

CR 87-132

RECEIVED

CERTIFICATE

MAY 2 1989  
1:50 pm  
Revisor of Statutes  
Bureau

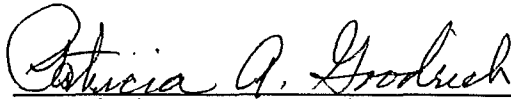
STATE OF WISCONSIN )  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES) SS

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 compensation for inmates of adult correctional institutions were duly approved and adopted by this Department on May 1, 1989.

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 1st day of May, 1989.

SEAL:



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

7-1-89

3-20-89

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

To repeal HSS 302.31(5)(intro.); to renumber HSS 302.31(5)(a) through (d); to amend HSS 303.11(6); to repeal and recreate HSS 309.55 and Note; and to create HSS 302.31(5)(a) and (b), relating to compensation for inmates of adult correctional institutions.

Analysis Prepared by the Department of Health and Social Services

This proposed order revises and places in a more logical order the Department's rules on payment of compensation to inmates of adult correctional institutions for participation in work assignments and in program assignments such as education, vocational training, and treatment for drug or alcohol abuse.

Several changes are made to existing provisions on rates of compensation and eligibility for compensation. The revised rules:

- (1) Replace the current ranking and pay range systems for program assignments with institution-determined pay ranges for program assignments other than school and vocational training and with two division-determined uniform compensation rates for school and vocational program assignments--one for inmates who are adequately performing their program assignments and one for inmates whose performance is inadequate;
- (2) Modify the existing requirement that inmates in comparable work assignments receive comparable pay by requiring comparable compensation within each institution for inmates working at the full performance level in comparable jobs. Inmates working at less than the full performance level could receive a low pay rate based on individual performance. This modification would allow for increases in pay as work performance improves;
- (3) Eliminate the existing provision which denies compensation to inmates making court appearances; and
- (4) Add provisions which prohibit compensation to inmates participating in work or program assignments as part of the assessment and evaluation process at Dodge correctional institution.

Existing requirements relating to the number of work assignment positions institutions may have in each pay range are also changed. Current rules place limits on the number of positions an institution may have in each pay range. The revised rules permit each institution to determine the number of positions assigned to each pay range, as long as the institution does not exceed its total allocation of work assignment funds.

In addition, the revisions make it clear that the work and program assignment compensation provisions do not apply to corrections industries and the prison farms, update provisions relating to compensation and extra good time credit for inmates in temporary lockup in accordance with 1983 Wisconsin Act 528 and make performance evaluations for awarding extra good time credit consistent with evaluations for setting compensation rates.

The Department's authority to promulgate these rules is found in ss. 46.03(6) and 227.11(2)(a), Stats. The rules interpret ss. 46.064, 46.065, 53.12, 56.01 and 56.065, Stats.

SECTION 1. HSS 302.31(5)(intro.) is repealed.

SECTION 2. HSS 302.31(5)(a) to (d) are renumbered HSS 302.31(5)(c) to (f).

SECTION 3. HSS 302.31(5)(a) and (b) are created to read:

HSS 302.31(5) PERFORMANCE EVALUATIONS. (a) Each supervisor shall make a written evaluation of the inmate's performance under the following circumstances:

1. When it is required under s. HSS 309.55;
2. If the supervisor does not recommend extra good time credit for an inmate for a particular month based on the inmate's performance; or
3. The inmate's social worker requests a written performance evaluation.

(b) The written evaluation under par. (a) shall indicate whether or not extra good time credit is recommended for an inmate. If extra good time is not recommended for a particular month, the reasons for this decision shall be noted on the evaluation.

SECTION 4. HSS 303.11(6) is amended to read:

HSS 303.11(6) Conditions in TLU shall, insofar as feasible, be the same as those in the status from which the inmate came prior to TLU placement. ~~If the inmate had been earning compensation, he or she shall continue to earn compensation.~~ An inmate who had been earning compensation shall continue to be compensated at the rate earned in his or her previous status, except that an inmate employed by corrections industries shall be compensated in accordance with s. HSS 313.08. If 1983 Wisconsin Act 528 does not apply to the inmate, he or she shall continue to earn extra good time credit. The inmate may be required to wear mechanical restraints, as defined in s. HSS 306.09(1), while outside the cell if the superintendent or his or her designee determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

SECTION 5. HSS 309.55 and Note are repealed and recreated to read:

HSS 309.55 COMPENSATION. (1) PURPOSES AND APPLICABILITY. (a) Except as provided under sub. (7), this section shall govern compensation for inmates participating in approved work and program assignments while confined in a correctional institution. This section does not apply to corrections industries or the prison farms. Inmates participating in work and program assignments are not employees of the state.

