

CR 84-100

CERTIFICATE

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

RECEIVED
OCT 1 1984
9:15 am
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Reivitz, 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 leaves for minimum security inmates from adult correctional institutions were duly approved and adopted by this Department on October 1, 1984.

I further certify that this 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 Street, in the city of Madison, this 1st day of October, A.D. 1984.



SEAL:

Linda Reivitz, Secretary
Department of Health and Social Services

12-1-84

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING AND RECREATING RULES

RECEIVED
OCT 1 1984
Revisor of Statutes
Bureau

To repeal and recreate ch. HSS 326, relating to leaves for minimum security inmates from adult correctional institutions.

Analysis Prepared by the Department of Health and Social Services

The Department's rules on leaves of absence for minimum security inmates from adult correctional institutions are revised to bring the rules into conformity with recently amended statutes and to simplify the process of obtaining a leave.

The Department has had authority under s. 56.068, Stats., to grant leaves of absence of ordinarily 3 days or less but no more than 6 days to minimum security inmates of adult correctional institutions so that an inmate can visit a seriously ill family member, attend the funeral of a family member, or contact a prospective employer who wants to interview the inmate. A recent session law, 1983 Wisconsin Act 27, made changes in that statute. Among other things, it added to the purposes for which a leave may be granted. These now include for screening, diagnosis or treatment of a medical condition and to visit family members in order to facilitate the inmate's eventual return to the family and to contribute to the family's stability. Chapter HSS 326 is modified to reflect these statutory changes.

In the revised rules, procedures for obtaining a leave are simplified without thereby eliminating any safeguard meant to ensure that public safety is taken into account when a decision is made on a request for leave. Leave requests are to be considered by the institution's Program Review Committee rather than by a separate leave review committee. Review by the Program Review Committee will help ensure that a leave is consistent with the inmate's overall institutional adjustment and means that review procedures that are used are those that are familiar to everyone involved. The central office classification chief is no longer required to approve every proposed leave before it is granted. Rather, the final decision is left to the institution superintendent. The classification chief, however, will continue to monitor all leaves throughout the adult institution system to make sure that leaves are granted in a consistent and equitable manner. A decision to deny a request for leave may be made by the institution Program Review Committee. That decision is not subject to review and approval of the superintendent, but it may be appealed by the inmate to the superintendent for final decision.

The new HSS 326 covers who is eligible to apply for leave, the process for obtaining leave, criteria to be used in making the decision to grant or deny an application for leave, appeal of a decision to deny an application for leave, conditions for leave, and extension of leave.

Pursuant to the authority vested in the Department of Health and Social Services by s. 56.068 (5), Stats., the Department of Health and Social Services hereby repeals and recreates rules interpreting s. 56.068, Stats., as follows:

SECTION 1. HSS 326 is repealed and recreated to read:

Chapter HSS 326

LEAVE FOR QUALIFIED INMATES

HSS 326.01	Authority and applicability	HSS 326.09	Notification of local officials
HSS 326.02	Purpose	HSS 326.10	Custody
HSS 326.03	Definitions	HSS 326.11	Expenses
HSS 326.04	Eligibility for leave application	HSS 326.12	Inmate conduct while on leave
HSS 326.05	Criteria for leave	HSS 326.13	Sanctions
HSS 326.06	Conditions	HSS 326.14	Records
HSS 326.07	Process for obtaining leave	HSS 326.15	Service of sentence
HSS 326.08	Review of denial of leave		

HSS 326.01 AUTHORITY AND APPLICABILITY. This chapter is promulgated under the authority of s. 56.068 (5), Stats., and interprets s. 56.068, Stats. It applies to the department and to all adult inmates in the legal custody of the department for correctional purposes. Unescorted leave for minimum security inmates under this chapter is distinguishable from temporary release of inmates with supervision which is regulated by ch. HSS 325 and from work and study release for inmates which is regulated by ch. HSS 324.

