

Chapter HSS 302

ASSESSMENT AND EVALUATION, SECURITY
CLASSIFICATION AND SENTENCE COMPUTATION IN
ADULT CORRECTIONAL INSTITUTIONS

HSS 302.01	Applicability of A&E process (p. 1)		WCI-Green Bay, and WCI-Taycheedah (p. 14)
HSS 302.02	Purposes of A&E (p. 2)	HSS 302.18	Program review (p. 14-1)
HSS 302.03	Duration of A&E process (p. 2)	HSS 302.19	Program review procedure (p. 14-2)
HSS 302.04	Restricted movement during A&E process (p. 2)	HSS 302.20	Inter-institution transfers (p. 14-3)
HSS 302.05	Orientation during A&E process (p. 2)	HSS 302.21	Sentence computation (p. 14-4)
HSS 302.06	Orientation in writing during A&E process (p. 3)	HSS 302.22	Ambiguity in sentence (p. 16)
HSS 302.07	Orientation for handicapped individuals during A&E process (p. 3)	HSS 302.23	Discretionary parole violators not subject to 1983 Wisconsin Act 528 (p. 16)
HSS 302.08	Orientation upon transfer (p. 3)	HSS 302.24	Mandatory release parole violators not subject to 1983 Wisconsin Act 528 (p. 16-1)
HSS 302.09	Recorded information (p. 4)	HSS 302.25	Parole violators subject to 1983 Wisconsin Act 528 (p. 16-1)
HSS 302.10	Orientation by residents during A&E process (p. 4)	HSS 302.26	Discretionary release for parole violators (p. 16-2)
HSS 302.11	Security classifications (p. 4)	HSS 302.27	Revocation of probation (p. 16-2)
HSS 302.12	Security classifications (p. 4)	HSS 302.28	Sentence credit (p. 16-2)
HSS 302.13	Institutional security classifications (p. 6)	HSS 302.29	Effect of escape on sentence (p. 16-3)
HSS 302.14	Factors in assigning a security classification (p. 8)	HSS 302.30	Waiver of good time or entitlement to mandatory release (p. 16-3)
HSS 302.145	Requirements for assigning a security classification to an inmate serving a life sentence (p. 9)	HSS 302.31	Extra good time for inmates not covered by 1983 Wisconsin Act 528 (p. 16-4)
HSS 302.15	Program assignment (p. 13)	HSS 302.32	Special action release program (p. 16-7)
HSS 302.16	Criteria for program assignment (p. 13)		Appendix (p. 17)
HSS 302.17	Procedure for program assignment and security classification at conclusion of A&E process at WCI-Waupun,		

Note: Each section in this chapter has explanatory material which can be found in the appendix following the last section of the chapter.

HSS 302.01 Applicability of A&E process. (1) Every convicted offender sentenced or committed to a correctional institution shall participate in an orientation program, receive a security classification and assignment to an institution and be offered a vocational, job, school or program assignment (hereinafter "program assignment"), consistent with existing resources, as specified in this chapter.

(2) This initial process for orientation, security classification and program assignment shall be called "the assessment and evaluation process" (hereinafter "A&E"). In this chapter the term "convicted offender" includes a person sentenced to a correctional institution, a person committed to the department under ch. 975, Stat., and transferred to a correctional institution and a person assigned to a correctional institution after the revocation of probation, discretionary parole or mandatory release.

HSS 302.02 Purposes of A&E. The purposes of A&E shall be the following:

- (1) A comprehensive assessment of a resident's social background, sentence structure, academic and vocational achievements;
- (2) A long-term and short-term evaluation of the academic, vocational, medical, social, treatment and security needs of a resident;
- (3) An orientation to the program resources of the division of corrections;
- (4) The motivation of the offender to become constructively involved in the correctional process;
- (5) The social reintegration of the offender through the formulation of an individualized plan to aid the newly confined resident to utilize resources effectively, to develop socially acceptable life goals and to permit the division to make efficient use of available resources; and
- (6) The protection of the public through planning for appropriate correctional treatment and supervision.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.03 Duration of A&E process. (1) A&E shall be completed not more than 6 weeks after the arrival of the offender at the institution to which the offender has been sentenced or assigned.

(2) In unusual circumstances, the director of A&E (hereinafter "director") may delay the starting time of the A&E Process.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.04 Restricted movement during A&E process. (1) During A&E, a resident may be separated from the general resident population until the institution physician is satisfied that the resident is not suffering from a communicable disease or the director is satisfied that the person need not be separated for the resident's safety.

(2) The director and the security director or their designees may evaluate residents upon their arrival at the institution and recommend to the superintendent that individuals be separated from the general population and each other and have their movement restricted for the duration of A&E. The superintendent may order such residents separated and their movement restricted if he or she believes that it is necessary for the safety and security of the individual resident or of the institution.

(3) If a resident is separated from the general resident population pursuant to this section, he or she shall be notified of the reasons in writing.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.05 Orientation during A&E process. (1) The purposes of orientation are:

- (a) To initiate the correctional process in a constructive and positive manner;
- (b) To communicate to residents the objectives of the correctional process, the successful reintegration of the offender into the community, and the protection of the public;

(c) To communicate to residents the commitment of the whole correctional staff to the achievement of these correctional objectives and of

Next page is numbered 3

their desire to help residents achieve them and other appropriate life goals; and

(d) To motivate residents to involve themselves in the correctional process constructively.

(2) Orientation shall include oral information communicated to the resident which:

(a) Describes all institutional programs available to the resident in the correctional system;

(b) Describes all available institutions within the correctional system;

(c) Identifies the criteria used in assigning a security classification to a resident and the criteria and eligibility requirements for offering a program assignment to a resident;

(d) Explains the parole eligibility date, projected mandatory release date and projected discharge date for a person sentenced to a correctional institution in Wisconsin;

(e) Explains the procedure and criteria for parole release;

(f) Explains the procedure and criteria for entering the mutual agreement program;

(g) Explains the procedure or review of assignment to an institution and program, and of the security classification;

(h) Describes the resources and activities available to residents;

(i) Describes the legal services available to residents;

(j) Informs the resident of the right to have a court review of the propriety of their confinement and how the right can be exercised; and

(k) Explains rules of resident conduct and procedures and other rules the resident is required to observe in the institution to which he or she has been sentenced.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.06 Orientation in writing during A & E process. (1) Each resident shall receive a copy of the rules of resident conduct that the resident is required to observe at the institution to which the person has been sentenced.

