

## Chapter DOC 331

### PROBATION, PAROLE, OR EXTENDED SUPERVISION

#### REVOCATION PROCEDURES

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**Note:** Chapter HSS 31 was renumbered chapter DOC 331 and revised under s. 13.93 (2m) (b) 1., 2., 6. and 7., Stats., Register, September, 1991, No. 429. Chapter DOC 331 was repealed and recreated, Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.01 Authority and applicability. (1)** These rules are promulgated under the authority of s. 227.11, Stats. They interpret ss. 302.11, 302.113, 302.114, 302.335, 304.02, 304.06, 961.47, 971.17, and 973.10, Stats.

**(2)** This chapter applies to offenders on probation, parole, and extended supervision in the legal custody of the department.

**History:** CR 10-125; cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.02 Definitions.** The definitions in s. DOC 328.03 apply to this chapter. In addition, in this chapter:

**(1)** “Magistrate” means a supervisor or supervisor’s designee who has not been directly involved in the decision to initiate proceedings to revoke the offender’s supervision.

**(2)** “Reviewing authority” means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the offender waives a hearing.

**History:** CR 10-125; cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.03 Violation of supervision. (1) INVESTIGATION.** The department shall investigate the facts underlying an alleged violation of supervision and shall meet with the offender to discuss the allegation within a reasonable period of time after becoming aware of the allegation.

**(2) RECOMMENDATION.** After investigation and discussion under sub. (1), the agent and supervisor shall do one of the following:

- (a) Take no action because the allegation is unfounded.
- (b) Resolve alleged violations by any of the following:
  1. A review of the rules of supervision followed by changes in them where necessary or desirable, including return to court.
  2. A formal or informal counseling session with the offender to reemphasize the necessity of compliance with the rules or conditions.
  3. An informal or formal warning that further violation may result in a recommendation for revocation.
  4. Implementation of an alternative to revocation.
- (c) Recommend revocation for the alleged violation.

**History:** CR 10-125; cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.04 Notice.** Within a reasonable time after a determination under s. DOC 331.03 (2) (c), the department shall provide the offender with written notice that the department has recommended revocation. The notice shall contain all of the following:

**(1)** A statement describing the alleged violation and the rule violated.

**(2)** The offender’s hearing rights, including the right to waive the hearing.

**(3)** The amount of any time available for good time forfeiture, reincarceration, or reconfinement.

**(4)** The amount of time recommended by the agent for good time forfeiture, reincarceration, or reconfinement.

**History:** CR 10-125; cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.05 Preliminary hearing. (1) REQUIREMENT.** When revocation is initiated, a magistrate shall conduct a preliminary hearing in accordance with this section to determine whether there is probable cause to believe that the offender violated a rule or a condition of supervision.

**(2) EXCEPTIONS.** A preliminary hearing need not be held if one of the following is true:

- (a) The offender waives the right to a preliminary hearing in writing.
- (b) The offender has given and signed a written statement which admits a violation.
- (c) There has been a finding of probable cause in a felony matter and the offender is bound over for trial for the same or similar conduct.
- (d) There has been an adjudication of guilt by a court for the same or similar conduct.
- (e) The offender is not being held in custody under the department’s authority.
- (f) There has been a finding of probable cause for the same or similar conduct by a court or magistrate in another state.

**(3) NOTICE OF PRELIMINARY HEARING.** Written notice shall be given to the offender and either the offender’s attorney or the state public defender. The notice shall include all of the following:

- (a) The rule or condition that the offender is alleged to have violated.
- (b) A statement that the offender has a right to a preliminary hearing to determine if there is probable cause to believe the offender has violated a rule or condition of supervision.
- (c) A statement that the offender has the right to waive the preliminary hearing.
- (d) A statement that the offender has a qualified right to be represented by an attorney at the preliminary hearing.
- (e) A statement that the offender or offender’s attorney, if applicable, may review all relevant evidence to be considered at the preliminary hearing, except evidence that is determined to be confidential.
- (f) An explanation of the possible consequences of any decision.
- (g) An explanation of the offender’s rights which shall include all of the following:

1. The right to be present.
2. The right to deny the allegation.
3. The right to present relevant evidence, including witnesses who can give relevant information regarding the violation of the rules or conditions of supervision.
4. The right to receive a written decision stating the reasons for the decision based on the evidence presented.

(4) **TIME AND PLACE.** The preliminary hearing shall take place as close as feasible to the area of the state in which the alleged violation occurred. It shall take place not sooner than one working day and not later than 5 working days after receipt by the offender of the notice of the preliminary hearing.

(5) **QUALIFIED RIGHT TO AN ATTORNEY.** If an attorney fails to appear at the preliminary hearing to represent the offender, the magistrate may either proceed with the hearing or postpone the hearing. The hearing shall be postponed to permit representation by an attorney if the offender, after being informed of his or her right to representation, requests an attorney based on a timely and plausible claim that he or she did not commit the alleged violation and the magistrate concludes either that the complexity of the issues will make it difficult for the offender to present his or her case or that the offender is otherwise not capable of speaking effectively for himself or herself.

(6) **DECISION.** (a) After the preliminary hearing the magistrate shall issue a written decision stating findings, conclusions and reasons for the decision. The decision shall be based on the evidence presented.

(b) The magistrate shall provide copies to the offender within a reasonable time after the preliminary hearing.

(c) If probable cause was found, the division of hearings and appeals shall be contacted in writing to request the scheduling of a final revocation hearing.

(d) If no probable cause was found the revocation process terminates without prejudice.

(7) **DETENTION PENDING FINAL HEARING.** (a) When there is a preliminary hearing, the magistrate shall decide if the offender is to be detained pending the outcome of the final hearing. When a preliminary hearing is not required because the case meets one of the criteria under sub. (2), a supervisor shall make the detention decision.

