

CR 85-140

CERTIFICATE

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

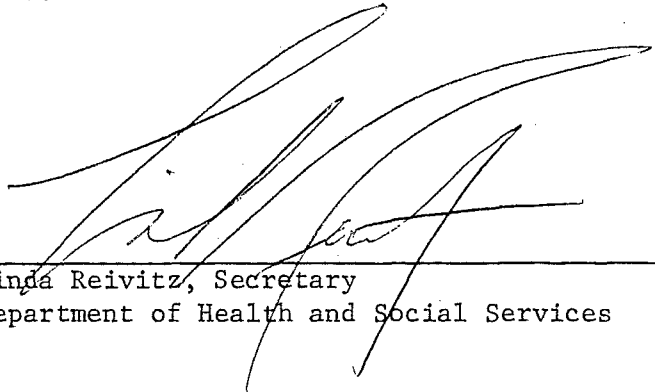
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

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 supervision of probationers and parolees were duly approved and adopted by this Department on February 24, 1986.

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 24th day of February, 1986.



Linda Reivitz, Secretary  
Department of Health and Social Services

SEAL:

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

To repeal HSS 328.03(31), 328.06(8), 328.10(4)(a) to (i), 328.29(3) and 328.30 Note (3rd paragraph); to renumber HSS 328.03(32) to (34), 328.06(9), and 328.29(4) and (5); to renumber and amend HSS 328.10(4)(intro.); to amend HSS 328.02, 328.03(5), (7) and (14), 328.11(4)(d) and (8)(b), 328.17(3)(b)3, 328.22(1) and (3), and 328.24(1)(a); to repeal and recreate HSS 328.09, 328.15, 328.21, 328.22 Note (3rd paragraph), and 328.30(1)(h); and to create HSS 328.03(34), 328.042, and 328.22(4), relating to supervision of probationers and parolees.

Analysis Prepared by the Department of Health and Social Services

This order updates and otherwise revises the Department's rules for supervision of adult probationers and parolees. Many of the changes bring the rules into conformity with present practice. The applicability of ch. HSS 328 is extended to persons who are committed to the Department because they are not competent to stand trial, are found not guilty because of mental disease or defect, or are sex crimes offenders. Some of the specific procedures for implementing the interstate compact on probation and parole supervision are deleted from the rules because these procedures change frequently through negotiations among the states involved in the compact and in reality are much more complex than the rule language suggests. Section 57.13, Stats., on the interstate compact is referenced; interested persons are referred to the Division of Corrections' Procedures Manual for the implementing procedures. Also eliminated from the rules is the detail about the types of information an agent is required to supply to a court or district attorney, on request, when a decision is being made about extending the term of supervision of a probationer. This detail is unneeded because agents are expected to and do provide all relevant information, and that simply is what the revised rule requires them to do. The revised order amends the rules on conducting searches for contraband to eliminate an agent's authority to strip search a client. It also amends the so-called "Watson rule" by requiring an agent to take a client into custody only if the client is alleged to have been involved in assaultive or dangerous conduct and no longer when the client has a record of assaultive or dangerous conduct but has been arrested for a reason not involving such conduct. In the latter case, taking the client into custody is not always a necessary response.

Pursuant to the authority vested in the Department of Health and Social Services by ss. 57.06, 973.10, and 227.014(2), Stats., the Department of Health and Social Services hereby repeals, renumbers, amends, and creates rules interpreting ss. 46.03(6)(c), 57.06, 57.13 and 973.10, Stats., as follows:

SECTION 1. HSS 328.02 is amended to read:

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--54.07~~ 54.03 to 54.07, ~~54.10--~~ ~~54.11~~ 54.10, 54.11, 54.13, 54.15 and 54.16, (1975) Stats.

SECTION 2. HSS 328.03(5), (7) and (14) are amended to read:

HSS 328.03(5) "Client" means that 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).

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

(14) "Director of the bureau of community corrections" or "director" means the director of the bureau or his or her designee.

