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STATE OF WISCONSIN )  
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DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

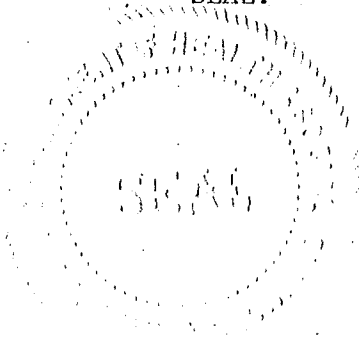
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department do hereby certify that the annexed rules relating to extra good time credit for adult correctional inmates were duly approved and adopted by this department on March 16, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such 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 St., in the city of Madison, this 16th day of March, 1981.

SEAL:



Donald E. Percy, Secretary  
Department of Health and Social Services

ORDER OF THE DEPARTMENT  
OF HEALTH AND SOCIAL SERVICES  
ADOPTING RULES.

Relating to a rule concerning extra good time credit for adult correctional inmates.

Analysis prepared by the Department of Health and Social Services.

This proposed rule interprets section 53.12(1), Wis. Stats., regarding credit for diligence in work or study by adult correctional inmates. A related proposed rule, HSS 309.55, concerning inmate compensation for participation in approved work or study programs, and rule HSS 302.21 concerning sentence computation and diminution of time for good conduct, interpret related sections 53.12(2) and 53.11, Wis. Stats., respectively.

This proposed rule provides for the award of extra good time credit to those inmates in certain specific statuses and to those whose diligence in labor or study surpasses the general average and entitles the inmates to a diminution of sentence at a rate provided for in the rule. Provision is established for monthly evaluation of an inmate's performance and inmate-requested review of the determination.

Pursuant to authority vested in the Department of Health and Social Services by section 227.014(2), Wis. Stats., the department hereby adopts rules interpreting section 53.12(1), Wis. Stats., as follows:

Section HSS 302.27 of the Wisconsin Administrative Code is adopted to read:

HSS 302.27 Extra good time.

(1) CONDITIONS FOR EARNING CREDIT. In order to provide an incentive to inmates in approved work and study programs to develop and reinforce positive behavior, and to promote institutional order, an inmate shall earn extra good time credit if he or she is:

- (a) Assigned to a vocational, job, school, or program assignment under ch. HSS 302 and surpasses the general average in diligence in labor or study for that assignment (see subsection (4));
- (b) Involuntarily unassigned and:
  - 1. His or her last assignment was terminated because of medical or psychological problems caused or aggravated by the assignment, which were verified by the clinical staff and which made it difficult or impossible to perform in the assignment, and the appropriate staff member was notified within two working days after termination of the last assignment, of the inmate's willingness to work at another assignment consistent with his or her abilities; or
  - 2. Is eligible for an assignment but has not been offered one by the program review committee (PRC) under ch. HSS 302;

- (c) In administrative confinement under ch. HSS 308 and was earning extra good time credit in his or her status immediately prior to this confinement;
- (d) In observation under ch. HSS 311 and was earning extra good time credit in his or her status immediately prior to this confinement;
- (e) In temporary lockup (TLU) under ch. HSS 303 and was earning extra good time credit in his or her prior status; or in TLU immediately after being in program adjustment, or control segregation under ch. HSS 303, and he or she was earning extra good time credit in the prior nonsegregation status. If the inmate's status in TLU is a result of a disciplinary charge, he or she may earn extra good time credit until the time of the disposition of the charge. If found innocent, the inmate may continue to earn extra good time credit. If found guilty, the inmate shall not thereafter be eligible to earn extra good time credit until he or she leaves segregation;
- (f) Participating in a correspondence course approved for study assignment by the PRC;
- (g) Out of the institution for a court appearance or dental or medical appointment and he or she was earning extra good time credit in the status immediately prior to leaving the institution for such matters;

