

CERTIFICATE

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STATE OF WISCONSIN)
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DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

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Revisor of Statutes
Bureau

I, Patricia A. Goodrich, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to special action release of inmates from adult correctional institutions were duly approved and adopted by this Department on November 15, 1988.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the 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 15th day of November, 1988.

SEAL:



Patricia A. Goodrich, Secretary
Department of Health and Social Services

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

To create HSS 302.32, relating to the special action release of inmates of adult correctional institutions.

Analysis Prepared by the Department of Health and Social Services

This rule, s. HSS 302.32, Wis. Adm. Code, permits the Secretary of the Department to order the release of select, low-risk inmates from state prisons to parole supervision prior to their mandatory release date in order to reduce crowded conditions at the prisons. Special action release (SAR), under this rule has a different purpose and is procedurally different from mandatory release under s. 53.11, Stats.; and discretionary parole recommended by the Parole Board.

Section HSS 302.32 covers: (1) the purpose of special action release, to relieve crowding in state prisons while maintaining the highest possible levels of public safety; (2) eligibility for SAR, including the inmate's offenses, his or her institutional record and appropriateness of the inmate's parole plan; (3) responsibilities and procedures in SAR consideration; (4) the Secretary's decision to grant or deny SAR; (5) conditions that the Secretary may impose on the release; and (6) notification requirements.

The Department's authority to adopt this rule is found in ss. 57.06 and 227.11(2), Stats. The rule interprets s. 57.06, Stats.

SECTION 1. HSS 302.32 is created to read:

HSS 302.32 SPECIAL ACTION RELEASE PROGRAM. (1) DEFINITIONS. In this section:

(a) "Agent of record" or "agent" means the employe of the department's bureau of community corrections to whom an inmate is assigned before release under this section.

(b) "Assaultive conduct" means an action inside or outside a correctional institution that results in or is intended to result in physical harm to another. Inside a correctional institution, assaultive conduct may be evidenced by violations of the department's disciplinary rules under ch. HSS 303, which demonstrate physical harm to another or an intention to physically harm another.

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

(d) "Detainer" means a writ or instrument issued or made by a competent officer, directing the keeper of a prison to notify the issuing authority when the named person is about to be released so that the issuing authority may obtain custody of the named person if appropriate.

(e) "Discretionary parole" means release of an inmate from the institution on recommendation of the parole board under s. HSS 30.06.

(f) "Mandatory release" means release of an inmate from the institution to supervision as required by s. 53.11, Stats., if not granted discretionary parole or special action release earlier.

(g) "Parole-eligible" means qualified to be considered for discretionary parole pursuant to s. 57.06, Stats., and s. HSS 30.04.

(h) "Secretary" means the secretary of the department or the secretary's designee.

(i) "SAR" or "special action release" means release of an inmate from the institution to parole supervision by decision of the secretary or the secretary's designee prior to mandatory release or a discretionary parole recommended by the parole board.

(j) "SAR coordinator" means the employe of the department who assembles all documents on an inmate relevant to SAR consideration and submits them to the secretary.

(k) "Social worker" means the institution social worker to whom an inmate is assigned.

(2) PURPOSE. The special action release program is intended to relieve crowding in state prisons by releasing select prisoners to parole supervision using a procedure other than mandatory release or a discretionary parole recommended by the parole board. The program intends to maintain the highest possible levels of public safety commensurate with good correctional practice by basing release determinations on individual differences among inmates, their offenses, their institutional records, and their abilities to comply with the rules of parole and to maintain themselves in open society without engaging in criminal activity.

