

Chapter HSS 328

ADULT FIELD SUPERVISION

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NOTE: Some sections in this chapter have explanatory material which can be found in the appendix following HSS 328.30.

Subchapter I—General Provisions

**HSS 328.01 Purpose.** The purposes of this chapter are to provide rules for community and facility-based supervision, services, and programs for clients under control in order to assure public safety, promote social reintegration, reduce repetition of crime and carry out the statutory directives under s. 46.001, Stats. The following specific goals and objectives are relevant towards fulfillment of these purposes:

- (1) To supervise and control offenders to the extent necessary to meet public, staff, and offender safety responsibilities;
- (2) To provide opportunities for obtaining education, training, work experience, coping skills, and other programs and services to enable offenders to live constructive lives;
- (3) To provide access to community-based programs for probationers and parolees for whom such programs are desirable and necessary;
- (4) To establish necessary guidelines, procedures, and controls to maintain program, staff, and fiscal accountability and to promote program efficiency and effectiveness;

(5) To cooperate with other public and private agencies in activities for the purpose of prevention of crime and to provide alternatives to institutionalization; and

(6) To protect the health and rights of all persons involved in the division's programs and activities.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**HSS 328.02 Applicability.** This chapter applies to the department and to all adult clients under its custody and supervision for correctional purposes. It implements ss. 46.001, 46.03, 46.036, 53.11, 53.14, 53.19, 53.31, 57.06(3), 57.072, 57.075, 57.12, 57.13, 57.135, 57.14, 161.47, 941.29, 971.14, 971.17, 972.15, 973.04, 973.06, 973.08, 973.09, 973.10, 973.155, 975.06, 975.08, 975.10, 975.11, 975.12, Stats., and ss. 54.01, 54.03 to 54.07, 54.10, 54.11, 54.13, 54.15 and 54.16, (1975) Stats.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. Register, April, 1986, No. 364, eff. 5-1-86.

**HSS 328.03 Definitions.** In this chapter:

(1) "Absconding" means the failure of a client to make himself or herself available as directed by the agent.

(2) "Administrator" means the administrator of the division or his or her designee.

(3) "Agent" means that employe of the bureau of community corrections, division of corrections, department of health and social services, who may be assigned the responsibilities under this chapter.

(4) "Bureau of community corrections" or "bureau" means the bureau of community corrections, division of corrections, department of health and social services.

(5) "Client" means a person who is committed to the custody of the department for correctional purposes and is under field supervision of the department, except that in s. HSS 328.09 (3) and (4) "client" has the meaning prescribed in s. HSS 328.09 (3) (a).

(6) "Collateral" means a family member, friend, employer, teacher, or any person who has contact with or information about a client.

(7) "Commitment term" or "term" means that period of time during which the client is under the custody and supervision of the department.

(8) "Compact administrator" means that person in Wisconsin or in a state other than Wisconsin who has been assigned the responsibilities under this chapter, or his or her designee.

(9) "Compact coordinator" means that employe of the bureau of community corrections, division of corrections, department of health and social services, who has been assigned the responsibilities under this chapter, or his or her designee.

(10) "Compact specialist" means an employe of the bureau of community corrections, division of corrections, department of health and social services, who has been assigned the responsibilities under this chapter, or designees.

appeal. Copies of the decision shall be sent to the client, the client's agent, and supervisor.

(8) **APPEAL OF THE REGIONAL CHIEF'S DECISION.** (a) If the client, agent, or supervisor disagrees with the decision of the regional chief, he or she may within 5 working days of receipt of the decision, appeal in writing to the director of the bureau of community corrections.

(b) The bureau director or designee shall review all relevant written material, including the client's complaint and the supervisor's and regional chief's decisions, and shall issue a written decision stating the reasons for it within 10 working days of receipt of the appeal. The client, agent, supervisor and regional chief shall be sent copies of the decision. If the bureau director is unable to decide within 10 working days, he or she shall notify the parties of this and of the reason for it. In this case a decision shall be rendered within 10 working days of that notification. If the bureau director fails to decide, the regional chief's decision shall be final.