- (h) In sick cell status and he or she was earning extra good time credit in the status immediately prior to this status; or
  - (i) In a hospital placement (including those inmates transferred to mental health or medical facilities) and was earning extra good time credit in the status immediately prior to this status.
- (2) CONDITIONS UNDER WHICH EXTRA GOOD TIME CREDIT SHALL NOT BE EARNED.
- An inmate shall not earn extra good time credit if the conditions under subsection (1) are not satisfied or if he or she:
- (a) Is voluntarily unassigned;
  - (b) Is involuntarily unassigned for reasons other than those stated under subsection (1)(b), for instance, to simply avoid work or study;
  - (c) Is in adjustment segregation;
  - (d) Is in program segregation;
  - (e) Is in control segregation;
  - (f) Refuses to accept a work or study assignment offered by the PRC;  
or
  - (g) Is in voluntary confinement - unless the inmate requested placement in this status upon the recommendation of, or with

approval of the security director for the purpose of ensuring the inmate's safety and the inmate was earning extra good time prior to such placement.

- (3) CRITERIA FOR AWARDING EXTRA GOOD TIME CREDIT. The division shall establish reasonably uniform written criteria that shall be used for the awarding of extra good time credit for all vocational, job, school, and program assignments with similar necessary skills and responsibilities within all adult correctional facilities.
- (a) To the extent that is necessary because of the unique requirements of a vocational, job, school or programming assignment each supervisor shall establish additional reasonable criteria consistent with the necessary skills and responsibilities of that assignment that shall be used to evaluate an inmate's diligence in that assignment for the purpose of awarding extra good time credit.
- (b) The criteria under subsection (3) or subsection (4) shall be the only criteria used in the determination of whether to award credit and shall state what is meant by "the general average in diligence in labor or study" for that assignment.
- (c) If an inmate is not capable of performing in his or her assignment at the level of "the general average in diligence," for instance, because of poor dexterity skills or mental, developmental, or physical disabilities that have been confirmed

through clinical testing, the supervisor shall develop new reasonable criteria for evaluation consistent with the skills and responsibilities of that assignment and the special disabilities of the inmate, if the inmate, his or her social worker, and supervisor agree that a change of assignment is unnecessary or undesirable.

- (d) The criteria for evaluating inmate diligence in performance for each assignment and any special criteria developed pursuant to subsection (c) shall be available to inmates prior to commencement of the assignment and to the staff upon request.

(4) MONTHLY PERFORMANCE EVALUATION. Each supervisor shall make a monthly written evaluation of the inmate's performance. Such an evaluation shall indicate whether or not extra good time credit is recommended for an inmate. If extra good time credit is not recommended, the reasons for this decision shall be noted on the evaluation.

- (a) If extra good time credit is not recommended for an inmate for a particular month, he or she shall receive written notice of the decision from the supervisor, including the reasons for it, within five (5) working days of the decision.

- (b) An inmate may appeal a decision under subsection (4) to his or her supervisor within five (5) days of receipt of notice. The supervisor shall have the authority to amend his or her earlier decision in favor of the inmate within five (5) workings days of

the appeal. If amended, the registrar and the inmate shall receive written notification of the change and the reasons for it. Failure by the supervisor to render a decision within the allowed time shall signify an affirmance of the earlier decision, and the inmate shall be notified of this.

(c) If the supervisor fails to amend his or her earlier decision within the time allowed, the inmate may appeal to the superintendent within five (5) working days after that time. If the superintendent fails to render a decision within five (5) working days after the appeal, the decision of the supervisor under subsection (10) is affirmed, and the inmate shall be notified of this.

(d) Any question regarding an inmate's eligibility for credit under subsection (1) or (2) shall be referred to the superintendent for resolution.

(5) SCHEDULE OF GOOD TIME CREDIT. An inmate shall earn extra good time credit as follows:

<u>Extra good time credit earned for a calendar month (in days)</u>	<u>Cumulative number of days in a calendar month in a status eligible for credit</u>	<u>Cumulative number of days in a calendar month in a status not entitling inmate to credit</u>
0	0	30
1	6	24
2	12	18
3	18	12
4	24	6
5	30	0



- (a) If an inmate is entitled to extra good time for any fraction of a calendar day, that whole day shall be credited.
  
- (b) An inmate shall earn fractions of one day of extra good time for each day in a status entitling the inmate to credit.

NOTE: HSS 302.27 deals with the award of extra good time credit to inmates who are assigned to approved vocational, job, school, or program assignments. An inmate shall earn extra good time credit only if he or she meets certain conditions and criteria. Extra good time credit is granted to provide incentives to inmates in work and study programs to develop and reinforce positive behavior. See American Correctional Association's Manual of Standards for Adult Correctional Institutions (1977), standard 4391.

