

Clearinghouse Rule 17-026

SS# 034-13, Wisconsin Administrative Register No. 688, 4/14/2013

WISCONSIN DEPARTMENT OF CORRECTIONS
PROPOSED RULE MAKING ORDER

INTRODUCTORY CLAUSE

The Wisconsin Department of Corrections proposes an order to amend DOC ss. 306.10 (3), 308.04 (12) (a), 309.466 (1), 313.02 (2) (c), 313.05 (2) (a), 313.07 (7), 324.04 (1), 324.05 (4), 324.13 (7), 325.07 (2) (d), 326.04 (1), 327.05 (4), 327.05 (8), 327.06 (8), 327.08 (4), 330.03 (4), 330.08, 333.04 (1) (d), 333.06 (2), 333.10 (2); and to repeal and recreate chapter DOC 302, relating to inmate classification, sentence and release provisions.

RULE SUMMARY

- A. **Statutes interpreted:** ss. 301.03 (2), 302.04, 302.07, 302.08 and 302.11 (2), Stats.
- B. **Statutory Authority to Promulgate the Rule:** ss. 227.11 (2), Stats.
- C. **Explanation of agency authority:** The department of corrections is responsible for the custody of all inmates, including their safety and security in prisons and the determining the duration of their period of confinement based on the sentence imposed by a court.
- D. **Related statutes or rules:** Chapters DOC 303, 304, 306, 308, 309, 310, 311, 313, 314, 316, 324, 325, 326, and 327, relating to the supervision of inmates.
- E. **Plain Language Analysis:** The rule:
 - 1. Reorganizes and updates the rule chapter.
 - 2. Creates three subchapters: General Provisions, Inmate Classification, Sentence and Release Provisions.
 - 3. Repeals the following definitions: A&E, certain earned release, IS, program or treatment, and program review.
 - 4. Amends the following definitions: administrator, agent, assaultive activity, director, classification section chief, classification specialist, custody classification, DAI, DCC, extended supervision, institution, program need, office of victim services and programs, PRC, positive adjustment time, program review committee, secretary, and security classification.
 - 5. Creates the following definitions: admission to DAI, applicable percentage, bifurcated sentence, bureau of offender classification and movement, challenge incarceration program, discretionary parole, discretionary parole violator, disturbance, earned release program, emergency, extended supervision violator, extra good time, extraordinary health condition, good time, in custody, initial classification, inmate, interstate

correctional compact, life sentence, mandatory release, mandatory release parole violator, non-bifurcated sentence, offender, parole-eligible, parole violator, prisoners, projected mandatory release date, reclassification, records staff, restrictive housing, reviewing authority, security threat group, special action release, special action release coordinator, staff, statutory good time and Wisconsin substance abuse program.

6. Promulgates a rule provision requiring the department to set prison population limits under s.301.055 Stats.
7. In keeping with current correctional practice and to more accurately describe the differences between the department's intake and inmate classification process, renames "Assessment and Evaluation" or "A&E" as "Initial Classification" or "IC".
8. In keeping with current correctional practice and to more accurately describe department's recurring inmate classification process, renames "Program Review" or "PR" as "Reclassification" or "RC".
9. Creates the following factors in assigning a custody classification in recognition of current inmate classification research results: gender, age, security threat group incidents or affiliation, and predatory behavior.
10. Clarifies that a designee of the director may approve minimum or community custody for an inmate serving a life sentence.
11. Clarifies and distinguishes program need assignment and enrollment processes.
12. Updates and clarifies the current initial and reclassification procedures.
13. Clarifies the procedures for requesting and authorizing a reclassification hearing prior to a previously scheduled recall date.
14. Permits alteration of a classification decision due to changes in institution program or placement resources that occur subsequent to the original decision.
15. Creates language in various sections to reflect bifurcated sentencing guidelines implemented after December 31, 1999, also referred to as "truth in sentencing".
16. Provides a process for a department registrar to contact the sentencing court and the inmate if there is uncertainty in the sentence imposed by the court.
17. Updates the chapter to clarify the process for waiver of good time, mandatory release or release to extended supervision.
18. Repeals certain earned releases formerly under 302.113 (9h), Stats. of 2009, and elements of positive adjustment time *repealed* by 2011 Wisconsin Act 38. This is due to the Wisconsin Supreme Court decision in *State ex rel. Aman Singh v. Paul Kemper*, 2016 WI 67, and the Wisconsin Court of Appeals decision in *State ex rel. Aman Singh v. Paul Kemper*, 2014 WI App 43, 353 Wis. 2d 520, 846 N.W.2d 820.
19. Updates the chapter to reflect statute change of the Wisconsin earned release program to the Wisconsin substance abuse program resulting from *2011 Wisconsin Act 38*.
20. Updates the chapter to reflect statute changes to the challenge incarceration program

resulting from *2011 Wisconsin Act 38*.

21. Updates the chapter to reflect statute changes to risk reduction sentences resulting from *2011 Wisconsin Act 38*.
22. Creates a department process for extraordinary health condition and geriatric petition release from prison under s.301.113 (9g).

F. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: There are no federal statutes or regulations that regulate the activities addressed by the proposed rule.

G. Comparison of similar rules in adjacent states:

1. Illinois

Illinois rules concerning classification and transfers apply to both adult and juvenile inmates of the Illinois Department of Corrections. (20 ILAC 503.10) Wisconsin has a separate set of rules which addresses incarcerated juveniles.

Illinois rules require evaluation of inmates for placement and classification purposes at a reception and classification center for initial assignment to a correctional facility or program. The process includes an evaluation of the following factors: criminal, educational and employment history, health care condition, and any other information deemed relevant to placement. The Director determines an inmate's initial placement based on the classification center's recommendation. The rules require that an inmate's classification or program be reviewed at regular intervals. (20 ILADC 503.20) Similarly, Wisconsin rules require that an inmate's classification and placement be initially determined at intake. Wisconsin rules consider similar factors in determining classification and placement. Unlike Illinois, Wisconsin rules require that the classification procedure be determined during a hearing and then reconsidered during incremental re-hearings.

Illinois rules permit that an inmate may be administratively transferred to any of the department's facilities or programs or as otherwise permitted by law. (20 ILADC 503.120) Illinois rules permit that an inmate may be transferred for discipline as the result of an adjustment committee decision. (20 ILADC 503.140) Illinois rules permit that an inmate may be transferred for mental health purposes by emergency or after a hearing and review process. (20 ILADC 503.150) Wisconsin rules require that permanent changes in custody or institution placement of an inmate requires a reclassification hearing. Wisconsin rules permit a temporary placement following a rule violation or for medical emergencies.

Illinois rules concerning sentence computations apply to both incarcerated adults and juveniles. The rules do not apply to persons committed as delinquents, as a result of a finding of contempt, or to those serving sentences of periodic imprisonment. (20 ILADC 107.100) Wisconsin has a separate set of rules which addresses incarcerated juveniles. Wisconsin rules do not distinguish between those committed due to contempt or period imprisonment.

Wisconsin rules require the department to calculate an inmate's sentence and inform the inmate in writing of parole eligibility, projected release, and projected discharge dates. Illinois does not have a similar rule.

Illinois rules establish a process to review inmates serving indeterminate sentences. The rules require those inmates to appear before a prison review board prior to parole eligibility after serving a minimum sentence or 20 years, whichever is less, less applicable statutory good time, compensatory good time, and day for day credit. If an offender must serve the maximum indeterminate sentence, he or she shall be released after serving the maximum of the sentence, less statutory good time, compensatory good time, and day for day credit. (20 ILADC 107.110)

Illinois rules require that an inmate serving a determinate sentence shall be released after serving his determinate sentence, less any applicable credit awarded. (20 ILADC 107.110)

Wisconsin rules establish a process to review inmates serving indeterminate sentences. Wisconsin rules require that an inmate serving an indeterminate sentence shall be eligible for parole when 25% of the sentence imposed, or 6 months, whichever is greater, less all credit which the inmate is entitled to by statute, has been served. An inmate is not eligible for parole consideration for at least 60 days following admission to DAI. If an inmate has more than one sentence, the inmate shall be eligible for parole on each non-bifurcated sentence. If an inmate has received consecutive sentences, the non-bifurcated sentences shall be computed as one continuous sentence for purposes of determining parole eligibility.

Illinois rules establish a process for determining when an inmate serving indeterminate sentences may receive statutory good time, compensatory time, and supplemental sentence credit. Illinois rules require that compensatory good time be prorated for those inmates serving indeterminate schedules at a rate also provided by a table, and normally at the rate of 7.5 days for each month in custody. Offenders are not eligible to receive compensatory good time for any month during which they are reported by their work or program supervisor for carelessness, negligence, or refusal to work if so recommended by the facility's Adjustment Committee and approved by the Chief Administrative Officer. Inmates in segregation or confinement for a period of 3 days or more are not awarded compensatory good time for that month pursuant to a hearing before an adjustment committee. If an offender is on investigative status, an offender earns compensatory good time for that month if the investigation findings indicate the offender did not commit a violation. Awarded compensatory good time may not be revoked. (20 ILADC 107.120)

Illinois rules permit offenders who enroll in full-time substance abuse program, industries assignment, other programs, behavior modification programs, life skill courses, or re-entry plans to be eligible for additional credit.

Illinois rules require that inmates found guilty of misconduct or rules violations may lose statutory good time, day for day credit, statutory sentence credit, supplemental credit, or program sentence credit (20 ILADC 107.150) The Director also has discretion to revoke statutory good time, day for day credit, statutory sentence credit,

supplemental sentence credit, and program sentence. (20 ILADC 107.150) Illinois rules permit the restoration of statutory good time, day for day credit, statutory sentence credit, supplemental sentence credit, and program sentence credit either by his own action or upon recommendation of an administrative review board, adjustment committee, or a deputy director. (20 ILADC 107.160)

Wisconsin rules permit offenders to waive good time, mandatory release or extended supervision. Illinois rules do not have a similar provision.

Wisconsin rules permit inmates eligible to earn extra good time for performing above average in vocational, education, or job assignment are involuntary assigned, or are in a status of administrative confinement, observation, temporary lockup, or out of the institution for a court or medical appointment and were earning extra good time immediately prior to the placement. Wisconsin rules permit inmates to earn one day of extra good time credit for every six days in an eligible status.

Illinois rules permit participation in an Impact Incarceration Program. (20 ILADC 460.10) Illinois rules require that upon successful completion of the program, inmates serve a term of mandatory supervised release. (20 ILADC 460.10)

Wisconsin rules permit inmates to participate in a challenge incarceration program. In Wisconsin, upon completion of the program, the Department either advises the parole board or the sentencing court of the inmate's completion for those bodies to determine the effect on the inmate's sentence.