(3) ELIGIBILITY FOR SPECIAL ACTION RELEASE CONSIDERATION. (a) To be eligible for special action release consideration, an inmate:

1. Shall be parole-eligible under s. 57.06, Stats., and s. HSS 30.04;

2. Shall have served a minimum of 6 months in the Wisconsin state prison system;

3. May not have been granted a special action release previously, if the inmate is currently serving time on a new criminal conviction;

4. May never have had a felony or misdemeanor conviction for an assaultive crime;

5. May not have a known history of assaultive conduct inside or outside of a correctional institution, except that an inmate who has a known history of assaultive conduct that did not result in a conviction may be considered for special action release if one of the following applies:

a. The conduct occurred more than 5 years prior to SAR review by the social worker under sub. (4)(a)1;

b. The inmate acted in self-defense or defense of property;

c. The inmate is to be released to a structured living arrangement such as a halfway house;

d. The inmate's conduct was an isolated incident not likely to be repeated; or

e. The inmate's age or physical condition makes repeat of the assaultive conduct unlikely;

6. Shall agree to intensive supervision and any other special conditions the secretary under sub. (7)(a) and (c) or the parole agent under sub. (7)(b) and (c) may impose;

7. Shall have a parole plan, investigated by the agent of record; and

8. If he or she is to be supervised in another state, shall be accepted for supervision by that other state.

(b) No special action release may be granted more than 12 months prior to the inmate's mandatory release date.

(c) An inmate in an affected correctional institution may be eligible for SAR consideration without meeting the criteria under pars. (a)3, 4, 5 and (b) if:

1. The department is subject to a court order or consent decree entered on or prior to August 24, 1988, which imposes a maximum population capacity for or otherwise requires inmate releases from a correctional institution;

2. The inmate is not currently serving time on a felony or misdemeanor conviction for an assaultive crime;

3. The institution social worker or agent of record has reason to believe the inmate will be able to maintain himself or herself in society without engaging in assaultive activity; and

4. The inmate is not granted a special action release more than 24 months prior to the inmate's mandatory release date.

(d) An inmate who has an active detainer is eligible for SAR consideration without meeting the criteria under par. (a) if the detainer concerns a sentence imposed in another jurisdiction and the remainder of that sentence is equal to or longer than the remainder of the Wisconsin sentence. In this paragraph, "active" means that the jurisdiction issuing the detainer intends to obtain custody of the inmate immediately upon release.

(e) An inmate may waive eligibility for SAR consideration at any time by notifying the institution social worker, except that an inmate who has an active detainer may not waive eligibility for SAR consideration. To reestablish eligibility following a waiver, the inmate shall notify the institution social worker that the inmate no longer waives eligibility for SAR consideration.

(4) PROCEDURE FOR APPROVAL FOR SAR CONSIDERATION. (a) Social worker responsibilities 1. Social workers shall review inmate files assigned to them to identify inmates who may be eligible for SAR consideration. The social worker may contact the agent of record to obtain further information concerning an inmate's eligibility.

2. If an inmate appears to be eligible for SAR consideration, the social worker in consultation with the inmate shall develop a parole plan which considers the inmate's institutional conduct, the inmate's resources and plans for the inmate's residence and job placement upon release.

3. The social worker shall send a copy of the parole plan to the agent of record, the SAR coordinator and the social worker's supervisor.

4. the department shall notify in writing the office of the district attorney which prosecuted the inmate, the court which sentenced the inmate and the victim of the crime committed by the inmate, if the victim submits a card under s. 57.06(1)(f), Stats., that the inmate is being considered for SAR. The notice shall advise the district attorney, court and the victim that they are permitted to submit written comments regarding the proposed release, which will be placed in the special action release record developed by the SAR coordinator under par. (c)1 for the secretary. The notice shall be mailed at least 21 days before the secretary under sub. (5) makes a decision concerning the release of the inmate.

(b) Agent responsibilities 1. Upon receipt of the parole plan from the social worker, the agent shall carry out an investigation to determine if the plan is appropriate and shall include in that investigation assessments of the inmate's proposed residence, employment and community treatment plans.

2. If the plan is not appropriate, the agent shall suggest alternatives to the inmate and social worker and attempt to develop an acceptable plan in consultation with the inmate and social worker.

3. The agent shall write a report which shall include the results of the investigation under subds. 1 and 2. The report shall address probable reaction to the inmate in the community where the inmate proposes to reside and shall contain other relevant information that is not available to the institution.

