, WI 53597  
608-849-5077

\*\*\*\*\*

As my specific concern is the assignment of prisoners to the Supermax, I will limit myself to those areas that allow themselves to vague interpretation in assigning an inmate to a facility, especially the Supermax.

**1. Vagueness:**

Chapter 302 contains a number of vague terms that lend themselves to subjective judgement, that can be arbitrarily defined, without objective protection of the interests of the inmate. Consider, for instance, fasting by a prisoner in the light of the rules cited:

- DOC 302.04 (d) disruption to the orderly processes of an institution.
- DOC 302.07(6), 13, 15, 17, 20 mention adjustment as important.
- In DOC 302.07 and DOC 302.10 in assigning a custody classification or program, the Department may consider factors that include but are not limited to...

**2. Institutional Security:**

DOC 302.06 gives the Department the authority to move any prisoner in level (1) maximum custody into the Supermax.

**3. Lack of Appeal:**

The rules vest all authority within the Department including the appeals process. There is no outside review or recourse:

- The director has final authority over classification assignments. DOC 302.12(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.
- In DOC 302.16 the Director appoints the review committee chair, in DOC 302.17(8) the Director approves the review, in DOC 302.18 the prisoner appeals to the Director, the Director responds to the appeal.

**4. Transfers:**

The most frightening rule is the transfer authority. Frightening to me, because it is an open door to the Supermax, frightening to the inmate because the Supermax truly borders on torture. For instance, we are told to believe that only the deserving inmates are in the Supermax, I notice that bed availability can be one of the criteria for transfer, DOC 302.19.

The Department of Correction works in a setting of absolute power. It deals with people's lives, none of them pretty. It is in vital need to establish a system of checks and balances that assures the staff, the public and the prisoners maximum fairness. An inside review and appeals process just does not do it. It is all too easy to get drawn into the violence inherent in a system that believes itself to be authorized to punish. Objective criteria of assessment, openness of records and outside review are essential to safeguard the basic human rights of all of us: public, staff, prisoner.

**Jahr, Dave**

**From:** Clark, Jessica  
**Sent:** Monday, August 20, 2001 3:45 PM  
**To:** Jahr, Dave  
**Subject:** DOC 302

Dear Dave,

Here are some of the initial concerns that have been raised about DOC 302 for you to share with Senator Jauch:

**Concerns Raised About DOC 302 Rule Change:**

- The time frame for DOC to complete an incoming inmate's assessment and evaluation (A&E) is changed from 6 weeks to up to 1 year. A&E includes both custody classification and program placement, which means that an inmate could be without a treatment program for up to one year.
- 
- "Community concerns" will be one of the factors considered in determining custody classification. This means that the "general attitude of the public as reflected by elected officials, judges, sheriffs, district attorneys, or a victim or witness" will now play a role in determining whether someone is classified as "maximum", "medium", or "minimum".
- 
- The time between program reviews for every inmate is lengthened from 6 months to 1 year. Program reviews are held by an institution's Program Review Committee (PRC) to monitor each inmate's custody classification, institution placement, and program or treatment assignments. Under this rule, an inmate requiring a different treatment program would have to wait a full year before such changes could be made.
- 
- Under current rule, a program review can be initiated by the institution or by a social worker on behalf of an inmate. The proposed rule deletes the option for an inmate-initiated program review via a social worker.
- 
- Under the proposed rule, an institutional staff member, rather than the social worker, initiates the program review process and collects the information for the program review hearing. This staff person could have a personal history with the inmate and seek retaliation (such as a transfer or removal from a program) through the program review procedure.
- 
- An inmate will not be provided information pertaining to the subject matter of the program review hearing before the hearing occurs, which means that the inmate may not even know the reason for the hearing before he/she goes before the PRC.
- 
- An inmate is allowed to appeal only *procedural* issues relating to custody classification, transfer, placement, etc. The inmate could not appeal the actual reason for the transfer, any errors made in risk assessment that led to the transfer, etc.

Current practice allows a rather broad appeal of the full PRC decision, where the inmate can challenge the reasoning for the transfer, etc.

- The director is granted the authority to transfer an inmate "*based solely on the availability of beds and security needs of the department*". This means that a minimum security inmate, due to a lack of available beds, could potentially be transferred to the Supermax facility, for example. This section further eliminates the inmate's right to know why he or she was transferred. According to the proposed 302.19(5), "*...the inmate is not entitled to know the criteria or factors upon which the decisions are based if the department determines that release of the criteria would threaten the security of the prison system.*"

I think that these points touch on the major issues raised by our advocates. Please let me know if you need any additional information.

Thanks!

*Jessica L. Clark*

Policy Analyst

Office of State Senator Gwendolynne S. Moore

State Capitol

409 South

Madison, WI 53707

(608)266-5810 (phone)

(608)267-2353 (fax)