

## Chapter HSS 96

### WAIVER BY FORENSIC PATIENTS OF GOOD TIME OR ENTITLEMENT TO MANDATORY RELEASE

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Note: This chapter was created by emergency rule effective August 12, 1985.

**HSS 96.01 Purpose and authority.** Persons who have been committed to the department under ch. 975, Stats., may, with the approval of the department, waive the good time credit they have received toward a reduction of their maximum length of stay at the institution or, if they are not credited with good time, their entitlement under ss. 53.11 and 975.12 (2), Stats., to mandatory release. This chapter establishes conditions and procedures for forensic patients who want to waive good time or mandatory release, and thereby remain longer at the institution, and contains the criteria which the department is to use in agreeing to waivers by patients. The chapter is promulgated under the authority granted to the department by ss. 53.11 (8) and 227.11, Stats.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**HSS 96.02 Definitions.** In this chapter:

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

(2) "Good time" means credit earned toward a reduction in a patient's maximum length of stay at an institution. It is expressed in number of days. A patient's maximum length of stay is the maximum term prescribed by law for the offense for which the patient was committed, less "good time" that the patient has earned as provided in ss. 53.11 and 53.12, 1981-82 Stats.

(3) "Mandatory release" means the required release of a patient from an institution when the patient who earns good time has been at the institution for the maximum time prescribed by law for the offense for which the patient was committed, less good time received and jail time credit, or when the patient who does not earn good time has been at the institution for two-thirds of the maximum time prescribed by law for the offense for which the patient was committed.

(4) "Patient" or "forensic patient" means a person convicted of a crime who is committed to the department under s. 975.06, Stats., for specialized treatment.

(5) "Secretary" means the secretary of the department.

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**HSS 96.03 Waivers.** (1) **AUTHORITY.** A patient may waive good time or may waive entitlement to mandatory release pursuant to s. 29 of 1983

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Wisconsin Act 528. Every waiver is subject to approval of the department.

Note: Since July 1, 1980 no defendant in a criminal trial has been committed to the Department for specialized treatment at a state mental health institute under the Sex Crimes Law, ch. 975, Stats. However, in October 1985 about 45 persons who were committed for treatment under that law were still confined at one of the institutes. Section 975.12 (2), Stats., provides that commitments under s. 975.06, Stats., are subject to s. 53.11, Stats., and so the changes made to s. 53.11, Stats., by 1983 Wisconsin Act 528 and 1985 Wisconsin Act 27 apply also to these patients. Under 1983 Wisconsin Act 528, the system for rewarding inmates for good behavior was changed from awarding good time off of sentence (length of commitment) for good behavior to establishing a mandatory release date at  $\frac{2}{3}$  of sentence (commitment) and providing for extension of that date for violation of institution regulations or for uncooperative behavior. That session law also provided in s. 29 that while the change in system for rewarding good behavior or penalizing unsatisfactory behavior applies automatically to persons committing offenses occurring on or after June 1, 1984, anyone who committed an offense before that date and was received at the institution before or on that date could, by written request to the department made before October 1, 1984, be subject to the new system.

(2) **CONDITIONS AND PROCEDURES.** The patient who wants to waive good time or entitlement to mandatory release shall do this in accordance with the following conditions and procedures:

(a) Except in an emergency, a patient's request to waive good time or mandatory release shall be made not earlier than 90 days before the projected mandatory release date and not later than 30 days before that date;

(b) Not less than 15 days nor more than 180 days of good time may be waived at one time. Similarly, a waiver may not result in extending the mandatory release date for less than 15 days or more than 180 days;

(c) Good time or mandatory release that is waived shall not be reinstated except for good cause related to the criteria under sub. (3) for approving a waiver;

(d) A request to be permitted to waive good time or mandatory release shall be made in writing by the patient; and

(e) The patient shall consult with his or her social worker regarding the request to waive good time or mandatory release before the department will consider approving the waiver.

(3) **CRITERIA FOR APPROVAL.** The secretary or a designee shall make decisions on waivers by patients. The secretary or designee shall evaluate each request according to the criteria in this subsection and shall make a record of the reasons for the decision. Waiver requests may be approved only if:

(a) The patient has not achieved maximum benefit from mental health treatment based on clinical judgment; or

(b) Time is needed to reestablish a release plan that is no longer appropriate.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.