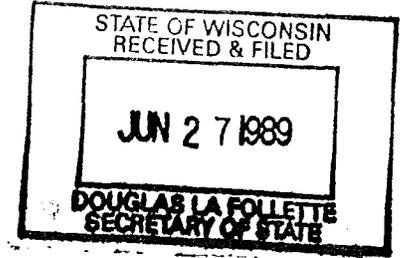


CR 89-19



CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Patricia A. Goodrich, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to the security classification of inmates of adult correctional institutions were duly approved and adopted by this Department on June 27, 1989.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

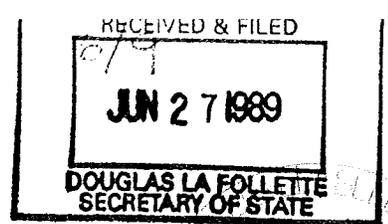
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 27th day of June, 1989.

SEAL:

Patricia A. Goodrich, Secretary
Department of Health and Social Services



ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, RENUMBERING AND CREATING RULES



To renumber HSS 30.06(3) to (7); to repeal and recreate HSS 302.14 and Note, 302.19 and Note and 302.20(1) and (3); and to create HSS 30.06(3) and 302.145, relating to classification of inmates of adult correctional institutions.

Analysis Prepared by the Department of Health and Social Services

In a recent decision, Richards v. Traut, Case No. 87-2108, the Wisconsin Court of Appeals ordered the Department to discontinue the method it was then using to assign security classifications to inmates of adult correctional institutions. In 1983 the Department had implemented an objective classification system which made use of a custody rating form. That system required raters to give numerical scores to certain factors to represent the severity of the behavior or the offense. The total score on the form was used to determine the inmate's security classification. However, the current rule, s. HSS 302.14, states that the criteria for assigning a security classification shall include only listed factors, with no mention of scores assigned to factors. Since the scoring used on the custody rating form was not sanctioned by the rule, i.e., the scores on the form were not listed as criteria in the current rule, the court found that relying on the scores was improper. Following the Court of Appeals decision, staff who assign security classifications to inmates have been considering the criteria listed in s. HSS 302.14, but they have not been using the custody rating form to weigh the criteria. This has hindered the Department's ability to make appropriate classification decisions. Since an inmate's security classification determines the type of supervision the inmate will receive, a proper determination is critical for the protection of the public, staff and other inmates.

These rule changes allow the Department to implement the Division of Corrections' Risk Rating System to evaluate the risks that an inmate presents to public safety and to the security and management of a correctional institution. The rules list an inmate's risk rating as an appropriate factor to take into consideration in determining the inmate's security classification. The Risk Rating System measures risk based on documented behavior that illustrates a level of assaultiveness or aggressiveness. It evaluates the inmate's current offense, offense history, sentence structure, institution adjustment, escape history, emotional or mental health, program participation and such temporary factors as detainers. The Risk Rating System is a tool which aids correctional staff in interpreting and weighing the factors listed in s. HSS 302.14. The intent of the Risk Rating System is to promote consistent, objective and effective classification decisions and limit bias and subjective interpretation of the classification criteria as much as possible. Correctional staff nonetheless retain discretion to exercise professional judgment in making the final security classification determination.

These rule changes also create additional criteria for the security classification of inmates serving a life sentence. Nearly all of these persons are serving a life sentence for having committed a murder. Inmates serving a life sentence are placed in one of four categories, depending upon the facts surrounding the murder and whether the inmate has a criminal history in addition to the murder. Lifers are required to serve a minimum time in a maximum security institution unless the PRC recommends a placement in a medium security institution at an earlier date and that recommendation is approved by the classification chief. Category I lifers serve a minimum of 15 years, Category II lifers a minimum of 8 years, Category III lifers a minimum of 6 years and

Category IV lifers at least up to the date 3 years prior to their parole eligibility date. These rules require that in order to be classified as minimum security, a lifer must have served the required time in a maximum security institution, be parole eligible, have a request by the Parole Board for a preparole plan and have the minimum security classification approved by the institution's Program Review Committee, the Classification Chief and the Director of the Bureau of Adult Institutions.