Wisconsin rules permit inmates who meet extraordinary health conditions or geriatric petitions to request a modification of their bifurcated sentence upon review by a committee and hearing. Illinois does not have a similar rule.

2. Iowa

Iowa has a statute that provides that the department of corrections may develop and utilize an inmate classification system. ICA s. 904.202 provides that the department may utilize a classification system to aid in the rehabilitation of the inmates and requires that the trial judge, prosecuting attorney, and presentence investigators furnish the department's director with any previously authorized presentence investigation report and a full statement of facts and circumstances attending the commission of the offense so far as known or believed by them. Wisconsin also requires a review of similar information in determining inmate classifications.

Iowa does not have a comparable administrative code concerning classification, sentence computations, or release provisions.

The Iowa department of corrections has issued policies and procedures which addresses offender classifications (Policy Number IS-CL-02 (eff. 8/2014)), classification rehearings (Policy Number IS-CL03 F-6 (eff. 10/2014)), program placement (Policy Number IS-CL-03 (eff. 2/2015)), and inter-institutional transfers (Policy Number IS-CL-08 (eff. 10/2014))

3. Michigan

Michigan rules requires that the department of corrections determine an inmate's classification to determine the level of confinement necessary for public safety and the safety and security of the facility. (Mich. Admin. Code R. 791.4401). The rules require that classification determinations be made based on safety and security concerns, including prevention of escape, maintenance of control and order, and medical and mental health care needs of the inmate. The rules provide that classification assignments will determine the placement of the inmate. This is similar to Wisconsin rules.

Michigan rules require that inmate classification be determined by a committee at each institution. (Mich. R. 791.4401(3)). Wisconsin rules require that inmate classification is determined by a hearing.

Michigan rules permit an inmate who objects to a reclassification decision to file a grievance. (Mich R. 791.4401(4)). Similarly, Wisconsin rules permit inmates to request administrative review of classification decisions.

Michigan rules permit designation of an inmate to community status after serving a minimum sentence imposed by the court. Prison officials determine community status by reviewing the inmate's classification level, sentence, assaultive risk, health care needs, pending charges, or other special designation by the department. (Mich. R. 791.4410(1) & (2)). Wisconsin does not have a similar rule.

4. Minnesota

Minnesota statues permit recordkeeping for inmate participation in substance abuse treatments. (MSA s. 241.416).

Minnesota rules create procedures for determining an inmate's sentence and release. (MN ADC 2940.1500). Inmates with indeterminate sentences may request a release date adjustment. Minnesota rules create a program review team tasked with reviewing requests and making recommendations to an executive officer of hearings for an inmate's release. (MN ADC 2940.1500).

Minnesota rules create a procedure to calculate an inmate's loss of good time or extension of imprisonment for disciplinary infractions. (MN ADC 2940.1600). The procedures are based upon an inmate's sentence structure and projected release date. Wisconsin similarly has rules in place to determine sentencing guidelines based upon sentence structure and adjustments based upon extensions for misconduct.

- H. Summary of the factual data and analytical methodologies that DOC used in support of its determination of the rule's fiscal effect on small businesses under s. 227.114, Stats:** The department of corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.
- I. Analysis and supporting documents that the department of corrections used in support of the department's determination of the proposed rule's effect on small businesses or that was used when the department of corrections prepared an economic impact**

report: Not applicable.

J. **A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs:** Not Applicable.

K. **Effect on small businesses:** Not applicable.

L. **Agency contact person:**

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M. **Place where comments are to be submitted and deadline for submission:** Written comments on the proposed rule will be accepted and receive consideration if they are received by a date to be determined and published when the DOC submits its notice of hearing on this proposed rule. Written comments should be addressed to: Glen A. Mercier II, DOC, P.O. Box 7925, Madison, WI 53707-7925, by email: DOCAdministrativeRulesCommittee@wisconsin.gov; or by phone at (608) 240-5309.

TEXT OF RULE

SECTION 1. Chapter DOC 302 is repealed and recreated to read:

Chapter DOC 302

INMATE CLASSIFICATION, SENTENCE, AND RELEASE PROVISIONS

Subchapter I – General Provisions

- DOC 302.01 Applicability
- DOC 302.02 Purpose
- DOC 302.03 Definitions
- DOC 302.04 Emergency suspension of rules
- DOC 302.05 Prison population limits
- DOC 302.06 Institution Security levels

Subchapter II – Inmate Classification

- DOC 302.07 Applicability
- DOC 302.08 Inmate Custody
- DOC 302.09 Custody levels
- DOC 302.10 Relationship of inmate custody classification to institution security levels
- DOC 302.11 Factors in assigning a custody classification
- DOC 302.12 Requirements for assigning minimum or community custody to an inmate

- DOC 302.13 Program need assignment
- DOC 302.14 Program enrollment
- DOC 302.15 Initial classification and reclassification personnel
- DOC 302.16 Initial classification procedure
- DOC 302.17 Reclassification procedure
- DOC 302.18 Subsequent action
- DOC 302.19 Administrative review of a classification decision
- DOC 302.20 Transfers
- DOC 302.21 Recordkeeping

Subchapter III – Sentence and Release Provisions

- DOC 302.22 Sentence computation
- DOC 302.23 Ambiguity in sentence
- DOC 302.24 Sentence credit
- DOC 302.25 Discretionary parole violators not subject to 1983 Wis. Act 528
- DOC 302.26 Mandatory release parole violators not subject to 1983 Wis. Act 528
- DOC 302.27 Parole violators subject to 1983 Wis. Act 528
- DOC 302.28 Discretionary release for parole violators
- DOC 302.29 Extended supervision violators.
- DOC 302.30 Revocation of probation.
- DOC 302.31 Effect of escape on sentence.
- DOC 302.32 Waiver of good time, mandatory release, or release to extended supervision.
- DOC 302.33 Extra good time for inmates not covered by 1983 Wis. Act 528
- DOC 302.34 Special action release program
- DOC 302.35 Certain earned release
- DOC 302.36 Positive adjustment time
- DOC 302.37 Sentence adjustment.
- DOC 302.38 Challenge incarceration program
- DOC 302.39 Earned release program.
- DOC 302.40 Risk reduction sentence
- DOC 302.41 Extraordinary health condition or geriatric petitions.

Subchapter I – General Provisions

DOC 302.01 Applicability. Under authority vested in the department by ss. 227.11 (2), 301.02, 301.03 (2), 301.21, 302.07, 302.25, 302.255, 302.26, and 302.27, 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, 301.055, 302.043 302.045, 302.05, 302.055, 302.07, 302.08, 302.11, 302.113, 302.114, 302.15, 302.18, 303.065, 303.068, 973.01, and 973.013, Stats.

DOC 302.02 Purpose. The purpose of this chapter is to provide procedures for inmate classification, sentence, and release provisions that include all of the following objectives.

- (1) The objectives of inmate classification include all of the following:
 - (a) Establish a dedicated and centralized inmate classification process to determine custody, program need, institution placement assignments, and movement of inmates.
 - (b) Classify every inmate based on factors related to public, staff, and inmate safety, institution security, mission of the department, and needs of the inmate.
 - (c) Match inmate needs to institution resources when possible.

- (d) Involve inmates in the process of determining custody, program need, and institution assignment.
- (e) Provide a record of custody, program need, and institution placement assignments.
- (2) The objectives of sentence and release provisions includes all of the following:
 - (a) Establish processes for inmate release from court imposed periods of incarceration.
 - (b) Review judgments of conviction and court orders received for legality and clarity.
 - (c) Calculate parole eligibility dates, projected release dates and discharge dates for all counts of all sentences.
 - (d) Inform inmate of calculated dates.
 - (e) Utilize calculated dates to facilitate the legal release of inmates from prison and offenders from supervision.

DOC 302.03 Definitions. In this chapter:

- (1) “Administrator” means the administrator of the DAI or designee
- (2) “Agent” means a probation and parole agent.
- (3) “Admission to DAI” means the placement of a person under the custody and control of the DAI, following sentencing or revocation of probation, discretionary parole, mandatory release parole, or extended supervision.
- (4) “Applicable percentage” means 85% for a Class C to E felony or 75% for a Class F to I felony.
- (5) “Assaultive activity” means an action that occurs inside or outside an institution and that results in or is intended to result in physical harm to another.
- (6) “Bifurcated sentence” means a sentence under s. 973.01, Stats.
- (7) “Bureau of offender classification and movement” or “BOCM” means the DAI bureau that administers the classification and movement of inmates.
- (8) “Challenge incarceration program” or “CIP” means a program that incorporates manual labor, personal development counseling, substance abuse treatment and education, military drill and ceremony, counseling, and age appropriate strenuous physical exercise resulting in earned release from confinement under s. 302.045, Stats.
- (9) “Classification sector chief” means a BOCM supervisor.
- (10) “Classification specialist” means a BOCM staff member who completes processes associated with the assignment of inmate custody, program need, and institution placement.
- (11) “Custody classification” means the assessed risk level assigned to an inmate for purposes of institution placement.
- (12) “DAI” means the division of adult institutions in the department of corrections .
- (13) “DCC” means the division of community corrections in the department of corrections.
- (14) “Department” means the department of corrections.
- (15) “Detainer” means a writ or other legal instrument issued by a competent officer directing the warden or superintendent of an institution to notify the issuing authority when the named person is about to be released so that the issuing authority may obtain custody of the named person if appropriate.
- (16) “Director” means the director of BOCM or designee.
- (17) “Disciplinary hearing” means a hearing authorized under ch. DOC 303 for the discipline of inmates for misconduct.
- (18) “Discretionary parole” means release of an inmate from an institution by parole grant under ch. PAC 1.
- (19) “Discretionary parole violator” means an inmate who has been released by the parole commission under s. 304.06, Stats., and who violated parole prior to their mandatory release date.
- (20) “Disturbance” means a riot or other disturbance to institutional order caused by a group of two or more inmates that may include one of the following:
 - (a) An assault on any person by two or more inmates.

- (b) The taking of one or more hostages.
- (c) The destruction of state property or the property of another by two or more inmates.
- (d) The refusal by two or more inmates, acting in concert, to comply with an order.
- (e) Any words or acts which incite or encourage inmates to take any of the actions under pars. (a) to (d).

(21) “Earned release program” or “ERP” means a program that incorporates substance abuse treatment resulting in earned release from confinement under the Wisconsin substance abuse program.

(22) “Emergency” means an immediate threat to the safety of the public, staff, or inmates of an institution, other than a disturbance. An emergency may include any of the following:

- (a) A public health threat.
- (b) A utility malfunction.
- (c) A fire.
- (d) A bomb threat or explosion.
- (e) An employee job action.
- (f) Any natural disaster.
- (g) A civil disturbance.
- (h) An inmate escape.