(c) The bureau director's decision regarding the complaint shall be final.

(9) **EFFECT OF APPEAL ON DISPUTED DECISION.** During the period required under this section to investigate any complaint or review any decision, the affected parties shall comply with the decision under dispute.

(10) **EXPEDITED APPEAL.** If resolution of a complaint under the periods of time provided for under this section would moot the complaint, the complaint process shall be expedited.

(11) **PENALTIES.** No penalties to a client shall result from the mere filing of a complaint by the client.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**HSS 328.12 Purchase of services.** (1) If a client requires assistance or materials that cannot feasibly be provided through any other available resource, the department may provide such assistance through individual or group service contracts with service agencies.

(2) The division shall follow department established, specific policies and procedures consistent with the goals and objectives of this chapter and s. 46.036, Stats., for the provision of such assistance to clients. Such guidelines should set priorities for the types of assistance which may be provided by the department.

(3) (a) A client may request and an agent may arrange for assistance to be provided to the client. Documentation of the provision of service shall be maintained in the client's record and it shall include the reasons why the assistance is needed and the agent's attempts to provide the necessary assistance through other sources. It shall be reviewed by the agent's supervisor.

(b) Appropriate staff may audit the provision of services to a client where a purchase of services contract has been entered into.

(4) Assistance to clients may be provided after receiving departmental approval pursuant to the procedures under sub. (2). Purchase of service funds may be used in service of clients by contracting with other service

agencies. Approval of the contract is necessary before such services may be provided.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**HSS 328.13 Voluntary return to an institution.** (1) A client on parole may request a return to a correctional institution in writing only after the client has been informed by an agent:

(a) That if he or she goes back to the institution a return to parole status may be determined only by the parole board or he or she may have to remain there until he or she reaches his or her mandatory release date under s. HSS 302.21;

(b) That he or she must waive good time in accordance with s. HSS 302.26 to return to or remain in an institution beyond the mandatory release date;

(c) That all the department's administrative rules applicable to inmates in correctional institutions shall apply to the client upon return; and

(d) Of the procedures to be used to return the client to a particular institution.

(2) An agent shall discuss a request and the client's record with a supervisor. If the agent and supervisor agree in writing that the client knowingly, voluntarily, and intelligently requests return and that such return is consistent with the goals and objectives of this chapter, the client may be returned to an institution. If the agent and supervisor disagree, the regional chief shall make the decision in writing.

(3) An agent shall arrange for a client's return to an institution.

(4) An agent and supervisor are responsible for following the client's case and shall appropriately assist the client when he or she is eligible for release.

(5) Relevant records relating to the voluntary return of a client to an institution shall be maintained in the client's record.

(6) In an emergency, the provisions of this section requiring a written decision prior to return are inapplicable.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**HSS 328.14 Absconding.** (1) If a client absconds, a field staff member shall issue an apprehension warrant to be entered in the TIME system or to be sent to the local apprehending authority. If the local apprehending authorities are contacted, they shall be instructed not to forward any information regarding the absconding to the TIME system.

(2) An apprehension warrant shall include all relevant and necessary information and should satisfy all of the requirements of the TIME system.

(3) A violation report shall be prepared for a client who absconds, in accordance with s. HSS 31.03 (1) (d).

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mation in the past and whether the informant has reason to supply inaccurate information;

(e) The activity of the client that relates to whether the client might possess contraband;

(f) Information provided by the client that is relevant to whether the client possesses contraband;

(g) The experience of a staff member with that client or in a similar circumstance;

(h) Prior seizures of contraband from the client; and

(i) The need to verify compliance with rules of supervision and state and federal law.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. and recr. Register, April, 1986, No. 364, eff. 5-1-86.

**HSS 328.22 Custody and detention.** Whenever feasible, staff shall rely on law enforcement authorities to take a client into custody. When such assistance is not practical, field staff shall take clients into custody in accordance with this section.

(1) A client shall be taken into custody and detained if the client is alleged to have been involved in assaultive or dangerous conduct. A regional chief may permit exceptions to this subsection.

