

APPENDIX

Note: HSS 326.02. HSS 326.02 states the purposes of leave for qualified inmates. Selected inmates are allowed unescorted leave only for serious illness in the immediate family, death of a close family member, for employment interviews or medical purposes, or to facilitate family reintegration and stability as provided under s. 56.068, Stats. Leaves are considered a privilege, not a right. They provide an incentive for inmates to exhibit appropriate behavior in the institution. Leaves for the purpose of family reintegration provide a special incentive for inmates.

Allowing selected inmates unescorted leave is consistent with the correctional goal of eventual reassimilation of the offender into the community. A conditional exposure to life outside an institution for an inmate who does not pose a threat to the public is beneficial as a means of preparing an inmate for life outside a structured prison environment.

Leave for qualified inmates has direct and immediate benefits. Permitting an inmate to visit a seriously ill relative or attend a funeral is important in maintaining family ties. The inmate can be with the family in these most difficult periods, can show his or her concern for the family, and can share the burden that frequently accompanies illness or death in a family. It strengthens family ties, helps the inmate work through feelings of pain and sorrow, and assists in the inmate's adjustment in the institution and after release. Leave is also granted to promote family stability and the reintegration of the inmate into the family. In some cases a person who is not the natural parent has actually raised the inmate.

Ch. HSS 326 and s. 56.068, Stats., allow leave for an inmate to contact a prospective employer. This contact away from the institution and staff enables an inmate to experience independent responsibility prior to release, thereby reducing the adjustment necessary after release. This independent responsibility can give the individual the self-confidence necessary for successful reintegration into society. The inmate has an opportunity to plan for life on the outside and to secure a position upon release by expanding the potential for employment. Employment opportunities are limited for someone with a criminal record. Many employers are unwilling to hire a person they have not seen or interviewed. Leaves for job-seeking remove this obstacle to obtaining employment.

Leaves granted for medical reasons, like other types of leaves, are granted only upon the superintendent's approval. The division of health's bureau of correctional health services should be consulted before deciding to grant a leave for this purpose. The chapter does not allow an inmate to select his or her own health care provider or type of treatment in lieu of the treatment already provided in the institution, except at the inmate's own expense.

Note: HSS 326.03 "Leave" is sometimes called "furlough" in the institutions.

Note: HSS 326.04. This section establishes the minimum requirements to be eligible for leaves. Simply meeting these requirements does not mean that an inmate is entitled to leave.

Subsection (2) (a) requires that if the purpose of leave is an employment interview to contact a prospective employer, the inmate must be within 6 months of release date or have a deferral of less than 6 months as defined in s. HSS 30.03 (2) from the state parole board or be living in a community correctional center. Inmates who are closest to release benefit most from the reintegration opportunities of an employment interview and job when released. Inmates with a long time to serve do not need an employment interview.

The proximity of parole eligibility is a prime restraint on escape. Subsection (2)(b) requires inmates serving a life sentence to be eligible for parole before application for leave is allowed.

Subsection (2)(c) requires any Wisconsin probation or parole revocation proceedings to be concluded before an inmate becomes eligible for leave. Again, this requirement is to prevent escape. By requiring the process to be complete, both the inmate and the reviewing authorities will have a clear picture of how these proceedings will affect time to be served.

The possibility of escape when an inmate has substantial time left to serve or is unsure of time because of pending proceedings was also identified in *Project: Temporary Release in New York State Correctional Facilities*, 38 Alb. L. Rev. 691, 733-735 (1974).

Subsection (3) requires inmates to agree to submit to certain tests upon return to the institution or during leave to determine whether the inmate has complied with the provisions of the leave agreement and related rules.

Subsection (4) requires the consent of the leave principals as a condition of eligibility. Thus leave will not be granted in cases where family conflict is likely to occur. Such family conflict would be detrimental to reintegration. Should a leave principal withdraw consent after leave is granted, HSS 326.13 (3) applies and the leave will be cancelled.

Under sub. (5) the leave review committee must deny an applicant as ineligible if the request is not for one of the purposes under HSS 326.03 (9). If a physician says that a close family member is seriously ill, the leave review committee has no discretion to make an additional review of this opinion. However, the leave review committee is not bound by the physician's opinion to grant a leave.

Note: HSS 326.05. Subsection (1) requires the reviewing authorities to determine whether eligibility exists.

