of correctional treatment. Six months is typical limit for such review. *American Bar Association,* supra, Standard 3.5 (6).

A review may occur at any time at the designation of the PRC or at the request of the resident. To avoid abuse of the process, there must be a change in relevant circumstances to compel early review at a resident's request. For example, early completion of a program or a modification of sentence would be a relevant change. HSS 302.18 (3). Such requests are typically granted.

The purposes of the review are stated in HSS 302.18 (2) and are self-explanatory. See note to HSS 302.02. Sometimes, effective review may require additional testing. If so, the PRC should refer the resident to an appropriate testing site.

HSS 302.18 (4) and (5) require every institution and camp to have a program review committee. Because it is essential that the review be meaningful and that there be experienced decision makers, it is required that members of the PRC be permanent and hold relatively high rank. The members of the PRC in the camp hold lower rank, only because staff there are limited. Because there is a single social services supervisor for the camp system, that member typically votes by telephone on PRC decisions and recommendations.

To insure permanence, HSS 302.18 (6) limits the use of alternates. Each PRC member may designate only one permanent alternate who should sit only in unusual circumstances. The phrase "consistent with available staff" is used to permit small institutions to vary from the single alternate requirement. This is necessary to avoid having the same staff member sit on the adjustment committee and PRC, when the case was referred to PRC by the adjustment committee. It is also necessary to avoid requiring a resident's social worker from sitting on the PRC at small institutions.

Note: HSS 302.19. HSS 302.19 provides the procedure for the review and change of classification and program assignment. The classification chief shall have final decision making authority for all security classification changes and transfers. HSS 302.19 (4). The PRC has this authority for program assignments. HSS 302.19 (5).

Typically, the classification chief's decision is made on the recommendation of the PRC. If recommenations for transfer or change of security classification are not unanimous, all recommendations are considered. HSS 302.19 (8).

If there is not unanimity as to the change in security classification, transfer or approval for work or study release, or if there is a tie vote as to program assignment, the A&E director and the superintendent or assistant superintendent have the authority to decide the question of program assignment and make a recommendation as to the security classification and placement in an institution. If they cannot agree, the issues go to the classification chief without recommendation.

The same principles discussed in the note to HSS 302.16 dictate the procedure for program review. There is no need to repeat them here, except to make sure that there are additional requirements. The resident's social worker must inteview the resident and make a recommendation. This is desirable to insure continued review of the resident's status by the social worker.

The resident has the option to appear before PRC. In the camp system, the distance of the resident from the PRC may require that the personal appearance be before a single member of the committee. This should occur as infrequently as possible. The resident must appear before a change in security classification or a transfer may be made. HSS 302.19 (1).

The procedure for decision making at the end of the A&E process and, periodically thereafter by the progam review committee may seem cumbersome. However, the assignments made at these stages have a substantial impact upon the quality of life of a resident and upon parole release decisions. For example, a person at a minimum security institution is accorded more freedom than a person at a maximum security institution. Successful adjustment at a camp might influence the parole release decision. So, correctional authorities and residents have a substantial interest in insuring that classification decisions are made in a careful way, by experienced people after a thorough development and review of the facts.

With roughly 3500 residents in the Wisconsin correctional system, review of each every 6 months means that there are seven thousand reviews per year, exclusive of reviews due to changed circumstances. This large volume of work means that responsibility must be delegated at each institution. Yet uniformity is also desirable. For these reasons, decision making is structured to include staff at the institutional level while leaving final authority in the classification chief.

The procedure has obvious strengths and is designed to prevent the possible abuses pointed out by Kenneth Culp Davis on institutional decision making:

An institutional decision of an administrative agency is a decision made by an organization and not by an individual or solely by agency heads. A trial judge's decision is personal; the judge hears evidence and argument and decides the case. In the administrative process, evidence may be taken before an examiner, the examiner or other subordinates may sift the evidence, various kinds of specialists of the agency's staff may contribute to the writing of the initial or recommended decision, and the agency heads may in fact lean so heavily on the work of the staff as to know little or nothing about the problems involved in many of the cases decided in the agency's name. In the institutional decision lie elements of special strength and elements of special weakness of the adminstrative process. The strength springs from the superiority of group work—from internal checks and balances, from cooperation among specialists in various disciplines, from assignment of relatively menial tasks to low-paid personnel so as to utilize most economically the energies of high-paid personnel, and from capacity of the system to handle huge volumes of business and at the same time maintain a reasonable degree of uniformity of policy determinations. The weaknesses of the institutional decision lie in its anonymity, in its reliance on extra-record advice, in frustration of parties' desire to reach the men who influence the decision behind the scenes, and in the separation of the deciding function from the writing of the opinion or report.