The Department's authority to renumber, repeal and create these rules is set forth in ss. 46.03(6) and 227.11(2)(a), Stats. The rules interpret ss. 53.04, 53.07 and 53.18, Stats.

SECTION 1. HSS 30.06(3) to (7) are renumbered 30.06(4) to (8).

SECTION 2. HSS 30.06(3) is created to read:

HSS 30.06(3) If the inmate is serving a life sentence, the board chairperson shall review the parole consideration and shall decide whether to defer or to recommend a grant of parole and whether to request a preparole plan.

SECTION 3. HSS 302.14 and Note are repealed and recreated to read:

HSS 302.14 FACTORS IN ASSIGNING A SECURITY CLASSIFICATION. The following factors may be taken into consideration in assigning a security classification to an inmate:

(1) The nature of the offense of which the inmate was convicted, and its seriousness. Evaluation of the seriousness of the offense may include consideration of the following:

(a) Physical danger to another by the offense;

(b) Harm done to another in the commission of the offense;

(c) Whether the offender exhibited physical aggressiveness that exposed another to harm;

(d) Whether the crime was a crime against property; and

(e) Mitigating factors;

(2) The criminal record of the inmate;

- (3) The length of sentence being served;
- (4) The motivation for the crime of which the inmate was convicted;
- (5) The inmate's attitude toward the offense and sentence;
- (6) The inmate's vulnerability to physical assault by other inmates;
- (7) The inmate's prior record of adjustment in a correctional setting, including any record of escape;
- (8) The length of time the inmate has been in a particular security classification and institution;
- (9) The medical needs of the inmate, including the need for physical or psychological treatment;
- (10) Time already served for the offense;
- (11) The reaction to the inmate in the community where the offense was committed or in the community where the institution is located;
- (12) The inmate's conduct and adjustment in the general population of the institution;
- (13) The inmate's performance in programs;
- (14) A detainer filed with respect to the inmate, except that if a detainer is to be considered in giving an inmate a security classification, the detainer shall be evaluated on the basis of the potential penalties which may be imposed upon disposition of whatever underlies the detainer. The procedure for evaluating the detainer shall include the following:
 - (a) The registrar shall inform the inmate and the inmate's social worker of the detainer;
 - (b) The inmate's social worker shall make reasonable efforts to find out from the authority which has filed the detainer the reasons for filing the detainer, the underlying facts upon which the detainer is based, evidence of those facts and the potential penalties for whatever underlies the detainer;

(c) The inmate's social worker shall make available, with the inmate's permission, to the authority which filed the detainer any information useful in determining whether the detainer should be maintained;

(d) The inmate's social worker shall inform the inmate of all information acquired and given pursuant to pars. (b), (c) and (d);

(e) The inmate shall be given the opportunity to place on file and before anyone considering the detainer additional facts or facts contrary to those acquired and placed on file; and

(f) The extent to which the detainer is relied on and the reasons for relying on it shall be given to the inmate in writing; and

(15) The inmate's risk rating as high risk, moderate risk or low risk, determined by employing the department's risk rating system. Under the risk rating system, if one or more factors are rated high risk, the risk rating is high risk. If one or more factors are rated moderate risk and no factors are rated high risk, the risk rating is moderate risk. If all factors are rated low risk, the risk rating is low risk. In this subsection, "risk rating system" means the interpretive guidelines, procedures and forms used to assess the risk that an inmate presents to public safety and to the security and management of the correctional institution.

Note: HSS 302.14. HSS 302.14 lists criteria that may be considered in the assignment of a security classification. While the criteria are for the most part self-explanatory, some elaboration on them is desirable.