HSS 326.02 PURPOSE. The purpose of this chapter is to permit a qualified minimum security inmate to be on unescorted leave from the institution for up to 3 days, exclusive of travel time, with a possible extension of another 3 days, exclusive of travel time, to visit a close family member who is seriously ill or for the purpose of facilitating eventual reintegration of the inmate into the family and the stability of the family, to attend the funeral of a close family member, to contact a prospective employer, or to be screened for, diagnosed, or treated for an injury or illness. A leave may be granted only if it is consistent with the public's need for protection. Decisions on leave applications are to be consistent with these goals.

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, for employment interviews or medical purposes, or to facilitate family reintegration and stability as provided under s. 56.068, Stats. Leaves are considered a

privilege, not a right. They provide an incentive for inmates to exhibit appropriate behavior in the institution. Leaves for the purpose of family reintegration provide a special incentive for inmates.

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 an inmate who does not pose a threat to the public is beneficial as a means of preparing the inmate for life outside a structured prison environment.

Leave for qualified inmates has direct and 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. Leave is also granted to promote family stability and the reintegration of the inmate into the family. In some cases a person who is not the natural parent has actually raised the inmate.

Ch. HSS 326 and s. 56.068, Stats., allow leave for an inmate to contact a prospective employer. This contact away from the institution and staff enables an inmate to experience 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-seeking remove this obstacle to obtaining employment.

Leaves granted for medical reasons, like other types of leaves, are granted only upon the superintendent's approval. The division of health's bureau of correctional health services should be consulted before deciding to grant a leave for this purpose. The chapter does not allow an inmate to select his or her own health care provider or type of treatment in lieu of the treatment already provided in the institution, except at the inmate's own expense.

HSS 326.03 DEFINITIONS. In this chapter:

(1) "Close family member" means a parent, child, spouse, grandparent, brother or sister. "Parent" includes a person who was previously acting as a parent, as defined in s. 822.02 (8), for the inmate.

(2) "Department" means the department of health and social services.

(3) "Division" or "DOC" means the department's division of corrections.

(4) "Classification chief" means the chief of classification of the division of corrections or that person's designee.

(5) "Detainer" means a document filed with the division of corrections by another criminal justice agency to initiate transfer of custody upon release of the inmate from the division's custody.

(6) "Leave agreement" means the written statement, signed by the inmate, by which the inmate agrees to accept the responsibilities that the privilege of leave requires and agrees to abide by certain specified conditions of leave.

(7) "Leave condition" or "condition of leave" means a specific written requirement or limitation placed upon leave that has been granted.

(8) "Leave destination" means the physical location of the leave principal or event that is the justification for the leave.

(9) "Leave for qualified inmates" or "leave" means a privileged, authorized absence from an institution for one of the following purposes under s. 56.068, Stats.:

- (a) To visit a close family member who is seriously ill;
- (b) To attend the funeral of a close family member;

(c) To contact a prospective employer;

(d) To be screened, diagnosed or treated for an injury, illness or disease; or

(e) To visit a close family member to facilitate family reintegration and stability

(10) "Leave principal" or "principal" means the individual approved during the eligibility review process as willing and able to assist in the leave and who has agreed to assist in the leave. "Leave principal" may include but is not limited to a member of the immediate family or a potential employer.

(11) "Misconduct" means behavior in violation of state or federal statutes, administrative rules of the department, the leave agreement or any conditions of leave.

(12) "Program review committee" or "PRC" means the committee described in s. HSS 302.18.

(13) "Regional chief" means the chief of a bureau of community corrections region of the division of corrections, or that person's designee.

(14) "Reviewing authorities" means the program review committee and the superintendent.

(15) "Serious illness" means an illness from which death may be imminent in the oral or written, formal or informal, opinion of an attending physician.

(16) "Superintendent" means the superintendent of the institution or that person's designee.

Note: HSS 326.03. "Leave" is sometimes called "furlough" in the institutions.

HSS 326.04 ELIGIBILITY FOR LEAVE APPLICATION. To be eligible to apply for a leave, an inmate shall meet the following requirements:

(1) The inmate shall have a security classification of minimum for at least the 30 days prior to application.