(2) There shall be available for inspection by each resident during A & E and thereafter written materials containing all the information required to be communicated to the resident during orientation, as specified in section HSS 302.05, the rules of the division of corrections, and any available institutional handbooks.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.07 Orientation for handicapped individuals during A & E process. Handicapped residents shall be provided with an orientation program that communicates the information specified in HSS 302.05, in accordance with their particular needs.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.08 Orientation upon transfer. (1) When a resident is transferred from one institution to another, the resident shall receive orientation at the institution to which transfer is made. This orientation shall include:

(a) An oral or written description of all programs available at the institution; and

(b) A copy of the rules of conduct the resident is required to observe.

(2) There shall be available for inspection by each resident a written description of the programs available at the institution.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.09 Recorded information. Each institution shall have available for listening by residents a recording of all rules of conduct which the resident is required to observe in the institution. These recordings shall be in English and Spanish.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.10 Orientation by residents during A & E process. Orientation sessions may be conducted by residents, with the approval of the director and the superintendent.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.11 Security classifications. The purposes of security classification program assignment and assignment to an institution are:

(1) The treatment of the resident in accordance with individual needs, and the resources of the division of corrections;

(2) The placement of the resident in a secure setting that provides supervision in accordance with the resident's needs; and

(3) The social reintegration of the resident and the protection of the public through appropriate treatment and supervision.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.12 Security classifications. (1) There shall be 5 security classifications in the Wisconsin correctional system which are:

(a) *Maximum security close.* 1. Supervision. Residents in this classification require the direct supervision of one or more correctional officers while outside their cell, or they must be locked in a cell. They may be required to reside in a segregated building or area.

2. Movement within institution. Residents in this classification must be accompanied by a correctional officer when they move outside their cell. They may be required to wear restraining devices while outside their cell.

3. Movement outside institution. Residents in this classification must be accompanied by correctional officers and must wear restraining devices when they are in transit outside the institution, except that the superintendent may permit travel outside without restraining devices for medical reasons, upon the recommendation of the institution physician.

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4. Programs. Residents in this classification may participate in any program which does not require them to leave their cell, may participate in limited exercise and in therapy and may keep in their cells legal, educational, religious and reading material. Residents in this classification may keep in their cells personal items as specified in the rules of the division.

(b) *Maximum security-general*. 1. Supervision. Residents in this classification require the general supervision of correctional staff while inside the institution.

2. Movement within institution. Movement of residents in this classification within the institution is controlled either by a pass system or by escort. They may move individually or in groups.

3. Movement outside institution. Residents in this classification must be accompanied by correctional employes and must wear restraining devices when they are in transit outside the institution, except that the superintendent may permit travel without restraining devices for medical reasons upon the recommendation of the institution physician, or if the superintendent believes that the resident does not pose a danger to himself or others or a risk of escape in the situation.

4. Programs. Residents in this classification may participate in all general population activities and programs and may keep in their cells personal items as specified in the rules of the division of corrections.

(c) *Medium security*. 1. Supervision. Residents in this classification require the general supervision of a corrections employe and shall be assigned only within the main security enclosure of a maximum or medium security institution.

2. Movement within institution. Residents in this classification may move within the main security enclosure without an escort or pass.

3. Movement outside institution. Residents in this classification must be accompanied by correctional employes and must wear restraining devices when in transit outside an institution, but the requirement of restraining devices may be waived by the superintendent for medical reasons upon the recommendation of the institution physician or if the superintendent believes that the resident does not pose a danger to self or others or a risk of escape in the situation.

4. Programs. Residents in this classification may participate in all general population activities and programs and may keep in their cells or rooms personal items as specified in the rules of the division of corrections.

(d) *Medium outside security with supervision*. 1. Supervision. Residents in this classification may be assigned work outside of the main security enclosure of a maximum or medium security institution. When assigned to an outside area, the resident must be under the general supervision of a corrections employe.

2. Movement within institution. Residents in this classification may move within the security enclosure without an escort or pass.

3. Movement outside institution. Residents in this classification must be accompanied by a corrections employe when in transit outside the institution. Restraining devices need not be required when in transit.

4. Programs. Residents in this classification may participate in all general population activities and programs and may keep in their cells or rooms personal items as specified in the rules of the division of corrections.

(e) *Minimum security.* 1. Supervision. Residents in this classification may be assigned outside the security enclosure of a maximum or medium institution or outside a minimum security institution in the community under the general supervision of a corrections employe.

2. Movement within institution. Residents in this classification may be permitted to move within designated areas within the security enclosure or within a minimum security institution without an escort or pass.

3. Movement outside institution. Residents in this classification who are also in the work and study release program may move in transit under the general supervision of a corrections employe. Other residents may move in transit only under escort. Restraining devices may be used only if the resident poses an immediate threat of escape or threat to self or others or to the safety and security of the institution.

4. Programs. Residents in this classification may participate in all general population activities and programs and may keep in their cells or rooms personal items as specified in the rules of the division of corrections.

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(2) Residents must be held at the level of custody at which they are classified or at a more secure level. Residents may be held at a level of custody more secure than the one at which they are classified because of space or program limitations, or with their consent.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.13 Institutional security classifications. No resident may be transferred to an institution unless the resident has the security classification required for residence in that institution as indicated below:

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Correctional Institution	Resident Security Classification			
	Maximum (Close and General)	Medium	Medium/ Outside	Minimum
WISCONSIN STATE PRISON	X	X	X	X
WISCONSIN STATE REFORMATORY	X	X	X	X
WISCONSIN CORRECTIONAL INSTITUTION		X	X	X
KETTLE MORAINÉ CORRECTIONAL INSTITUTION		X	X	X
TAYCHEEDAH CORRECTIONAL INSTITUTION (FEMALE)	X	X	X	X
WISCONSIN CORRECTIONAL CAMP SYSTEM				X
WISCONSIN CORRECTIONAL INSTITUTION-OAKHILL				X
WISCONSIN CORRECTIONAL INSTITUTION-DODGE	X	X	X	X
COMMUNITY CORRECTIONS CENTERS				X
AETP				X

HSS 302.14 Factors in assigning a security classification. The following factors may be taken into consideration in assigning a security classification to an inmate:

(1) The nature of the offense of which the inmate was convicted, and its seriousness. Evaluation of the seriousness of the offense may include consideration of the following:

(a) Physical danger to another by the offense;

(b) Harm done to another in the commission of the offense;

(c) Whether the offender exhibited physical aggressiveness that exposed another to harm;

(d) Whether the crime was a crime against property; and

(e) Mitigating factors;

(2) The criminal record of the inmate;

(3) The length of sentence being served;

(4) The motivation for the crime of which the inmate was convicted;

(5) The inmate's attitude toward the offense and sentence;

(6) The inmate's vulnerability to physical assault by other inmates;

(7) The inmate's prior record of adjustment in a correctional setting, including any record of escape;

(8) The length of time the inmate has been in a particular security classification and institution;