(b) The purposes of this section are:

1. To provide uniform and fair compensation standards to encourage and reinforce positive inmate behavior;
2. To enable inmates to make purchases from the canteen and to accumulate funds to assist them upon release;
3. To encourage inmates to complete their assignments successfully;
4. To promote institutional order by providing inmates with an incentive for good behavior; and
5. To encourage inmates to develop skills that will be useful in helping them to become reintegrated into the community upon release.

(2) DEFINITIONS. In this subsection:

(a) "Full performance level" means the maximum level of performance expected on a work assignment or program assignment other than school or vocational training in terms of skills exhibited, output achieved, responsibility, diligence and effort shown, and level of supervision required.

(b) "Program assignment" means a placement in a school, vocational training or other program to which the inmate has been assigned by a program review committee in accordance with ch. HSS 302.

(c) "Range" means the ranking established by an institution for a work assignment or for a program assignment other than school or vocational training, based on the skill and responsibility required for the assignment.

(3) ELIGIBILITY. Except as provided under sub. (7), only inmates participating in approved work and program assignments while confined in a correctional institution shall be compensated.

(4) EXCEPTIONS. No compensation may be paid under this section to an inmate who:

(a) Participates in a work release program approved under ch. HSS 324, unless the inmate participates in a work or program assignment in a correctional institution in addition to the work release program;

(b) Participates in a work or program assignment while assigned to the assessment and evaluation program at Dodge correctional institution;

(c) Refuses any work or program assignment;

(d) Is voluntarily unassigned; or

(e) Is placed in one of the following segregated statuses:

1. Voluntary confinement under s. HSS 306.045, unless the inmate requested placement in this status upon the recommendation or approval of the security director for the purpose of ensuring the inmate's personal safety and the inmate was receiving pay immediately prior to placement in voluntary confinement;

2. Administrative confinement under ch. HSS 308, if the inmate was not receiving pay immediately prior to that placement and is not participating in an approved work or program assignment while in administrative confinement;

3. Observation under ch. HSS 311, if the inmate was not receiving pay immediately prior to that placement and is not participating in an approved work or program assignment while in observation status;

4. Adjustment segregation under s. HSS 303.69;

5. Program segregation under s. HSS 303.70; or

6. Controlled segregation under s. HSS 303.71.

(5) WORK ASSIGNMENT PAY PLAN. (a) Each institution shall rank its work assignments on a scale of one to 5 based on the level of skill and responsibility required by each assignment. Range 5 shall include work assignments requiring the most skill and responsibility and range one shall include work assignments requiring the least. The division shall ensure that the ranking of comparable work assignments within an institution is consistent. The range of the work assignment shall determine the pay rate for the full performance level of the work assignment.

(b) The number of work assignments an institution may have in each range may vary to meet institutional needs, but an institution may not exceed the total allocation of work assignment funds made available to it on the basis of the percentages in Table 309.55.

inmate is paid at the full performance level pay rate. The criteria to be used in evaluating the inmate's work performance include, but are not limited to, the following:

1. Attitude toward fellow employes and staff;
2. Initiative and ability to perform assignments with minimal supervision;
3. Punctuality and attendance;
4. Quality of performance of assigned duties;
5. Diligence in applying one's self to an assignment and willingness to acquire and apply job skills;
6. Conduct as it relates to the job assignment; and
7. Improvement.

(f) Each institution may establish a probationary period, not to exceed 6 months, during which an inmate may be compensated at a lower rate of pay than the full performance rate for the work assignment. The pay rate may not be lower than the pay rate 2 ranges below the full performance level of the work assignment.

(g) In exceptional circumstances, such as an inmate demonstrating a substantial improvement in effort shown or output achieved, the superintendent, upon the recommendation of the inmate's supervisor, may compensate an inmate working above the full performance level at a higher pay rate than the full performance rate for the work assignment.

(6) PROGRAM ASSIGNMENT PAY PLAN. (a) The division shall establish a single uniform pay rate higher than the pay rate for range one of work



assignments for all inmates whose primary program assignment is to a school or vocational training program and who are adequately performing their school or vocational training assignments. An inmate's supervisor shall periodically evaluate the performance of an inmate participating in a school or vocational training assignment. Criteria to be used in evaluating program performance include, but are not limited to, skills exhibited, output achieved, responsibility, diligence and effort shown, and level of supervision required. To the extent necessary because of the unique requirements of a school or vocational training assignment, the supervisor shall establish additional reasonable criteria consistent with the necessary skills and responsibilities of that assignment. An inmate who does not meet the established performance criteria for an adequate performance level shall be compensated using the pay rate for a range one work assignment.

(b) Each institution shall rank and establish pay rates for the full performance level of program assignments other than school or vocational training. The division shall ensure that the ranking within an institution of comparable program assignments other than school or vocational training is consistent. An inmate's supervisor shall periodically evaluate the performance of an inmate participating in a program assignment. Institutions may vary compensation rates based on individual performance evaluations for inmates working at less than the full performance level in comparable program assignments other than school or vocational training.