SECTION 3. HSS 328.03(31) is repealed.

SECTION 4. HSS 328.03(32) to (34) are renumbered HSS 328.03(31) to (33).

SECTION 5. HSS 328.03(34) is created to read:

HSS 328.03(34) "Working day" means any day, Monday through Friday, except a legal holiday.

SECTION 6. HSS 328.042 is created to read:

HSS 328.042 NOTICE TO LAW ENFORCEMENT OF INMATE RELEASE TO SUPERVISION.

Before releasing an inmate to field supervision, the department shall notify the municipal police department and the county sheriff in the area where the individual will reside, as required under s. 57.06(1), Stats., unless the municipal police department or the county sheriff's office has submitted to the department a written statement waiving the right to be notified.

SECTION 7. HSS 328.06(8) and Note are repealed.

SECTION 8. HSS 328.06(9) is renumbered HSS 328.06(8).

SECTION 9. HSS 328.09 is repealed and recreated to read:

HSS 328.09 OUT-OF-STATE SUPERVISION AND INTERSTATE TRANSFER. (1)

COOPERATION WITH OTHER JURISDICTIONS. The division shall cooperate with other jurisdictions that have signed the uniform act for out-of-state probation and parole supervision to provide for the welfare and protection of clients and the public by means of the cooperative supervision of clients on probation or parole, the return from one state to another of clients who have absconded or escaped, and any additional measures for the protection of clients and the public which 2 or more of the party states may undertake cooperatively in accordance with s. 57.13, Stats.

(2) WISCONSIN CLIENTS IN OTHER STATES. (a) An inmate scheduled to be paroled or a client under field supervision may request the assistance of a social worker or agent to help prepare a sound transfer plan providing for residence, schooling, employment or training in another state. The agent or social worker shall assist with all reasonable requests and shall counsel the inmate or client about opportunities that may exist in other states. The social worker or agent may suggest that a client seek authorization under s. HSS 328.06 for temporary travel to another state to seek or confirm opportunities that would substantiate a request for a transfer.

(b) A client on supervision may transfer to another state after obtaining prior consent of that state in accordance with this section if:

1. The client is a resident of that state or has family residing in that state, or transfer is recommended by the parole board or court;

2. A client has feasible plans to obtain residence, schooling, employment or vocational training in another state; and

3. The client has not been committed to the department under s. 971.17, Stats. Persons committed to the department under s. 971.17, Stats., are not covered by the interstate compact and therefore may not live, work or be trained or educated in another state.

(c) Wherever possible restitution, court costs, back child support and other financial obligations of a client shall be paid before the client is allowed to transfer to another state.

(d) A client may apply for a transfer to another state by completing an application for compact services which acknowledges that any differences in the course and character of supervision in the other state or by the compact are accepted by the client and notes any reasons why the transfer would benefit him or her and would improve his or her opportunities to make a successful adjustment into the community. Both the client and the agent shall approve and sign the application before the client is permitted to transfer. An agent may assist a client in completing the application.

(e) When an application for transfer to another state has been completed and signed in accordance with par. (d), the agent, after receiving supervisory approval, shall send it to a compact specialist.

(f) A compact specialist shall review the materials submitted pursuant to par. (e), prepare a written request for the interstate transfer based upon the information provided, and send the request with the materials to the receiving state's compact administrator.

(g) If a client under the supervision of another state in accordance with this subsection violates the conditions or rules of his or her supervision, revocation may occur.

(3) OUT-OF-STATE CLIENTS IN WISCONSIN. (a) Definition. For the purposes of this subsection and sub. (4), "client" means an offender from a state other than Wisconsin who has been convicted and placed on probation or parole in that other state.

(b) Application for compact services. 1. A client may request compact services by submitting an application to the Wisconsin compact administrator. The application shall be referred to the appropriate compact specialist for assignment to a Wisconsin agent who shall complete an investigation of the request and recommend approval or rejection of the transfer within 30 days of its receipt by him or her.

