

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 96-092

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

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

a. Although the analysis of Clearinghouse Rule 96-092 summarizes the contents of the rule revision, it does not explain the changes made in existing rules as required in s. 1.02 (2) (b), Manual. Explaining the changes is especially important because Clearinghouse Rule 96-092 repeals and recreates ch. DOC 326, rather than amending particular provisions of the current chapter, so that a reader cannot easily ascertain the changes. Also, because many of the provisions of Clearinghouse Rule 96-092 are identical or similar to provisions in current ch. DOC 326, revision of the chapter by amendment would provide the reader with a better understanding of the proposed changes.

Also, in the second paragraph of the analysis, “life” should replace “live.”

b. In s. DOC 326.05 (3), “shall” should replace “will.” Also, in s. DOC 326.10 (2), “shall” should replace “is expected to” and the reference should be to “state statutes and rules and local ordinances.”

c. In s. DOC 326.10 (4), “An” should replace “The.” In s. DOC 326.11 (2), “An inmate who violates” should replace “Inmates who violate.”

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

It is not clear why s. DOC 326.12 refers to a 1983 Act (1983 Wisconsin Act 528) on good time credit rather than a statute on this subject. Also, what is “extra good time credit for inmates not covered by 1983 Wis. Act 528”?

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

a. Section DOC 326.04 specifies requirements that an inmate must meet to be eligible for leave. Subsection (1) requires that the inmate be housed in a minimum security facility. “Minimum security facility” is not defined in ch. DOC 326. Clarity of this provision would be improved by a cross-reference to a statutory or Administrative Code definition. Such a cross-reference may eliminate the need for the vague reference to “including contract facilities.”

Subsection (2) requires the inmate to demonstrate a need (for leave) consistent with one of the purposes under s. DOC 326.02. Rather than cross-referencing s. DOC 326.02, s. DOC 326.02 could be eliminated and sub. (2) could be revised to set forth the list of approved purposes for leave.

Subsection (3) specifies that the inmate may not be confined nor have a criminal conviction for a “violent offense” or “history of assaultive behavior.” Only the term “violent offense” is defined in s. DOC 326.03. Thus, the phrase “history of assaultive behavior” should be defined in this provision or in a separate definition in s. DOC 326.03.

b. Section DOC 326.05 prescribes the process for obtaining leave. Subsection (1) requires that the inmate apply for a leave “...far enough in advance of the requested departure date to permit investigation....” Can a specific time be specified in lieu of this vague application deadline?

Subsection (2) requires that the inmate provide all of the necessary information to prove eligibility, as specified under s. DOC 326.04. Additionally, this provision requires the inmate to agree in advance to: “...all conditions of the leave, including, but not limited to urinalysis or breathalyzer tests, personal or strip searches by department staff or law enforcement personnel.” This vague reference to conditions of leave is an ambiguous substitute for current s. DOC 326.06, which requires minimum conditions to be imposed on all leaves and which specifies additional conditions that may be imposed. Is it the intent of the department to substitute a vague reference to conditions for the specific list of minimum conditions specified in current ch. DOC 326? If so, an explanation for this change should be set forth in the analysis of the rule.

Subsection (3) (c) requires staff of the institution to notify the assigned parole agent of the “basic leave plan information.” Presumably, the reference to “assigned parole agent” refers to the agent who has been assigned to monitor the leave. This should be clarified as should the reference to “**basic** leave plan information.” Is this the same as “the details of the approved leave” in s. DOC 326.07? Both “basic leave plan information” and the phrase in s. DOC 326.07 should be clarified.

Subsection (3) (e), relating to the investigation and documentation of the application in a timely manner, seems to be redundant with the introductory clause which specifies that the warden or superintendent must designate a staff member to investigate and verify the application information. If the intent of this provision is to put a time limit on the investigation, then a specific time limit should be substituted for the vague reference to “timely manner.”

Subsection (4) requires, following the investigation, that the completed application for leave be referred to the warden or superintendent with the recommendation to approve or deny

the leave. This provision should be revised to clarify that the recommendation is by the staff member who is assigned the responsibility to investigate and verify the application information under sub. (3) if this is the intent of this provision. Subsection (4) should be rewritten in the active voice to specify this; e.g., "...the staff member designated under sub. (3) shall refer the completed application to...."

c. Section DOC 326.06 (3) specifies that complaints about violations of "procedures of the process" shall be reviewed under ch. DOC 310. The phrase "procedures of the process" is awkward and redundant. It is recommended that this clause be eliminated in favor of a reference to either the procedures or the process under s. DOC 326.05.

d. Section DOC 326.10, relating to inmate conduct while on leave, contains inmate requirements that are similar to conditions. Although current ch. DOC 326 includes separate sections dealing with inmate conditions and inmate conduct, these sections could be combined so as to set forth all the conditions that must be imposed on inmate leaves. This may be what is intended by s. DOC 326.10 because the Note to that section specifies that: "These provisions must be part of the leave agreement so the inmate is aware of them." In fact, subs. (3) and (4) of this section refer to "leave agreement" and the "conditions of leave," while not expressly stating that subs. (1) and (2) are conditions that must be set forth in the agreement and complied with by the inmate. This confusion could be eliminated if this section were retitled "Conditions of Leave" and a complete list of the mandatory conditions of leave were specified.

Although there may be a good reason to eliminate current s. DOC 326.06, relating to conditions of leave, and to modify current s. DOC 326.12, relating to inmate conduct while on leave, to substitute a vague requirement that the inmate comply with the law and DOC policies and procedures [see proposed s. DOC 326.10 (2)] for specific conduct requirements and restrictions, these changes do not improve the clarity of current ch. DOC 326. For example, current s. DOC 326.12 (3) prohibits an inmate from taking into his or her body "...any alcohol beverage or controlled substance, except as authorized by a physician." This specific proscription is not retained in proposed s. DOC 326.10. In its place is the general requirement under s. DOC 326.10 (2) that the inmate comply with the law and department policies and procedures and agree to submit to urinalysis and breathalyzer tests under s. DOC 326.05 (2).