Decision making throughout these rules is structured to insure fairness and thoroughness.

Note: HSS 302.20. Typically, inter-institution transfers will be made routinely as part of the A&E and program review process. This is stated in HSS 302.20 (1). The transfer decision is part of the A&E and PRC process.

While it is true that there is wide discretion vested in correctional authorities to transfer residents, in Wisconsin this may only be done consistent with the overall review of a resident's status. *Meachum V. Fano*, 427 U.S. 215 (1976); *Montayne V. Haymes*, 427 U.S. 236 (1976).

When a resident is alleged to have violated a disciplinary rule and this may require review of his security classification and program assignment, the procedure set forth in HSS 302.20 must be followed. It is designed to insure that there is a factual basis for the transfer and the finding of a disciplinary infraction, to give the resident an adequate opportunity to be heard on the issue of whether an infraction occurred and whether transfer is desirable, and to insure that all facts relevant to program assignment and security classification are considered. Thus, a disciplinary infraction is only one factor to be considered in reviewing these matters. This substantially conforms to the suggestions of the *American Bar Association*, supra and *Krantz, et. al., Model Rules and Regulations On Prisoners' Rights And Responsibilities.*

Several provisions of the rule require comment. Subsection (4) permits segregation of the resident pending review by the PRC. This is apart from any segregation which is imposed for the violation. Three working days is adequate time to provide for a decision as to program and security classification.

Sub. (5) requires the disciplinary hearing to be held within 3 working days of service of the report of the infraction, with the permission of the resident, if he or she is in a county jail. Such confinement is necessary because camps are unable to segregate residents due to a lack of facilities. Rather than require transfer to a more secure institution, it is thought more desirable to permit the resident to reside in a couty jail until the outcome of the disciplinary hearing and program review. This permits the resident to have the hearing and review in a place where he or she can call on witnesses and a staff advocate familiar with the setting in which the infraction is alleged to have occurred, if they are necessary. Less hardship is visited on the resident by having the resident remain close by if a transfer does not ultimately occur.

If 3 working days is insufficient time for the resident to prepare for the hearing, the resident may be transferred to a more secure institution. This is because county jails are usually unwilling to hold residents for more than 3 working days. If a particular jail is willing to hold a person for longer than 3 working days, transfer should be unnecessary.

Subsections (6) and (7) provide for emergency transfers. If a resident's physical or mental health requires transfer or if there is a major security problem, it is necessary to have the authority for emergency transfers. A review of the resident's program assignment and security classification is required within 7 days of such a transfer. A "security emergency" is defined in s.HSS 306.23 (1).

Note: HSS 302.21. HSS 302.21 (1), (2), and (3) require the computation of 3 critical dates in a resident's life and notice to the resident of them. They are the parole eligibility date, the projected mandatory release date and the projected discharge date. The latter 2 are "projected" because they may be altered.

Appendix

Newly sentenced offenders are distinguished from others by HSS 302.21 (1) and (2). Because registrars have the necessary information to determine the dates for those recently sentenced, they can provide the information within 10 days.

Residents whose discretionary parole and mandatory release parole has been revoked must await a determination as to how much good time is forfeited before the dates can be set. Residents whose probation was revoked but whose sentence was withheld must await sentencing before the dates are detemined. After sentencing, they are informed of the dates pursuant to subsection (1).

Parole eligibility, except for crimes with a mandatory parole eligibility date, is one-half the minimum sentence. Parole eligibility should not be equated with a grant of parole. Eligibility simply means the person may be considered for parole. It does not mean the person will be granted parole, necessarily. The minimum is one year for felonies for purposes of parole eligibility. Wis. Stat. 57.06; 973.01; *Edelman V. State,* 62 Wis. 2 613, 215 N.W. 2d 386 (1973). The requirement that a resident serve 60 days in a state institution before eligibility was recently enacted. Wis. Stat. s. 57.06 (1) (a) (1977).

A resident with a 5 year sentence for burglary is eligible for parole after 6 months. A resident who receives 2 consecutive 5 year sentences imposed at the same time is eligible for parole after serving one year. The resident begins satisfying parole eligibility requirements on the second sentence upon satisfying eligibility requirements on the first. HSS 302.21 (4).

