

APPENDIX

Note: HSS 326.02. HSS 326.02 states the purposes of leave for qualified inmates. Selected inmates are allowed unescorted leave only for serious illness in the immediate family, death of a close family member, and employment interviews as provided under s. 56.068, Stats.

Allowing selected inmates unescorted leave is consistent with the correctional goal of eventual reassimilation of the offender into the community. A conditional exposure to life outside an institution, for those inmates who do not pose a threat to the public, is beneficial as a means of preparing an inmate for life outside a structured prison environment.

Leave for qualified inmates has direct immediate benefits. Permitting an inmate to visit a seriously ill relative or attend a funeral is important in maintaining family ties. The inmate can be with the family in these most difficult periods, can show his or her concern for the family, and can share the burden that frequently accompanies illness or death in a family. It strengthens family ties, helps the inmate work through feelings of pain and sorrow, and assists in the inmate's adjustment in the institution and after release.

Ch. HSS 326 and s. 56.068, Stats., allow leave for an inmate to contact a prospective employer who requests an interview. This contact away from the institution and staff enables an inmate to request independent responsibility prior to release, thereby reducing the adjustment necessary after release. This independent responsibility can give the individual the self-confidence necessary for successful reintegration into society. The inmate has an opportunity to plan for life on the outside and to secure a position upon release by expanding the potential for employment. Employment opportunities are limited for someone with a criminal record. Many employers are unwilling to hire a person they have not seen or interviewed. Leaves for job interviews remove this obstacle to obtaining employment.

A significant benefit of the leave program is that it affords inmates an opportunity to get some relief from the tensions of prison life. Interviews with inmates in other states with leave programs reveal that the inmates feel a leave can make time within the institution easier and gives them something to look forward to. See *Project: Temporary Release in New York State Correctional Facilities*, 38 *Alb. L. Rev.* 691, 727 (1974). If an inmate has a positive attitude about life in the institution, adjustment problems are minimized.

For helpful discussions about leave programs, see *Project: Temporary Release in New York State Correctional Facilities*, 38 *Alb. L. Rev.* 691 (1974); National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (1973); Washington, D.C., Department of Corrections, *A Review of D.C. Department of Corrections Furlough Program* (1974).

Note: HSS 326.04. HSS 326.04 sets the minimum requirements for eligibility for application under the leave program. Meeting these criteria does not entitle an inmate to leave, but does entitle the inmate to have the application reviewed. Initially, an application will be reviewed by the institution social worker, who determines whether the basic requirements of this section are met. Following investigation, the application is forwarded to the leave review committee, which must evaluate it under the criteria of HSS 326.06.

Subsection (1) states that inmates must be classified as minimum security for at least 30 days prior to application. Inmates with a minimum security classification are considered lesser escape risks because they are not likely to do something to adversely affect their release. See: HSS 302.14 and note regarding criteria for security classification; and HSS 326.14 and note regarding sanctions for discussions of escape risk.

The requirement that the inmate be classified minimum for 30 days prior to application was adopted so newly classified inmates will have adequate time to adjust to new rules and procedures that may accompany a minimum security classification. This period of adjustment is important.

Subsection (2) (a) requires that if the purpose of leave is an employment interview, the inmate be within 6 months of release date or have a defer of less than 6 months from the state parole board. Inmates closest to release benefit from the reintegration opportunities of an employment interview and a job when released. Inmates with a long time to serve do not need an employment interview until they are within six months of release.

The proximity of parole eligibility is a prime restraint on escape. Subsection (2) (c) requires inmates serving a life sentence to be eligible for parole before application for leave is allowed.

Subsection (2) (d) requires any Wisconsin probation or parole revocation proceedings to be concluded before an inmate becomes eligible for leave. Again, this requirement is to

HSS 326 Appendix

prevent escape. By requiring the process to be complete, both the inmate and the reviewing authorities will have a clear picture of how these proceedings will affect time to be served.

The possibility of escape when an inmate has substantial time left to serve or is unsure of time because of pending proceedings was also identified in *Project: Temporary Release in New York State Correctional Facilities*, 38 *Atb. L. Rev.* 691, 733-735 (1974).