Subsection (1)(a) puts into rule form the requirements of s. 53.12(1), Stats. Assignment to a vocational, job, school, or program in accordance with chapter HSS 302 is a prerequisite for earning extra good time credit. In addition, an inmate must surpass "the general average" (s. 53.12(1), Stats.) for that assignment as determined by his or her supervisor in accordance with the criteria established for such an evaluation of that particular assignment. It is anticipated that most inmates will perform at this average level. The term "average" does not mean that half of the inmates in a particular assignment should lose extra good time credit each month. If that was the intent underlying the provision, the word "mean" would have been used instead of "average."

Subsection (1)(b) provides for extra good time credit to certain inmates who are involuntarily unassigned. Subsection (2)(b) denies credit to others involuntarily unassigned. Legal support for these provisions is found in an attorney general's opinion, 37 Op. Atty. Gen. 452 (1948). The opinion dealt with awarding good time to a county jail prisoner sentenced under the Huber Law, but for whom the sheriff is unable to secure employment. The opinion says such a prisoner is entitled to good time under such conditions.

Subsection (1)(b)1 provides that an inmate who is involuntarily unassigned and whose last assignment was terminated because of medical or psychological problems resulting from, or aggravated by, the assignment may be entitled to extra good time credit if the appropriate staff member was notified of the inmate's willingness to accept another assignment within the specified period of time. Examples of what this provision is meant to include are situations when an inmate develops a serious physical reaction (e.g., hives or a rash) from chemicals he or she must use in the course of an assignment; when an inmate develops or aggravates a hay fever condition while working on a camp farm; when an inmate has an emotional disturbance that results in placement in observation; and upon release the clinical psychologist, psychiatric social worker, or physician decides that it is in the inmate's best interests not to return to the previous assignment because of fear of a possible recurrence of the emotional turmoil. In such cases, the inmate shall receive extra good time credit if the other provision of the subsection is met. Subsection (1)(b)2 is meant to deal with those situations in which an inmate has not received an assignment from the PRC.

Subsections (1)(c)-(e) recognize that administrative confinement, observation, and TLU are nonpunitive statuses and the inmate may earn extra good time if he or she was earning extra good time credit in his or her status immediately prior to this placement. If the inmate is participating in an approved institution work or study program while in this status and satisfies the criteria under subsection (1)(a), credit shall also be granted. Additionally, an inmate placed in TLU from administrative confinement, program, or control segregation may earn extra good time credit if he or she was earning credit in the nonsegregation status prior to placement in segregation. However, if an inmate remains in TLU after the disposition of a disciplinary charge as guilty, he or she shall not be eligible to earn extra good time credit from the date of the disposition through placement into segregation, if any is imposed.

Subsection (1)(f) recognizes that an inmate may want to receive extra good time credit for participating in a correspondence course program. Extra good time credit shall be granted for such study involvement if the PRC approves of such study in accordance with chapter HSS 302, and credit shall be granted for the inmate's involvement only subsequent to the PRC decision.

Similarly, subsections (1)(h) and (i) provide that an inmate shall earn extra good time credit while in sick cell status or hospital placement under the stated conditions. Credit shall be awarded for nonassignment as well as assignment-related medical conditions.

Subsection (2) states specific conditions under which an inmate may not earn extra good time credit. This provision is meant to complement subsection (1) in

denoting an inmate's eligibility for credit. Problems in determining an inmate's eligibility for credit under these sections are to be referred to the superintendent for resolution.

Subsection (3) requires that all assignments with similar skills and responsibilities in all of the correctional facilities have reasonably uniform criteria. This requirement ensures that each inmate in the system is evaluated uniformly on the basis of reasonable criteria consistent with the skills and responsibilities of the assignment independent of institution placement. It also necessitates interinstitution communication among supervisors who, with their experience, can provide for development of the most sound criteria for evaluation.