(9) The medical needs of the inmate, including the need for physical or psychological treatment;

(10) Time already served for the offense;

(11) The reaction to the inmate in the community where the offense was committed or in the community where the institution is located;

(12) The inmate's conduct and adjustment in the general population of the institution;

(13) The inmate's performance in programs;

(14) A detainer filed with respect to the inmate, except that if a detainer is to be considered in giving an inmate a security classification, the detainer shall be evaluated on the basis of the potential penalties which may be imposed upon disposition of whatever underlies the detainer. The procedure for evaluating the detainer shall include the following:

(a) The registrar shall inform the inmate and the inmate's social worker of the detainer;

(b) The inmate's social worker shall make reasonable efforts to find out from the authority which has filed the detainer the reasons for filing the detainer, the underlying facts upon which the detainer is based, evidence of those facts and the potential penalties for whatever underlies the detainer;

(c) The inmate's social worker shall make available, with the inmate's permission, to the authority which filed the detainer any information useful in determining whether the detainer should be maintained;

(d) The inmate's social worker shall inform the inmate of all information acquired and given pursuant to pars. (b), (c), and (d);

(e) The inmate shall be given the opportunity to place on file and before anyone considering the detainer additional facts or facts contrary to those acquired and placed on file; and

(f) The extent to which the detainer is relied on and the reasons for relying on it shall be given to the inmate in writing; and

(15) The inmate's risk rating as high risk, moderate risk or low risk, determined by employing the department's risk rating system. Under the risk rating system, if one or more factors are rated high risk, the risk rating is high risk. If one or more factors are rated moderate risk and no factors are rated high risk, the risk rating is moderate risk. If all factors are rated low risk, the risk rating is low risk. In this subsection, "risk rating system" means the interpretive guidelines, procedures and forms used to assess the risk that an inmate presents to public safety and to the security and management of the correctional institution.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 12-7-88; r. and recr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 302.145 Requirements for assigning a security classification to an inmate serving a life sentence. (1) DEFINITIONS. In this section:

(a) "Bureau director" means the director of the bureau of adult institutions in the Wisconsin department of health and social services.

(b) "Life sentence" means a sentence of life imprisonment imposed following a conviction for a Class A felony. An inmate sentenced to life imprisonment who is released on parole, violates a condition of parole and is returned to a state correctional institution with or without a new sentence is serving a life sentence. If the governor pardons or commutes a life sentence, it is no longer a life sentence. In this paragraph, "Class A felony" means a crime specified as a Class A felony in chs. 939 to 951 of the Wisconsin Statutes or a crime from another jurisdiction that is punishable by a sentence of life imprisonment under that jurisdiction's laws.

(c) "Parole violator" means an inmate sentenced to life imprisonment who is released on parole, violates parole, has parole revoked under ch. HSS 31 and is returned to a state correctional institution with or without a new sentence.

(2) **CATEGORIES OF LIFERS.** (a) Each inmate serving a life sentence shall be designated as a category I, II, III or IV lifer. If the designation as to category of lifer is made at A&E, the A&E director or designee shall make the designation. At other times the PRC shall make the designation. A PRC designation as to category of lifer requires a unanimous vote. If a vote of the PRC is not unanimous, the case shall be referred to the classification chief to make designation as to category of lifer. Categories of lifers shall be designated in accordance with the following criteria:

1. A category I lifer is an inmate serving a life sentence who does not meet the criteria for a category IV lifer and who either committed a particularly vicious murder or other class A felony, including a murder or other class A felony involving torture, sexual abuse, body dismemberment, mutilation or sacrificial rituals, or multiple murders, or whose prior criminal record includes one or more felony or misdemeanor convictions or, within 10 years before commission of the current offense, one or more juvenile delinquency adjudications, for behaviors which reflect an intent to inflict great bodily harm, as defined in s. 939.22, Stats., on the victim.

2. A category II lifer is an inmate serving a life sentence who does not meet the criteria of a category I, III or IV lifer.

3. A category III lifer is an inmate serving a life sentence who does not meet the criteria for a category I or category IV lifer and who has had no prior felony convictions and no prior juvenile delinquency adjudications within 10 years before the current offense for a felony offense and fewer than 5 prior misdemeanor convictions and juvenile delinquency adjudications within 10 years before the current offense for a misdemeanor offense, with none of the misdemeanor convictions or adjudications reflecting an intent to inflict great bodily harm on the victim, and no previous incarcerations in any state or federal correctional institution. The category III lifer had a close or long-term relationship with the victim. The murder or other class A felony was not committed for material gain and did not involve planning and preparation. The murder or other class A felony was a spontaneous emotional response to specific circumstances occurring at the time of the murder.

4. A category IV lifer is an inmate serving a life sentence who has a parole eligibility date set by the court under s. 973.014, Stats., later than the date provided in s. 57.06 (1), Stats.

(b) An inmate may appeal the designation as to category of lifer to the classification chief within 10 days after receipt of the designation.

(c) The PRC may review a designation as to category of lifer at any time on its own direction or at the request of the classification chief.

(3) NEW LIFERS AND LIFERS WHO HAD A MAXIMUM SECURITY CLASSIFICATION ON DECEMBER 7, 1988. (a) *Applicability.* The factors listed under s. HSS 302.14 may be taken into consideration in assigning a security classification to an inmate serving a life sentence who is received at a correctional institution following sentencing or revocation on or after December 7, 1988, and to an inmate serving a life sentence who had a maximum security classification on December 7, 1988. In addition, the requirements in this subsection shall apply to those inmates.

(b) *Time to be served in a maximum security institution.* Requirements for service of time in a maximum security institution by category of lifer are set out in this paragraph. A lifer shall serve in a maximum security institution at least the number of years that apply to his or her category, unless the PRC recommends placement in a medium security institution at an earlier date and the PRC recommendation is approved by the classification chief, or unless the lifer is in need of individualized care in which case he or she may be transferred to the Wisconsin Resource Center (WRC) under s. 53.055, Stats., with the time served in WRC deducted from the requirement for service of time in a maximum security

institution. The following are the requirements for service of service of time in a maximum security institution:

1. Unless the classification chief approves placement in a medium security institution at an earlier date, a category I lifer shall serve a minimum of 15 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category I lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wisconsin Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wisconsin Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

2. Unless the classification chief approves placement in a medium security institution at an earlier date, a category II lifer shall serve a minimum of 8 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category II lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wisconsin Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wisconsin Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

3. Unless the classification chief approves placement in a medium security institution at an earlier date, a category III lifer shall serve a minimum of 6 years in a maximum security institution, reduced by any sentence credit granted pursuant to s. 973.155, Stats. If a category III lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wisconsin Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wisconsin Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

4. Unless the classification chief approves placement in a medium security institution at an earlier date, a category IV lifer shall serve his or her sentence in a maximum security institution at least up to the date 3 years prior to his or her parole eligibility date or for a minimum of 15 years, reduced by any sentence credit granted pursuant to s. 973.155, Stats., whichever is longer. If a category IV lifer has one or more consecutive sentences in addition to the life sentence, the inmate shall serve a minimum of an additional 25% of the consecutive sentence or sentences, or, in the case of a consecutive life sentence, an additional 13 years 4 months if the life sentence is covered by 1983 Wisconsin Act 528 or 11 years 3 months if the life sentence is not covered by 1983 Wisconsin Act 528, in a maximum security institution, unless the classification chief approves placement in a medium security institution at an earlier date.