(2) The leave shall be requested for one of the purposes under s. HSS 326.03 (9).

(3)(a) If the purpose of leave is to contact a prospective employer, the inmate shall have a deferral, as defined in s. HSS 30.03 (2) of 6 months or less from the state parole board, or shall be within 6 months of mandatory release or discharge or shall be in a community corrections center.

(b) An inmate serving a life sentence shall have attained parole eligibility prior to making application and shall meet all other criteria.

(c) The inmate may not have a Wisconsin probation or parole revocation proceeding pending.

(4) If the purpose of the leave is to obtain medical treatment, that treatment may not be in lieu of treatment already provided at the institution, except at the inmate's own expense.

(5) The inmate shall agree in advance to examinations such as urinalysis or breathalyzer test and personal or strip searches upon return to the institution or during the leave. Tests shall be conducted upon order of a law enforcement official, an official of the division's bureau of community corrections or an official of the division's bureau of adult institutions. The inmate may not be granted a leave unless he or she agrees to these examinations.

(6) The leave principals shall consent to the leave. A failure to consent by any leave principal shall make the inmate ineligible.

Note: HSS 326.04. This section establishes the minimum requirements to be eligible for leaves. Simply meeting these requirements does not mean that an inmate is entitled to a leave.

Subsection (2)(a) requires that if the purpose of leave is an employment interview to contact a prospective employer, the inmate must be within 6 months of release date or have a deferral of less than 6 months as defined in s. HSS 30.03 (2) from the state parole board or be living in a community correctional center. Inmates who are closest to release benefit most from the reintegration opportunities of an employment interview and job when released. Inmates with a long time to serve do not need an employment interview.

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

Subsection (2)(c) requires any Wisconsin probation or parole revocation proceedings to be concluded before an inmate becomes eligible for leave. Again, this requirement is to 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 Alb. 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 326.13 (3) applies and the leave will be cancelled.

Under sub. (5) the leave review committee must deny an applicant as ineligible if the request is not for one of the purposes under HSS 326.03 (9). If a physician says that a close family member is seriously ill, the leave review committee has no discretion to make an additional review of this opinion. However, the leave review committee is not bound by the physician's opinion to grant a leave.

HSS 326.05 CRITERIA FOR LEAVE. The criteria for granting or denying a leave application may include only the following:

- (1) The inmate's eligibility under s. HSS 326.04.
- (2) The risk of escape. In deciding whether an inmate presents a risk of escape, the following factors are relevant:
 - (a) The inmate's escape record;
 - (b) Detainers filed with respect to the inmate. The facts underlying a detainer shall be the relevant criteria; and
 - (c) Misconduct on a prior leave.
- (3) The disciplinary record of the inmate.
- (4) Any other matter consistent with the purposes of leave under s. HSS 326.02. Such matters may include but are not limited to:
 - (a) The substantial likelihood of a severe negative reaction in the community to which the inmate is granted leave or in the community where the offense was committed; or

(b) The substantial likelihood that the inmate will be in physical danger while on leave.

Note: HSS 326.05. Subsection (1) requires the reviewing authorities to determine whether eligibility exists.

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 detainers to be considered as relevant to escape risk, but s. HSS 302.14 and note govern the weight to be given detainers for purposes of the leave program. It is not the detainer itself but the facts underlying it that are relevant to leave applications.

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. This paragraph 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. Two concerns are listed 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 negative reactions. Subsection (4)(a) requires the reviewing authorities to consider the likelihood of such severe negative community reactions. If investigation reveals a substantial likelihood that 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.

Subsection (4) 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.

HSS 326.06 CONDITIONS. (1) The reviewing authorities shall impose the following written conditions on all leaves granted:

(a) The leave shall be restricted to the state of Wisconsin;

(b) The leave shall be granted for a period of time necessary for the purpose of the leave, but no inmate may be granted a total of more than 3 leaves per calendar year under s. HSS 326.03(5)(a)(b) and (e) combined, and no leave may exceed 3 days exclusive of travel time unless an extension is granted under par. (c); and

(c) One extension beyond the 3-day maximum period for a leave may be granted by the superintendent for reasons consistent with the purpose of the leave. The extension shall not exceed 3 days exclusive of travel time.