2. If the application is rejected, the Wisconsin agent shall notify the Wisconsin compact specialist, state the reasons for the rejection and return all of the application materials to the Wisconsin compact specialist. Rejection of an application requires supervisory approval. The Wisconsin compact specialist shall return all of the application materials to the compact administrator with an explanatory letter rejecting the application.

3. If the application is accepted, the Wisconsin agent shall notify the Wisconsin compact specialist of the acceptance and the reasons for it. The Wisconsin compact specialist shall notify the compact administrator of the sending state of the acceptance and the reasons for it.

(c) Alleged violation of conditions or rules of supervision. If a client allegedly violates the conditions or rules of supervision and the Wisconsin agent with supervisory approval recommends return to the other state, the compact specialist shall be notified and he or she shall inform the sending state compact administrator of the facts underlying the alleged violation and request notice of that state's preferred disposition for the division either to proceed with a probable cause hearing in accordance with this chapter or immediately return the client to that state.

(d) Absconding clients. An apprehension request for a client who absconds may be issued. The sending state shall be notified. If the client is not located after a reasonable period of time, the request shall be cancelled and the client's record along with an explanatory letter indicating the facts regarding the absconding, the client's adjustment prior to absconding, and any pending criminal charges against the client shall be forwarded by the Wisconsin agent with a recommendation for termination of compact services to the compact specialist for transmittal to the sending state compact administrator.

(4) REQUESTS FROM OTHER STATES FOR PRESENTENCE OR RECORD CHECK INVESTIGATIONS. The compact coordinator shall receive all requests from other states for presentence or record check investigations of clients and refer them to a compact specialist who shall assign the investigation to an agent. The agent shall complete the investigation within 30 days of its receipt by him or her and submit a written report to the compact specialist for transmittal to the compact administrator requesting the investigation.

(5) RETURN OF PAROLE AND PROBATION VIOLATORS. The secretary may deputize a person from another state to assist in returning a client to Wisconsin if the client has violated the rules and conditions of parole or probation. Any deputation shall be in writing.

Note: HSS 328.09. Wisconsin and several other states are parties to the uniform act for out-of-state probationer and parolee supervision. The compact and supplementary provisions are found under ss. 57.13, 57.135, and 57.14, Stats. The parties have agreed to cooperate to provide for the welfare and protection of clients and the public with respect to the areas noted in sub. (1) of this section.



The compact gives clients the opportunity to live, work, or obtain training outside of the state of their conviction when such an arrangement is consistent with the goals of supervision under this chapter.

More specific procedures for implementing the Interstate Compact are set out in the Interstate Compact Manual, available from the Bureau of Community Corrections, Division of Corrections, P.O. Box 7925, Madison, Wisconsin 53707.

SECTION 10. HSS 328.10(4)(intro.) is renumbered HSS 328.10(4) and amended to read:

HSS 328.10(4) AGENT'S RECOMMENDATION. An agent may recommend that a court grant an extension of the commitment term or that financial obligations be modified. If the court or district attorney requests information regarding a client's possible extension, the agent ~~may report the following to the client and court or district attorney as appropriate;~~ shall provide relevant information.

SECTION 11. HSS 328.10(4)(a) to (i) are repealed.

SECTION 12. HSS 328.11(4)(d) and (8)(b) are amended to read:

HSS 328.11(4)(d) A denial of use or possession of firearms pursuant to the federal gun control act of 1968, 18 USC 921 to 928 and s. 941.29, Stats.;

(8)(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 receive be sent copies of the decision. If the bureau chief director is unable to decide within 10 working days, he or she shall ~~so~~ state-and notify the parties of this and of the reason for it. In ~~such-cases~~

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.

SECTION 13. HSS 328.15 and Note are repealed and recreated to read:

HSS 328.15 ETHICS, FRATERNIZATION, GIFTS AND GRATUITIES. No agent or other division employe may have a nonprofessional relationship with an inmate, a client, or a resident who is under the supervision or custody of the division, except as permitted by the division administrator at the request of the employe.