(c) Each institution may establish a probationary period, not to exceed 6 months, during which an inmate may be compensated at a lower pay rate than the

pay rate established for adequate performance of the school or vocational training assignment or full performance of the program assignment that is not school or vocational training. The probationary period pay rate may not be lower than 2 ranges below the adequate performance level of the school or vocational training assignment or the full performance level of the program assignment that is not school or vocational training.

(d) Compensation for inmates in program assignments shall be determined on a daily basis. For purposes of determining daily pay for inmates in program assignments:

1. Full-time vocational training and school programs are equivalent to 7 hours a day;
2. Full-time program assignments other than vocational training and school are equivalent to 8 hours a day;
3. Half-time programs are equivalent to 4 hours a day; and
4. Quarter-time programs and programs which are less than quarter time are equivalent to 2 hours a day.

(7) SPECIAL CATEGORIES. (a) Unless otherwise specified in this section, the division shall establish a uniform compensation rate less than that for range one work assignments for inmates who are:

1. Involuntarily unassigned;
2. In sick cell status;
3. In hospital placement, including inmates transferred to mental health or medical facilities;

4. Unable to perform work assignments, such as elderly or disabled inmates, and not otherwise assigned under this section; or

5. In voluntary confinement status if that status was requested by the inmate upon the recommendation or approval of the security director for the inmate's personal safety and the inmate was receiving pay immediately prior to the placement in voluntary confinement.

(b) An inmate who is in sick cell status or hospital confinement as a result of injury sustained in a job-related accident shall be compensated at the rate he or she was earning in his or her previous status.

(8) STATUS CHANGES. An inmate in temporary lockup shall be compensated at the rate earned in his or her previous status. An inmate in administrative confinement or observation status and eligible for compensation under this section shall receive the rate earned in his or her previous status.

(9) LOCKDOWNS. An inmate who has a work or program assignment shall be compensated for the period of any lockdown required for search of an institution pursuant to ch. HSS 306, unless the lockdown is precipitated by the misconduct of any inmate, in which case, under s. HSS 306.14(2), only those inmates allowed to work to perform necessary housekeeping chores shall be compensated.

Note: HSS 309.55. Subsection (4)(e)1 provides for compensation for inmates who were receiving pay before placement in voluntary confinement and requested placement in voluntary confinement upon the recommendation or approval of the security director for the purpose of ensuring the inmates' safety. These inmates receive the minimum pay under sub. (7)(a) while in voluntary confinement. Subsection (4)(e)2 and 3 provides for compensation for inmates who are in administrative confinement or observation either because they were receiving pay prior to this placement or because they are able to participate in

approved work or program assignments while under administrative confinement or observation. Payment of compensation to inmates in administrative confinement and observation is appropriate because these are nonpunitive statuses and it is important to encourage participation in work and program assignments when that participation is consistent with the inmate's status and behavior.

Subsection (5) requires each institution to rank its work assignments according to the degree of skill and responsibility demanded by each. This ranking should be uniform within an institution to ensure fair treatment of all inmates. However, the subsection does allow for paying inmates in comparable assignments at different rates if their performances differ (sub.(5)(e)).

Each institution may determine the number of positions assigned to each pay range as long as the institution does not exceed its total allocation of work assignment funds. Table 309.55 indicates how the total amount of work assignment funds will be allocated to each institution. The table does not limit the number of positions an institution may have in each pay range.

In addition to the compensation provided under sub. (7)(b) for inmates with injuries sustained in job-related accidents, s. 56.21, Stats., provides for further compensation at the time of parole or final discharge to inmates who have become permanently incapacitated or have materially reduced earning power as a result of the injury, as determined by the Department of Industry, Labor and Human Relations.

The statuses in sub. (8) are short-term, temporary in nature, usually pending further investigation or examination after which the inmate may return to the former assignment. The inmate should not lose pay during this period.

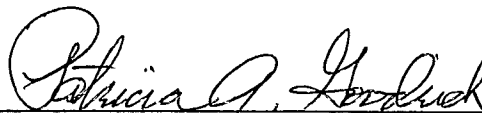
Subsection (9) is derived from the security rules, ch. HSS 306.

The repeals 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. 227.22(2), Stats.

Wisconsin Department of Health and Social Services

Dated: May 1, 1989

By:



Patricia A. Goodrich, Secretary

Seal:

bh/2-2-28.clr/legal



State of Wisconsin \

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

Tommy G. Thompson  
Governor

RECEIVED

Patricia A. Goodrich  
Secretary

MAY 2 1989

Mailing Address:  
Post Office Box 7850  
Madison, WI 53707

May 1, 1989

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 302.31, 303.11 and 309.55, administrative rules relating to compensation for inmates of 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. They do not have a significant economic impact on small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Patricia A. Goodrich  
SECRETARY

Enclosure