(23) “Enrolled victim” means a victim who has submitted a request to the office of victim services and programs for notification of inmate or offender status changes.

(24) “Extended supervision” or “ES” means the portion of a bifurcated sentence imposed under s. 973.01, Stats., which is served in the community under the supervision of the DCC.

(25) “Extended supervision violator” is an offender who violated extended supervision after the release date.

(26) “Extra good time” means credit for diligence and is earned according to the conditions and procedures set forth in ss. DOC 302.22, 302.26, and 302.33.

(27) “Extraordinary health condition” or “EHC” means a condition afflicting an inmate such as advanced age, infirmity or disability, or a need for medical treatment or services not available within a correctional institution.

(28) “Good time” means credit earned by inmates that diminishes the period of incarceration and includes both statutory and extra good time. This applies to inmates who committed crimes before June 1, 1984, and did not choose to have 1983 Wis. Act 528 apply to them.

(29) “In custody” means any time an offender spent confined, as described in s. 973.155 (1), Stats., in connection with the violation.

(30) “Initial classification” or “IC” means the process associated with the assignment of inmate custody, program need, and institution placement upon admission to DAI.

(31) “Inmate” means a person who is committed to, under sentence to, and confined in a state prison under s. 302.01, Stats.

(32) “Institution” means a correctional facility under s. 302.01, Stats., a prison under s. 301.048, Stats. and s. 301.046 Stats., or a facility that the department contracts with for incarceration of inmates.

(33) “Interstate correctional compact” or “ICC” means the agreement between the department and other correctional jurisdictions for the incarceration of inmates under ss. 301.21 and 302.25, Stats.

(34) “Life sentence” means any sentence of imprisonment under which the convicted person may remain incarcerated for the rest of their life. “Life sentence” includes the sentence of an inmate who is sentenced to life imprisonment, released on parole or to ES and returned to an institution with or without a new sentence and the sentence of an inmate sentenced to life imprisonment in another jurisdiction.

(35) “Mandatory release” or “MR” means release of an inmate from the institution to supervision as required by s. 302.11, Stats., if not granted discretionary parole or special action release earlier.

- (36) "Mandatory release parole violator" means an offender who violated parole after the mandatory release date, regardless of how the offender was originally released.
- (37) "Non-bifurcated sentence" means an indeterminate sentence under s. 973.013, Stats.
- (38) "Offender" means a person who is committed to the custody of the department for correctional purposes and is under the community supervision of the DCC.
- (39) "Office of victim services and programs" or "OVSP" means the office in the department that is responsible for victim information and advocacy.
- (40) "Parole-eligible" means qualified to be considered for discretionary parole under s. 304.06, Stats., and ch. PAC 1.
- (41) "Parole violator" means a discretionary parole violator or a mandatory release parole violator.
- (42) "Positive adjustment time" or "PAT" means a period of time measured in days that can be earned to reduce an inmate's period of confinement.
- (43) "Prisoner" means any person who is incarcerated or imprisoned under s. 301.01, Stats.
- (44) "Program need" means the programs, treatment, or services identified by the department to assist in an inmate's incarceration, reduce the inmate's risk of reoffending, and enhance the inmate's successful community reentry.
- (45) "Program review committee" or "PRC" means the staff designated to review petitions under s. 302.113 (9g), Stats.
- (46) "Projected mandatory release date" means the date an inmate may be released from prison for a non-bifurcated sentence.
- (47) "Reclassification" or "RC" means the process associated with the assignment of inmate custody, institution placement and program need subsequent to an initial classification.
- (48) "Records staff" means staff whose job duties include completing sentence computations along with other assigned functions.
- (49) "Release eligibility date" means the date that an inmate who is serving a risk reduction sentence under s. 973.031, 2009 Stats., has served 75% of the confinement portion of their sentence
- (50) "Restrictive housing" means housing in which the movement, property, or programming of an inmate may be limited.
- (51) "Reviewing authority" means the division of hearings and appeals in the department of administration, upon proper notice and hearing under ch. DOC 331, or the department, if the discretionary parole violator, extended supervision violator, mandatory release parole violator, or parole violator waives a hearing.
- (52) "Risk reduction sentence" means a sentence imposed by a court under s. 971.031, 2009 Stats., that results in the inmate's release to extended supervision upon serving 75% of the sentence, completing a risk reduction plan, and maintaining good conduct as determined by the department.
- (53) "Secretary" means the secretary of the department or designee.
- (54) "Security classification" means the security level of an institution as determined by the department's review of specific policies, physical plant characteristics, resources and degree of supervision of inmate supervision.
- (55) "Security threat group" or "STG" means a group of individuals which threatens, intimidates, coerces or harasses others or which engages in any activity which violates or encourages the violation of statutes, administrative rules or department policy.
- (56) "Social worker" means the institution social worker to whom an inmate is assigned.
- (57) "Special action release" or "SAR" means release of an inmate from the institution to parole supervision by decision of the secretary prior to mandatory release.
- (58) "Special action release coordinator" or "SAR coordinator" means the staff member who assembles and submits to the secretary all documents on an inmate relevant to SAR consideration.
- (59) "Staff" or "staff member" means a person employed by the department as permanent, project, contract, or limited term employee.
- (60) "Statutory good time" means credit for good conduct and for performing all required duties as

required under s. 53.11, 1981 Stats.

(61) “Superintendent” means a superintendent or designee at a correctional center as established under s. 301.13, Stats.

(62) “Victim” has the meaning given in s. 950.02 (4), Stats.

(63) “Warden” means the warden or designee at an institution.

(64) “Wisconsin substance abuse program” means a program that incorporates substance abuse treatment resulting in earned release from confinement under s. 302.05, Stats.

(65) “Working days” means all days except Saturdays, Sundays, and state legal holidays.

DOC 302.04 Emergency suspension of rules. The secretary may suspend rules specified in this chapter if an emergency occurs that prevents the normal functioning of department operations.

DOC 302.05 Prison population limits. The department shall maintain limits on the number of prisoners at each institution and limits on the number of prisoners system-wide under s. 301.055, Stats. The limits may be exceeded in an emergency situation. Given the dynamic nature of these potential capacities, department policy shall address requirements regarding the establishment and computation of system wide and each state prison limits and it shall address procedures by which it may exceed system wide and each state prison limits. The department may provide a single limit and procedure for the Wisconsin correctional center system.

DOC 302.06 Institution Security levels.

(1) The department shall classify all institutions as maximum, medium, or minimum security.

(2) Restrictive housing at any institution is considered maximum security.

Subchapter II – Inmate Classification

DOC 302.07 Applicability. This subchapter applies to all inmates who are serving a Wisconsin prison sentence or who are confined in institutions pursuant to an interstate correctional compact.

DOC 302.08 Inmate Custody. The department assigns an inmate custody classification during initial classification and reclassification processes using factors identified in s. DOC 302.11 to achieve all of the following:

(1) Enhance the safety and security of the public, staff, institutions, and inmates.

(2) Match inmate custody assignment to institution security assignment and department resources when possible.

(3) Regulate the supervision and movement of inmates among institutions and between institutions and community programs.

DOC 302.09 Custody levels. Based on the result of an assessment of the inmate’s risk under the initial classification or reclassification process, an inmate is classified under one of the following custody classification levels:

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

(4) 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 work 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.

DOC 302.10 Relationship of inmate custody classification to institution security levels. An inmate's custody classification shall be no greater than the designated security level of the institution in which the inmate is placed except for any of the following circumstances:

- (1) Inmates housed in restrictive status housing.
- (2) Inmates awaiting transfer.
- (3) Inmates at institutions in which there is a declared emergency or disturbance.

DOC 302.11 Factors in assigning a custody classification. The department may consider any of the following factors when assigning inmate custody:

- (1) The nature, number, and severity of each offense. In evaluating the nature and severity of an 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.
 - (e) Motivation for the offense.
- (2) Length of sentence being served.
- (3) Length of time in a particular custody classification, overall time served during the current period of incarceration, and time remaining to serve.
- (4) Attitude regarding the offense and sentence.
- (5) Criminal record and juvenile delinquency adjudications.
- (6) Conduct and adjustment during current or prior confinements or community supervision.
- (7) Record of escape or walk away from an institution or a mental health facility or absconding from probation, parole, or extended supervision.
- (8) Security threat group incidents, activities, or affiliations.
- (9) Gender.
- (10) Age.
- (11) Medical, dental, and mental health status, including physical or psychological treatment and observation.
- (12) Risk to a victim, witness, general public, or inmate. In determining this risk, the department may consider the general public's perception of the offense and the inmate.
- (13) Performance or refusal to participate in programs, treatment, or services associated with identified needs.
- (14) Pending legal process, notification, or detainer.
- (15) Parole commission actions, their stated expectations, and the likelihood of a release during the review period.
- (16) History or characteristics of predatory behavior towards others.
- (17) History or characteristics of vulnerability to hurt or harm by others.
- (18) The results of assessments or instruments developed to assist with the assignment of custody classification.

DOC 302.12 Requirements for assigning minimum or community custody to an inmate serving a life sentence. An inmate serving a life sentence shall have reached parole eligibility under s. 304.06 (1), Stats., or be within 5 years of extended supervision eligibility under s. 973.014, Stats., prior to consideration for a minimum or community custody classification.

DOC 302.13 Program need assignment.

(1) The department may assign program needs during initial classification and reclassification processes to achieve all of the following:

- (a) Enhancement of safety and security of the public, staff, institutions, and inmates.
- (b) Reduction of the inmate's risk of reoffending.
- (c) Successful community reentry.

(2) The department shall consider any of the following in assigning program needs:

- (a) Factors under s. DOC 302.11.
- (b) The results of assessments and screening instruments developed to assist with the identification of program needs.
- (c) The inmate's past performance in or compliance with programs.
- (d) Federal or state law requirements.

DOC 302.14 Program enrollment.

(1) Unless otherwise specified by policies of the department or by state and federal law, inmates shall be considered for program enrollment if all of the following conditions are met:

- (a) A need has been identified that will be addressed by the program.
- (b) The inmate attains the custody assignment required for placement at the site where the program is available.
- (c) There is space available in the program.
- (d) The inmate meets the department's program enrollment requirements.

(2) An inmate may choose not to enroll in programs. Refusal may affect custody classification and institution placement.

DOC 302.15 Initial classification and reclassification personnel.

(1) Initial classification hearings shall be conducted by a classification specialist designated by the director.

(2) Each institution shall have a reclassification committee composed of all of the following:

- (a) A classification specialist designated by the director to chair the committee.
- (b) Up to 3 staff members from institution security, social service or education areas who are designated by the warden and who possess the knowledge and experience necessary to fulfill the responsibilities of this section.

DOC 302.16 Initial classification procedure.