Note: HSS 328.15. The Department has a written administrative policy for employes of the division concerning nonprofessional relationships with inmates and clients. For a copy of the no-fraternization policy, write Community Corrections, Division of Corrections, P.O. Box 7925, Madison, Wisconsin 53707.

SECTION 14. HSS 328.17(3)(b)3 is amended to read:

HSS 328.17(3)(b)3. The client has reached his or her mandatory release date or has been under supervision for 2 years; and

SECTION 15. HSS 328.21 and Note are repealed and recreated to read:

HSS 328.21 SEARCH AND SEIZURE. (1) GENERAL POLICY. A search of a client or the client's living quarters or property may be made at any time, but only in accordance with this section.

(2) PERSONAL SEARCH. (a) In this subsection, "personal search" means a search of a client's person, including but not limited to the client's pockets, frisking the client's body, an examination of the client's shoes and hat, and a visual inspection of the client's mouth.

(b) A personal search of a client may be conducted by any field staff member:

1. If the staff member has reasonable grounds to believe that the client possesses contraband;

2. At the direction of a supervisor;

3. Before a client enters and after a client leaves the security enclosure of a correctional institution, jail or detention facility; or

4. When a client is taken into custody.

(c) A written report of every personal search shall be prepared by the staff member who conducted the search and shall be filed in the client's case record.

(3) SEARCH OF LIVING QUARTERS OR PROPERTY. (a) A search of a client's living quarters or property may be conducted by field staff if there are reasonable grounds to believe that the quarters or property contain contraband. Approval of the supervisor shall be obtained unless exigent circumstances, such as suspicion the parolee will destroy contraband or use a weapon, require search without approval.

(b) There shall be a written record of all searches of a client's living quarters or property. This record shall be prepared by the staff member who conducted the search and shall be filed with the agent's supervisor. If the

search was conducted without the supervisor's approval because of exigent circumstances, a report stating what the exigent circumstances were shall be part of the record and shall be filed with the supervisor within 48 hours of the search. The report shall state:

1. The identity of the client whose living quarters or property was searched;
2. The identity of the staff member who conducted the search and the supervisor, if any, who approved it;
3. The date, time, and place of the search;
4. The reason for conducting the search. If the search was a random one, the report shall state this;
5. Any items seized pursuant to the search; and
6. Whether any damage was done to the premises or property during the search.

(c) If any items are damaged pursuant to the search of a client's living quarters or property, the agent shall document the damage in the case record, inform his or her supervisor and inform the client.

(d) In conducting searches, field staff may not disturb the effects of the client more than is necessary for thoroughness.

(e) During searches, staff may not read any legal materials, any communication between the client and an attorney or any materials prepared in anticipation of a lawsuit. Staff are not prohibited from reading business records.

(f) The agent may not forcibly enter a locked premises to search it if the client whose living quarters or property it is is not present.

(4) RESPECT FOR THE CLIENT. Field staff shall strive to preserve the dignity of clients in all searches conducted under this section.

(5) INFORMING THE CLIENT. Whenever feasible before a search is conducted under this section, the client shall be informed that a search is about to occur, why and how the search will be conducted and the place where the search is to occur.

(6) CONTRABAND. In deciding whether there are reasonable grounds to believe that a client possesses contraband or that a client's living quarters or property contain contraband, a staff member shall consider:

(a) The observations of staff members;

(b) Information provided by informants;

(c) The reliability of the information relied on. In evaluating reliability, attention shall be given to whether the information is detailed and consistent and whether it is corroborated;

(d) The reliability of the informant. In evaluating reliability, attention shall be given to whether the informant has supplied reliable information 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.