Subsection (3) requires inmates to agree to submit to certain tests upon return to the institution or during leave to determine whether the inmate has complied with the provisions of the leave agreement and related rules.

Subsection (4) requires the consent of the leave principals as a condition of eligibility. Thus leave will not be granted in cases where family conflict is likely to occur. Such family conflict would be detrimental to reintegration. Should a leave principal withdraw consent after leave is granted, HSS 326.15(3) applies and the leave will be cancelled.

Under subsection (5) the social worker shall deny an applicant as ineligible if the request is not for one of the purposes under HSS 326.03(4). If a physician says that a close family member is seriously ill, the investigating social worker has no discretion to make an additional review of this opinion. However, the leave review committee is not bound by the physician's opinion.

Note: HSS 326.05. HSS 326.05 requires an investigation of every leave application submitted by an eligible leave applicant. The investigation must be completed in sufficient time to allow the leave review committee, the superintendent or regional chief, and the classification chief adequate time to review the application. Timely investigation is necessary to prevent *de facto* denial of an application. HSS 326.09(1) requires the inmate to submit the application within a reasonable time prior to the requested date of departure.

The investigation protects the public. All the inmate's assertions must be verified and the leave principals must be willing to cooperate.

The investigation of a detainee will most likely be done for security classification purposes prior to leave applications. However, in some instances a detainee may not have been filed at the time of security classification or an investigation may not have been made. Subsection (2) requires an investigation in those cases using the same procedures outlined in HSS 302.14(14) for investigation for security classification.

Note: HSS 326.06. Subsection (1) requires the reviewing authorities (leave review committee, superintendent or regional chief, and classification chief) to determine whether eligibility exists, which is a check on the social worker's determination of eligibility. See HSS 326.04 and HSS 326.09(2) (a) and notes.

Subsection (2) makes the risk of escape a relevant criterion. Although an inmate who is eligible for leave is likely to be a low escape risk due to the eligibility requirements of HSS 326.04, this subsection was adopted because leave, an unescorted and unsupervised visit to the community, offers more freedom of movement than any previous experience the inmate has had in the correctional system. An unescorted leave presents an opportunity for escape. An inmate with a record of escapes may be more likely to take advantage of this opportunity, and the committee is to consider this under sub. (2) (a). However, this is not an automatic exclusion from eligibility and should not be treated as such.

Subsection (2) (b) allows detainees to be considered as relevant to escape risk, but HSS 302.14(14) and note govern the weight to be given detainees for purposes of the leave program. It is not the detainee itself, but the facts underlying it that are relevant to leave applications. See HSS 326.05 and HSS 302.14(14) and notes on detainees.

Subsection (2) (c) gives the reviewing authorities discretion to consider misconduct on a prior leave. Misconduct on leave is punishable through the disciplinary procedure or in court. Allowing a denial of a future leave based on that misconduct prevents those inmates who have a history of violating leave requirements from enjoying the privilege of leave. Subsection (2) (c) should encourage inmates to follow all the rules and conditions of leave, since failure to do so could jeopardize chances of future leave.

Subsection (3) permits the disciplinary record of the inmate to be taken into consideration. A recent serious conduct report might indicate that the inmate is an escape risk due to poor institutional adjustment.

Subsection (4) allows the reviewing authorities to consider any facts relevant to the purpose of leave. HSS 326.02 states that the purpose of leave is to fulfill the correctional goals of reintegration. This is to be achieved consistent with the protection of the public. The reviewing authorities must include in the decision the facts they consider to be relevant and their

reasoning as to relevance. Subsection (4) lists two concerns that are relevant to these purposes, but there may be others.

In some instances, an offense may have received unusually intense publicity and substantial community reaction may have been aroused. In such a case the presence of the offender might cause a negative reaction. Subsection (4) (a) requires the reviewing authorities to consider the likelihood of such a severe negative community reaction. If the investigation under HSS 326.05 reveals a substantial likelihood the community will become aroused, then, in the best interests of the community and of the inmate, leave should not be granted. If investigation reveals substantial threat to the safety of the inmate in the community, the leave should not be granted.