(2) A client may be taken into custody and detained:

(a) For investigation of an alleged violation by the client;

(b) After an alleged violation by the client to determine whether to commence revocation proceedings;

(c) For disciplinary purposes; or

(d) To prevent a possible violation by the client.

(3) An agent may authorize the detention of a client under sub. (1) or (2) (a) (b) and (d) for a maximum of 5 working days. A supervisor may approve of subsequent detention for a maximum of 5 working days and the regional chief may approve of detention for an additional 5 working days. Detention beyond the foregoing time limits shall be authorized by the director. A client detained under sub. (2) (c) may only be detained with supervisory approval for a maximum of 5 working days for disciplinary purposes. This subsection does not apply to detentions pending final revocation which are authorized by an agent's immediate supervisor under s. HSS 31.04 (5) when a preliminary hearing is not held pursuant to s. HSS 31.04 (2).

(4) Custody decisions during revocation proceedings shall be made pursuant to s. HSS 31.04 (5).

(5) A client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained in an institution pending revocation proceedings.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. (4) and (5), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (1), eff. 10-18-85; am. (1) and (3), cr. (4), Register, April, 1986, No. 364, eff. 5-1-86; renum. (6) to be (5) under s. 13.93 (2m) (b) 1, Stats., Register, April, 1986, No. 364.

**HSS 328.23 Transporting clients in custody.** (1) A field staff member may transport a client to jail, institution, court, or other detention facility.

(2) A client may be handcuffed or otherwise appropriately restrained when being transported by field staff. When a client is being taken into custody, it is usually desirable to restrain the client.

(3) Two field staff members shall transport a client whenever feasible, and the client shall be informed of the reasons why he or she is being transported prior to such transport.

(4) If a client is to be transported to Wisconsin from another state, an agent and the agent's supervisor shall determine:

- (a) Whether the client is available for transport;
- (b) Whether an on-site hearing should be held prior to transport;
- (c) Whether extradition matters are resolved;
- (d) Which staff members shall transport the client.

(5) Relevant records relating to transport of a client shall be maintained in the client's record.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

#### Subchapter IV—Matters Relating to Revocation

**HSS 328.24 Good time forfeiture hearings.** (1) AMOUNT OF TIME AVAILABLE FOR FORFEITURE. (a) Prior to a client's preliminary hearing under s. HSS 31.04, an agent shall contact in writing the registrar of the institution which has the client's record and advise the registrar of the client's alleged date of violation and request the registrar to provide the amount of the client's total good time that is available for forfeiture upon revocation of a parolee's supervision.

(b) The agent shall notify the hearing examiner's office of the amount of good time available for forfeiture prior to a final revocation hearing.

(2) AGENT'S RECOMMENDATION. (a) An agent shall recommend that a specific amount of good time be forfeited upon revocation of a client's supervision. This amount of time shall be expressed in terms of whole days, months, or years, or any combination thereof. The amount of time shall not be expressed in terms of fractions or percentages of time periods. Reasons for the recommendation, including the factual basis for it, shall be given with it.

(b) An agent should consider the following prior to making a forfeiture recommendation:

1. The client's institution conduct record;
2. The nature and severity of the original offense;
3. The client's conduct and behavior while on parole;
4. The amount of time left before mandatory release (if the client is a discretionary release parolee); and

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5. Whether forfeiture would be consistent with the goals and objectives of field supervision under this chapter.

(c) If an agent's supervisor approves of the agent's recommendation, it shall be included in the client's chronological history along with a supervisor's comments on the recommendation.

(3) HEARING. (a) *General*. A hearing shall be held before an impartial hearing examiner who shall determine, based upon the evidence presented, what amount of good time shall be forfeited following revocation of a client's parole supervision unless the client waives his or her rights to the hearing in accordance with par. (c). This hearing may be held in conjunction with the final revocation hearing.

(b) *Notice*. A client and the client's agent shall be given written notice of the client's right to:

1. A hearing to be held in accordance with this section;
2. Receive a written decision stating the reasons for it based upon the evidence presented; and
3. The right to have the decision reviewed in accordance with par. (h). The notice shall include the date, time, and place of the hearing.