Note: HSS 328.21. This section provides for searches of clients, clients' living quarters and property by field staff. Although it is preferable to have searches and seizure conducted by law enforcement authorities, that may not always be feasible or advisable. It is therefore deemed important to give field staff the authority to conduct reasonable searches at reasonable times. Experience teaches that these searches may be necessary because contraband, including drugs and weapons, may be discovered during the searches. These searches are thought to deter the possession of contraband.

Contraband, particularly weapons, may be used to threaten, injure, or kill another. That weapons be kept out of the hands of clients is critical for the safety of others. Contraband must also be kept out of the hands of clients so they may be better able to effectively participate in jobs, schooling or training, and other programs.

While the discovery of contraband is important, this is not to say that the authority to search should be without control. Consideration should be given to the possible effects of a search on a client's rehabilitation and the client's family and peer relationships. Rehabilitation as well as the control of a

client is the responsibility of field staff and searches should be conducted so as not to unreasonably upset delicate personal relationships. This section attempts to give due regard to client concerns about their privacy.

The Wisconsin Supreme Court in State v. Tarrell, 74 Wis. 2d 647 (1976), discussed the fourth amendment rights of adult probationers. It recognized that probationers retain some fourth amendment rights. It explained that the fourth amendment requires that searches and seizures be reasonable, and reasonableness is to be determined by the facts and circumstances presented in each case. State v. Pires, 55 Wis. 2d 597, 201 N.W.2d 153 (1972); State v. Davidson, 44 Wis. 2d 177, 170 N.W.2d 755 (1969); Edwards v. State, 38 Wis. 2d 332, 156 N.W.2d 397 (1968). The court stated the fundamental rule that warrantless searches are in themselves unreasonable except under certain well-defined circumstances.

In Tarrell, the court recognized that probation agents have a limited right to search or seize a probationer without a warrant. The foundation for this exception to the warrant requirement lies in the nature of probation itself. Probation and parole are integral parts of the criminal justice system and have as their object the rehabilitation of those convicted of crime and the protection of the state and community interest, State ex rel. Niederer v. Cady, 72 Wis. 2d 311, 322, 240 N.W.2d 626, 633 (1976). Even though probation and parole are privileges, not rights, once granted, this conditional liberty can be forfeited only by breaching the conditions of probation or parole. The expectations of privacy of a person on probation or parole, however, cannot be the same as the expectations of privacy of persons never convicted of crimes, and the fourth amendment protects only the reasonable expectations of privacy. Thus, the court determined that conditions of probation may limit the constitutional freedom of the probationer. "Necessary infringements on these freedoms are permissible as long as they are not overly broad and are reasonably related to the person's rehabilitation." These limitations are the bases for an exception to the warrant requirements of the fourth amendment.

The application of a less stringent standard for the agent's search or seizure is therefore appropriate.

Subsection (2) (b) 1. to 4. states the circumstances under which a personal search may be conducted. If a staff member has reasonable grounds to believe a client possesses contraband, an immediate search is permissible and may be necessary to prevent disposal of contraband. Such searches are not conducted to harass clients but may be approved after review by a supervisory staff member. Random searches should not be conducted frequently, but are thought to be of substantial deterrent value.

Subsection (3) requires supervisor approval unless the search is conducted in exigent circumstances. Examples of exigent circumstances are where drugs or other contraband would be destroyed if the premises were not searched; or if it were feared that the parolee had a gun and might use it; an immediate search would be necessary to seize it before that could occur.

Subsection (3) (f) indicates the conditions for a search when the client is not present. The agent may enter in any way that does not do damage to the property.

Subsection (4) states the policy that the dignity of clients should be preserved when searches are conducted. Searches are unpleasant for everyone involved. Recognition of this and attempts to preserve dignity may have a humanizing influence on the process.

Subsection (5) also regulates the manner of conducting searches. It requires that the client be informed that a search is about to occur, its nature, and the place it is to be made unless it is a random search. By informing the client orally, the staff member may enlist the client's cooperation and make the search easier on all concerned. Of course, it is not possible to give advance notice of a random search. Notice would defeat the purpose of a random search.