(1) An initial classification hearing shall be conducted after the inmate's admission to DAI to determine custody, institution placement, program need, and the date of the next reclassification hearing.

(2) The director may alter the scope, purpose, and duration of the initial classification process to meet security, resource, or bed needs of the department.

(3) The classification specialist shall ensure all of the following:

- (a) Collection, investigation, and documentation of information necessary to evaluate risk and need factors under ss. DOC 302.11 and 302.13.
- (b) Completion of department required risk and need instruments.
- (c) The inmate has been informed of the reason for review.
- (d) The inmate has been afforded an opportunity to provide information about custody, program need, or institution placement.
- (e) The inmate has been advised of the recommendation regarding custody classification, program needs, institution placement and next reclassification hearing date.

- (f) Production of a report that includes all of the following:
 1. A reason for the inmate's absence if not present during the hearing
 2. A reason for the hearing and the facts considered.
 3. A summary of the information gathered through pars. (a), (b), and (d).
 4. Documentation of information used to evaluate and support risk and need factors under ss. DOC 302.11 and 302.13.
 5. A recommendation of custody, program needs, and institution placement.
 6. A recommended date for a reclassification hearing not to exceed 12 months from the date of the initial classification hearing.
- (4) The classification specialist may suspend the hearing to investigate any issue affecting custody classification, institution placement, or program need.
- (5) If an inmate is unable to be physically present for an initial classification hearing, the department may utilize technology such as telephone, video, or other electronic devices to meet the requirements of this section.
- (6) If the inmate disrupts or refuses to attend the hearing, the classification specialist may conduct the hearing without the inmate being present.
- (7) The director shall review recommended custody, program needs and institution placement, make the final decision, and ensure a date for a reclassification hearing not to exceed 12 months from the date of the classification hearing.
- (8) The department shall provide the inmate a written copy of the initial classification decision concerning custody, institutional placement, and date of next reclassification hearing.
- (9) The inmate shall be advised of the factors upon which the classification is based unless the department determines that release of such information would threaten the security of the prison system.

DOC 302.17 Reclassification procedure.

- (1) Reclassification hearings shall be conducted by a reclassification committee to determine custody, institution placement, program need, and the date of the next reclassification hearing.
- (2) The director may alter the scope, purpose, and duration of the reclassification process to meet security, resource, or bed needs of the department.
- (3) Before a reclassification hearing is conducted, institution staff designated by the warden or superintendent shall do all of the following:
 - (a) Collect, investigate and document information necessary to evaluate risk and need factors under ss. DOC 302.11 and 302.13.
 - (b) Complete department required risk and need instruments.
 - (c) Conduct an interview with the inmate that allows the inmate an opportunity to provide information about custody, program need, or institution placement.
 - (d) Prepare a report for the reclassification hearing that includes all of the following:
 1. The reason for the review and the facts being considered.
 2. A summary of the information gathered through pars. (a), (b) and (d).
 3. A recommendation of custody, program needs, and institution placement.
 4. A statement as to whether the inmate wants to appear or waive attendance at the reclassification hearing.
- (4) The classification specialist shall conduct a reclassification hearing that ensures all of the following:
 - (a) The inmate has been informed of the reason for the review.
 - (b) Completion of the requirements under sub. (3).
 - (c) The inmate has been afforded an opportunity to provide information about custody, program need, or institution placement.
 - (d) Review of information obtained in sub. (3).

(e) The inmate has been advised of the reclassification hearing recommendation regarding custody classification, program needs, institution placement and next reclassification hearing date .

(f) Production of a report that includes all of the following:

1. A reason for the inmate's absence if not present during the hearing,
2. A reason for the hearing and the facts considered.
3. The reclassification hearing staff comments regarding custody, program need, and institution placement.
4. Documentation of information used to evaluate and support risk and need factors under ss. DOC 302.11 and 302.13.
5. A recommendation of custody classification, program needs, and institution placement.
6. A recommended date for a reclassification hearing not to exceed 12 months from the date of the classification hearing.

(5) A change in an inmate's custody or institution placement requires a unanimous recommendation by the reclassification committee. If the committee cannot reach an unanimous recommendation, the classification specialist shall refer the case to the classification sector chief and the warden for a recommendation. If the classification sector chief and the warden cannot reach a unanimous recommendation, the classification sector chief shall refer the case to the director for decision.

(6) A recommendation for program need assignment requires a majority consent by the reclassification committee. If the committee cannot reach a majority recommendation, the classification specialist shall refer the case to the classification sector chief and the warden for a recommendation. If the classification sector chief and the warden cannot reach a unanimous recommendation, the classification sector chief shall refer the case to the director for decision.

(7) The classification specialist may suspend a hearing to investigate any issue affecting custody classification, institution placement, or program need.

(8) If an inmate is unable to be physically present for the interview under sub (3) (c) or the hearing under sub (4), the department may utilize technology such as telephone, video, or other electronic devices to meet the requirements of this section.

(9) If the inmate disrupts or refuses to attend the hearing, the classification specialist may conduct the hearing without the inmate being present.

(10) The director shall review recommended custody, institution placement and changes, make the final decision, and ensure a date for a reclassification hearing not to exceed 12 months from the date of the classification hearing.

(11) The department shall provide the inmate a written copy of the reclassification decision concerning custody, institutional placement, and date of next reclassification hearing.

(12) The inmate shall be advised under sub (11) of the factors upon which the classification is based unless the department determines that release of such information would threaten the security of the prison system.

(13) When a significant change affecting custody, program need, or institution placement occurs, any of the following may make a request for a reclassification hearing prior to the date set by the last classification hearing:

- (a) Director.
- (b) Warden or superintendent.
- (c) Hearing officer under s. DOC 303.65 (5).
- (d) Assigned social worker.
- (e) Inmate with a request through the assigned social worker submitted on a form provided by the department.

(14) The classification specialist will approve or deny requests submitted under sub. (13) (d) or (e).

DOC 302.18 Subsequent action.

(1) The director may modify a classification decision made under s. DOC 302.16 or DOC 302.17, without a re-hearing, due to subsequent changes in inmate security needs, program needs, treatment needs, DOC resources, or resulting from an administrative review under s. DOC 302.19.

(2) The department shall provide the inmate a written copy of the modified classification decision.

DOC 302.19 Administrative review of a classification decision.

(1) Within 10 calendar days of an inmate's receipt of a written decision concerning custody, institution placement, or program need, the inmate may request a review of the decision made under s. DOC 302.16 (7), 302.17 (10), or 302.18 if the inmate believes that the decision was based on erroneous information.

(2) Denial of a request for a classification review under s. DOC 302.17 (14) is not subject to review under this section.

(3) Requests for review under this section shall meet all of the following requirements:

(a) The request shall be submitted on an administrative review form provided by the department.

(b) The request shall be legibly handwritten or typed.

(c) The request shall be filed only under the name by which the inmate was committed to the department or the legal name granted by a court.

(d) The request shall include the original inmate signature.

(e) The request shall not exceed 500 words total and not exceed two pages.

(f) The request shall provide relevant supporting documentation that may be accepted at the discretion of the director.

(4) The review shall be completed by one of the following:

(a) The director if the director is not the decision maker under s. DOC 302.16 (7) or 302.17 (10).

(b) The division administrator if the director was the decision maker under s. DOC 302.16 (7) or 302.17 (10).

(5) The director or administrator shall issue a written decision within a reasonable period of time following receipt of the administrative review request. The department shall provide the inmate a written copy of the decision.

(6) The decision under sub. (5) is final.

DOC 302.20 Transfers.

(1) The director may transfer an inmate to any institution or location authorized by the department under any of the following circumstances:

(a) As a permanent or temporary placement under s. DOC 302.16, 302.17, or 302.18.

(b) As a temporary placement due to a medical, dental, mental health need.

(c) As a temporary placement due to an emergency.

(2) Under ch. DOC 325, a warden may transfer an inmate to any institution or location authorized by the department as a temporary placement to address clinical, medical or security concerns that exceed the resources of the sending institution.

(3) If the prior permanent placement needs to be re-evaluated following a transfer under sub. (1)

(b) or sub. (2) a reclassification hearing shall be conducted within 21 working days of a ch. DOC 303 conduct report disposition.

(4) If the prior permanent placement needs to be re-evaluated following a transfer under sub. 1 or sub. 2, a reclassification hearing shall be conducted within 45 working days of the transfer for clinical or medical reasons.

DOC 302.21 Recordkeeping. The director, classification sector chief, or a classification specialist may document information concerning an inmate between regularly scheduled classification hearings regarding any of the following:

- (1) Program or treatment assignments.
- (2) Progress of program or treatment assignment.
- (3) Physical health.
- (4) Mental health.
- (5) Conduct and adjustment.
- (6) Placement.
- (7) Custody level.

Subchapter III – Sentence and Release Provisions

DOC 302.22 Sentence computation.

(1) **TIMELINESS.** Within a reasonable time frame after an inmate arrives at a correctional institution following sentencing, revocation of probation, discretionary parole, mandatory release parole, extended supervision, return from escape, or staff becomes aware of a change, records staff shall compute the inmate's parole eligibility date, projected release date, and projected discharge date and inform the inmate in writing of these dates.

(2) **DETERMINATION OF PAROLE ELIGIBILITY DATE.** For persons sentenced for offenses committed before December 31, 1999, or after December 31, 1999 but sentenced to a non-bifurcated sentence, the inmate's eligibility for discretionary parole will be determined under s. 304.06, Stats subject to all of the following:

(a) An inmate serving a life sentence shall be eligible for parole based on one of the following:

1. If the inmate is not subject to 1983 Wis. Act 528, 1997 Wis. Act 283, or 2001 Wis. Act 109, the inmate is eligible for parole after serving 11 years and 3 months. This period may be extended for misconduct by loss of earned good time under s. DOC 303.72.

2. If the inmate is subject to 1983 Wis. Act 528 and has been ordered eligible for parole by the court, the inmate is eligible for parole after serving 13 years and 4 months or at a later date ordered by the court. This period may be extended for loss of good time under s. DOC 303.72.

(b) An inmate not serving a life sentence shall be eligible for parole based on one of the following:

1. If the inmate committed a crime before November 3, 1983, the inmate shall be eligible for parole when 6 months, less all credit to which the inmate is entitled under s. 973.155, Stats., has been served.

2. If the inmate committed a crime on or after November 3, 1983, and was sentenced to a non-bifurcated sentence, the inmate shall be eligible for parole when 25% of the sentence imposed, or 6 months, whichever is greater, less all credit to which the inmate is entitled under s. 973.155, Stats., has been served.

(c) An inmate is not eligible for parole consideration for at least 60 days following admission to DAI.

