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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 11-022

#### Comments

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

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

a. The proposed rule makes numerous references to departmental policies and institutional procedures. The department should review these references in relation to the definition of “rule” in s. 227.01 (13), Stats., to ensure that the contents of these policies and procedures do not need to be promulgated by rule. See, for example, ss. DOC 303.07, 303.09, 303.14 (1) (f), 303.28 (3), and 303.92.

b. In s. DOC 303.09 (2), what statutory authority permits the department to transmit contraband funds to the state general fund?

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

a. In the introductory clause to the rule, “, relating to discipline of inmates” should go at the end. Also, “ch.” should be inserted before “DOC 303”.

b. In the citation of statutory authority in the rule summary, the department should cite “s. 227.11 (2), Stats.” not “ss. 227.11 (2), Stats.”

c. In the plain language analysis of the rule summary, item 13. refers to “PREA”. The department should spell out this acronym on its first use.

d. In the rule summary’s comparison of similar rules in adjacent states, the department provides extensive citations to the Wisconsin Administrative Code in comparison to the rules in

the State of Illinois. These citations are not present in comparison to the rules of other states. The department should consider either expanding the citations to other states or removing them from the summary of Illinois rules.

e. In the treatment clause of SECTION 1 of the proposed rule, "Chapter" should be placed at the beginning of the clause.

f. In the table of contents for ch. DOC 303, the titles of ss. DOC 303.79, 303.80, 303.81, and 303.91 need to be consistent with the titles in the text.

g. In s. DOC 303.01 (1), the department refers to "section", "subsection", and "chapter". Are these references accurate, or should they be revised in order to be consistent with one another? In the same subsection, what is the relevance of the phrase "regardless of the inmates' physical custody"?

h. Generally, in s. DOC 303.02, the department defines several terms to include "or designee". Given the specific duties assigned to these defined individuals later in ch. DOC 303, is the inclusion of "or designee" overly broad?

i. In s. DOC 303.02 (4), the use of the phrase "but not limited to" is superfluous.

j. In s. DOC 303.02 (6), the department should revise the use of semi-colons and commas to ensure consistent use. Additionally, is it necessary to define the term "parent surrogate" as it is used in the definition of "close family member"?

k. In s. DOC 303.02 (12), the permissibility of a "committee of one" in the definition of "disciplinary committee" is misleading given the plain language definition of "committee". The department should consider whether a "committee of one" is an appropriate manner in which a disciplinary committee may be formed and, if so, whether reference to a "committee" remains appropriate in the disciplinary context.

l. In s. DOC 303.02 (16), the department should avoid use of the slash in the definition of "employee". Additionally, is the department's definition of "employee" consistent with its uses elsewhere in the chapter? For example, by its definition of employee and reference to an employee in the definition of "disciplinary committee", a volunteer could be appointed to a disciplinary committee. Did the department intend for the definition of employee to be construed in this manner?

m. In s. DOC 303.02 (23), is the definition of "intoxicating substance" overly broad? For example, common pain relievers, or even water, if consumed in a high enough quantity, could satisfy the definition to the extent that normal physical functions would be altered or impaired.

n. In s. DOC 303.02 (25) and (34), "means" should replace "is".

o. In s. DOC 303.02 (30), the definition of "security threat group" should be revised to state, "...the violation of statutes, administrative rules, department policies, or institutional procedures".

p. In s. DOC 303.02 (31), the definition of “serious mental illness” should be revised to state, “...psychotic symptoms, significant functional impairments, or both”. Also, the parenthetical material should be worked into the text – “...functional impairments, including schizophrenia, bipolar...”. The latter comment also applies to s. DOC 303.66 (1) (b).

q. In Table DOC 303.03, the department should revise the table so that the full contents of each cell are visible. For example, the reference to s. DOC 303.48 appears incomplete. In s. DOC 303.03 (5), the department refers to “each note”. In an administrative rule, a “note” is a term of art that appears to be used incorrectly in s. DOC 303.03 (5).

r. In s. DOC 303.03 (5), should “major offense” replace “completed offense”?

s. In s. DOC 303.10 (2), it appears the last sentence should refer to a determination by the security director or correctional center superintendent. In s. DOC 303.10 (3), the department should say “may not” in place of “shall not”.

t. Throughout the rule, the department refers to “staff member”. Based on its definition of “employee” in s. DOC 303.02, did the department intend to distinguish between employees and staff members for purposes of these references? See, for example, ss. DOC 303.13, 303.30, and 303.32.

u. In s. DOC 303.16, is the reference to consensual acts in sub. (2) superfluous given the reference to force or threat of force in the sub. (1)? Could sub. (2) be deleted, and sub. (1) combined with the (intro.)?

v. In s. DOC 303.18, subs. (1) to (3) should end with periods and “or” should be deleted from sub. (2).

w. The department should compare its definitions of offenses throughout the chapter. In particular, certain definitions refer to each offense in the text of the section, i.e., an inmate is guilty of stalking, while other definitions state “an inmate...is guilty of an offense”. The former style of reference is preferable, and the department may wish to revise definitions in the chapter in order to consistently use that form.

x. In s. DOC 303.28 (1), what does the department intend when it applies the definition of disobeying orders to “a group of which the inmate is *or was* a member...”? (Emphasis added.)