5. Following revocation, a parole violator with an underlying life sentence but without the imposition of a new sentence or sentences shall

serve a minimum of 12 months in a maximum security institution starting from the date of return to a state correctional institution, unless the classification chief approves placement in a medium security institution at an earlier date; and

6. Unless the classification chief approves placement in a medium security institution at an earlier date, following revocation, a parole violator with an underlying life sentence and with the imposition of a new sentence or sentences shall serve in a maximum security institution a minimum of 12 months or 50% of the time from the date of custody for the violation to a projected mandatory release date, calculated using the formula under s. 53.11 (1), Stats., on the new sentence or sentences imposed, whichever is greater.

(c) *Eligibility for minimum security classification.* To be eligible for a minimum security classification, an inmate serving a life sentence, including a parole violator with an underlying life sentence, shall have:

1. Reached parole eligibility as defined in ss. 57.06 (1) and 973.014, Stats.;

2. Served the required time in a maximum security institution under par. (b), unless the classification chief approved placement in a medium security institution at an earlier date;

3. Had a request by the parole board for a preparole plan;

4. Had a recommendation for minimum security classification made by the PRC under s. HSS 302.19 (4), using the factors listed under s. HSS 302.14, or, if the vote of the PRC for the change was not unanimous, had a recommendation for minimum security classification made by the A&E director and superintendent or designee, but if they could not agree, had the case referred to the classification chief;

5. Had a recommendation for minimum security classification made by the classification chief and referred to the bureau director for a final decision; and

6. Had a final decision by the bureau director approving the inmate's minimum security classification.

(4) **LIFERS WHO HAD A MINIMUM SECURITY OR MEDIUM SECURITY CLASSIFICATION ON DECEMBER 7, 1988.** (a) *Applicability.* The factors listed under s. HSS 302.14 may be taken into consideration in assigning a security classification to an inmate serving a life sentence who had a minimum security or medium security classification on December 7, 1988. In addition, the requirements in this subsection shall apply to those inmates.

(b) *Minimum security classification.* Prior to December 7, 1988, the parole board shall have provided a parole consideration file review for each inmate serving a life sentence who had a minimum security classification and who was parole eligible on December 7, 1988. If the parole board requested a preparole plan for an inmate, that inmate shall remain in minimum security classification until the inmate is found guilty of a major disciplinary violation under ch. HSS 303 or is released on parole under ch. HSS 30, except that an inmate in need of individualized care may be transferred to the Wisconsin Resource Center under s. 53.055, Stats. If the inmate was not parole eligible on December 7, 1988, or the

parole board did not request a preparole plan, the PRC shall have reviewed the inmate's security classification. The criteria for this review and all subsequent reviews shall be the criteria under sub. (3) (c) 1 and 3 to 6 and s. HSS 302.14.

(c) *Medium security classification.* An inmate serving a life sentence who had a medium security classification on December 7, 1988, shall remain classified medium security until the inmate is found guilty of a major disciplinary violation under ch. HSS 303, meets the eligibility requirements for minimum security classification under sub. (3) (c) 1 and 3 to 6 or is released on parole under ch. HSS 30. An inmate serving a life sentence who was classified medium security on December 7, 1988, may be eligible for a minimum security classification without meeting the requirements of sub. (3) (c) 2.

(d) *Major disciplinary violations.* If an inmate serving a life sentence who had a minimum or medium security classification on December 7, 1988, is found guilty of a major disciplinary violation, the PRC shall review the inmate's security classification using the criteria under sub. (3) (c) 1 and 3 to 6 and s. HSS 302.14.

History: Emerg. cr. eff. 12-7-88; cr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 302.15 Program assignment. (1) Unless otherwise specified in the rules of the division, every resident is eligible for every job, school, vocational or other program within the Wisconsin correctional system, provided the resident has the security classification which permits transfer to the institution where the job, school vocational or other program is available and may otherwise be transferred to that institution or commute to the institution where the program is available.

(2) Each resident shall be offered a program assignment, consistent with available resources and security needs.

(3) Consistent with available resources, any resident may participate in any program at the institution at which the resident resides or at any other institution, provided the resident is otherwise eligible for the program and is assigned to it in accordance with the rules of the division.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.16 Criteria for program assignment. The criteria for assigning a resident to a job, school, vocational or other program shall include only the following:

(1) The medical needs of the residents, including any physical or mental disabilities or behavioral disorders the resident may suffer;

(2) The resident's:

(a) Aptitude;

(b) Motivation;

(c) Present and potential vocational and educational needs, interests and ability;

(d) Institutional adjustment;

(e) Past performance in programs;

(3) The physical vulnerability of the resident;

- (4) Limitations on program participation due to population pressure;
- (5) The needs of the institution; and
- (6) The resident's security classification.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.17 Procedure for program assignment and security classification at conclusion of A&E process at WCI-Waupun, WCI-Green Bay, and WCI-Taycheedah. (1) With the advice of the A&E committee, the director shall recommend a security classification, assignment to a job, school, vocational or other program and an assignment to an institution to the classification chief at the end of the A&E process. The classification chief shall decide the security, program assignment and assignment to an institution for each resident.

(2) The director shall set the time for a review of the security classification, program assignment and assignment to an institution for each resident, but the date shall be not more than 6 months from the date of the initial classification and program assignment.

(3) Except at WCI-Taycheedah, the A&E committee shall be made up of not less than 3 permanent members who shall include:

- (a) The director or designee;
- (b) A member of the parole board; and
- (c) A member of the A&E staff designated by the director.

(4) At WCI-Taycheedah, the A&E committee shall be made up of not less than 3 permanent members who shall include:

- (a) The superintendent or a member of the treatment staff designated by the superintendent;
- (b) A director designated by the classification chief; and
- (c) A member of the parole board.

(5) Before the director recommends a security classification, assignment to an institution, and program assignment for a resident to the classification chief, the committee shall interview the resident. At the interview, the committee shall explain to the resident the criteria for the recommendations and decisions and the specific facts under consideration. The resident shall be afforded the opportunity to dispute these facts and to indicate what the resident believes to be the appropriate classification and assignment. The resident's views, to the extent they differ from the director's, shall be forwarded to the classification chief.