(c) *Waiver*. A client may knowingly, voluntarily, and intelligently waive his or her right to a hearing under this section in writing. Forfeiture is then decided pursuant to par. (k).

(d) *Time*. A hearing shall take place either:

1. Immediately following a final revocation hearing under s. HSS 31.03 (3); or
2. Within a reasonable period of time after the secretary issues a decision under s. HSS 31.03 (4) revoking the client's parole, if a client waived his or her rights to a final revocation hearing.

(e) *Procedure*. The hearing shall be conducted in accordance with par. (a). If the recommendation has been decided upon, it shall be read aloud and the client and agent may speak and respond to questions from the hearing examiner. A verbatim record of the hearing shall be kept.

(f) *Decision*. 1. After the hearing, the examiner shall consider only the record of the final revocation hearing, if any was held, any record kept under ch. HSS 31, the revocation decision and the reasons for it, testimony at the hearing, and the client's record.

2. The examiner shall recommend:

- a. Whether good time should be forfeited; and
- b. If good time should be forfeited, the specific number of whole days, months, or years, or any combination thereof, that shall be forfeited. The amount of time forfeited shall not be expressed in terms of fractions or percentages of time periods.

3. Good time shall not be forfeited unless the examiner finds that non-forfeiture would be inconsistent with the goals and objectives of supervision under this chapter. The specific goal or objective and the reason it would be inconsistent with the continuation of supervision shall be ex-

pressly stated in the decision. No more good time shall be forfeited than is necessary to achieve the goals and objectives of supervision under this chapter.

4. The examiner shall issue a written decision, based upon the evidence presented and the client's record, indicating the forfeiture or nonforfeiture of the client's good time.

(g) *Order.* The examiner's written order stating the decision and the reasons for it shall be delivered within 10 working days after the hearing to the client and the division's representative and agent. The time limits start on the day after the end of the hearing and include the date of delivery. If a hearing was held under par. (d)1., this order shall be incorporated into the order under s. HSS 31.03 (3) (g).

(h) *Effect of order and request for review.* 1. An order pursuant to a hearing under par. (d)1. shall take effect and be reviewed in accordance with s. HSS 31.03 (3).

2. An order pursuant to a hearing under par. (d)2. or (c) shall take effect and be final 10 days after the date it was delivered unless the client or the division requests a review of the forfeiture decision by the secretary within that time. Written notice of the request shall be sent to the secretary and other party.

3. The registrar at the institution where the client is to be received following revocation shall be notified by the hearing examiner as soon as possible after the forfeiture decision becomes final and shall receive a copy of the order within 10 working days of its effective date.

(i) *Materials submitted for review.* All materials submitted to aid the secretary in review of the forfeiture decision must be received by the secretary within 10 working days after the request for review is received by the secretary. An extension of this time limit may be granted by the secretary.

(j) *Secretary's decision.* 1. The secretary shall review the record of the hearing, the revocation decision and the reasons for it, the client's record, and all materials submitted for review under par. (i).

2. The secretary shall decide to modify or affirm the examiner's forfeiture decision based upon the evidence presented.

3. The secretary's written decision, stating the reasons for it, shall be delivered to the client and the agent within 10 days after the date that all materials under par. (i) are due. The secretary may extend the time limit.

4. The secretary shall inform the client and agent in writing of any extension of the time limit. Specific reasons for the extension shall be included in the notice of extension.

(k) *Procedure when hearing waived.* 1. If a client waives his or her right to a hearing under this section, copies of the waiver and revocation decision shall be sent to the hearing examiner for review within a reasonable time after the revocation decision becomes final.

2. An agent shall recommend a forfeiture of good time in accordance with sub. (2) (a) and (b).



3. The waiver may result in an informal interview with a hearing examiner who shall consider the client's record, the revocation decision and the reasons for it, and any evidence or testimony presented at the final revocation hearing.

4. The hearing examiner shall decide whether good time should be forfeited and, if so, the amount of time to be forfeited. A forfeiture of time shall be expressed in terms of whole days, months, or years, or any combination thereof. The amount of time shall not be expressed in fractions or percentages of time periods. Paragraph (f)3. applies to the hearing examiner's decision.