HSS 302.14(1) makes the nature of the offense relevant and identifies factors relevant to seriousness. These factors are not inclusive and others may be relevant and should be considered in individual cases. It should also be noted that the absence of the factors is relevant. So, for example, if an offense posed no physical danger to another or if the offender did something to avoid or diminish the physical danger to another, this should be considered.

Subsection (2) makes the offender's criminal record relevant.

The length of sentence is of importance in assigning a security classification, as is the amount of time already served for the offense. These criteria are in subs. (3) and (10). An inmate who is close to release, either because he or she has served close to the expiration of sentence or because of the duration of sentence, may be less of an escape risk or may not need as close

supervision as an offender with a substantial period of confinement ahead of him or her. Because of the special escape risk inmates serving life sentences pose, HSS 302.145 establishes additional criteria for the security classification of lifers.

The motivation for the crime and the inmate's attitude are also relevant. If the inmate's motivation was anger and he or she continues to be angry and shows no remorse, that person may require closer supervision than a person motivated by acute economic need who is sorry for having committed the offense. Subsections (4) and (5) permit these factors to be taken into account.

Subsection (6) explicitly recognizes that physical assaults occur in correctional institutions and that this is relevant to classification. Sometimes, vulnerability may dictate close supervision for the inmate's protection. In other cases, minimum supervision will be necessary, because the inmate is not exposed to assaultive inmates in a particular minimum security setting.

Subsection (7) takes into account the fact that prior conduct is sometimes an indicator of future conduct. While this is not always so, an inmate's prior record, particularly with respect to escape, is properly considered.

Subsection (8) recognizes that the period of time in a particular security setting and institution is relevant to security classification.

It may be necessary, in some cases, to observe people in a maximum security setting before lowering their rating even though some factors suggest immediate lowering of rating is possible. This might be true in a situation in which there is difficulty in deciding the appropriate classification and a short trial period with the inmate is desirable.

On the other hand, if an inmate has demonstrated over a long period of time that he or she has no difficulty in a particular setting, it may be desirable to decrease the level of supervision or transfer the person to a different institution. This enables the inmate to accept more responsibility and to avoid the unnecessary boredom that may accompany confinement in the same place for a long period of time.

In some cases, the medical needs of an inmate greatly affect his or her security rating. For example, an institution may not be staffed to administer a particular medication. It is necessary to keep an individual requiring such medication where the medication can be properly administered. This is provided for in sub. (9).

Subsection (11) makes community reaction a relevant criterion for the security classification. While this criterion is not often used, it is true that community reaction to particular offenders sometimes must be considered. For example, if there is hostility to an offender in a particular place such that adjustment to a nearby institution would be made difficult, it may not be desirable to place the individual in that institution. This adds unnecessarily to the pressures on the inmate.

Subsection (12) makes the inmate's conduct in the institution relevant. An inmate who is aggressive or who is in constant disciplinary trouble may thereby require close supervision. On the other hand, some inmates have difficulty in maximum security institutions where the environment is quite structured but have few problems in minimum security institutions. This subsection permits these facts to be taken into account.

Subsection (13) makes past program performance relevant. Past performance is usually an indicator of the future. The correctional system is committed to helping people improve. It is important to recognize that people can change for the better.

Subsection (14) states that detainers are relevant to the security classification decision but that detainers must be evaluated with respect to the potential penalties an inmate would face upon disposition of whatever underlies the detainer. This is in conformity with Reddin v. Israel, 455 F. Supp. 1215 (E.D. Wis. 1978).

Detainers are particularly troublesome to inmates and to correctional officials because they make correctional planning difficult. It is not generally understood that detainers frustrate inmates as well as correctional authorities. Detainers make program and parole planning difficult because of the uncertainty they create. Correctional authorities are reluctant to use scarce resources in planning for a person's future if the planning may go for naught because a detaining authority takes custody upon parole release.

Understandably, inmates are frustrated by this. When the time and place of release are uncertain inmates often lack incentive to constructively involve themselves in programs that will help them upon release. The uncertainty may also have adverse psychological consequences for the inmate.