(6) The recommendation of the director and the reasons for it shall be explained to the resident orally and in writing and shall include the specific facts and criteria on which the recommendations are made.

(7) The director and the resident shall be informed in writing to the extent that the decision of the classification chief differs from the recommendation of the director and the specific facts and reasons for the classification chief's decision.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.18 Program review. (1) The security classification, assignment to an institution and program assignment of each resident shall be reviewed by the program review committee (hereinafter "PRC") not more than 6 months from the last review of classification and assignment.

(2) The purposes of such review are:

(a) To provide systematic review of the resident's academic, vocational, medical, social, treatment, and security needs and progress;

(b) To monitor the implementation and revision of plans developed during A&E and previous PRC meetings;

(c) To provide supplemental or alternative program recommendations;

(d) To provide supplemental recommendations regarding security needs; and

(e) To aid the resident's reintegration into society.

(3) Such review may occur before the time designated for the review:

(a) At the designation of the PRC or at its own direction, upon the recommendation of a staff member; or

(b) At the request of the resident or a staff member, provided there is a significant change of circumstances relevant to the classification or program assignment of the resident. A request for early review by the resident shall be made to the resident's social worker who shall forward it to the PRC.

(4) Every correctional institution and camp shall have a PRC. Except at the camps, the PRC shall consist of not less than 4 permanent members which shall include:

(a) A member of the security staff holding the rank of lieutenant or higher, to be designated by the superintendent;

(b) The program review coordinator, to be designated by the classification chief;

(c) A member of the social services staff holding the rank of social services supervisor; and

(d) An educational representative in a supervisory class or a guidance counselor.

(5) The PRC in each camp shall consist of not less than 3 permanent members who shall include 3 of the following people:

(a) The social services specialist or supervisor;

(b) A social worker who shall serve as program review coordinator;

(c) A member of the security staff; or

(d) The camp superintendent or designee.

(6) A permanent member of the PRC may designate a single person to sit as an alternate, consistent with available staff. The designee need not hold the rank of the permanent member. In view of the importance of the

PRC, the alternate should replace the permanent member as infrequently as possible.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.19 Program review procedure. (1) Before an inmate's security classification, assignment to an institution or program assignment is reviewed by the PRC, a staff member shall interview the inmate and inform the inmate orally of the approximate date of the review, the criteria for the review, the facts to be considered at the review and the fact that the inmate has the option to appear before the PRC. The inmate shall also be informed that if he or she refuses to attend the review or disrupts the review, the review may be conducted without the inmate being present.

(2) Before the scheduled PRC review, the staff member who contacted the inmate under sub. (1) shall:

(a) Make known to the PRC in writing the inmate's view of the appropriate security classification, program assignment or assignment to an institution; and

(b) Make a written recommendation to the PRC as to the appropriate security classification, program assignment or assignment to an institution.

(3) If the inmate appears, the coordinator shall inform the inmate of the facts being considered, the criteria for the decision and the recommendation of the staff member under sub. (2). The inmate shall be afforded the opportunity to present additional facts, dispute facts being considered and state an opinion about the appropriate security classification or program assignment.

(4) The classification chief shall approve or deny changes in an inmate's security classification or transfer upon the recommendation of the PRC. If the inmate is serving a life sentence and the PRC recommends a minimum security classification, the classification chief shall make a recommendation to the bureau director to approve or deny the minimum security classification and refer the case to the bureau director for a final decision.

(5) Each member of the PRC shall have one vote. A recommendation for a security classification change, transfer or approval for work or study release requires a unanimous vote of the PRC. A change in program assignment requires a majority vote of the PRC.

(6) The factors to be considered may include those stated in ss. HSS 302.14 and 302.16. In addition, the criteria under s. HSS 302.145 shall apply to the security classification of inmates serving a life sentence.

(7) For a change in security classification, transfer or approval for work or study release status, if a vote of the PRC is not unanimous, the case shall be referred to the A&E director and superintendent or designee for a recommendation as to security classification change, transfer or approval for work or study release status. If the A&E director and superintendent or designee are unable to agree, the case shall be referred with comments but without a formal recommendation to the classification chief. The classification chief shall decide whether to approve or deny a transfer, approval for work or study release status or a change in security

classification except that if the inmate is serving a life sentence the decision to approve a minimum security classification shall be made by the director of the bureau of adult institutions upon the recommendation of the classification chief. The inmate's views, to the extent they differ from the PRC's, shall be forwarded to the classification chief.

(8) For a change in program assignment, if the PRC vote results in a tie, the case shall be referred to the superintendent or designee for a decision.

(9) An inmate may appeal the PRC's decision concerning a program assignment to the superintendent within 10 days after receipt of the decision.

(10) Reasons for the recommendation as to the change in security classification, transfer or work or study release status and the decision about a program assignment shall be given to the inmate in writing and shall include the specific facts relied upon and criteria to which the facts were applied.

(11) To the extent that the classification chief's decision or, in relevant cases, the decision of the director of the bureau of adult institutions, differs from the recommendations, reasons for the decision shall be provided to the PRC and the inmate in writing and shall include the facts relied upon and the criteria to which the facts were applied.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; am. (7), renum. (9) to be (10), cr. (9), Register, February, 1987, No. 374, eff. 3-1-87; emerg. r. and recr., eff. 12-7-88; r. and recr. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 302.20 Inter-institution transfers. (1) The transfer of an inmate from one institution to another requires the approval of the classification chief. Except for a transfer made as a part of the initial security classification, assignment to an institution, and program assignment during the A&E process or as otherwise provided under this section, a transfer may be approved only upon the recommendation of the PRC at the institution at which the inmate is residing. If the inmate has been transferred pursuant to sub. (2), the PRC of the institution at which the inmate resided before the transfer has responsibility for the recommendation. If the PRC is unable to make a unanimous recommendation as to transfer, the procedure established under s. HSS 302.19 (7) shall be followed. The criteria for the transfer decision and recommendation are those in ss. HSS 302.14, 302.145 and 302.16.

(2) The PRC may review the security classification and program assignment and consider a resident for transfer due to a disciplinary infraction, only after disposition of the disciplinary case is completed by the adjustment committee. Before the PRC review, the adjustment committee shall inform the resident that such review may occur, and that the results and findings of fact at the disciplinary hearing may be considered in the program review process.

(3) Before a review as provided in sub. (2), the inmate shall be afforded a disciplinary hearing. After the hearing, the adjustment committee shall forward to the PRC the results and specific findings of facts relating to the alleged disciplinary violations. The PRC may consider this information and the criteria under ss. HSS 302.14, 302.145 and 302.16 before making a recommendation as to a change in security classification or a

transfer, or a decision about a program assignment. The procedure provided for in s. HSS 302.19 shall be followed in the review.

