

## Chapter DOC 326

## APPENDIX

**Note: DOC 326.02.** DOC 326.02 states the purposes of leave for qualified inmates. Selected inmates are allowed unescorted leave only for a serious illness of the close family member, to attend the funeral of a close family member, for employment interviews, for medical purposes, or to facilitate family reintegration and stability as provided under s. 303.068, 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 purposes 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. DOC 326 and s. 303.068, 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 warden's or superintendent's approval. The bureau of health services should be consulted before deciding to grant 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.

The purpose of leave is to fulfill the correctional goals of reintegration. This is to be achieved consistent with the protection of the public.

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

**Note: DOC 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.

Although an inmate who is eligible for leave is likely to be a low escape risk due to the eligibility requirements of s. DOC 326.04, an unescorted and supervised 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 therefore, no inmate is eligible for leave who is confined or have a criminal conviction for escape.

The duration of leave is limited to 3 days, excluding travel time. The duration of leave may be extended by the warden or superintendent. 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. No more than 3 leaves are granted in a calendar year.

**Note: DOC 326.05.** DOC 326.05 described the procedures for obtaining a leave. Subsection (1) allows either an inmate or an employee on behalf of the inmate to apply for the leave. An employee should not apply for a leave on behalf of an inmate if the

inmate does not want the leave. Some leaves which cannot be planned in advance, such as some funerals or sick bed visits, may not allow sufficient time to process the application. In such cases the inmate may apply for a temporary leave under supervision as provided in ch. DOC 325. Subsection (2) allows the imposition of leave conditions as provided in s. DOC 326.04 (2). Having the inmate sign a statement agreeing to the conditions ensures that the inmate knows what those conditions are.

Subsection (3) describes the process of investigating leave applications. First, a staff member 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 s. DOC 326.04. 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.

Following the investigation, the application and recommendation is referred to the warden or superintendent. The warden or superintendent approves and imposes conditions on the leave or denies the leave.

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. The staff member is required 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.

**Note: DOC 326.06.** DOC 326.06 allows an inmate to request the warden or administrator 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 warden or administrator may, but does not have to, review any procedural irregularities of the leave review. The warden's or administrator's main task in reviewing leave applications is to decide whether to override the actual decision of the reviewing authorities. The warden's or administrator's decision to deny a leave is final.

An inmate may request a review of procedural irregularities in the leave process by going through the inmate complaint system.

**Note: DOC 326.08.** 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: DOC 326.10.** This section specifies conduct that is expressly controlled while the inmate is on leave. These provisions must be a part of the leave agreement so the inmate is aware of them. Violation of any of the these provisions may subject an inmate to the sanctions under s. DOC 326.11.

**Note: DOC 326.11.** DOC 326.11 provides for escape or misconduct while an inmate is on leave. 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. This escape could be prosecuted as a new offense.

Subsection (2) provides for sanctions for misconduct, other than escape, while the inmate is on leave. An inmate may be disciplined under ch. DOC 303 for violation of conditions of leave or the leave agreement, department rules under ch. DOC 303. Subsection (3) also gives the warden or superintendent the right to cancel leave at any time.