(2) The reviewing authorities may impose in writing the following additional conditions appropriate to specific applications:

(a) Geographic and travel conditions, including travel routes, mode of transportation, the specific geographical confines within which the inmate is authorized to move and other relevant restrictions; and

(b) Any condition on movement, conduct or communication consistent with the purposes of leave under s. HSS 326.02.

Note: HSS 326.06. 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 (1)(c) allows the superintendent to grant one extension beyond the 3-day maximum for a leave. This power is specifically authorized under s. 58.068 (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.

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

HSS 326.07 PROCESS FOR OBTAINING LEAVE. (1) An inmate or an employe on behalf of the inmate shall apply for a leave far enough in advance of the requested departure date to permit investigation, review by the program review committee (PRC) and appeal of an adverse decision, by submitting an application and a signed leave agreement. The application shall contain details including time, dates, principals involved and any other relevant information. An inmate shall submit the application to the institution social worker. An employe shall submit the application to the program review committee or institution social worker.

(2) An employe or designee of the department shall investigate and document the validity of the application for leave according to the following procedure:

(a) The employe or designee shall review the application for leave to verify the accuracy of the information in the application and the inmate's eligibility under s. HSS 326.04. This investigation may include contact with the principals named on the leave application and any other person who can

verify the accuracy of the information in the application. If, upon investigation, the inmate is found ineligible, the employe or department designee shall note the reason for the ineligibility in writing on the application;

(b) If the inmate is eligible, the application shall be investigated by the employe or designee to ascertain all information that could be relevant to the reviewing authorities' decision based on the criteria for leave under s. HSS 326.05. This investigation may include contact with relevant law enforcement and criminal justice agencies, including the committing court. Detainers filed with respect to the inmate shall be investigated in the manner provided under s. HSS 302.14(14);

(c) The institution may provide the parole agent with basic leave plan information;

(d) The institution, with the assistance of the parole agent, if necessary, shall investigate other facts under s. HSS 326.06 needed by the reviewing authorities and note the results of the investigation on the appropriate form for the institution and field supervisor. In emergencies, the parole agent, with the approval of the field supervisor, may provide a verbal report to the institution; and

(e) The investigation shall be completed in a timely manner so an application may be reviewed prior to the requested leave date.

(3) Following the investigation, the application shall be referred to the institution's program review committee. In its review and decisionmaking the PRC shall follow the procedures and employ the criteria under s. HSS 302.19 and this chapter. All inconsistencies between ch. HSS 302 shall be resolved in favor of this chapter.

(4) The PRC shall either:

(a) Deny the leave; or

(b) Make a recommendation to the superintendent to grant the leave.

(5) The superintendent shall review any recommendation of the PRC to grant a leave and shall decide whether or not to grant the leave. He or she shall impose leave conditions in accordance with s. HSS 326.06. The inmate shall sign a statement agreeing to the conditions as a prerequisite to leave being granted.

(6) The decision of the superintendent, if leave is granted, or the PRC or superintendent, if leave is denied, and the reasons for the decision shall be given to the inmate in writing and shall include the specific facts and criteria on which the decision is based.

(7) The superintendent shall notify the division's classification chief of a decision to grant a leave as soon as possible after the decision is made.

Note: HSS 326.07. This section describes the procedures for obtaining a leave. Subsection (1) allows either an inmate or an employe on behalf of the inmate to apply for the leave. An employe should not apply for a leave on behalf of an inmate if the inmate does not want the leave. The application should be submitted far enough in advance of the desired leave date that the PRC has ample opportunity to review the application and the inmate has an opportunity to request review of the decision under HSS 326.09.