Subsection (6) indicates what should be considered in determining if there are reasonable grounds for a search for contraband. Errors and abuse of search authority may be due to inadvertence and poor judgment. This section seeks to avoid these abuses and errors. Often, very general information is not reliable because its lack of detail suggests the information is hypothetical or incomplete. Specificity usually suggests a more reliable grasp of the relevant facts. Consistency of information is also important. Internal inconsistencies make a report less reliable. Subsection (6) (c) requires attention to the specificity and consistency of information.

Subsection (6) (f) indicates that the client should be talked to before the search. Sometimes, talking will elicit information helpful in determining whether to search.

What a staff member observed, information from a reliable source, prior seizures of evidence from the client, and the experience of the staff member are all also relevant to the decision to search.

This section is in substantial compliance with ACA standard 3151 concerning searches of probationers and parolees. See 15 Cal. Adm. Code 2511 that provides as a condition of probation for warrantless searches of a client and a client's residence or property, at any time, without a finding of reasonable grounds to believe that the client possesses contraband.

SECTION 16. HSS 328.22(1) and (3) are amended to read:

HSS 328.22(1). A client shall be taken into custody and detained if the client ~~has a record of prior assaultive or dangerous conduct and is arrested for any reason or is~~ alleged to have been involved in assaultive or dangerous conduct. A regional chief may permit exceptions to this subsection.

(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 of a maximum of 5 working days and the regional chief may approve of detention of an additional 5 working days. Detention beyond the foregoing time limits ~~must~~ 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).

SECTION 17. HSS 328.22 Note (3rd paragraph) is repealed and recreated to read:

Note: HSS 328.22. Subsection (1) provides that a client must be taken into custody when the client's alleged violation involves assaultive or dangerous conduct. In addition, sub. (2) provides that a client may be taken into custody whether or not an alleged violation involves assaultive or dangerous conduct, if this is desirable for disciplinary purposes, for an investigation, or to prevent a possible violation by the client.

SECTION 18. HSS 328.22(4) is created to read:

HSS 328.22(4). Custody decisions during revocation proceedings shall be made pursuant to s. HSS 31.04(5).

SECTION 19. HSS 328.24(1)(a) is amended to read:

HSS 328.24(1)(a) Prior to a client's ~~case review~~ preliminary hearing under ~~s. HSS 31.03(2), Wis. Adm. Code~~ 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.

SECTION 20. HSS 328.29(3) is repealed.

SECTION 21. HSS 328.29 (4) and (5) are renumbered HSS 328.29(3) and (4).

SECTION 22. HSS 328.30(1)(h) is repealed and recreated to read:

HSS 328.30(1)(h). A record of all written disclosures of information to social welfare agencies, law enforcement agencies or third parties, and of all information disclosed pursuant to a written request for specific information to social welfare agencies, law enforcement agencies or third parties.

SECTION 23. HSS 328.30 Note (3rd paragraph) is repealed.

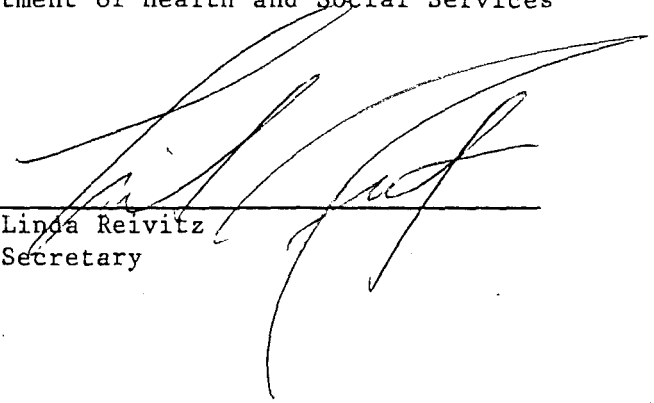
(End)

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

Dated: February 24, 1986

By:

  
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Linda Reivitz  
Secretary

SEAL:

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