(d) If an inmate has more than one sentence, the inmate shall be eligible for parole on each non-bifurcated sentence. If an inmate has received consecutive sentences, the non-bifurcated sentences shall be computed as one continuous sentence for purposes of determining the parole eligibility date.

(e) An inmate serving a bifurcated sentence is not eligible for release on parole under that sentence.

(3) **DETERMINATION OF PROJECTED MANDATORY RELEASE DATE FOR AN INMATE SERVING A NON-BIFURCATED SENTENCE.**

(a) For an inmate subject to sentencing under law prior to 1983 Wis. Act 528, all of the following apply:

1. The projected mandatory release date shall be the maximum term to which the inmate was

sentenced, reduced by any of the following:

- a. Sentence credit granted under s. 973.155, Stats.
- b. Statutory good time earned under s. 53.11, 1981 Stats.
- c. Extra good time earned under s. 53.12, 1981 Stats.
2. Statutory good time shall be credited from the beginning date of the inmate's sentence.
3. Extra good time shall be credited beginning on the date following the inmate's date of arrival at the institution.
4. For an inmate who is serving consecutive sentences for crimes that were committed before the person was admitted to DAI under any of the sentences, records staff shall treat the sentences as one continuous sentence for the purposes of statutory good time credit.
5. For an inmate who is serving a consecutive sentence for a crime that was committed while serving another sentence or on parole, records staff shall treat that sentence as a separate sentence and compute statutory good time as if the consecutive sentence were a first sentence.
6. The projected mandatory release date may be modified based on any of the following:
 - a. The inmate was released on parole.
 - b. The date was extended due to forfeiture of earned statutory good time or extra good time for violation of a disciplinary rule under s. DOC 303.72.
 - c. Any period during which an inmate was in a status under which he or she was not earning extra good time.
 - d. The inmate was approved to waive entitlement to mandatory release in accordance with s. DOC 302.32.

(b) For an inmate subject to sentencing under 1983 Wis. Act 528, the projected mandatory release date shall be subject to all of the following:

1. Statutory or extra good time may not be earned.
2. The term of incarceration shall be two-thirds of the maximum term to which the inmate was sentenced reduced by any sentence credit granted under s. 973.155, Stats.
3. An inmate who was sentenced for crimes committed before June 1, 1984, but who chose to have 1983 Wis. Act 528 apply to him or her shall have their mandatory release date extended by prior forfeitures of statutory and extra good time for misconduct in the institution or while the inmate was on parole.
4. The projected mandatory release date of an inmate who is serving consecutive sentences shall be calculated by treating all consecutive sentences, no matter when the inmate's crimes were committed, as one continuous sentence.
5. The projected mandatory release date may be modified based on any of the following:
 - a. The inmate was released on parole.
 - b. The date was extended under s. DOC 303.72.
 - c. The inmate was approved to waive entitlement to mandatory release in accordance with this chapter.

(c) For an inmate serving concurrent sentences imposed at the same time, records staff shall consider the longer sentence as governing.

(d) Each sentence shall begin on the date the sentence is imposed. Sentence credit shall be applied under s. 973.155, Stats.

(e) For an inmate serving concurrent sentences imposed at different times, records staff shall treat each sentence as beginning on the date that the sentence was imposed. Sentence credit shall be applied under s. 973.155, Stats.

(4) DETERMINATION OF EXTENDED SUPERVISION DATE. For an inmate serving a bifurcated sentence, the extended supervision date shall be subject to the following:

(a) The term of confinement shall be the maximum term of confinement to which the inmate was sentenced, reduced by any sentence credit granted under s. 973.155, Stats.

(b) The extended supervision date of an inmate who is serving consecutive sentences shall be

calculated by treating all consecutive sentences, no matter when the crimes were committed, as one continuous sentence.

(c) The extended supervision date may be extended under s. DOC 303.72 for violation of a disciplinary rule.

(d) The extended supervision date may be extended if the inmate is approved to waive release under s. DOC 302.32.

(5) DETERMINATION OF RELEASE DATE FOR CONSECUTIVE BIFURCATED AND NON-BIFURCATED SENTENCES.

(a) The projected release date of an inmate who is serving consecutive sentences shall be calculated by treating all consecutive sentences, no matter when the crimes were committed, as one continuous sentence.

(b) Inmates serving consecutive sentences shall serve all periods of incarceration in prison prior to serving periods of community supervision.

DOC 302.23 Ambiguity in sentence. If the records staff determine that the terms of an imposed sentence or any other communication from the court are ambiguous, unclear, or potentially in conflict with sentencing statutes, the records staff shall notify the sentencing court and inmate in writing.

DOC 302.24 Sentence credit.

(1) Sentence credit determination and appropriate orders shall be in accordance with s. DOC 331.13 in all of the following situations:

(a) When parole or extended supervision is revoked and sentence is credited subject to the provisions of s. DOC 302.25, 302.26, 302.27, or 302.29.

(b) When probation is revoked for a probationer whose sentence was imposed and stayed.

(c) When judgments have been entered prior to May 17, 1978, the effective date of 1977 Act 354 creating s. 973.155, Stats.

(2) In situations not covered by sub. (1) the sentencing court shall determine sentence credit.

DOC 302.25 Discretionary parole violators not subject to 1983 Wis. Act 528.

(1) This section applies to an inmate to whom all of the following apply:

(a) The inmate committed their crime before June 1, 1984.

(b) Did not choose to have 1983 Wis. Act 528 apply.

(c) Were released by the parole commission under s. 304.06 (1), Stats.

(d) Violated terms and conditions of parole prior to their mandatory release date and whose supervision is revoked.

(2) The inmate shall receive credit for time served on the sentence from the beginning date of the sentence until the date of violation under sub (1)(d)determined by the reviewing authority under ch. DOC 331 or HA 2.

(3) The inmate shall receive credit, for all days in custody, authorized under s. 973.155, Stats., in connection with the violation. Credit shall be verified by the reviewing authority. Credit will also be applied to the applicable case when presentence credit is granted after revocation and during the current reincarceration of the inmate. Statutory good time shall be earned for all days in custody.

(4) The reviewing authority shall consider all of the following when making a decision regarding revocation:

(a) Statutory and extra good time may be forfeited.

(b) The amount of good time forfeited may not exceed the good time earned as of the date of violation under sub (1)(d).

(c) The inmate shall be allowed to earn good time on the amount of time forfeited.

(d) Statutory good time shall be earned at the rate being earned on the date of violation under sub (1)(d).

(5) The inmate must serve the sentence to the recalculated mandatory release date which, based on the decision of the reviewing authority, may include one or both of the following:

- (a) Tolloed time as defined in s. DOC 328.03 (40).
 - (b) Forfeited good time, less good time earned on the forfeited good time.
- (6) The maximum discharge date shall be extended by the amount of time tolloed.

DOC 302.26 Mandatory release parole violators not subject to 1983 Wis. Act 528.

(1) This section applies to an inmate to whom all of the following criteria apply:

- (a) Committed their crime before June 1, 1984.
- (b) Did not choose to have 1983 Wis. Act 528 apply to their.
- (c) Violated terms and conditions of parole following their mandatory release date and whose supervision is revoked.

(2) The inmate shall receive credit for time served on the sentence from the beginning date of the sentence to the mandatory release date for the sentence.

(3) The inmate shall receive credit, for all days in custody, authorized under s. 973.155, Stats., in connection with the violation under sub (1)(c). Credit shall be verified by the reviewing authority. Credit will also be applied to the applicable case when presentence credit is granted after revocation and during the current reincarceration of the inmate. Statutory good time shall be earned for all days in custody.

(4) The reviewing authority shall consider all of the following when making a decision regarding revocation:

- (a) Statutory and extra good time may be forfeited.
 - (b) The amount of good time forfeited may not exceed the amount of time from the mandatory release date to the maximum discharge date.
 - (c) Good time may be earned on the amount forfeited.
 - (d) Statutory good time may be earned at the rate applicable on the mandatory release date.
- (5) The inmate's maximum discharge date may be extended by an amount of time no greater than the amount of time tolloed under s. DOC 328.25 and ch. DOC 331 plus the period from the mandatory release date to the date of violation.

DOC 302.27 Parole violators subject to 1983 Wis. Act 528.

(1) This section applies to an inmate who has violated terms and conditions of parole, whose supervision is revoked, and to whom one of the following criteria applies:

- (a) Committed their crime on or after June 1, 1984.
 - (b) Chose to have 1983 Wis. Act 528 apply to him or her.
- (2) The inmate shall receive credit toward the satisfaction of the sentence from the beginning date of the sentence to the date of release to community supervision.
- (3) The inmate shall receive credit, for all days in custody, authorized under s. 973.155, Stats following the date of release. Credit shall be verified by the reviewing authority. Credit will also be applied to the applicable case when presentence credit is granted after revocation and during the current reincarceration of the inmate.
- (4) The inmate may be required by the reviewing authority to serve a period of confinement in a correctional institution up to the remainder of the sentence. The remainder of the sentence is the entire sentence less time served in custody prior to release to community supervision.
- (5) This period of confinement ordered by the reviewing authority may be extended for misconduct in accordance with s. DOC 303.72.
- (6) The inmate's maximum discharge date shall be recalculated by adding the remainder of the sentence to the date of custody after violation and subtracting credit received.

DOC 302.28 Discretionary release for parole violators. Nothing in this chapter shall limit the

authority of the chairperson of the parole commission to grant a discretionary parole in accordance with ch. PAC 1 to an inmate who had been previously paroled and had their supervision revoked.

DOC 302.29 Extended supervision violators.

(1) This section applies to inmates who are serving a bifurcated sentence and whose extended supervision has been revoked.

(2) An inmate who has had their extended supervision revoked shall serve a period of reconfinement up to the entire term of the sentence less time served in custody prior to release to community supervision. The period of reconfinement may be adjusted by any of the following:

(a) Credit toward the satisfaction of the sentence from the beginning date of the sentence to the date of release to community supervision.

(b) The inmate shall receive credit as determined by the reviewing authority for all days in custody following the date of release. Credit will also be applied when presentence credit is granted after revocation and during the current reincarceration of the case to which the credit applies. This period of reconfinement ordered by the reviewing authority may be extended for misconduct in accordance with s. DOC 303.72.

(3) An inmate's maximum discharge date shall be recalculated by adding the remainder of the sentence to the date of custody after violation and subtracting credit received. The remainder of the sentence is the entire sentence less time served in custody prior to release to community supervision.

DOC 302.30 Revocation of probation.

(1) A probationer whose probation is revoked shall receive credit toward the satisfaction of the sentence, including sentence credit in accordance with s. 973.155 (1), Stats. Probationers who before June 1, 1984 committed the crime for which they were sentenced and did not choose to have 1983 Wis. Act 528 apply to them shall receive credit for statutory good time earned while in custody.