Sub. (2) describes the process of investigating leave applications. First, an employe or designee must review each application to determine whether the information in the application is accurate and whether the inmate is eligible for the leave under the criteria in HSS 326.05. If the information is inaccurate and can be corrected, the investigator should do so. If the inmate is ineligible for the leave, there is no reason to continue processing the application.

If the inmate is found eligible for the leave and the information is verified, the investigation continues. The investigation's purpose is to make sure that all information that could be relevant to the decision to grant or deny the leave is included in the application. Investigation also protects the public. All the inmate's assertions must be verified and the leave principals willing to cooperate. Investigation may include contact with many outside people, including law enforcement and criminal justice agencies and the committing court. It also includes investigation for detainers.

Subsection (3) describes the process for reviewing a leave once the investigation is complete. The leave application will be reviewed by the institution's program review committee (PRC). Review by the PRC ensures that the leave is considered in conjunction with the inmate's overall adjustment in the institution.

Subsection (5) allows the superintendent to impose leave conditions as provided in HSS 326.06. Having the inmate sign a statement agreeing to the conditions ensures that the inmate knows what those conditions are. The PRC may recommend these conditions and should make sure that the inmate understands the conditions before the inmate signs the statement.

Subsection (6) provides that the inmate shall be informed in writing about the decision of the PRC to deny the request for a leave or the decision of the superintendent to approve or deny it. Including the facts and criteria on which the decision is based serves the dual purpose of helping the inmate understand why a leave was or was not granted and facilitating review by the superintendent.

Subsection (7) provides that the division of corrections classification chief is notified of all leaves. The purpose of this notification is to allow him or her to monitor leave decisions for consistency. Its purpose is not to provide an additional level of review of the merits of a particular leave decision before the leave takes place.

HSS 326.08 REVIEW OF DENIAL OF LEAVE. (1) An inmate may appeal the PRC's denial of a leave to the superintendent in writing within 5 days of the date of the written decision denying leave. The superintendent for good cause may grant more time for an inmate to ask for review. The superintendent shall review the PRC's decision and reasons for denying leave. The superintendent is not required to review complaints about violations of procedures of the leave process. The superintendent shall issue his or her decision within 10 days of receiving the request. The superintendent's decision to deny a leave is final.

(2) Complaints about violations of procedures of the leave process, but not about the PRC's or superintendent's final decision, shall be reviewed within the inmate complaint system under ch. HSS 310.

Note: HSS 326.08. Subsection (1) allows an inmate to request the superintendent to review a denial of a leave. This request must be made within 5 days of the decision to deny the leave. The time limit protects the inmate's ability to get review and also ensures that the review process does not unnecessarily delay the leave process. The superintendent may, but does not have to, review any procedural irregularities of the leave review. The superintendent's main task in reviewing leave applications is to decide whether to override the actual decision of the reviewing authorities. The superintendent's decision to deny a leave is final.

Subsection (2) allows an inmate to request review of procedural irregularities in the leave process by going through the inmate complaint system. The inmate complaint system is better able to conduct an investigation of procedural irregularities than is the superintendent's office.

HSS 326.09 NOTIFICATION OF LOCAL OFFICIALS. Before an inmate is released on leave, the superintendent shall notify the police chief of any community involved and the sheriff and district attorney of any county involved.

HSS 326.10 CUSTODY. An inmate granted leave remains in the legal custody of the institution from which the inmate has taken leave or to which the inmate is assigned.

Note: HSS 326.10. This section makes clear that legal custody of an inmate on leave remains with the department, thereby avoiding confusion about who has legal custody of the inmate if the inmate is not within the institution.

HSS 326.11 EXPENSES. All direct expenses of a leave shall be responsibility of the inmate, the inmate's family or another lawful source.

Note: HSS 326.11. This section fixes the responsibility for the expenses of a leave. A study of New York's 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.