(4) Pending such review by the PRC, the resident may be segregated from the general resident population. If an institution or camp is without the facilities necessary to do so, the resident may be transferred to a county jail pending the results of the disciplinary hearing and review of the resident's security classification and program assignment. If the sheriff's department is unable or unwilling to retain a resident, the resident may be transferred to another institution pending the disposition of the disciplinary infraction with the approval of the classification chief. Residents should be confined in county jails pursuant to this rule for as short a time as possible.

(5) If the resident is transferred to a county jail as provided in sub. (4), the disciplinary hearing and program and security review shall be held 3 less than 2 days of service of the report of the disciplinary infraction, with the consent of the resident. However, if the resident wishes additional time to prepare for the hearing and it is not possible for him or her to remain in the county jail or camp, the resident shall be transferred to a more secure institution for the hearing. In no event shall the disciplinary hearing occur more than 10 calendar days from the date of the disciplinary report.

Note: In sub. (5) "3 less than 2 days" is an error. The department's intent was to state "not more than 3 days." See the explanatory note for this section in the appendix.

(6) A resident may be transferred without following the procedures set forth in this rule and in HSS 302.19 only for the following reasons:

- (a) A medical emergency; or
- (b) A security emergency.

(7) If a resident is transferred pursuant to sub. (6), the resident's program assignment, assignment to an institution and security classification shall be reviewed within 7 calendar days of such transfer by a PRC from the institution from which the resident was transferred and the procedure for review and transfer as set forth in HSS 302.19 shall be followed.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. (1) and (3), eff. 12-7-88; r. and recr. (1) and (3), Register, August, 1989, No. 404, eff. 9-1-89.

HSS 302.21 Sentence computation. (1) TIMELINESS IN COMPUTING DATES AND INFORMING INMATES. (a) Within 10 working days after a person arrives at a correctional institution following sentencing or after an inmate returns from escape, the registrar shall compute the inmate's parole eligibility date, projected mandatory release date and projected discharge date, and shall inform the inmate in writing of these dates.

(b) Within a reasonable time after an inmate arrives at a correctional institution following revocation of probation, discretionary parole or mandatory release parole, the registrar shall inform the inmate in writing of the inmate's parole eligibility date, projected mandatory release date and projected discharge date.

(c) Within a reasonable time after the registrar becomes aware of any change in an inmate's parole eligibility date, projected mandatory release date or projected discharge date, the registrar shall inform the inmate in writing of that change. For an inmate not covered by 1983 Wis-

consin Act 528, the projected mandatory release date may change due to loss of good time or failure to earn extra good time. For an inmate who, on or after June 1, 1984, committed the crime for which he or she was sentenced and for other inmates who chose to have 1983 Wisconsin Act 528 apply to them, the mandatory release date may be extended as a penalty for misconduct under ch. HSS 303.

(2) *Determination of parole eligibility date.* (a) Except for an inmate serving a life sentence and as otherwise specified in chs. HSS 302 to 326, an inmate who committed a crime before November 3, 1983, shall be eligible for parole when one-half of the minimum sentence for the crime for which the person was convicted less all credit to which the inmate is entitled pursuant to s. 973.155, Stats., has been served. An inmate who committed a crime on or after November 3, 1983, shall be eligible for parole when 25% of the sentence imposed, or 6 months, whichever is greater, less all credit to which the inmate is entitled pursuant to s. 973.155, Stats., has been served. However, in no case may any inmate be eligible for parole before 60 days has elapsed from the date of the inmate's arrival at the institution. If an inmate was sentenced for more than one crime, he or she shall be eligible for parole on each sentence in order to be considered for parole. If an inmate has received a consecutive sentence, the inmate may not begin serving the consecutive sentence for

Next page is numbered 15

purposes of parole eligibility until the person has become eligible for parole on the first sentence.

(b) 1. An inmate serving a life sentence who is not covered by 1983 Wisconsin Act 528 is eligible for parole after serving 11 years and 3 months, a period which may be extended for misconduct by forfeiture of good time under ch. HSS 303.

2. An inmate serving a life sentence who is covered by 1983 Wisconsin Act 528 is eligible for parole after serving 13 years and 4 months, a period which may be extended for misconduct under ch. HSS 303.

(3) DETERMINATION OF PROJECTED MANDATORY RELEASE DATE. (a) For an inmate not covered by 1983 Wisconsin Act 528:

1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, and provided that the inmate earns all the statutory and extra good time for which he or she is eligible unless good time is waived or forfeited in accordance with this chapter and ch. HSS 303;

2. The projected mandatory release date shall be the maximum term to which the inmate was sentenced, reduced by any sentence credit granted pursuant to s. 973.155, Stats., and by the statutory and extra good time the inmate may earn during the sentence. Statutory good time shall be credited from the beginning date of the inmate's sentence. Extra good time shall be credited beginning on the date following the inmate's date of arrival at the institution;

3. The registrar, in determining the projected mandatory release date of an inmate who is serving consecutive sentences for crimes which occurred before the person was committed under any of the sentences, shall treat the sentences as one continuous sentence for the purposes of good time credit; and

4. The registrar, in determining the projected mandatory release date of an inmate who is serving a consecutive sentence for a crime which was committed while the person was serving another sentence or on parole, shall treat the second sentence as a separate sentence. Accordingly, statutory good time shall be computed on the second sentence as if it were a first sentence.

(b) For an inmate covered by Wisconsin Act 528:

1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, unless that date is extended pursuant to s. HSS 303.84 for violation of a disciplinary rule or the resident waives entitlement to mandatory release in accordance with this chapter;

2. The projected mandatory release date shall be two-thirds the maximum term to which the inmate was sentenced, reduced by any sentence credit granted pursuant to s. 973.155, Stats. Inmates whose crimes were committed before June 1, 1984, but who chose to have 1983 Wisconsin Act 528 apply to them shall have their mandatory release dates extended by prior forfeitures of statutory and extra good time for misconduct in the institution or on parole. Inmates covered by 1983 Wisconsin Act 528 do not earn statutory or extra good time; and

3. The registrar, in determining the projected mandatory release date of an inmate who is serving consecutive sentences, shall treat all consecutive sentences, no matter when the crimes were committed, as one continuous sentence.