Rarely is anyone, including the authority who filed the detainer, certain about the disposition of whatever underlies the warrant. Indeed, detainers are sometimes filed for non-criminal matters like non-support and, in criminal matters, without serious or informed consideration of whether the matter will be pursued when the inmate is available. Whether the authority which filed the detainer eventually takes custody of the inmate may depend upon the sentence being served, a fact the authority has no information about. For discussions of the effects of detainers, see Dickey and Remington, *Legal Assistance for Institutionalized Persons - An Overlooked Need*, 1976 So. Ill. L.R. 175, 184; D. Wexler, *The Law of Detainers* (U.S. Department of Justice Monograph, 1973); L. Abramson, *Criminal Detainers*, (Ballinger Publishing Co. 1979).

Subsection (14) requires several things before a detainer can be considered in classification. It has several purposes: (1) to permit the corrections staff to consider the alleged facts underlying the detainer; (2) to permit the inmate to know what those alleged facts are; (3) to permit the inmate to make known additional or contradictory facts; (4) to ensure that the importance attached to the detainer is made clear to the inmate. This last point may enable an inmate, through the social worker or directly, to raise with the authority which placed the detainer the desirability of maintaining it, in the light of its effect.

While dealing with detainers effectively may require legal assistance, it is important for the division to inform the detaining authority of the continuing effect of a detainer. For this reason, the inmate's social worker should be kept informed about the detainer and is required to communicate with the detaining authority about the detainer. See sub.(14)(b) and (c). This may encourage the exchange of information that will enhance the correctional process.

Subsection (15) recognizes that the risk that an inmate presents to public safety and to the security and management of a correctional institution as measured by the Division of Corrections' risk rating system is relevant to the security classification decision. The measurement of risk is based on documented behavior that illustrates a level of assaultiveness or

aggressiveness. The risk rating system is a tool that aids correctional staff in interpreting and weighing the other individual factors in this section. The intent of the risk rating system is to promote consistent, objective and effective classification decisions and limit bias and subjective interpretation of the classification factors as much as possible. The system, however, permits correctional staff to exercise professional judgment in making the final security classification determination.

SECTION 4. HSS 302.145 is created to read:

HSS 302.145 REQUIREMENTS FOR ASSIGNING A SECURITY CLASSIFICATION TO AN INMATE SERVING A LIFE SENTENCE. (1) DEFINITIONS. In this section:

(a) "Bureau director" means the director of the bureau of adult institutions in the Wisconsin department of health and social services.

(b) "Life sentence" means a sentence of life imprisonment imposed following a conviction for a Class A felony. An inmate sentenced to life imprisonment who is released on parole, violates a condition of parole and is returned to a state correctional institution with or without a new sentence is serving a life sentence. If the governor pardons or commutes a life sentence, it is no longer a life sentence. In this paragraph, "Class A felony" means a crime specified as a Class A felony in chs. 939 to 951 of the Wisconsin Statutes or a crime from another jurisdiction that is punishable by a sentence of life imprisonment under that jurisdiction's laws.

(c) "Parole violator" means an inmate sentenced to life imprisonment who is released on parole, violates parole, has parole revoked under ch. HSS 31 and is returned to a state correctional institution with or without a new sentence.

(2) CATEGORIES OF LIFERS. (a) Each inmate serving a life sentence shall be designated as a category I, II, III or IV lifer. If the designation as to category of lifer is made at A&E, the A&E director or designee shall make the

designation. At other times the PRC shall make the designation. A PRC designation as to category of lifer requires a unanimous vote. If a vote of the PRC is not unanimous, the case shall be referred to the classification chief to make a designation as to category of lifer. Categories of lifers shall be designated in accordance with the following criteria:

1. A category I lifer is an inmate serving a life sentence who does not meet the criteria for a category IV lifer and who either committed a particularly vicious murder or other class A felony, including a murder or other class A felony involving torture, sexual abuse, body dismemberment, mutilation or sacrificial rituals, or multiple murders, or whose prior criminal record includes one or more felony or misdemeanor convictions or, within 10 years before commission of the current offense, one or more juvenile delinquency adjudications, for behaviors which reflect an intent to inflict great bodily harm, as defined in s. 939.22, Stats., on the victim.