(2) If the probationer has already been sentenced, the term of the sentence shall begin upon revocation.

(3) If the probationer has not been sentenced, both of the following shall apply:

(a) The probationer shall be returned to court for sentencing.

(b) The term of the sentence shall begin on the date of sentencing unless the sentence is consecutive to another sentence.

DOC 302.31 Effect of escape on sentence. The following shall apply to the sentence calculation of an inmate who escapes from custody:

(1) An inmate who escapes from custody shall receive no credit toward the service of the sentence during the period the person is unlawfully absent from custody.

(2) An inmate shall be regarded as unlawfully absent unless he or she is in the custody of law enforcement officials of any state or the United States.

(3) An inmate may not receive credit for time in custody while serving a sentence for a crime committed in a jurisdiction outside of Wisconsin while in escape status.

DOC 302.32 Waiver of good time, mandatory release, or release to extended supervision.

(1) An inmate may make a request to waive good time, mandatory release, or release to extended supervision.

(2) The inmate's request shall be in accordance with all of the following:

(a) Requests shall be submitted in writing to their assigned social worker.

(b) Requests shall be submitted between 30 and 90 days before the projected mandatory release date or extended supervision date.

- (c) The amount of good time waived, the extension of the mandatory release date, or extended supervision date shall not exceed 180 days.
- (d) Good time, mandatory release, or extended supervision that is waived shall not be reinstated, except for good cause.
- (3) The administrator shall approve or deny waivers based on resources of the department and needs of the inmate.
- (4) The decision shall be in writing and not subject to appeal.
- (5) The warden may submit a request to waive good time, mandatory release, or release to extended supervision on behalf of the inmate in extraordinary situations. Requests made under this subsection are not subject to s. DOC 302.32 (2).

DOC 302.33 Extra good time for inmates not covered by 1983 Wis. Act 528.

- (1) This section applies to inmates who committed their crime before June 1, 1984 and did not choose to have 1983 Wis. Act 528 apply to them.
- (2) An inmate shall earn extra good time under all of the following circumstances:
 - (a) By performing above average in a vocational, education, or job assignment.
 - (b) By being involuntarily unassigned.
 - (c) By being in one of the following statuses and earning extra good time immediately prior to placement in the status:
 - 1. Administrative confinement under ch. DOC 308.
 - 2. Observation under ch. DOC 311.
 - 3. Temporary lockup under s. DOC 303.10
 - 4. Disciplinary separation under s. DOC 303.72.
 - 5. Out of the institution for a court or medical appointment.
- (3) An inmate shall earn one day of extra good time credit for every 6 days in an eligible status.
- (4) If an inmate is entitled to extra good time for any fraction of a calendar day, that whole day shall be credited.

DOC 302.34 Special action release program.

- (1) In accordance with s. 304.02, Stats., the special action release program authorizes the secretary to relieve crowding in institutions by releasing select inmates to parole supervision other than by mandatory release or a discretionary parole.
- (2) To be eligible for special action release consideration, the inmate shall meet all of the following:
 - (a) Be parole-eligible under s. 304.06, Stats., and ch. PAC 1.
 - (b) Not be serving a life sentence.
 - (c) Not be serving a bifurcated sentence under s. 973.01, Stats.
 - (d) Not have been previously granted a special action release under this section if currently serving time on a new criminal conviction.
 - (e) Have served a minimum of 6 months in the Wisconsin prison system.
 - (f) Be within 18 months of mandatory release on the date of the special action release.
 - (g) Never have had a felony or misdemeanor conviction for an assaultive crime.
 - (h) Have no known history of assaultive conduct inside or outside of a correctional institution, except that an inmate who has a known history of assaultive conduct that did not result in a conviction may be considered for special action release if one of the following applies:
 - 1. The conduct occurred more than 5 years prior to SAR review by the social worker under sub. (5).
 - 2. The inmate acted in self-defense or defense of property.
 - 3. The inmate is to be released to a structured living arrangement such as a halfway house.
 - 4. The inmate's conduct was an isolated incident not likely to be repeated.

5. The inmate's age or physical condition makes repeat of the assaultive conduct unlikely.
 - (i) If an active detainer exists in another jurisdiction, the remainder of that sentence is equal to or longer than the remainder of the Wisconsin sentence and the jurisdiction issuing the detainer intends to obtain custody of the inmate immediately upon release.
 - (j) Have an approved parole plan.
 - (k) If to be supervised in another state, shall be accepted for supervision by that other state.
 - (l) Agrees to intensive supervision and any other special conditions the agent or secretary may impose.
- (3)** An inmate is eligible for special action release to parole supervision without meeting the eligibility criteria of sub. (2) if all of the following conditions are met:
 - (a) The inmate population equals or exceeds the statewide inmate population limit promulgated by rule under s. 301.055, stats.
 - (b) The inmate is not currently incarcerated regarding a felony conviction for an assaultive crime.
 - (c) The institution social worker or the agent has reason to believe the inmate will be able to maintain himself or herself in society without engaging in assaultive activity.
 - (d) The inmate is not granted a special action release more than 18 months before their expected release date under s. 302.11, stats.
 - (e) The inmate is eligible for release under s. 304.06 (1) (b), Stats.
- (4)** An inmate may waive eligibility for SAR consideration at any time by notifying the institution social worker, except that an inmate who has an active detainer may not waive eligibility for SAR consideration. To reestablish eligibility following a waiver, the inmate shall notify the institution social worker that the inmate no longer waives eligibility for SAR consideration.
- (5)** The following steps shall be taken in preparing an SAR referral:
 - (a) The social worker shall review inmate files to identify inmates who may be eligible for SAR consideration. The social worker may contact the agent to obtain further information concerning an inmate's eligibility.
 - (b) If an inmate appears to be eligible for SAR consideration, the social worker in consultation with the inmate shall develop a parole plan that considers the inmate's institutional conduct, the inmate's resources, and plans for the inmate's residence and job placement upon release.
 - (c) The social worker shall send a copy of the parole plan to the agent, the SAR coordinator, and the social worker's supervisor.
 - (d) The department shall notify in writing the office of the district attorney that prosecuted the inmate, the court that sentenced the inmate, and the victim of the crime committed by the inmate, if the victim submits a card under s. 304.06 (1) (f), Stats., that the inmate is being considered for SAR. The notice shall advise the district attorney, court, and the victim that they are permitted to submit written comments regarding the proposed release, which will be placed in the special action release record developed by the SAR coordinator for the secretary. The notice shall be mailed at least 21 days before the secretary under sub. (5) makes a decision concerning the release of the inmate.
 - (e) Upon receipt of the parole plan from the social worker, the agent shall carry out an investigation to determine if the plan is appropriate and shall include in that investigation assessments of the inmate's proposed residence, employment, and community treatment plans.
 - (f) If the plan is not appropriate, the agent shall suggest alternatives to the inmate and social worker and attempt to develop an acceptable plan in consultation with the inmate and social worker.
 - (g) In addition to the rules provided under ch. DOC 328, the agent may develop additional written rules and specific conditions for the inmate's parole supervision to achieve the goals and objectives of supervision under ch. DOC 328.
 - (h) The agent shall write a report that shall include the results of the agent's investigation. The report shall address probable reaction to the inmate in the community where the inmate proposes to reside and shall contain other relevant information that is not available to the institution.

- (i) The agent shall send a copy of the report under to the SAR coordinator.
- (j) The SAR coordinator shall assemble all relevant documents on an inmate, including the inmate's parole plan, the agent's report, any comments received from the district attorney's office, judge, or victim, a summary of the inmate's arrests and convictions, reasons why the parole commission denied parole, if applicable, and any other relevant information requested by the secretary.
- (k) The SAR coordinator shall submit the relevant information to the secretary for consideration.
- (6)** The secretary may consider the following factors in deciding whether to grant or deny an SAR:
 - (a) Parole eligibility.
 - (b) The inmate's criminal record, the nature of the offense of which the inmate was convicted, and any known history of assaultive conduct outside a correctional institution.
 - (c) Institutional adjustment.
 - (d) Adequacy of the parole plan.
 - (e) Population pressures.
 - (f) Risk to the public safety.
 - (g) Any other factors that relate to whether the inmate will be able to comply with the rules of parole and maintain himself or herself in open society without engaging in assaultive or any other criminal activity.
- (7)** If the SAR is granted, the secretary may impose in writing any special conditions that are appropriate. The secretary may modify the conditions of the former inmate's special action release at any time until discharge from supervision, and the agent may modify the rules and specific conditions of the inmate's parole supervision at any time until discharge from supervision. The conditions that the secretary may impose include the following:
 - (a) A period of intensive supervision that requires the former inmate to report to the agent on the first day of release and to contact the agent in person at least once a week for a minimum of 90 days, and that requires the agent to visit the former inmate's place of residence or employment once a month during the period of intensive supervision.
 - (b) Restrictions on residence.
 - (c) Restrictions on travel and local movement.
 - (d) Restrictions on associations.
 - (e) Restrictions on possessions.
 - (f) Restrictions on consumption of drugs and alcohol.
 - (g) Requirements for inpatient or outpatient treatment, including treatment for alcohol abuse or other drug abuse.
 - (h) Requirements for training and participation in other self-improvement programs including job training.
 - (i) Requirements for the former inmate to make himself or herself available for any tests or searches ordered by the agent, including urinalysis, breathalyzer, and blood sample tests, or for search of the former inmate's residence, person, or any property under their control.
 - (j) Electronic monitoring.
 - (k) Any other specific condition to achieve the purpose of maintaining the former inmate in open society without engaging in criminal activity.
- (8)** The institution where the inmate is incarcerated shall inform the inmate of the decision to grant or deny an SAR and, if granted, of any conditions imposed on the inmate's release.
- (9)** Before the inmate is released, the department shall notify the municipal police department and the county sheriff for the area where the inmate plans to reside and shall notify the victim of the crime committed by the inmate, if the victim submits a card under s. 304.06 (1) (f), Stats., and if the victim can be found.
- (10)** An offender released under special action release who violates the rules or conditions of their supervision is subject to revocation under ch. DOC 331 procedures.
- (11)** The secretary's decision is final and not subject to appeal.

DOC 302.35 Certain earned releases.

(1) The department may release to extended supervision or to another sentence inmates who are serving the confinement portion of a bifurcated sentence under s. 302.113 (9h), Stats. of 2009, *repealed* by 2011 Wisconsin Act 38, and who meet all of the following criteria:

(a) The inmate is serving a confinement portion of a bifurcated sentence for a misdemeanor or a Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats.

(b) The inmate committed the offense, or was convicted, or sentenced on the offense between October 1, 2009 and August 3, 2011.

(c) The social worker or agent has reason to believe that the inmate will be able to maintain himself or herself while on extended supervision without engaging in assaultive activity.

