

**STATEMENT OF SCOPE
DEPARTMENT OF CORRECTIONS**

Rule Number: Chapter DOC 302

Relating to: Inmate Classification, Sentence and Release Provisions

Rule Type: Permanent

1. DETAILED DESCRIPTION OF THE OBJECTIVE OF THE PROPOSED RULE.

The objective of the rule is to review the entire chapter and update accordingly to reflect changes in the law and changes in operations and practices of the department as they affect inmate classification, sentence and release provisions.

2. DESCRIPTION OF EXISTING POLICIES AND NEW POLICIES INCLUDED IN PROPOSED RULE AND AN ANALYSIS OF POLICY ALTERNATIVES.

The current rule chapter provides in detail the procedures for initial classification and reclassification of inmates. This procedure identifies facility security classification, custody level, program or treatment assignments and institution placement. The chapter also sets forth the procedures followed in computing sentencing information which is used in determining eligibility for parole and release dates.

The last significant revision for this chapter was completed in 2018 in response to the passage of 2011 WI Act 38. Since that time, there have been changes to the laws and correctional practices which need to be addressed, such as 2021 Wisconsin Act 227. These changes have an impact on the eligibility of those being considered for the Challenge Incarceration Program as well as individuals who would like to request a modification of a bifurcated sentence due to geriatric and/or extraordinary health condition. Further, they also have an impact on the calculation of time served for geriatric petitions.

Additionally, the implementation of evidence-based practices has brought about the development of a new department risk assessment resulting in changes to the reclassification procedure. Other changes to practice, such as not requiring individuals with less than 6 months to serve to be present during initial classification, have been implemented.

Based on the above changes to the laws and correctional practices there is a need to review the current rule chapter and update accordingly to reflect current practices.

3. STATUTORY AUTHORITY.

Section 227.11 (2)(a) – (c): Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

Section 301.02: The department shall maintain and govern the state correctional institutions.

Section 301.03(2): Supervise the custody and discipline of all prisoners and the maintenance of state correctional institutions and the prison industries under s. 303.01.

Section 301.21: The department may enter into one or more contracts with another state or a political subdivision of another state for the transfer and confinement in that state of prisoners who have been committed to the custody of the department.

Section 302.07: The warden or superintendent shall maintain order, enforce obedience, suppress riots and prevent escapes. For such purposes the warden or superintendent may command the aid of the officers of the institution and of persons outside of the prison; and any person who fails to obey such command shall be punished by imprisonment in the county jail not more than one year or by a fine not exceeding \$500. The warden or superintendent may adopt proper means to capture escaped inmates.

Section 302.25: The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Section 302.26: The secretary is responsible for performing all functions necessary or incidental to carrying out the requirements of the interstate corrections compact under s. 302.25. The secretary may delegate and redelegate any of the functions as provided in s. 15.02(4). If a contract under s. 301.21 and 302.25 involves the transfer of more than 10 prisoners in any fiscal year to any one state or to any one political subdivision of another state, the contract may be entered into only if it is approved by the legislature by law or the joint committee on finance.

Section 302.27: The department may contract with a local unit of government, as defined in s. 16.957(1)(k), for temporary housing or detention in county jails, county houses of correction, or tribal jails for persons placed on probation or sentenced to imprisonment in state prisons or to the intensive sanctions program. The rate under any such contract may not exceed \$60 per person per day. Nothing in this subsection limits the authority of the department to place persons in jails under s. 301.048(3)(a)1.

4. ESTIMATE OF AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OTHER RESOURCES NECESSARY TO DEVELOP THE RULE.

The Department estimates that it will take approximately 400 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

5. LIST WITH DESCRIPTION OF ALL ENTITIES THAT MAY BE AFFECTED BY THE PROPOSED RULE.

This proposed rule will affect inmates, the Department of Corrections (DOC), DOC staff and the public.

6. SUMMARY AND PRELIMINARY COMPARISON WITH ANY EXISTING OR PROPOSED FEDERAL REGULATION THAT IS INTENDED TO ADDRESS THE ACTIVITIES TO BE REGULATED BY THE PROPOSED RULE.

There are no specific federal regulations which address the assessment and evaluation, security classification, custody level determination or sentence computation of individuals sentenced to Wisconsin prisons for violations of Wisconsin criminal statutes.

7. ANTICIPATED ECONOMIC IMPACT OF IMPLEMENTING THE RULE. NOTE IF THE RULE IS LIKELY TO HAVE AN ECONOMIC IMPACT ON SMALL BUSINESSES.

Rule changes will likely have minimal to no economic impact on the DOC or its county stakeholders.

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