2. A category II lifer is an inmate serving a life sentence who does not meet the criteria of a category I, III or IV lifer.

3. A category III lifer is an inmate serving a life sentence who does not meet the criteria for a category I or category IV lifer and who has had no prior felony convictions and no prior juvenile delinquency adjudications within 10 years before the current offense for a felony offense and fewer than 5 prior misdemeanor convictions and juvenile delinquency adjudications within 10 years before the current offense for a misdemeanor offense, with none of the misdemeanor convictions or adjudications reflecting an intent to inflict great bodily harm on the victim, and no previous incarcerations in any state or federal correctional institution. The category III lifer had a close or long-term relationship with the victim. The murder or other class A felony was

not committed for material gain and did not involve planning and preparation. The murder or other class A felony was a spontaneous emotional response to specific circumstances occurring at the time of the murder.

4. A category IV lifer is an inmate serving a life sentence who has a parole eligibility date set by the court under s. 973.014, Stats., later than the date provided in s. 57.06(1), Stats.

(b) An inmate may appeal the designation as to category of lifer to the classification chief within 10 days after receipt of the designation.

(c) The PRC may review a designation as to category of lifer at any time on its own direction or at the request of the classification chief.

(3) NEW LIFERS AND LIFERS WHO HAD A MAXIMUM SECURITY CLASSIFICATION ON DECEMBER 7, 1988. (a) Applicability. The factors listed under s. HSS 302.14 may be taken into consideration in assigning a security classification to an inmate serving a life sentence who is received at a correctional institution following sentencing or revocation on or after December 7, 1988, and to an inmate serving a life sentence who had a maximum security classification on December 7, 1988. In addition, the requirements in this subsection shall apply to those inmates.

(b) Time to be served in a maximum security institution. Requirements for service of time in a maximum security institution by category of lifer are set out in this paragraph. A lifer shall serve in a maximum security institution at least the number of years that apply to his or her category, unless the PRC recommends placement in a medium security institution at an earlier date and the PRC recommendation is approved by the classification chief, or unless the lifer is in need of individualized care in which case he or she may be transferred to the Wisconsin Resource Center (WRC) under s. 53.055, Stats., with the time

served in WRC deducted from the requirement for service of time in a maximum security institution. The following are the requirements for service of service of time in a maximum security institution:

1. Unless the classification chief approves placement in a medium security institution at an earlier date, a category I lifer shall serve a minimum of 15 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category I lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wisconsin Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wisconsin Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

2. Unless the classification chief approves placement in a medium security institution at an earlier date, a category II lifer shall serve a minimum of 8 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category II lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wisconsin Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wisconsin Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

3. Unless the classification chief approves placement in a medium security institution at an earlier date, a category III lifer shall serve a minimum of 6 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category III lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wisconsin Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wisconsin Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

4. Unless the classification chief approves placement in a medium security institution at an earlier date, a category IV lifer shall serve his or her sentence in a maximum security institution at least up to the date 3 years prior to his or her parole eligibility date or for a minimum of 15 years, reduced by any sentence credit granted pursuant to s.973.155, Stats., whichever is longer. If a category IV lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wisconsin Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wisconsin Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

5. Following revocation, a parole violator with an underlying life sentence but without the imposition of a new sentence or sentences shall serve a minimum of 12 months in a maximum security institution starting from the date of return to a state correctional institution, unless the classification chief approves placement in a medium security institution at an earlier date; and

6. Unless the classification chief approves placement in a medium security institution at an earlier date, following revocation, a parole violator with an underlying life sentence and with the imposition of a new sentence or sentences shall serve in a maximum security institution a minimum of 12 months or 50% of the time from the date of custody for the violation to a projected mandatory release date, calculated using the formula under s. 53.11(1), Stats., on the new sentence or sentences imposed, whichever is greater.