5. The hearing examiner's written decision shall state the reasons for it based upon the evidence presented and the client's record and the decision shall be delivered to the client and agent within 10 days of receipt of the waiver and revocation decision pursuant to par. (k)1. and 2.

(4) RECORDS. Relevant records relating to the forfeiture of good time shall be maintained in the client's record.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. (1) (a), Register, April, 1986, No. 364, eff. 5-1-86.

**HSS 328.25 Tolloed time.** (1) For the purposes of this chapter, "tolled time" means the period of time between the date of a client's violation and the date the client is reinstated or revoked.

(2) The period of a client's probation or parole ceases to run during tolled time in accordance with s. 57.072, Stats. If a client is subsequently reinstated rather than revoked, time shall be tolled only if the reinstatement order concludes that the client did in fact violate the rules or conditions of his or her supervision. In this case, the reinstatement order shall credit time spent in custody as service of the supervision period.

(3) The amount of time to be tolled is officially determined by a hearing examiner or the secretary's decision in accordance with HSS 328.24.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**HSS 328.26 Reinstatement.** Reinstatement may only occur in accordance with this section.

(1) DEFINITION. For the purposes of this chapter, "reinstatement" means the return of a client to field supervision after either:

(a) A client's personal written admission of a violation of the rules or conditions of supervision; or

(b) A finding by a hearing examiner or the secretary under ch. HSS 31, that the client committed a violation of the rules or conditions of supervision sufficient to warrant revocation.

(2) ADMISSION. (a) A client may knowingly, intelligently, and voluntarily make a written admission, signed and witnessed, of a violation of the rules or conditions of supervision sufficient to warrant revocation, and request reinstatement. The request must acknowledge:

1. The date of the violation;

2. That the client is aware that the period between the date of violation and the date of reinstatement or revocation shall be tolled, i.e., the

period of the client's commitment term ceases to run during this period of time; and

3. That the client is aware that a specific stated amount of good time may be forfeited as a result of the violation if reinstatement is approved by the secretary.

(b) A staff member may accept a client's written admission and request and shall submit it with the report under s. HSS 31.03 (1) (d) to a supervisory staff member.

(c) The supervisory staff member shall decide whether to accept the admission and request, recommend reinstatement, and forward the admission, request, and recommendation to the secretary for approval, or proceed with revocation proceedings. Reinstatement shall only be recommended when it is consistent with the goals and objectives of supervision under this chapter. The recommendations shall include a statement of the reasons for it.

(d) The secretary shall decide within 5 working days of receipt of an admission and request and a staff member's recommendation whether to order reinstatement. A copy of the secretary's decision, stating the reasons for it, shall be sent to the client and the supervisory staff member.

(e) If the secretary decides that reinstatement shall not occur, the revocation process may be initiated in accordance with ch. HSS 31.

(3) **FINDING OF VIOLATION BY HEARING EXAMINER.** A hearing examiner may, under ch. HSS 31, order a client reinstated after finding that the client committed a violation of the rules or conditions of supervision. Reinstatement shall only be ordered when it is consistent with the goals and objectives of supervision under this chapter. The order shall include a statement of the reasons for it.

(a) The date of a client's violation and the date that the client was reinstated shall be stated on the hearing examiner's order of reinstatement.

(b) Good time may be forfeited by a hearing examiner's decision and order for reinstatement.

(c) A hearing examiner's order for reinstatement is subject to approval by the secretary in accordance with ch. HSS 31.

(4) **RECORDS.** Relevant records relating to a client's reinstatement shall be maintained in the client's records.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

#### Subchapter V—Records and Reports

**HSS 328.27 Presentence investigation report.** (1) **PURPOSE.** The primary purpose of the presentence investigation report is to provide the sentencing court with accurate and relevant information upon which to base its sentencing decision. The report is also important in the correctional process. It is used for such things as determining levels of supervision, classification, program assignment, parole planning and decision making and in the overall correctional treatment of offenders.