Subsection (2) makes the risk of escape a relevant criterion. Although an inmate who is eligible for leave is likely to be a low escape risk due to the eligibility requirements of HSS 326.04, this subsection was adopted because leave, an unescorted and unsupervised visit to the community, offers more freedom of movement than any previous experience the inmate has had in the correctional system. An unescorted leave presents an opportunity for escape. An inmate with a record of escapes may be more likely to take advantage of this opportunity, and the committee is to consider this under sub. (2) (a). However, this is not an automatic exclusion from eligibility and should not be treated as such.

Subsection (2) (b) allows detainees to be considered as relevant to escape risk, but HSS 302.14 and note govern the weight to be given detainees for purposes of the leave program. It is not the detainee itself, but the facts underlying it that are relevant to leave applications.

Subsection (2) (c) gives the reviewing authorities discretion to consider misconduct on a prior leave. Misconduct on leave is punishable through the disciplinary procedure or in court. Allowing a denial of a future leave based on that misconduct prevents those inmates who have a history of violating leave requirements from enjoying the privilege of leave. This paragraph should encourage inmates to follow all the rules and conditions of leave since failure to do so could jeopardize chances of future leave.

Subsection (3) permits the disciplinary record of the inmate to be taken into consideration. A recent serious conduct report might indicate that the inmate is an escape risk due to poor institutional adjustment.

Subsection (4) allows the reviewing authorities to consider any facts relevant to the purpose of leave. HSS 326.02 states that the purpose of leave is to fulfill the correctional goals of reintegration. This is to be achieved consistent with the protection of the public. The reviewing authorities must include in the decision the facts they consider to be relevant and their reasoning as to relevance. Two concerns are listed that are relevant to these purposes, but there may be others.

In some instances, an offense may have received unusually intense publicity and substantial community reaction may have been aroused. In such a case the presence of the offender might cause negative reactions. Subsection (4) (a) requires the reviewing authorities to consider the likelihood of such severe negative community reactions. If investigation reveals substantial likelihood that the community will become aroused, then, in the best interests of the community and of the inmate, leave should not be granted. If investigation reveals substantial threat to the safety of the inmate in the community, the leave should not be granted.

Subsection (4) should be used only if the community reaction was or is likely to be much greater than the usual negative reaction that occurs when a similar offense is committed or when an offender convicted of a similar offense visits a community. The inmate on leave will be released soon and may return to the community very shortly.

Note: HSS 326.06. Subsection (1) (a) recognizes the requirement of s. 56.068(4), Stats., that a leave is restricted to the confines of the state of Wisconsin.

Subsection (1) (b) limits the duration of leave to a period of time necessary for the leave. For example, an employment interview may be completed in one morning if it is close to the institution, or it may take several days if great distances are involved.

Subsection (1) (c) allows the superintendent to grant one extension beyond the 3-day maximum for a leave. This power is specifically authorized under s. 58.068 (3) Stats. An extension may be granted, for example, if a seriously ill family member dies while the inmate is on leave and the inmate wants to attend the funeral. Also, an employer may request a second interview with an inmate who is on leave for an employment interview.

Subsection (2) grants the superintendent discretion to impose additional conditions on specific leaves. Subsection (2) (a) allows the superintendent discretion to consider conditions on movement and communication in addition to the requirements of sub. (1) (a). These conditions should be imposed only when considered necessary to prevent an inmate from abusing the leave. The reason for imposing a condition and the underlying facts upon which the decision was based must be written.

Note: HSS 326.07. This section describes the procedures for obtaining a leave. Subsection (1) allows either an inmate or an employe on behalf of the inmate to apply for the leave. An employe should not apply for a leave on behalf of an inmate if the inmate does not want the leave. The application should be submitted far enough in advance of the desired leave date that the PRC has ample opportunity to review the application and the inmate has an opportunity to request review of the decision under HSS 326.09.

Subsection (2) describes the process of investigating leave applications. First, an employe or designee must review each application to determine whether the information in the application is accurate and whether the inmate is eligible for the leave under the criteria in HSS 326.05. If the information is inaccurate and can be corrected, the investigator should do so. If the inmate is ineligible for the leave, there is no reason to continue processing the application.

If the inmate is found eligible for the leave and the information is verified, the investigation continues. The investigation's purpose is to make sure that all information that could be relevant to the decision to grant or deny the leave is included in the application. Investigation also protects the public. All the inmate's assertions must be verified and the leave principals willing to cooperate. Investigation may include contact with many outside people, including law enforcement and criminal justice agencies and the committing court. It also includes investigation for detainees.