(c) Eligibility for minimum security classification. To be eligible for a minimum security classification, an inmate serving a life sentence, including a parole violator with an underlying life sentence, shall have:

1. Reached parole eligibility as defined in ss. 57.06(1) and 973.014, Stats.;

2. Served the required time in a maximum security institution under par. (b), unless the classification chief approved placement in a medium security institution at an earlier date;

3. Had a request by the parole board for a preparole plan;

4. Had a recommendation for minimum security classification made by the PRC under s. HSS 302.19(4), using the factors listed under s. HSS 302.14, or, if the vote of the PRC for the change was not unanimous, had a recommendation for minimum security classification made by the A&E director and superintendent or designee, but if they could not agree, had the case referred to the classification chief;

5. Had a recommendation for minimum security classification made by the classification chief and referred to the bureau director for a final decision; and

6. Had a final decision by the bureau director approving the inmate's minimum security classification.

(4) LIFERS WHO HAD A MINIMUM SECURITY OR MEDIUM SECURITY CLASSIFICATION ON DECEMBER 7, 1988. (a) Applicability. The factors listed under s. HSS 302.14 may be taken into consideration in assigning a security classification to an inmate serving a life sentence who had a minimum security or medium security classification on December 7, 1988. In addition, the requirements in this subsection shall apply to those inmates.

(b) Minimum security classification. Prior to December 7, 1988, the parole board shall have provided a parole consideration file review for each inmate serving a life sentence who had a minimum security classification and who was parole eligible on December 7, 1988. If the parole board requested a preparole plan for an inmate, that inmate shall remain in minimum security classification until the inmate is found guilty of a major disciplinary violation under ch. HSS 303 or is released on parole under ch. HSS 30, except that an inmate in need of individualized care may be transferred to the Wisconsin Resource Center under s. 53.055, Stats. If the inmate was not parole eligible on December 7, 1988, or the parole board did not request a preparole plan, the PRC shall have reviewed the inmate's security classification. The criteria for this review and all subsequent reviews shall be the criteria under sub. (3)(c)1 and 3 to 6 and s. HSS 302.14.

(c) Medium security classification. An inmate serving a life sentence who had a medium security classification on December 7, 1988, shall remain classified medium security until the inmate is found guilty of a major disciplinary violation under ch. HSS 303, meets the eligibility requirements for minimum security classification under sub. (3)(c)1 and 3 to 6 or is released on parole under ch. HSS 30. An inmate serving a life sentence who was classified medium security on December 7, 1988, may be eligible for a minimum security classification without meeting the requirements of sub. (3)(c)2.

(d) Major disciplinary violations. If an inmate serving a life sentence who had a minimum or medium security classification on December 7, 1988, is found guilty of a major disciplinary violation, the PRC shall review the inmate's security classification using the criteria under sub. (3)(c)1 and 3 to 6 and s. HSS 302.14.

SECTION 5. HSS 302.19 and Note are repealed and recreated to read:

HSS 302.19 PROGRAM REVIEW PROCEDURE. (1) Before an inmate's security classification, assignment to an institution or program assignment is reviewed by the PRC, a staff member shall interview the inmate and inform the inmate orally of the approximate date of the review, the criteria for the review, the facts to be considered at the review and the fact that the inmate has the option to appear before the PRC. The inmate shall also be informed that if he or she refuses to attend the review or disrupts the review, the review may be conducted without the inmate being present.

(2) Before the scheduled PRC review, the staff member who contacted the inmate under sub. (1) shall:

(a) Make known to the PRC in writing the inmate's view of the appropriate security classification, program assignment or assignment to an institution; and

(b) Make a written recommendation to the PRC as to the appropriate security classification, program assignment or assignment to an institution.