y. In ss. DOC 303.29 and 303.63, the department should avoid the use of “and/or” and may wish to substitute “or”.

z. In s. DOC 303.35, the department should delete stricken material in subs. (2) and (3).

aa. In s. DOC 303.42 (5), and throughout the rule, “the” should replace “such”.

bb. In s. DOC 303.60 (3), the department refers to “a prescribed time frame”. Where is that time frame prescribed?

cc. In s. DOC 303.65 (2), “ss.” should replace “s.”.

dd. In s. DOC 303.67, and throughout the rule, “shall” should replace “will”.

ee. In s. DOC 303.71 (3), who is responsible for the designation referenced in the subsection?

ff. In ss. DOC 303.72 and 303.75, the department should substitute “more than” for “over”.

gg. In s. DOC 303.73 (2) (b), what does the department intend by the phrase “unless the inmate is allowed to use person hygiene supplies”? Is this an exception to the rule regarding when items may be kept in a cell? The department should clarify its use of this phrase.

hh. In s. DOC 303.74 (4) (a), the department refers to possession of property described in subs (2) and (3). Subsection (3) refers to visits, not the possession of property. The department should clarify its intent regarding this cross-reference.

ii. A number of changes are needed in s. DOC 303.79. Subsection titles should be written in capital letters and plain text. If any subsections have titles, they all should. The (intro.) should be numbered sub. (1). These comments also apply to s. DOC 303.77. In making these changes, the department should review s. DOC 303.80, in which all of these things were done correctly.

jj. In s. DOC 303.81, sub. (5) should have a title.

kk. In s. DOC 303.83 (1) (b), the department might consider mandatory reassignment (“shall” instead of “may”) in cases of conflict of interest.

ll. In s. DOC 303.85 (1), the department should delete the requirement that one member of a disciplinary committee must be a supervisor; this requirement is included in the definition of disciplinary committee in s. DOC 303.02.

mm. In s. DOC 303.87 (2), the department should insert “DOC” after “Table”.

nn. In Table DOC 303.87, the department should revise the table to ensure that all fields are fully visible. Also, it should clarify where the asterisk-footnote is intended to apply. The numbering of s. DOC 303.87 should be reviewed. Did the department intend for the table to be considered sub. (2) (a)? In s. DOC 303.87 (2) (b), the department refers to Table 303.84. Did the department intend to refer to Table DOC 303.87? No table appears in s. DOC 303.84. Are new tables necessary in s. DOC 303.87 (2) (e) and (f)?

oo. In s. DOC 303.88 (1), pars. (c) and (d) do not appear to qualify as “situations” as referenced in sub. (1) (intro.). Also, in sub. (1) (intro.), “department” should replace “Department”.

pp. In SECTION 2 of the proposed rule, “Chapter” should be placed before “DOC”.

qq. The contents of SECTIONS 3 to 5 should be reviewed and new SECTIONS of the proposed rule should be created as necessary to place the contents of the proposed rule in sequential order.

rr. In ss. DOC 306.05 (4) (a) and 308.04 (10), the contents of the sections should be revised to refer to disciplinary separation and review of disciplinary separation, not program segregation and the segregation review process.

ss. In s. DOC 308.03 (4) (b), all of the underscored material should follow the stricken material.

tt. In s. DOC 309.04 (4) (e) 2. and (6), the department should insert the more direct cross-reference of s. DOC 303.09 (2).

uu. In s. DOC 327.09 (2) (t), did the department intend to refer to s. DOC 303.54 instead of s. DOC 303.50?

vv. In s. DOC 327.09 (2) (z) (intro.), the department should refer to the terms mentioned in its cross-reference: “department policies and facility procedures”.

ww. In s. DOC 327.13 (6), the department should modify the new contents of s. DOC 303.83 rather than simply inserting a new cross-reference.

xx. In s. DOC 327.13 (9), did the department intend to refer to Table DOC 303.87?

yy. In s. DOC 327.13 (10), should the department modify the rule text as well as the cross-reference to include references to “disciplinary separation” as described in s. DOC 303.73?

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

a. Is s. 227.11 (2), Stats., the only source of the department’s authority to promulgate Clearinghouse Rule 11-022? The rule summary and s. DOC 303.01 (1) should provide citations to all applicable sources of statutory authority.

b. In s. DOC 303.02 (14) (e), “take any of the actions under pars. (a) to (d)” should replace “do any of the above”.

c. In s. DOC 303.87 (1) (h), “Wis.” should be deleted.

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

a. The rule summary and proposed rule should be comprehensively reviewed to ensure that adequate punctuation ends each sentence, title, and clause. Generally, a title or sentence should end with a period and an introductory clause should end with a colon.

b. In s. DOC 303.58 (7), a hyphen should connect “nonprescribed” and an apostrophe should be placed in “medications”.

c. In s. DOC 303.62, the department should delete the comma after “school”.

d. In s. DOC 303.68, it appears the department intended to insert “may” between “and” and “do” in sub. (1) (intro.).

e. In s. DOC 303.76, is “Notwithstanding” the correct term? Should the SECTION begin “In addition to enforcing this chapter, the department shall..”?