4. The agent shall send a copy of the report under subd. 3 to the SAR coordinator.

(c) SAR coordinator responsibilities 1. The SAR coordinator shall assemble all relevant documents on an inmate, including the inmate's parole plan, the agent's report, any comments received from the district attorney's office, judge or victim, a summary of the inmate's arrests and convictions, reasons why the parole board denied parole, if applicable, and any other relevant information requested by the secretary.

2. The SAR coordinator shall submit the relevant information to the secretary for consideration.

(5) DECISION. (a) After reviewing the information about the inmate submitted by the SAR coordinator, the secretary shall decide whether to grant or deny an SAR. The secretary may consider the following factors in deciding whether to grant or deny an SAR:

1. Parole eligibility;

2. The inmate's criminal record, the nature of the offense of which the inmate was convicted and any known history of assaultive conduct outside a correctional institution;

3. Institutional adjustment;

4. Adequacy of the parole plan;

5. Population pressures;

6. Risk to the public safety; and

7. Any other factors which relate to whether the inmate will be able to comply with the rules of parole and maintain him or herself in open society without engaging in assaultive or any other criminal activity.

(b) The secretary's decision is final.

(c) If the SAR is granted, the secretary may impose in writing any special conditions that are appropriate.

(d) The institution where the inmate is incarcerated shall inform the inmate of the decision to grant or deny an SAR and, if granted, of any conditions imposed on the inmate's release.

(6) NOTIFICATION. Before the inmate is released, the department shall notify the municipal police department and the county sheriff for the area where the inmate plans to reside and shall notify the victim of the crime committed by the inmate, if the victim submits a card under s. 57.06(1)(f), Stats., and if the victim can be found.

(7) CONDITIONS. (a) The conditions that the secretary may impose under sub.(5)(c) include but are not limited to the following:

1. A period of intensive supervision which requires the former inmate to report to the agent on the first day of release and to contact the agent in person at least once a week for a minimum of 90 days, and which requires the agent to visit the former inmate's place of residence or employment once a month during the period of intensive supervision;

2. Restrictions on residence;
3. Restrictions on travel and local movement;
4. Restrictions on associations;
5. Restrictions on possessions;
6. Restrictions on consumption of drugs and alcohol;
7. Requirements for inpatient or outpatient treatment, including treatment for alcohol abuse or other drug abuse;
8. Requirements for training and participation in other self-improvement programs including job training;
9. Requirements for the former inmate to make himself or herself available for any tests or searches ordered by the agent, including urinalysis, breathalyzer and blood sample tests, or for search of the former inmate's residence, person or any property under his or her control;
10. Electronic monitoring; and
11. Any other specific condition to achieve the purpose of maintaining the former inmate in open society without engaging in criminal activity.

(b) In addition to the rules provided under ch. HSS 328, the agent may develop additional written rules and specific conditions for the new client's parole supervision to achieve the goals and objectives of supervision under ch. HSS 328.

(c) The secretary may modify the conditions of the former inmate's special action release at any time until discharge from supervision, and the agent may modify the rules and specific conditions of the new client's parole supervision at any time until discharge from supervision.

(d) A client released under special action release who violates the rules or conditions of his or her supervision is subject to revocation under ch. HSS 31 procedures.

The rule contained in this order shall take effect on the first day of the month following its publication in the Wisconsin Administrative Registrar, as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Date: November 15, 1988

By: Patricia A. Goodrich
Patricia A. Goodrich
Secretary

Seal:



State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson
Governor

Patricia A. Goodrich
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

November 15, 1988

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NOV 15 1988

Revisor of Statutes
Bureau

Mr. Orlan Prestegard
Revisor of Statutes
7th Floor - 30 on the Square
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 302.32, administrative rules relating to special action release of inmates from adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules apply to the Department, adult correctional institutions and inmates of adult correctional institutions. The rules do not affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Patricia A. Goodrich
SECRETARY

Enclosure