This subsection should be used only if the community reaction was or is likely to be much greater than the usual negative reaction that occurs when a similar offense is committed or when an offender convicted of a similar offense visits a community. The inmate on leave will be released soon and may return to the community very shortly.

Note: HSS 326.07. Subsection (1) (a) recognizes the requirement of s. 56.068 (4), Stats., that a leave is restricted to the confines of the state of Wisconsin.

Subsection (1) (b) limits the duration of leave to a period of time necessary for the leave. For example, an employment interview may be completed in one morning if it is close to the institution, or it may take several days if great distances are involved.

Subsection (2) grants the reviewing authorities discretion to impose additional conditions on specific leaves. Subsection (2) (a) allows the reviewing authorities to consider conditions on movement in addition to the requirements of sub. (1) (a). These conditions should be imposed only when considered necessary to prevent an inmate from abusing leave. To comply with HSS 326.09 (5) and (6), the reason for imposing the condition and the underlying facts upon which the decision was based must be written.

Subsection (3) prevents use of the leave program for disciplinary or other purposes not directly related to the leave program. However, the inmate's prior disciplinary violations may be considered as a criterion under HSS 326.06 (4). Discipline is dealt with by the disciplinary processes under ch. HSS 303. For example, when an inmate violates a disciplinary rule, it should be dealt with in a disciplinary proceeding and, possibly, program review procedures that contain hearing and review. Denial of leave should not be relied on in lieu of these procedures. This subsection also protects the inmate from being judged in 2 separate forums. However, if misconduct occurred on a prior leave, the leave may be denied on that basis under HSS 326.06 (2) (c).

Note: HSS 326.08. Subsection (1) requires that the inmate initiate the process. The division should provide appropriate forms that clearly show what information is required for the 3 types of leave. The application is to be submitted to the institution social worker, who reviews it for inmate eligibility under HSS 326.04.

Subsection (2) (b) recommends that the institution social worker provide the parole agent with the basic information. The parole agent may assist in determining eligibility under HSS 326.04 and HSS 326.06.

Provision was made to allow the parole agent, with approval, to give an oral report because some leave applications, especially those involving a serious illness or funeral, must be investigated and acted on so quickly that transmitting written material would be too time consuming.

Subsection (4) outlines the three level procedure for review of an application. The leave review committee reviews the application first. The committee may request the inmate to appear and give a statement or answer questions. A personal appearance is not expressly granted since the committee is not required to meet as a group, but may hold discussions and vote by telephone.

The inmate is protected against the committee relying on misinformation because sub. (6) requires a written decision with the reasons for the decision and the facts relied on. If the information is incorrect, the superintendent or regional chief may be notified of this by the inmate.

Unanimous approval is required for a recommendation to grant leave. If the recommendation is to approve or if the inmate requests review, the application must be reviewed by the second level, which is the superintendent or regional chief. The inmate may supply the facts or reasons he or she believes show error by the leave review committee. Regardless of the recommendation by the superintendent or regional chief, the classification chief has the final decision.

HSS 326 Appendix

The 3 level review procedure serves 2 major objectives: 1) It ensures that the public will be adequately protected against an unwarranted leave being granted. The danger of an inmate committing a crime or escaping while on leave is diminished when a thorough review by institution people as well as the classification chief is provided. 2) It guarantees the inmate the right to have someone who is not in the day-to-day life at the housing facility (i.e., the classification chief) review the application if the leave review committee denies it. This procedure increases objectivity.

Subsection (5) requires that leave conditions be imposed in writing and that the inmate agree to them. This ensures that the inmate knows the leave conditions. (See: HSS 326.07 and note on leave conditions.)

Subsection (6) requires the decisions of the reviewing authorities to be in writing and requires the decisions to include specific facts and criteria upon which the decisions are based. This provides a means of monitoring decisions to ensure compliance with this chapter. The written decision also provides the basis for appeal under subsection (4) and protects the inmate from arbitrary exercise of discretion.