Subsection (3) describes the process for reviewing a leave once the investigation is complete. The leave application will be reviewed by the institution's program review committee (PRC). Review by the PRC ensures that the leave is considered in conjunction with the inmate's overall adjustment in the institution.

Subsection (5) allows the superintendent to impose leave conditions as provided in HSS 326.06. Having the inmate sign a statement agreeing to the conditions ensures that the inmate knows what those conditions are. The PRC may recommend these conditions and should make sure that the inmate understands the conditions before the inmate signs the statement.

Subsection (6) provides that the inmate shall be informed in writing about the decision of the PRC to deny the request for a leave or the decision of the superintendent to approve or deny it. Including the facts and criteria on which the decision is based serves the dual purpose of helping the inmate understand why a leave was or was not granted and facilitating review by the superintendent.

Subsection (7) provides that the division of corrections classification chief is notified of all leaves. The purpose of this notification is to allow him or her to monitor leave decisions for consistency. Its purpose is not to provide an additional level of review of the merits of a particular leave decision before the leave takes place.

Note: HSS 326.08. Subsection (1) allows an inmate to request the superintendent to review a denial of a leave. This request must be made within 5 days of the decision to deny the leave. The time limit protects the inmate's ability to get review and also ensures that the review process does not unnecessarily delay the leave process. The superintendent may, but does not have to, review any procedural irregularities of the leave review. The superintendent's main task in reviewing leave applications is to decide whether to override the actual decision of the reviewing authorities. The superintendent's decision to deny a leave is final.

Subsection (2) allows an inmate to request review of procedural irregularities in the leave process by going through the inmate complaint system. The inmate complaint system is better able to conduct an investigation of procedural irregularities than is the superintendent's office.

Note: HSS 326.10. This section makes clear that legal custody of an inmate on leave remains with the department, thereby avoiding confusion about who has legal custody of the inmate if the inmate is not within the institution.

Note: HSS 326.11. This section fixes the responsibility for the expenses of a leave. A study of New York's leave program concluded that its cost was insubstantial since inmates who participate pay their own expenses. See *Project: Temporary Release in New York State Correctional Facilities*. 38 Alb. L. Rev. 691, 718-719 (1974). The section does not require inmates to prepay the expenses. Thus, institutions may lend money for leave to inmates, who then repay the loan out of future earnings.

Note: HSS 326.12. This section specifies conduct that is expressly controlled while the inmate is on leave. These provisions must be part of the leave agreement so the inmate is aware of them. Since the inmate is in the legal custody of the department while on leave, sub. (2) was included to avoid potential legal problems associated with these activities. Violation of any of the provisions of HSS 326.12 may subject an inmate to the sanctions under HSS 326.13.

Note: HSS 326.13. HSS 326.13 provides sanctions for escape or misconduct while an inmate is on leave, and for withdrawal of the consent of a leave principal.

Under sub. (1) an inmate may be treated as an escapee if that inmate leaves the area designated in the leave agreement or if the inmate fails to return from leave. Since an inmate is in the custody of the department, a violation of this subsection is an "intentional escape from custody" under s. 946.42 (3), Stats., as affected by chs. 173, 354, and 418, laws of 1977. This escape could be prosecuted as a new offense.

Subsections (2) and (3) are sanctions for misconduct, other than escape, while the inmate is on leave. These provisions include possible institution discipline under ch. HSS 303, program review under ch. HSS 302, or cancellation of leave. Subsection (3) also gives the superintendent the right to cancel leave when a leave principal requests it. Since consent of the leave principal is necessary to grant leave, withdrawal of consent must result in cancellation. Cancellation as a result of the withdrawal of consent of a leave principal is not necessarily for misconduct. For example, an employer may be called away on urgent business and be unable to keep an interview appointment, or a family member may become unable or unwilling to act as a leave principal.

Note: HSS 326.14 The record-keeping requirements for the leave program are outlined in this section. One objective of record-keeping is to permit evaluation of the program as structured by these rules.

Subsection (2) requires that a monthly listing of inmates granted leave be compiled and submitted to the bureau of adult institutions. This ensures that adequate records about the number of leaves granted are maintained so the division can comply with the requirements of s. 56.068 (3), Stats.

Note: HSS 326.15. Since an inmate is in the legal custody of the department and participating in an authorized correctional program while on leave, HSS 326.16 requires that the inmate be given full credit toward his or her sentence for this time. (See HSS 302.21 and note regarding sentence computation.)