(c) For any inmate:

1. The registrar, in determining the projected mandatory release date of an inmate serving concurrent sentences imposed at the same time, shall consider the longer sentence as controlling. Each sentence shall begin on the date the sentence is imposed, less any sentence credit granted pursuant to s. 973.155, Stats.; and

2. The registrar, in determining the projected mandatory release date of an inmate serving concurrent sentences imposed at different times, shall treat each sentence as beginning on the date that it was imposed, less any sentence credit granted to s. 973.155, Stats.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.22 Ambiguity in sentence. If a registrar is uncertain as to the terms of a sentence imposed on a resident, the registrar shall notify the court of the uncertainty in writing. The registrar shall also inform the resident in writing of the uncertainty and inform the resident of the legal services available at the institution to assist the resident.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

HSS 302.23 Discretionary parole violators not subject to 1983 Wisconsin Act 528. (1) This section applies to inmates who, before June 1, 1984, committed the crime for which they were sentenced and did not choose to have 1983 Wisconsin Act 528 apply to them.

(2) In this section, "discretionary parole violator" means an inmate released by the parole board under s. 57.06 (1) (a), Stats., who violated parole prior to his or her mandatory release date.

(3) A discretionary parole violator shall receive credit toward the satisfaction of the sentence from the beginning date of the sentence until the date of violation of parole determined by a department hearing examiner.

(4) A discretionary parole violator shall receive credit as determined by a department hearing examiner for all time from the date of placement in custody after violation to the date of return to the institution, including statutory good time for the period during which the parolee was in custody. In this subsection, "in custody" means any time the parolee spent confined, as described in s. 973.155 (1), Stats., in connection with the violation.

(5) A discretionary parole violator may not be released until he or she has served the sentence to the recomputed mandatory release date plus tolled time defined in s. HSS 31.15 and forfeited good time less good time earned on the forfeited good time in accordance with the hearing examiner's decision. The maximum discharge date shall be extended by the amount of time tolled.

(6) A department hearing examiner may require a discretionary parole violator to serve forfeited statutory and extra good time. The amount of
Register, February, 1987, No. 374

good time forfeited may not exceed the good time earned as of the date of violation. The hearing examiner may allow a discretionary parole violator to earn good time on the amount forfeited. If allowed, good time shall be earned at the rate applicable on the date of violation as a continuous sentence.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 9-10-86; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.24 Mandatory release parole violators not subject to 1983 Wisconsin Act 528. (1) This section applies to inmates who, before June 1, 1984, committed the crimes for which they were sentenced and did not choose to have 1983 Wisconsin Act 528 apply to them.

(2) In this section, "mandatory release parole violator" is a person who violated parole after the mandatory release date, regardless of how the person was originally released.

(3) A mandatory release parole violator shall receive credit toward the satisfaction of sentence from the beginning date of the sentence to the mandatory release date.

(4) A mandatory release parole violator shall receive credit as determined by a department hearing examiner for all time from the date of placement in custody after the mandatory release date to the date of return to the institution, including statutory good time for the period during which the parolee was in custody. In this subsection, "in custody" means any time the parolee spent confined, as described in s. 973.155 (1), Stats., in connection with the violation.

(5) A department hearing examiner may require a mandatory release parole violator to serve forfeited statutory and extra good time. The amount of time forfeited may not exceed the amount of time from the mandatory release date to the maximum discharge date. The hearing examiner may allow a mandatory release parole violator to earn good time on the amount forfeited. If allowed, good time shall be earned at the rate applicable on the mandatory release date as a continuous sentence.

(6) A mandatory release parole violator's maximum discharge date may be extended by an amount of time no greater than the amount of time tolled under s. HSS 31.15 plus the period from the mandatory release date to the date of violation.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 9-10-86; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.245 Revocation of probation. History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; r. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.25 Parole violators subject to 1983 Wisconsin Act 528. (1) This section applies to inmates who, on or after June 1, 1984, committed the crimes for which they were sentenced and to other inmates who chose to have 1983 Wisconsin Act 528 apply to them.

(2) In this section, "a parole violator" means a discretionary parole violator, as defined in s. HSS 302.23, or a mandatory release parole violator, as defined in s. HSS 302.24.

(3) A parole violator shall receive credit toward the satisfaction of the sentence from the beginning date of the sentence to the date of release to field supervision.

(4) A parole violator shall receive credit as determined by a department hearing examiner for all periods during which the parolee was in custody following the date of release. In this subsection, "in custody" means any time the parolee spent confined, as described in s. 973.155 (1), Stats., in connection with the violation.

(5) A department hearing examiner may require a parole violator to serve a period of confinement in a correctional institution up to the remainder of the sentence. The remainder of the sentence is the entire sentence less time served in custody prior to release to field supervision. This period of confinement is subject to extensions for misconduct in accordance with ch. HSS 303.

(6) A parole violator's maximum discharge date shall be reestablished by counting the number of days equal to the remainder of the sentence beginning from the date of custody after violation of parole.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.26 Discretionary release for parole violators. Nothing in this chapter shall limit the authority of the parole board to grant a discretionary parole in accordance with ch. HSS 30 to an inmate who had been previously paroled, revoked and returned to the institution.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.27 Revocation of probation. When probation is revoked, the probationer shall receive credit toward the satisfaction of sentence as follows:

(1) If the probationer has already been sentenced, the term of the sentence shall begin on the date the probationer enters the prison. The length of the term shall be reduced by the sentence credit granted pursuant to s. 973.155 (1), Stats.;

(2) If the probationer has not been sentenced, he or she shall be returned to court for sentencing and, unless the sentence is consecutive, the term of the sentence shall begin on the date of sentencing; and

(3) Every probationer whose probation is revoked shall receive credit toward the satisfaction of the sentence, including sentence credit in accordance with s. 973.155 (1), Stats., for all periods during which the probationer was in custody. Probationers not subject to 1983 Wisconsin Act 528 shall receive credit for statutory good time earned while in this custody. Probationers subject to 1983 Wisconsin Act 528 are not eligible to earn good time.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.28 Sentence credit. (1) A department hearing examiner shall, upon proper proof and verification, make sentence credit determinations and issue appropriate orders in the following situations:

(a) When parole is revoked and sentence is credited subject to the provisions of ss. HSS 302.23, 302.24, and 302.25;

(b) When probation is revoked for a probationer whose sentence was imposed and stayed; and

(c) When judgments were entered prior to May 17, 1978, the effective date of s. 973.155, Stats.;

Register, February, 1987, No. 374

(2) In situations not covered by sub. (1) the department may not make sentence credit determinations and shall refer requests for sentence credit to the sentencing court.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.29 Effect of escape on sentence. A resident who escapes from custody shall receive no credit toward the service of the sentence during the period the person is unlawfully absent from custody. A resident shall be regarded as unlawfully absent unless he or she is in the custody of law enforcement officials of any state or the United States in connection with the escape, except that the person shall be treated as unlawfully absent while in custody serving a sentence other than a sentence to a Wisconsin correctional institution.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; renum. from HSS 302.25, Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.30. Waiver of good time or entitlement to mandatory release. (1) In this section "good time" means credit which diminishes an inmate's period of incarceration, and includes both statutory good time, under s. 53.11 (1981-82), Stats., which is credit for good conduct and performing all required duties, and extra good time, which is credit for diligence and which is earned according to the conditions and procedures set forth in s. HSS 302.27. Inmates who committed crimes before June 1, 1984, and did not choose to have 1983 Wisconsin Act 528 apply to them earn good time.