(3) If the inmate appears, the coordinator shall inform the inmate of the facts being considered, the criteria for the decision and the recommendation of the staff member under sub. (2). The inmate shall be afforded the opportunity to present additional facts, dispute facts being considered and state an opinion about the appropriate security classification or program assignment.

(4) The classification chief shall approve or deny changes in an inmate's security classification or transfer upon the recommendation of the PRC. If the inmate is serving a life sentence and the PRC recommends a minimum security classification, the classification chief shall make a recommendation to the bureau director to approve or deny the minimum security classification and refer the case to the bureau director for a final decision.

(5) Each member of the PRC shall have one vote. A recommendation for a security classification change, transfer or approval for work or study release requires a unanimous vote of the PRC. A change in program assignment requires a majority vote of the PRC.

(6) The factors to be considered may include those stated in ss. HSS 302.14 and 302.16. In addition, the criteria under s. HSS 302.145 shall apply to the security classification of inmates serving a life sentence.

(7) For a change in security classification, transfer or approval for work or study release status, if a vote of the PRC is not unanimous, the case shall be referred to the A&E director and superintendent or designee for a recommendation as to security classification change, transfer or approval for work or study release status. If the A&E director and superintendent or designee are unable to agree, the case shall be referred with comments but without a formal recommendation to the classification chief. The classification chief shall decide whether to approve or deny a transfer, approval for work or study release status or a change in security classification except that if the inmate is serving a life sentence the decision to approve a minimum security classification shall be made by the director of the bureau of adult institutions upon the recommendation of the classification chief. The inmate's views, to the extent they differ from the PRC's, shall be forwarded to the classification chief.

(8) For a change in program assignment, if the PRC vote results in a tie, the case shall be referred to the superintendent or designee for a decision.

(9) An inmate may appeal the PRC's decision concerning a program assignment to the superintendent within 10 days after receipt of the decision.

(10) Reasons for the recommendation as to the change in security classification, transfer or work or study release status and the decision about a program assignment shall be given to the inmate in writing and shall include the specific facts relied upon and criteria to which the facts were applied.

(11) To the extent that the classification chief's decision or, in relevant cases, the decision of the director of the bureau of adult institutions, differs from the recommendations, reasons for the decision shall be provided to the PRC and the inmate in writing and shall include the facts relied upon and the criteria to which the facts were applied.

Note: HSS 302.19. HSS 302.19 provides a procedure for review and change of an inmate's security classification, institutional placement or program assignment. Except for inmates serving a life sentence, the division's classification chief has final decisionmaking authority for all security classification changes and transfers. The PRC has this authority for program assignments. Inmates may appeal the PRC's decision as to program assignment to the institution superintendent.

Typically, the classification chief's decision is made on the recommendation of the PRC. If a recommendation for transfer or change of security classification is not unanimous, all recommendations are considered.

If there is not unanimity as to the change in security classification, transfer or approval for work or study release, the A&E director and the superintendent or designee have the authority to make a recommendation as to the security classification and placement in an institution. If they cannot agree, the issue goes to the classification chief without a formal recommendation but with comments. If there is a tie vote as to program assignment, the superintendent or designee has the authority to make that decision.

The same principles discussed in the note to HSS 302.16 dictate the criteria for program review. There is no need to repeat them here. A staff member must interview the inmate and make a recommendation. This is desirable to ensure continued review of the inmate's status.

The inmate has the option to appear before the PRC unless the inmate refuses or is disruptive. In the center system, the distance of the inmate from the PRC may require that the personal appearance be before a single member of the committee. This should occur as infrequently as possible.

The procedure for decisionmaking at the end of the A&E process and periodically thereafter by the program review committee may seem cumbersome. However, the assignments made at these stages have a substantial impact upon the quality of life of an inmate and upon parole release decisions. For example, a person at a minimum security institution is accorded more freedom than a person at a maximum security institution. Successful adjustment at a center might

influence the parole release decision. So correctional authorities and inmates have a substantial interest in ensuring that classification decisions are made in a careful way, by experienced people after a thorough development and review of the facts.