(b) The magistrate or supervisor shall consider factors including the following:

1. The offender is believed to be dangerous.
2. The offender is likely to flee.
3. The offender is likely to engage in criminal behavior before the revocation takes place.
4. The offender is likely to engage in an activity that does not comply with the rules and conditions of supervision.
5. The length of the term to be served upon revocation is great.

(c) A detained offender is not eligible for release, including temporary release for work.

(d) The detention decision made pursuant to par. (b) shall remain in effect until one of the following occurs:

1. The decision of the administrative law judge becomes final.
2. The offender is reinstated.
3. The violation warrant is vacated by the department.

(e) If the department requests review of the administrative law judge's decision, the custody decision made pursuant to par. (b) shall remain in effect.

(f) The secretary may alter the custody decision at any time if the public interest warrants it.

(8) **REISSUANCE OF NOTICE.** (a) If notice of the preliminary hearing is found to be improper and the impropriety itself results in the dismissal of the revocation proceedings, the department may issue a proper notice and begin the proceedings again.

(b) If a magistrate decides that there is no probable cause to believe the offender committed the violation and later the department learns of additional relevant information regarding the alleged violation, revocation proceedings may be started again with issuance of a new notice for the preliminary hearing.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.06 Final revocation hearing.** A final revocation hearing of an offender's supervision shall take place in accordance with procedures set forth in ch. HA 2.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.07 Waived revocation hearing.** (1) An offender may waive in writing the right to revocation hearing.

(2) The agent shall prepare and send the waiver and a record of documents supporting the recommendation for revocation to the secretary for decision within a reasonable period of time.

(3) The secretary shall issue a written decision to the offender, the offender's attorney, if applicable, the agent, and the supervisory staff member who recommended revocation within 10 days of receipt of the recommendation.

(4) The offender may withdraw a waiver prior to the secretary's decision if the offender establishes that it was not knowingly, voluntarily, or intelligently made.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.08 Termination of revocation proceedings.** (1) A supervisor may recommend to the regional chief that revocation proceedings be terminated at any time before the administrative law judge issues a decision.

(2) The regional chief shall determine if there is sufficient basis for terminating the revocation proceedings.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.09 Concurrent criminal prosecution and acquittal in criminal proceeding.** Any revocation action under this chapter may proceed regardless of a concurrent prosecution of the offender for the conduct underlying the alleged violation. An acquittal in a criminal proceeding for an offender's conduct underlying an alleged violation shall not preclude revocation of that offender's supervision for the same or similar conduct.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.10 Records.** A summary of all alleged violations, revocation actions, and proceedings under this section against an offender shall be maintained in the offender's record.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.11 Special revocation procedures.** All offenders under supervision by the department are subject to revocation under ss. DOC 331.03 to 331.10, except for an offender committed under s. 961.47, Stats. For an offender committed under s. 961.47, Stats., an agent shall proceed under s. DOC 331.03 (1) and (2) and shall, upon the approval of a supervisor, notify the committing court of the alleged violation and submit a report to the court within a reasonable time after becoming aware of the alleged violation. The court shall decide if the offender shall remain on probation under s. 961.47, Stats.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.12 Harmless error.** The secretary may deem a failure to comply with a requirement under this chapter as harmless error if it does not prejudice a fair proceeding or disposition.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.13 Post revocation hearing to determine good time forfeiture, reincarceration, or reconfinement time.** (1) **APPLICABILITY.** (a) Good time forfeiture hearings apply to offenders who, before June 1, 1984, committed the crime for which they were sentenced to a period of incarceration in the Wisconsin state prison and chose not to have 1983 Wis. Act 528 apply.

(b) Reincarceration hearings apply to offenders who, between June 1, 1984, and December 30, 1999, committed the crime for which they were sentenced to a period of incarceration in the Wisconsin state prison and to any other offender who chose to have 1983 Wis. Act 528 apply, except offenders sentenced under s. 973.01, Stats.

(c) Reconfinement hearings apply to offenders who, on or after December 31, 1999, committed the crime for which they received a bifurcated sentence under s. 973.01, Stats.

**(2) HEARING.** The offender is entitled to a hearing under sub. (1) (a), (b), or (c) to determine the amount of good time to be forfeited, or the amount of reincarceration or reconfinement time to be served.

**(3) WAIVER.** The offender may waive, in writing, the right to a hearing. The waiver may be withdrawn by the offender prior to the decision if the offender establishes that it was not knowingly, voluntarily, or intelligently made.

**(4) AMOUNT OF TIME AVAILABLE.** The agent shall notify the reviewing authority of the amount of good time available for forfeiture, or the amount of reincarceration or reconfinement time available.

**(5) CRITERIA.** (a) For a proceeding under sub. (1) (a), the agent shall recommend to the reviewing authority that a specific amount

of good time be forfeited and whether good time should be earned upon the forfeited good time. For a proceeding under sub. (1) (b) or (c), the agent shall recommend a specific period of reincarceration or reconfinement. The amount of time may be expressed only in terms of years, months, and days. The agent shall include the reasons and facts consistent with the criteria listed in par. (b) that support the recommendation.

(b) In making a recommendation, the agent shall consider all of the following:

1. The nature and severity of the original offense.
2. The offender's institution conduct record.
3. The offender's conduct and behavior while on supervision.
4. The amount of time left before mandatory release if the offender is a discretionary release parolee.
5. The amount of time necessary to meet the goals and objectives of supervision under ch. DOC 328.
6. The amount of time necessary to protect the public from the offender's further criminal activity, to prevent depreciation of the seriousness of the violation or to provide a confined correctional treatment setting.
7. Other mitigating or aggravating circumstances.

**History:** CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.