The projected mandatory release date is reached by crediting the resident with state good time in the amount of one month for the first year, 2 for the second and so on to a maximum of 6 months for the sixth year and every year thereafter; and by crediting extra good time at the rate of one day for every 6 of satisfactory work or study. A resident receives state good time but not extra good time for county jail time. The resident does not receive extra good time for the period by which his or her sentence is reduced by state good time. ss. 53.11 and 53.12, Stats. *State ex. rel. Hauser V. Carballo,* 82 Wis. 2d 51, 261 N.W. 2d 133 (1978).

The discharge date is reached by taking the beginning date of the sentence, reduced by county jail time and projecting the maximum period imposed by the court.

A few examples help explain this process. A resident with a single five-year sentence which had a beginning date of 5-16-74 has a projected discharge date of 5-16-79. Such a person may earn one year, three months of state good time pursuant to Wis. Stat. s. 53.11 and six months, 13 days of extra good time pursuant to Wis. Stat. s. 53.12. Thus, the resident's projected mandatory release date would be 8-3-77. Parole eligibility would be reached on 11-16-74.

If the same resident had 2 concurrent 5-year sentences imposed on the same date, the parole eligibility, projected mandatory release and projected discharge dates would be the same. HSS 302.21 (8).

If a resident received 2 terms of 5 years to be served consecutively for a total sentence of 10 years, and these sentences were both imposed on 5-16-74, the projected maximum discharge date would be 5-16-84. The resident could earn 3 years, 9 months of state good time and 10 months, 22 days of extra good time. The projected mandatory release date would be 9-24-79. Parole eligibility would be 5-16-75. HSS 302.21 (10).

If a resident with a single 5-year sentence imposed on 5-16-74 received a second 5-year concurrent sentence imposed 3 months later on 8-16-74, the resident's new projected maximum discharge date would be 8-16-79. The resident's new projected mandatory release date would be 11-3-77. Parole eligibility would be reached on 2-16-75. HSS 302.21 (9).

A resident with a single five-year term imposed on 5-16-74 who received a second five-year term to be served consecutively to the first three months later on 8-16-74 would have a new projected maximum discharge date of 5-16-84. The new projected mandatory release date would be 10-20-80. The new parole eligibility date would be 5-16-75. HSS 302.21 (11). It should be noted that the resident can receive only one month of state good time on the second sentence during its first year, two during its second year and so on. Wis. Stat. 53.11. *State ex. rel., Gergenfurtner V. Burke,* 7 Wis. 2d 668, 97 N.W. 2d 517 (1959). *State ex. rel., Stenson V. Schmidt,* 22 Wis. 2d 314, 125 N.W. 2d 634 (1964).

Note: HSS 302.22. HSS 302.22 requires the registrar to notify the court and resident if there is uncertainty as to what sentence or sentences were imposed. It is sometimes difficult to understand the terms of a sentence, particularly when there are multiple convictions and when a resident is sentenced as a repeater. The rule also requires that special notice be given to the resident of legal services, because the issue usually arises early in the A & E process, before the resident has been seen by a law student.

Note: HSS 302.23. HSS 302.23 deals with credit toward sentence for people whose discretionary parole is revoked. The resident receives credit for the whole period under supervision. State and extra good time may be subject to forfeiture, but only so much as has been earned

to the date of violation. Wis. Stat. s. 53.11, 53.12, 57.07 (2). *State ex. rel., Hauser V. Carballo,* 82 Wis. 2d 51, 261 N.W. 2d 133 (1978). HSS 302.23 (1).

Sub. (2) requires that credit be given for all periods in custody after violation, either pursuant to a "hold" or in connection with the course of conduct that leads to violation. For example, if a resident on parole were arrested for burglary on the date of the alleged offense and the resident's parole was revoked either after conviction for the burglary or because the burglary was a violation of parole, though there was no conviction, the resident would receive credit for all time in custody in connection with the burglary. cf. s. 973.155 (1) (a) Stats. (1977).

If the person were convicted of the burglary, even if it were in another state, and served a sentence for it in the other state, credit would be given toward the Wisconsin sentence for the whole period of custody in that other state. This is required by Wis. Stat. 57.072 (2) (1977) and Wis. Stat. 973.155 (1) (b) (1977).

Even if the person were not convicted of burglary, if parole was later revoked for it, the person would receive credit for all time in custody beginning when the parole was placed. Wis. Stat. 973.155 (1) (a) and (b) (1977).