(d) The release to extended supervision date is not more than 12 months before the inmate's extended supervision eligibility date.

(2) An inmate is not eligible for certain earned release if any of the following apply:

(a) The inmate is the subject of a bulletin issued under s. 301.46 (2m), Stats.

(b) The inmate has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

(c) The inmate has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.

(d) The inmate is required to register under s. 301.45, Stats.

(e) The inmate has, in his or her lifetime, been committed under ch. 975, Stats.

(f) An inmate who is serving, begins to serve, or has served, during his or her current period of confinement, a sentence for a Class A or B felony.

(g) An inmate who is serving, begins to serve, or has served during his or her current period of confinement a sentence for a felony defined in ch. 940, Stats. (3) The department shall consider all of the following when making a decision to release an inmate under this section:

(a) The inmate meets the eligibility criteria under sub. (1) and is not excluded from consideration under sub. (2).

(b) The inmate has served sufficient time so that release would not depreciate the seriousness of the offense.

(c) The inmate has demonstrated satisfactory adjustment in the institution.

(d) The inmate has not refused or neglected to perform required or assigned duties, including programming and treatment identified by the department.

(e) The inmate has participated in and has demonstrated sufficient efforts in required or recommended programs which have been made available by demonstrating one of the following:

1. The inmate has gained maximum benefit from programs.

2. The inmate can complete programming and treatment in the community without presenting an undue risk.

3. The inmate has not been able to gain entry into programming and treatment and release would not present an undue risk.

(f) The inmate has developed an adequate release plan.

(g) The inmate is subject to a sentence of confinement in another state or is in the United States illegally and may be deported.

(h) The inmate has reached a point at which the department concludes that release would not pose an unreasonable risk to the public and would be in the interests of justice.

(4) Release to detainer. An inmate who has an active detainer is eligible for certain earned release consideration without meeting the criteria under sub. (1) (a) and (b) if the detainer concerns a sentence imposed in another jurisdiction and the remainder of the confinement portion of that sentence is equal to or longer than the remainder of the confinement portion of the Wisconsin

sentence. In this paragraph, "active" means that the jurisdiction issuing the detainer intends to obtain custody of the inmate immediately upon release.

(5) Prior to its decision to recommend release of an inmate under this section, the department shall notify an enrolled victim for the purpose of giving the victim the opportunity of providing input.

(6) Prior to release of an inmate under this section, the department shall notify an enrolled victim that the inmate is to be released.

(7) upon the inmate's release, The department shall notify the court and district attorney

(8) Release authority. The secretary may release eligible inmates under this section consistent with public safety and reentry goals.

(9) When an inmate who has served less than the entire confinement time of the sentence imposed under s. 973.01, Stats., is released to extended supervision or to another sentence under this section, the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

DOC 302.36 Positive adjustment time. Inmates who are eligible to earn positive adjustment time between may petition the sentencing court to adjust the inmate's sentence under s. 973.198, Stats., in accordance with the following:

(1) The inmate may petition the sentencing court up to 90 days prior to the completion of the confinement portion less positive adjustment time earned if all of the following criteria are met:

(a) The inmate is serving a sentence imposed under s. 973.01, Stats.

(b) The inmate earned positive adjustment time under s. 302.113, 2009 Stats., or s. 304.06, 2009 Stats. in accordance with one of the following:

1. The inmate serving a sentence imposed prior to October 1, 2009, for a crime committed after December 30, 1999, may earn positive adjustment time under s. 302.113, 2009 stats., or under s. 304.06, 2009 stats., based on the number of days of positive adjustment time earned between October 1, 2009, and August 3, 2011.

2. The inmate serving a sentence for a crime committed, conviction entered, or sentence imposed between October 1, 2009, and August 3, 2011, may earn positive adjustment time under s. 302.113, 2009 stats., or under s. 304.06, 2009 stats., based on the number of days of positive adjustment time earned between October 1, 2009, and discharge from the sentence.

(c) The inmate served the confinement portion of their sentence less positive adjustment time earned.

(2) If the court determines that the inmate has earned positive adjustment time, the court may reduce the term of confinement in prison by the amount of time remaining in the term of confinement in prison portion of the sentence by the number of positive adjustment time earned, less up to 30 days, and shall lengthen the term of extended supervision so that the total length of the bifurcated sentence originally imposed does not change.

(3) An inmate who files a petition under sub. (1) shall be released to extended supervision or to another sentence only as determined and approved by the court.

(4) If an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually.

DOC 302.37 Sentence adjustment.

(1) Except as provided in s. 973.198, Stats., an inmate may petition the sentencing court to adjust the sentence if the following criteria are met:

(a) The inmate is serving a sentence imposed under s. 973.01, Stats., for a crime other than a Class B felony.

(b) The inmate served at least the applicable percentage of the term of confinement in prison portion of the sentence.

(2) If the court determines that the inmate has served at least the applicable percentage of the term

of confinement in prison portion of the sentence, the court may reduce the term of confinement in prison by the amount of time remaining in the term of confinement in prison portion of the sentence, less up to 30 days and shall lengthen the term of extended supervision so that the total length of the bifurcated sentence originally imposed does not change.

(3) The court may reduce the length of the term of extended supervision under s. 973.195 (1r) (h), Stats.

(4) If an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually.

DOC 302.38 Challenge incarceration program.

(1) Inmates who are convicted of a crime specified in ch. 940, Stats., or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, Stats., are excluded from eligibility for the challenge incarceration program.

(2) The department or sentencing court shall determine eligibility under one of the following:

(a) For inmates sentenced for crimes committed before December 31, 1999, the department determines eligibility.

(b) For inmates sentenced for crimes committed on or after December 31, 1999, the sentencing court determines eligibility.

(3) The department may enroll an inmate in the program if all of the following criteria are met:

(a) The inmate is determined to be eligible for participation under subs. (1) and (2).

(b) The inmate has not attained the age of 40 on the date of program entry if sentenced on or after July 26, 2003 or the inmate has not attained the age of 30 on the date of program entry if sentenced before July 26, 2003.

(c) The inmate volunteers to participate in the program and agrees to the rules and regulations of the program.

(d) The inmate meets department determined physical, medical, and psychological criteria required for program participation.

(e) The department determines the inmate has a substance abuse need.

(f) The department determines the inmate is suitable for the program. In determining suitability, the department may consider any of the following:

1. Department policy affecting enrollment in the program.

2. Department resources.

3. Inmate needs.

4. Inmate custody assignment.

5. Length of sentence being served.

6. Length of time in a particular custody classification, overall time served during the current period of incarceration, and time remaining to serve.

(4) The department may determine participant privileges to support program objectives.

(5) For inmates sentenced for crimes committed before December 31, 1999, the department shall determine successful completion of the program and notify the parole commission who will parole the inmate for that sentence.

(6) For inmates sentenced for crimes committed on or after December 31, 1999, the department shall determine successful completion of the program and notify the sentencing court of the successful completion to initiate a modification of the inmate's sentence. The department shall release the inmate within 6 working days upon receipt of a court order modifying the inmate's bifurcated sentence.

(7) The department shall provide notice to an enrolled victim prior to an inmate's release under this section.

DOC 302.39 Earned release program.

(1) Inmates convicted of a crime specified in ch. 940, Stats., or s. 948.02, 948.025, 948.03, 948.05, 948.05 1, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, Stats., are excluded from eligibility.

(2) The department or sentencing court shall determine eligibility for the program under one of the following:

(a) For inmates sentenced for crimes committed before December 31, 1999, the department determines eligibility.

(b) For inmates sentenced for crimes committed on or after December 31, 1999, the sentencing court determines eligibility.

(c) For inmates who are serving a bifurcated sentence and whose sentence was imposed on or after December 31, 1999, but before July 26, 2003, the inmate may petition the sentencing court with the department's approval to determine eligibility. The inmate shall serve a copy of the petition on the district attorney who prosecuted him or her.

(3) The department may enroll an inmate in the program if all of the following criteria are met:

(a) The inmate is determined to be eligible for participation under subs. (1) and (2).

(b) The inmate volunteers to participate in the program and agrees to the rules and regulations of the program.

(c) The department determines that inmate has a substance abuse need.

(d) The department determines the inmate is suitable for the program. In determining suitability, the department may consider any of the following:

1. Department policy affecting enrollment in the program.

2. Department resources.

3. Inmate needs.

4. Inmate custody assignment.

5. Length of sentence being served.

6. Length of time in a particular custody classification, overall time served during the current period of incarceration, and time remaining to serve.

(4) The department may determine participant privileges to support program objectives.

(5) For inmates sentenced for crimes committed before December 31, 1999, the department shall determine successful completion of the program and notify the parole commission who will parole the inmate for that sentence.

(6) For inmates sentenced for crimes committed on or after December 31, 1999, the department shall determine successful completion of the earned release program and notify the sentencing court of the successful completion to initiate a modification of the inmate's sentence. The department shall release the inmate within 6 working days upon receipt of a court order modifying the inmate's bifurcated sentence.

(7) The department shall provide notice to an enrolled victim prior to an inmate's release under this section.

DOC 302.40 Risk reduction sentence.

(1) The sentencing court must impose a risk reduction sentence under s. 973.031, 2009 Stats. to be eligible for consideration under this section.

(2) Inmates convicted of a crime specified in s. 940.03, 940.06, 940.11 (1), 940.235, 940.302, 940.31 (1), 940.32 (3), 941.21, 946.465, 948.03 (2) (a), or 948.40 (4) (a) or for a felony murder under s. 940.03, an offense against an elderly or vulnerable person, as defined in s. 939.22 (20d), an offense related to ethical government, as defined in s. 939.22 (20m), or an offense related to school safety, as defined in s. 939.22 (20s), Stats., are excluded from eligibility.

(3) An inmate is suitable for a risk reduction sentence if the inmate meets all of the following criteria:

(a) Is eligible for participation under subs. (1) and (2).

- (b) Volunteers to participate in the program.
- (c) Completes an assessment of the inmate's criminogenic program need and risk of reoffending.
- (d) Participates in formulation of a risk reduction plan.
- (e) Successfully completes department designated programs, treatment and services related to the assigned criminogenic program need.
- (f) Maintains satisfactory adjustment.
- (g) Develops a department approved release plan.
- (h) Attains release eligibility date.
- (i) Is referred by the department to the sentencing court.
- (4) The department shall monitor and review an inmate's progress toward completion of the risk reduction plan through the reclassification hearing. The risk reduction plan may be modified if programming is unavailable or a new program need is identified.
- (5) The department may rescind or withhold a determination regarding the completion of the risk reduction plan based on misconduct or failure to complete any component of the risk reduction plan.
- (6) The department shall notify the sentencing court if the inmate has successfully completed the requirements of a risk reduction sentence. The department shall release the inmate within 6 working days upon receipt of a court order modifying the inmate's bifurcated sentence.
- (7) The department will notify an enrolled victim that the inmate will be released under this section.
- (8) The department shall release an inmate to extended supervision on or after the inmate's release eligibility date when the inmate has completed the risk reduction plan under sub. (3).
- (9) If an inmate is released after successfully completing the risk reduction plan and demonstrating satisfactory institution adjustment but prior to their release eligibility date, the inmate's overall sentence shall be reduced by the confinement time not served. The term of extended supervision shall not be increased.