With roughly 6,500 inmates in the Wisconsin correctional system, review of each inmate every 6 months means that there are thirteen thousand reviews each year, exclusive of reviews due to changed circumstances. This large volume of work means that responsibility must be delegated at each institution. Yet uniformity is also desirable. For these reasons, decisionmaking is structured to include staff at the institutional level while leaving final authority with the division's classification chief or, in the case of a lifer's minimum security classification, the director of the bureau of adult institutions.

SECTION 6. HSS 302.20(1) and (3) are repealed and recreated to read:

HSS 302.20 INTER-INSTITUTION TRANSFERS. (1) The transfer of an inmate from one institution to another requires the approval of the classification chief. Except for a transfer made as a part of the initial security classification, assignment to an institution, and program assignment during the A&E process or as otherwise provided under this section, a transfer may be approved only upon the recommendation of the PRC at the institution at which the inmate is residing. If the inmate has been transferred pursuant to sub. (2), the PRC of the institution at which the inmate resided before the transfer has responsibility for the recommendation. If the PRC is unable to make a unanimous recommendation as to transfer, the procedure established under s. HSS 302.19(7) shall be followed. The criteria for the transfer decision and recommendation are those in ss. HSS 302.14, 302.145 and 302.16.

(3) Before a review as provided in sub. (2), the inmate shall be afforded a disciplinary hearing. After the hearing, the adjustment committee shall forward to the PRC the results and specific findings of facts relating to the alleged disciplinary violations. The PRC may consider this information and the criteria under ss. HSS 302.14, 302.145 and 302.16 before making a recommendation as to a change in security classification or a transfer, or a decision about a program assignment. The procedure provided for in s. HSS 302.19 shall be followed in the review.

The repeals and rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

WISCONSIN DEPARTMENT OF
HEALTH AND SOCIAL SERVICES

By: 
Patricia A. Goodrich
Secretary

Dated: June 27, 1989

Seal:

mlc/
12-8-19/legal





State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

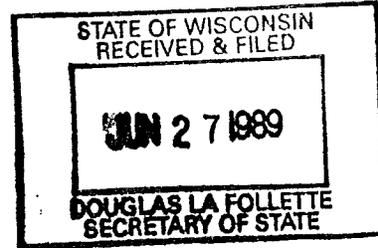
Tommy G. Thompson
Governor

Patricia A. Goodrich
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

June 27, 1989

Mr. Orlan Prestegard
Revisor of Statutes
7th Floor - 30 on the Square
Madison, Wisconsin 53702



Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 302.14 and 302.145, administrative rules relating to the security classification of inmates of adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules apply to the Department, adult correctional institutions, and inmates of adult correctional institutions. They do not directly affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Patricia A. Goodrich
SECRETARY

Enclosure



Rules



State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

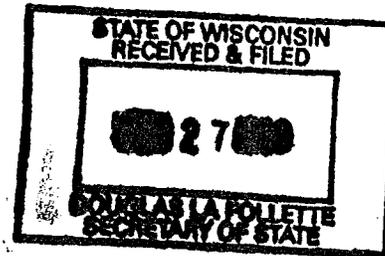
Tommy G. Thompson
Governor

Patricia A. Goodrich
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

June 27, 1989

Honorable Douglas La Follette
Secretary of State
10th Floor - 30 on the Square
Madison, Wisconsin 53702



Dear Mr. La Follette:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 302.14 and 302.145, administrative rules relating to the security classification of inmates of adult correctional institutions.

These rules are also being submitted to the Revisor of Statutes for publication in the Wisconsin Administrative Register.

Sincerely,

Patricia A. Goodrich

Patricia A. Goodrich
SECRETARY

Enclosure