Note: HSS 302.24. HSS 302.24 deals with credit toward sentence for people whose mandatory release parole is revoked. HSS 302.24 (1) puts into rule form the requirements of Wis. Stat. S. 53.11 (7) (b). Subsection (2) defines custody as it is defined in HSS 302.23 (2). See note to HSS 302.23 (2).

Subsection (3) puts into rule form the requirements of the *Hauser* case, supra.

Note: HSS 302.245. This rule deals with credit provisions for people whose probation is revoked who are sentenced to probation. People who have been sentenced prior to revocation are treated slightly differently from those whose sentencing is deferred until after revocation because this is required by Chapter 347, Laws of 1977 and Chapter 353, Laws of 1977. (Wis. Stat. 973.10, 57.072 (3), 973.15 and 973.155 (1977)).

Subsection (1) provides that if the probationer has been sentenced, the term begins when the probationer enters prison. Wis. Stat. s. 973.19 (2) (b). If sentencing was deferred, the term of the sentence begins on the date it is imposed unless is ordered consecutive.

This difference has a limited practical effect. The provisions of Wis. Stat. s. 973.155 give both categories of people identical credit. Therefore, the difference does not enlarge the total period of confinement. The practical effect is to limit the authority of a court which imposes a new sentence upon a new conviction after the revocation of probation. This is so because a court may not impose a sentence consecutive to another sentence unless the person is "then serving a sentence." Wis. Stat. 973.15 (2) (1977). *Guyton V. State,* 69 Wis. 2d 660, 230 N.W. 2d 726 (1975). *Drinkwater V. State,* 69 Wis. 2d 60, 230 N.W. 2d 126 (1975). *Juneau V. State,* 77 Wis. 2d 166, N.W. 2d (1977). Because a probationer who has already been sentenced for the original crime does not commence service of the sentence until he or she enters the prison, a court may not impose a sentence consecutive to the original sentence until after the probationer enters the prison. Wis. Stat. 973.10 (2) (b) and 973.15 (2) (1977).

Note: HSS 302.25. HSS 302.25 deals with credit provisions for escapes. It states that the person resumes receiving credit for the sentence from which he or she escapes when the person is taken into custody. Because a resident often has no control over when he or she is returned to a Wisconsin correctional institution, it is thought that fairness requires credit for all time in custody, unless the custody is pursuant to a sentence in a jurisdiction outside Wisconsin. Custody is thus defined differently than in HSS 302.23 and 302.245. This is based on Wis. Stat. 973.15 (7) (1977). cf. Wis. Stat. 57.072 (2) (1977). Therefore, while an escapee awaits extradition or return to the institution, credit is to be given.

Note: HSS 302.26. Inmates and persons on mandatory release parole may on occasion wish to waive good time or entitlement to mandatory release. Because a waiver has serious implications for parties other than the person requesting the waiver, it must be subject to approval of the department.

The overall goal in the decision to permit the waiver of good time or of entitlement to mandatory release is to promote the individual's reintegration into society. Superficial compliance with any of the criteria is not sufficient. The institution staff and the bureau director must exercise their judgment to decide if the waiver will help the inmate or mandatory release parolee cope with the outside world. This decision should take into account the views of the inmate's social worker at the institution or the parolee's parole agent. The department's bureau of correctional health services should be consulted if the reason for the request is to complete medical treatment. Examples of inappropriate considerations which do not promote reintegration into society are avoidance of parole supervision, avoidance of detainers, and desire to serve lengthy periods of another jurisdiction's sentence in Wisconsin. A waiver may be allowed if an inmate has minimal time remaining on his or her sentence

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from another jurisdiction, since transferring the inmate for such a short time could disrupt release planning and cause administrative difficulties.

The requirements of HSS 302.26 (3) (a) are to enable the registrar to do the necessary administrative work for a waiver. The rule forbidding the waiver of more than 6 months of good time at once is to ensure that the inmate does not waive too much good time at once, because once waived the time may not be reinstated, except for good cause. Good cause would be shown if the circumstances which caused the waiver changed. HSS 302.26 (3) (c). Circumstances might change and make a wholesale waiver of good time undesirable. For example, a sick inmate might recover more rapidly than anticipated. The requirement that at least 15 days be waived at once is to avoid undue administrative burden. The requirement of a written waiver is to ensure that proper records are kept. The requirement of consultation with a social worker or agent is to ensure that the inmate or mandatory release parolee understands the consequences of a waiver.