

DEPARTMENT OF HEALTH AND SOCIAL SERVICES 241
HSS 328 Appendix

This section is in substantial accord with ACA, standard 3132.

See s. HSS 328.07, Wis. Adm. Code, regarding restitution.

Note: HSS 328.06. provides for authorized out-of-state travel by clients. Only those clients convicted of an offense and eligible for interstate travel under the uniform act for out-of-state parolee supervision may be eligible for travel authorization. This does not apply to nonconviction cases. Clients on temporary travel are subject to return to Wisconsin upon demand.

Authorization is permitted for 2 types of travel. One authorizes a client to leave the state for a maximum of 15 days. Typically, this would be authorized to allow a client to visit relatives during holidays, attend a funeral, or seek educational or vocational opportunities. Another authorizes a client to leave the state for period in excess of 15 days. This type of travel authorization may be granted to include a "blanket permit." A blanket permit is most often used in the border counties of Wisconsin where clients reside in Wisconsin but may be employed or obtaining schooling across the Wisconsin border. It may also be useful to issue such permits to allow clients to shop and go about other routine daily business in border areas. Those clients whose job requires them to be out-of-state routinely, such as an interstate truck driving job, should be issued this type of permit to allow fulfillment of job requirements without undue problems. Special restrictions may be placed on either type of permit governing hours or places of travel.

Subsection (4) requires that authorizations to travel be in writing. They shall include the reasons for the travel and they shall state any additional rules of supervision (see sub. (2) (a) - (d)) effective while the client is out of state. The client must sign the authorization to acknowledge an understanding of the additional terms of supervision to avoid any misunderstanding or unintended infractions of the rules. These additional rules supplement the existing rules and conditions and a violation of them may result in a modification or revocation of the client's supervision.

Subsection (8) requires that a state be notified of a client's presence in it. This is mainly a courtesy gesture for those clients with travel permits of short duration, but for those clients transferring to another state under the uniform act for out-of-state supervision notification and approval is necessary in advance of any travel. See HSS 328.09 and note.

Note: HSS 328.07. Under s. 973.09(1m), Stats., the court may order the department to document the nature and amount of a victim's pecuniary loss. Subsection (1) recognizes this. This determination may be made before conviction, if the court so orders pursuant to s. 973.09(1m), Stats. Although the department does not ordinarily investigate an offender's background, possible restitution obligations, and ability to pay until after conviction under s. 972.15, Stats., the court may order a determination of pecuniary loss at any time under s. 973.09(1m). Under this section, a determination may be ordered prior to conviction pursuant to a plea agreement and the department must prepare it. Restitution documentation may be included in the presentence report.

Subsection (5) provides the department with the authority to establish specific procedures to help evaluate an offender's ability to pay or amount of restitution owed, for example. These are not published in this section because they are subject to rapid change, due to inflation and other factors.

Subsection (8) requires the agent to notify the court if an offender is not making payments and will be unable to make payments. The agent may make a recommendation for adjustment or waiver of the payments under sub. (4) criteria.

Subsection (9) is required under s. 973.09(3) (d), Stats. A court may authorize the department to discharge a probationer only if there is "substantial reason" for doing so. Consequently, the agent should not recommend discharge unless there is substantial reason to believe that discharging the offender is appropriate. For clients with outstanding restitution obligations, the agent should recommend discharge only where there is indication of inability to pay, absent other relevant factors.

Note: HSS 328.08. A number of factors enter into the decision to release an inmate in an institution to supervision, or to place a client under supervision, in a particular geographical area. Chief among those are the inmate's home, opportunities for schooling, employment, training, treatment, and community receptivity to the inmate. A supervision plan is designed to conform to the client's needs and to allow implementation within a particular geographical area. Given the period of time that a client may be under supervision, and the importance of achieving the goals and objectives of supervision, there should be some provision for modification of the plan that includes the opportunity to transfer between geographical areas.

This section provides for transfers of clients as well as transfers of inmates for implementation upon their return to the community when the inmate requests modification of his or her geographical placement.

HSS 328 Appendix

There may be changes of circumstances that warrant or necessitate a client's transfer to a new area if the goals and objectives of supervision are to be reasonably achieved. Most common are those where the client's family has moved to another area, or where the client has sought and obtained schooling, employment, or training opportunities in another area of benefit to the client that may not be available under present supervision. A transfer may occur, however, only if it is consistent with the goals and objectives of supervision for the client. An agent and the agent's supervisor should balance the benefits to the client offered by the present supervision with those anticipated by a transfer before initiating the transfer process. A transfer should never be used for disciplinary purposes.

The receiving agent may reject a proposed transfer but that agent's supervisor must authorize the rejection in writing. The reasons for the rejection must be provided to the sending or requesting agent in writing and communicated to the client. Again, a client may appeal a rejection under the client complaint process.

Subsection (4) requires the agent and client to meet following the transfer. This contact is necessary to establish a mutual understanding of the rules and conditions of the client's supervision, to restate its goals and objectives, and to avoid misunderstandings and possible unintended infractions of the terms of supervision in the future. This meeting also provides an opportunity for the agent and client to establish a foundation for a personal relationship which, as noted under HSS 328.15, may prove to be an important factor in the client's supervision.

Subsection (5) provides that the client may be returned to the previous area and agent for supervision if the transfer plan cannot be implemented within a set time for reasons other than the client's misconduct. In this event, the previous agent should automatically assume responsibility for the client and the client's supervision.

Subsection (6) provides for complete and accurate recordkeeping regarding a client's transfer. See ch. HSS 307 for a discussion of the necessity and advantages of such recordkeeping. See s. HSS 328.30 for information regarding a transfer summary.

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 the introduction to this section. This section interprets the compact so that the goal of providing for the welfare and protection of clients and the public may be achieved.

The compact provides 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.

Subsection (1) provides the procedures and criteria for transfer of a Wisconsin client to another state. The criteria for transfer are that the client be a resident of, or that the client's family resides in, that other state, or that the client desires to transfer elsewhere, and that the client has plans to obtain employment and training there or that transfer is recommended. The plans should be firmly established prior to transfer, but lack of a verified plan need not necessarily disqualify the client for a transfer. Sub. (1) (a).

If an agent reasonably believes that a client is requesting a transfer to avoid supervision, or that equal opportunities for the client exist in Wisconsin, a transfer should not be recommended. Sub. (1) (b) 1. Other states are often reluctant to accept clients with outstanding financial obligations. The general practice in Wisconsin is to require that all obligations are paid in full prior to a transfer. However, circumstances may dictate that a transfer is nonetheless desirable and the procedures under this subsection should be followed. The agent's failure to recommend a transfer is grievable by a client under the client complaint process.

Subsections (1) (i) 1-6 present the important terms of a transfer which must be explained to a client prior to transfer so that misunderstandings and unintended infractions of the terms and rules may be avoided. The provisions for the immediate return of a client to Wisconsin who has absconded or escaped are consistent with the waiver of extradition provisions under the compact.

Subsection (1) (j) provides the procedures to be followed subsequent to an alleged violation of the terms or conditions of supervision by the client. If criminal charges against the client are not pending, an on-site hearing should be held to determine if there is probable cause to believe the client violated the terms or rules and a final revocation hearing may be held in accordance with this chapter upon return of the client to Wisconsin. If criminal charges are pending, the client may be detained in the other state and his or her probation or parole may be revoked later upon verified notice of the conviction.