Note: HSS 326.09. HSS 326.09 prevents the use of the inmate complaint system as a forum for appeal from denial of specific applications for leave. This section limits complaints pertaining to leave to alleged violations of the procedures themselves. For example, if an eligible inmate's application was not reviewed, a violation of procedural requirements occurred and is properly reviewable in the complaint system. A complaint pertaining to the reviewing authorities' interpretation of facts under the criteria of HSS 326.06 and a denial of leave based on this interpretation would not be reviewable in the inmate complaint system.

Note: HSS 316.10. Local officials must be notified whenever leave is granted. Notifying local officials of the presence of an unescorted inmate protects the public. It also reduces the possibility that local authorities would mistakenly apprehend the inmate if they saw him or her in the community.

Note: HSS 326.11. Subsection (1) states that legal custody remains with the department, and sub. (2) requires the inmate to carry a copy of the leave authorization which states that legal custody is with the department and contains specific information such as the inmate's name, dates of leave, destination, and purpose of the leave.

These 2 subsections avoid confusion about who has responsibility for the inmate. The leave authorization facilitates identification of an inmate if, while on leave, he or she is mistakenly or rightfully apprehended by law enforcement officials and notifies authorities of the conditions of the leave.

Note: HSS 326.12. This section fixes the responsibility for the expenses of a leave. A study of the New York leave program concluded that its cost was insubstantial since inmates who participate pay their own expenses. See *Project: Temporary Release in New York State Correctional Facilities*, 38 *Alb. L. Rev.* 691, 718-719 (1974). The section does not require inmates to prepay the expenses. Thus, institutions may lend money for leave to inmates, who then repay the loan out of future earnings.

Note: HSS 326.13. This section specifies conduct that is expressly controlled while the inmate is on leave. These provisions must be part of the leave agreement so the inmate is aware of them. Since the inmate is in the legal custody of the department while on leave, sub. (2) was included to avoid potential legal problems associated with these activities. Violation of any of the provisions of HSS 326.14 may subject an inmate to the sanctions under HSS 326.14.

Note: HSS 326.14. HSS 326.14 provides sanctions for escape or misconduct, or withdrawal of the consent of a leave principal while an inmate is on leave.

Under sub. (1) an inmate may be treated as an escapee if that inmate leaves the area designated in the leave agreement or if the inmate fails to return from leave. Since an inmate is in the custody of the department, a violation of this subsection is an "intentional escape from custody" under s. 946.42(3), Stats., as affected by chs. 173, 354, and 418, laws of 1977. This escape could be prosecuted as a new offense.

Subsection (2) and (3) are sanctions for misconduct, other than escape, while the inmate is on leave. These provisions include possible institution discipline under ch. HSS 303, program review under ch. HSS 302, or cancellation of leave. Subsection (3) also gives the superintendent the right to cancel leave when a leave principal requests it. Since consent of the leave principal is necessary to grant leave, withdrawal of consent must result in cancellation. Cancellation as a result of the withdrawal of consent of a leave principal is not necessarily for misconduct. For example, an employer may be called away on urgent business and be unable

to keep an interview appointment, or a family member may become unable or unwilling to act as a leave principal.

Note: HSS 326.15. The power to grant extensions is specifically authorized under s. 56.068 (3), Stats. An extension may be granted, for example, if a seriously ill family member dies while the inmate is on leave and the inmate wants to attend the funeral. Also an employer may request a second interview with an inmate who is on leave for an employment interview.

Note: HSS 326.16. The record keeping requirements for the leave program are outlined in this section. One objective of record keeping is evaluation of the program as structured by these rules.

Subsection (2) requires that a monthly listing of inmates granted leave be compiled and submitted to the bureau of adult institutions. These sections ensure that adequate records about the number of leaves granted are maintained so the division can comply with the requirements of s. 56.068 (3), Stats.

Note: HSS 326.17. Since an inmate is in the legal custody of the department and participating in an authorized correctional program while on leave, HSS 326.17 requires that the inmate be given full credit toward his or her sentence for this time. (See HSS 302.21 and note regarding sentence computation.)