DOC 302.41 Extraordinary health condition or geriatric petitions.

- (1) An inmate who is serving a bifurcated sentence for a crime, other than a class A or B felony, may seek modification of the bifurcated sentence under s. 302.113 (9g), Stats., if the inmate meets one of the following criteria:
 - (a) The inmate is 65 years of age or older and has served at least 5 years of the term of confinement in the prison portion of the bifurcated sentence.
 - (b) The inmate is 60 years of age or older and has served at least 10 years of the term of confinement in the prison portion of the bifurcated sentence.
 - (c) The inmate has an extraordinary health condition.
- (2) Time served under sub. (1) (a) and (b) is calculated on each count.
- (3) An inmate who meets one of the criterion under sub. (1) may submit a petition to a classification specialist. A petition submitted under this section shall contain documentation required by the department policy.
- (4) Upon receipt of a petition from an inmate, the classification specialist shall review the petition to determine if the inmate is eligible to petition under sub. (1).
- (5) If the inmate meets the criteria for a hearing, the classification specialist shall schedule a hearing with the PRC to determine if public interest would be served by a modification of the inmate's sentence under s. 302.113 (9g).
- (6) The PRC may request additional information from the agent, social worker, or community agencies.
- (7) An inmate who is eligible to petition for modification of the sentence under this section may have an attorney present in proceedings.
- (8) During the hearing the inmate or an attorney representing the inmate, if applicable, may provide a written or oral statement regarding the inmate's petition and whether public interest would be

served by a modification of the bifurcated sentence.

(9) The hearing may be conducted in person, by telephone, videoconferencing or other virtual communication at the discretion of the department.

(10) The PRC may defer making a decision at the hearing in order to obtain relevant information that may affect the final decision.

(11) During the hearing, the classification specialist shall summarize the inmate's petition and case factors being considered.

(12) The department may consider all of the following in determining if public interest would be served by modification of an inmate's sentence:

- (a) Risk to the community/public safety.
- (b) Institution adjustment.
- (c) Program participation.
- (d) Impact on department resources.
- (e) Release plan.

(13) The PRC shall do one of the following:

- (a) Approve the petition and notify the inmate and the sentencing court that public interest would be served by a modification of the bifurcated sentence.
- (b) Deny the petition and notify the inmate that public interest would not be served by a modification of the bifurcated sentence.

(14) The PRC shall prepare a report containing a summary of the information provided at the hearing.

(15) The inmate may not file another petition within one year of the date of the denial by the PRC or the sentencing court.

(16) The department may withhold or rescind a PRC decision based on subsequent changes in safety concerns or in the inmate's medical condition, conduct, legal status, or release plan.

SECTION 2. DOC 306.10 (3) is amended to read:

DOC 306.10 (3) MOVEMENT OUTSIDE INSTITUTION. Staff may use mechanical restraints in transporting an inmate outside an institution, ~~in accordance with s. DOC 302.12.~~

SECTION 3. DOC 308.04 (12) (a) is amended to read:

DOC 308.04 (12) (a) Shall have a classification of maximum ~~security custody~~; supervision, movement, and program shall be in accordance with ss. DOC ~~302.05 (1)~~ 302.09 (1) and 306.10.

SECTION 4. DOC 309.466 (1) is amended to read:

DOC 309.466 (1) Upon transfer of the inmate to the first placement, following ~~assessment and evaluation~~ initial classification under s. DOC ~~302.12~~ 302.16, and in all subsequent reclassifications under s. DOC 302.17, the institution business office shall deduct 10% of all income earned by or received for the benefit of the inmate, except from work release and study release funds under ch. DOC 324, until \$5,000 is accumulated, and shall deposit the funds in a release account in the inmate's name. The department shall adjust the maximum release account amount every 5 years by multiplying \$5,000 by the percentage increase of the Consumer Price Index, as defined in s. 16.004 (8) (e) 1., Stats., from January 1, 2010 to January 1 of the next fifth year [2015, 2020] and adding that amount to \$5,000, rounded to the nearest \$100 increment. If the Consumer Price Index reflects a percentage decrease, the maximum release account amount will not be reduced but remain the same.

SECTION 5. DOC 313.05 (2) (a) is amended to read:

DOC 313.02 (2) (c) “Reclassification” or “RC” means the process associated with the assignment of inmate custody, program need subsequent to an initial classification established in s. DOC ~~302.18~~302.17.

SECTION 6. DOC 313.05 (2) (a) is amended to read:

DOC 313.05 (2) (a) Interview applicants for specific positions under the shop supervisor's supervision. If an opening occurs, the shop supervisor may select any inmate applicant for the position ~~and recommend that the PRC approve the inmate for the program assignment.~~ The selection shall be consistent with current education requirements, employment opportunities, and affirmative action policies.

SECTION 7. DOC 313.07 (7) is amended to read:

DOC 313.07 (7) A recommendation concerning extra good time for those inmates to whom 1983 Wis. Act 528 does not apply shall be included in the evaluation. The criteria for an extra good time recommendation shall be those under s. DOC ~~302.31 (4) to (6)~~ 302.33.

SECTION 8. DOC 324.03 (4) is amended to read:

DOC 324.03 (4) “Reclassification” or “RC” means the process associated with the assignment of inmate custody, institution placement and program need subsequent to an initial classification.

SECTION 9. DOC 324.04 (1) is amended to read:

DOC 324.04 (1) Reside in a minimum security facility and have a community custody classification as described in s. DOC ~~326.03 (4)~~ 302.09 (4).

SECTION 10. DOC 324.05 (4) is amended to read:

DOC 324.05 (4) The criteria set forth under ss. DOC ~~302.07~~ 302.11 and ~~302.09~~ 302.14 shall be considered in making the decision to approve or deny the inmate’s application for work or study release.

SECTION 11. DOC 324.13 (7) is amended to read:

DOC 324.13 (7) If the inmate is found to have committed the violation alleged, the warden or superintendent may terminate the inmate’s work or study release placement. The inmate may be referred to ~~the PRC~~ RC for a review of custody level in accordance with s. DOC ~~302.18~~ 302.17.

SECTION 12. DOC 325.07 (2) (d) is amended to read:

DOC 325.07 (2) (d) Any other conditions that shall be complied with by the inmate on temporary release. The conditions imposed shall comply with s. DOC ~~302.05~~ 302.09.

SECTION 13. DOC 326.04 (1) is amended to read:

DOC 326.04 (1) The inmate shall be housed in a minimum security facility as described in s. DOC ~~302.06~~ 302.10, including contract facilities, and the inmate shall have a community custody status as defined in s. DOC ~~326.03 (4)~~ 302.09 (4).

SECTION 14. DOC 327.05 (4) is amended to read:

DOC 327.05 (4) The ~~program review~~ reclassification procedure shall be the procedure for changing a ~~security~~ custody classification under s. DOC ~~302.19~~ 302.17 and this chapter.

SECTION 15. DOC 327.05 (8) is amended to read:

DOC 327.05 (8) The inmate's eligibility under s. DOC 327.04, the objectives under s. DOC ~~302.14~~ 302.02, and any other factors that relate to whether the inmate will be able to maintain himself or herself in a community residential confinement placement without engaging in criminal or disciplinary activity may be considered in making the decision under this section.

SECTION 16. DOC 327.06 (8) is amended to read:

DOC 327.06 (8) The inmate's eligibility under s. DOC 327.04, the adequacy of the inmate's plan, the objectives under s. DOC ~~302.14~~ 302.02 and any other factors which relate to whether the inmate will be able to maintain himself or herself in a CRC placement without engaging in criminal or disciplinary activity may be considered in making the decision.

SECTION 17. DOC 327.08 (4) is amended to read:

DOC 327.08 (4) The criteria under s. ~~ss.~~ DOC 302.16 302.11 and 302.13, the availability of programs in the community, and any other factor relevant to the inmate's rehabilitation and the protection of the community may be considered in making the decision.

SECTION 18. DOC 330.03 (4) is amended to read:

DOC 330.03 (4) "Division administrator" means the administrator of the department of corrections, division of program planning and movement when the pharmacological treatment hearing is conducted as part of the ~~program review~~ reclassification process in s. DOC ~~302.48~~ 17, and the administrator of the department of corrections, division of community corrections when the hearing is not conducted as part of the program review process.

SECTION 19. DOC 330.08 is amended to read:

DOC 330.08 **Manner of hearing.** The hearing may be included as part of the ~~program review~~ reclassification process in s. DOC ~~302.16~~ 302.17 and appearance may be in person or by telephone.

SECTION 20. DOC 333.03 (11) is amended to read:

DOC 333.03 (11) "Reclassification" or "RC" means the process associated with the assignment of inmate custody, institution placement and program need subsequent to an initial

classification.

SECTION 21. DOC 333.04 (1) (d) is amended to read:

DOC 333.04 (1) (d) Transferred to DIS by DAI in accordance with s. 301.048 (2) (am) 2., Stats., ~~and s. DOC 302.20~~, provided that the inmate has a case plan that includes an intended residence, either a school or job placement or an alternative acceptable to the PRC and a proposal for meeting treatment goals in the community.

SECTION 22. DOC 333.06 (2) is amended to read:

DOC 333.06 (2) The criteria under ~~s. ss. DOC 302.16~~ 302.11 and 302.13, the availability of programs in the community and any other factor relevant to the inmate's rehabilitation and the protection of the community shall be considered in making the decision.

SECTION 23. DOC 333.10 (2) is amended to read:

DOC 333.10 (2) ~~The PRC RC~~ RC may recommend to the administrator or the administrator's designee that the inmate's DIS placement be terminated and the inmate returned to a type 1 prison or that the inmate be transferred to another community or another living arrangement or that any other appropriate action be taken. ~~PRC RC~~ RC review of the inmate's DIS placement shall be conducted in accordance with ss. DOC 302.17 and 302.19 ~~and 302.20~~, except that "administrator or their designee" shall be substituted for "superintendent" in those provisions and no disciplinary hearing shall be held to determine if a violation has occurred. The decision of the administrator or the administrator's designee shall be final.

SECTION 24. EFFECTIVE DATE. 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, or on a specific date as determined by the Department, whichever is later.