HSS 326.12 INMATE CONDUCT WHILE ON LEAVE. The following provisions apply when leave is granted and shall be included in the leave agreement:

(1) An inmate shall travel to and from the leave destination by a method of transportation and on a route approved by the reviewing authorities;

(2) An inmate shall not enter into contracts or agreements without prior approval of the appropriate correctional authority, except that an inmate may enter into a contract to begin employment following release. Prohibited contracts include, but are not limited to, purchase of property, time payments and marriage;

(3) An inmate shall not take into his or her body any alcoholic beverage or controlled substance, except as authorized by a physician;

(4) An inmate shall comply with the leave agreement including the conditions of the leave, and with all statutes, ordinances and administrative rules under this chapter.

(5) The inmate shall at all times have on his or her person a copy of the leave authorization and the conditions of leave.

Note: HSS 326.12. 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 326.12 may subject an inmate to the sanctions under HSS 326.13.

HSS 326.13 SANCTIONS. (1) An inmate who intentionally fails to return from leave or who intentionally leaves the area designated as the limits of confinement according to the leave conditions may be treated as an escapee.

(2) Inmates who violate conditions of leave, the leave agreement, or any rules of the division are subject to disciplinary action under ch. HSS 303.

(3) The superintendent may cancel leave at any time for misconduct by the inmate or upon request of a leave principal.

Note: HSS 326.13. HSS 326.13 provides sanctions for escape or misconduct while an inmate is on leave, and for withdrawal of the consent of a leave principal.

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.

Subsections (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.

HSS 326.14 RECORDS. (1) Appropriate records regarding leaves shall be kept.

(2) The records shall include a monthly listing of inmates granted leaves or extensions. The superintendent shall submit a monthly list to the director of the division's bureau of adult institutions. The list shall include the name, number, leave destination and dates involved.

(3) The records shall permit an evaluation of the leave program.

Note: HSS 326.14. The record-keeping requirements for the leave program are outlined in this section. One objective of record-keeping is to permit 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. This ensures 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.

HSS 326.15 SERVICE OF SENTENCE. Leave time is credited toward service of the sentence.

Note: HSS 326.15. Since an inmate is in the legal custody of the department and participating in an authorized correctional program while on leave, HSS 326.16 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.)

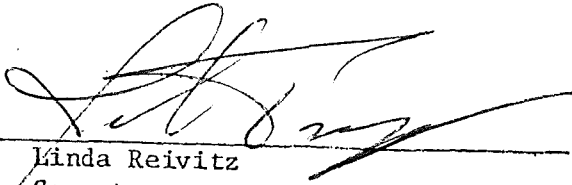
388/kc

The repeal and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.026 (1), Stats.

Department of Health and Social Services

Dates: 10-1-84

By:


Linda Reivitz
Secretary

SEAL

CERTIFICATE

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Reivitz, 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 leaves for minimum security inmates from adult correctional institutions were duly approved and adopted by this Department on October 1, 1984.

I further certify that this 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 Street, in the city of Madison, this 1st day of October, A.D. 1984.



SEAL:

Linda Reivitz, Secretary
Department of Health and Social Services



State of Wisconsin

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1 West Wilson Street, Madison, Wisconsin 53702

Anthony S. Earl
Governor

Linda Reivitz
Secretary

October 1, 1984

Mailing Address:
Post Office Box 7850
Madison, WI 53707

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

RECEIVED

OCT 1 1984

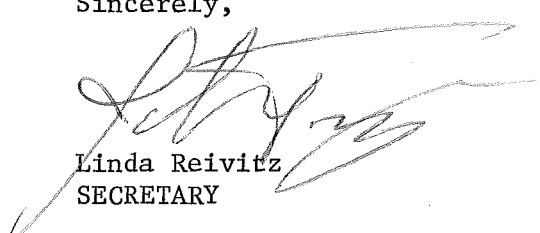
Revisor of Statutes
Bureau

Dear Mr. Prestegard:

As provided in s. 227.023, Stats., there is hereby submitted a certified copy of HSS 326, administrative rules relating to leaves for minimum security inmates from adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.023, Stats.

Sincerely,



Linda Reivitz
SECRETARY

Enclosure