Subsection (3)(c) is a refinement of subsection (3)(b). In most cases, a supervisor may properly assume that each assigned inmate is capable of earning extra good time credit in that assignment. However, at times an inmate may be incapable of performing in the assignment at a level that would entitle him or her to credit, because of poor dexterity skills or mental, physical, or medical disabilities that have been confirmed through clinical testing. In these special cases, the supervisor should consult with the inmate and appropriate staff and develop new criteria consistent with the inmate's special disabilities as well as the skills and responsibilities of that assignment. Of course, the inmate may be placed in another assignment more tailored to his or her abilities but, if this is undesirable or impossible, every effort should be made to accommodate the inmate.

An example might be helpful here. Suppose that an inmate with a physical disability is assigned to the yard maintenance crew at the Kettle Moraine Correctional Institution. An inmate not so disabled might be required under the criteria developed pursuant to subsection (5) to perform a given amount of work of a certain quality in set amount of time to earn extra good time credit. However, a disabled inmate may not be able to perform at this level despite diligence. In this case, new criteria should be established to take this inmate's disability into account in the decision to award extra good time credit. It would seem reasonable to reduce the amount of required work and its quality in a given amount of time. By reducing the quality and quantity of work for a disabled person we are simply recognizing that the person with equal or greater diligence than a nondisabled person may nonetheless produce less. This inability to produce an equal amount of work should not deny credit to the inmate. To the contrary, diligence should earn credit.

Subsection (4) states that additional reasonable criteria used to evaluate an inmate's performance in an assignment must be established if a job has unique requirements. This requirement ensures that all inmates are treated fairly and that each inmate knows the level of performance required. The evaluation of performance must be based on diligence and effort in an assignment and not on the quantity or quality of work product.

Subsection (4)(d) authorizes the superintendent to resolve any questions regarding an inmate's eligibility under subsections (1) and (2). This is necessary because subsections (1) and (2) may not categorize the full range of inmate statuses, and questions may arise regarding time spent in certain

statuses in relation to credit earned. It is anticipated that a question will be resolved within thirty (30) days after the date of referral to the superintendent.

Section 53.12(1), Stats., provides for "a diminution of time at a rate of one day for each six days during which he shows diligence." As stated earlier, it is anticipated that most inmates will perform adequately in their assignments and will earn credit each month. Since projected credit is granted upon entry, this would require no monthly administrative computations. Monthly recomputation would be required, however, for those who fail to perform adequately or who spend time in any status noted under subsection (2). In these cases, the table under subsection (5) should be used in computing earned credit for a particular month. This provides for fairness to inmates and reduces unnecessary paperwork.

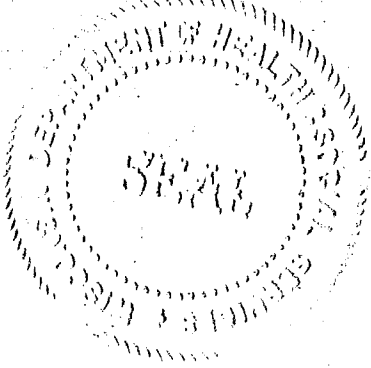
Subsection (5)(a) also provides that an inmate who is entitled to extra good time for a fraction of a day is credited with the whole day. Thus, an inmate who works part of a day in a shop which is closed for part of the day due to an equipment failure receives credit for the full day.

The proposed rule contained in this order shall take effect as provided in section 227.026(1), Wis. Stats.

Date: 3-16-81

Department of Health and Social Services

SEAL:



By

A handwritten signature in black ink, appearing to read "D.E. Percy", written over a horizontal line.

Donald E. Percy  
Secretary

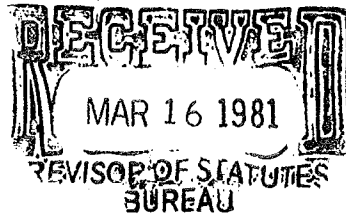


State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE SECRETARY  
1 WEST WILSON STREET  
MADISON, WISCONSIN 53702

March 16, 1981



Mr. Orlan Prestegard  
Revisor of Statutes  
411 West, State Capitol  
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in section 227.023, Wis. Stats., there is hereby submitted a certified copy of HSS 302.27 relating to extra good time credit for adult correctional inmates.

This rule is being submitted to the Secretary of State as required by section 227.023, Wis. Stats.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald E. Percy".

Donald E. Percy  
SECRETARY

Enclosure