(2) An inmate or a person on mandatory release may waive good time and an inmate or person on mandatory release who committed an offense on or after June 1, 1984, or who makes a written request to the department pursuant to s. 29 of 1983 Wisconsin Act 528, may waive entitlement to mandatory release. All waivers are subject to approval by the department.

(3) The inmate or person on mandatory release who wants to waive good time or mandatory release shall do this in accordance with the following conditions and procedures:

(a) Except in an emergency, an inmate's request to waive good time or mandatory release shall be made not earlier than 90 days before the projected mandatory release date and not later than 30 days before that date;

(b) Not less than 15 days and not more than 180 days of good time may be waived at one time, and similarly a waiver may not result in extending the mandatory release date for less than 15 days or more than 180 days, except that a person on mandatory release may waive 360 days of good time at one time;

(c) Good time or mandatory release that is waived shall not be reinstated, except for good cause;

(d) A request to waive good time or mandatory release shall be made in writing by the inmate or person on mandatory release; and

(e) The inmate shall consult with his or her social worker and the person on mandatory release shall consult with his or her parole agent before the department will make a decision to approve a waiver of good time or of mandatory release.

(4) The director of the division's bureau of adult institutions or a designee shall make decisions on waivers by inmates, and the director of the division's bureau of community corrections or a designee shall make decisions on waivers by mandatory release parolees. The director or designee shall evaluate each request according to the criteria in this subsection and shall make a record of the reasons for the decision. Waiver requests may be approved only if extension of incarceration or new incarceration does not contribute to unreasonable overcrowding or threaten institutional security and only if:

(a) An inmate or person on mandatory release wants to complete an on-going course of medical treatment or care for an illness or injury which began in the correctional facility;

(b) An inmate wants to complete an educational or vocational program begun in the correctional facility;

(c) Time is needed to reestablish a release plan that is no longer functional; or

(d) Another objective that promotes the individual's reintegration into society will be accomplished.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. am. eff. 8-5-85; am. Register, February, 1986, No. 362, eff. 3-1-86; renun. from HSS 302.26, Register, February, 1987, No. 374, eff. 3-1-87.

HSS 302.31 Extra good time for inmates not covered by 1983 Wisconsin Act 528. (1) This section does not apply to inmates who committed crimes on or after June 1, 1984, and to other inmates who chose to have 1983 Wisconsin Act 528 apply to them.

(2) **CONDITIONS FOR EARNING CREDIT.** In order to provide an incentive to inmates in approved work and study programs to develop and reinforce positive behavior, and to promote institutional order, an inmate shall earn extra good time credit if he or she is:

(a) Assigned to a vocational, job, school, or program assignment under ch. HSS 302 and surpasses the general average in diligence in labor or study for that assignment (see sub. (4));

(b) Involuntarily unassigned and:

1. His or her last assignment was terminated because of medical or psychological problems caused or aggravated by the assignment, which were verified by the clinical staff and which made it difficult or impossible to perform in the assignment, and the appropriate staff member was notified within 2 working days after termination of the last assignment, of the inmate's willingness to work at another assignment consistent with his or her abilities; or

2. Is eligible for an assignment but has not been offered one by the program review committee (PRC) under ch. HSS 302;

(c) In administrative confinement under ch. HSS 308 and was earning extra good time credit in his or her status immediately prior to this confinement;

(d) In observation under ch. HSS 311 and was earning extra good time credit in his or her status immediately prior to this confinement;

(e) In temporary lockup (TLU) under ch. HSS 303 and was earning extra good time credit in his or her prior status; or in TLU immediately after being in program adjustment, or control segregation under ch. HSS 303, and he or she was earning extra good time credit in the prior non-segregation status. If the inmate's status in TLU is a result of a disciplinary charge, he or she may earn extra good time credit until the time of the disposition of the charge. If found innocent, the inmate may continue to earn extra good time credit. If found guilty, the inmate shall not thereafter be eligible to earn extra good time credit until he or she leaves segregation;

(f) Participating in a correspondence course approved for study assignment by the PRC;

(g) Out of the institution for a court appearance or dental or medical appointment and he or she was earning extra good time credit in the status immediately prior to leaving the institution for such matters;

(h) In sick cell status and he or she was earning extra good time credit in the status immediately prior to this status; or

(i) In a hospital placement (including those inmates transferred to mental health or medical facilities) and was earning extra good time credit in the status immediately prior to this status.

(3) **CONDITIONS UNDER WHICH EXTRA GOOD TIME CREDIT SHALL NOT BE EARNED.** An inmate shall not earn extra good time credit if the conditions under sub. (1) are not satisfied or if he or she:

(a) Is voluntarily unassigned;

(b) Is involuntarily unassigned for reasons other than those stated under sub. (1) (b), for instance, to simply avoid work or study;

(c) Is in adjustment segregation;

(d) Is in program segregation;

(e) Is in control segregation;

(f) Refuses to accept a work or study assignment offered by the PRC;
or

(g) Is in voluntary confinement—unless the inmate requested placement in this status upon the recommendation of, or with approval of the security director for the purpose of ensuring the inmate's safety and the inmate was earning extra good time prior to such placement.

(4) **CRITERIA FOR AWARDED EXTRA GOOD TIME CREDIT.** The division shall establish reasonably uniform written criteria that shall be used for the awarding of extra good time credit for all vocational, job, school, and program assignments with similar necessary skills and responsibilities within all adult correctional facilities.

(a) To the extent that is necessary because of the unique requirements of a vocational, job, school or programming assignment each supervisor shall establish additional reasonable criteria consistent with the necessary skills and responsibilities of that assignment that shall be used to evaluate an inmate's diligence in that assignment for the purpose of awarding extra good time credit.

(b) The criteria under sub. (3) or (4) shall be the only criteria used in the determination of whether to award credit and shall state what is meant by "the general average in diligence in labor or study" for that assignment.

(c) If an inmate is not capable of performing in his or her assignment at the level of "the general average in diligence," for instance, because of poor dexterity skills or mental, developmental, or physical disabilities that have been confirmed through clinical testing, the supervisor shall develop new reasonable criteria for evaluation consistent with the skills and responsibilities of that assignment and the special disabilities of the inmate, if the inmate, his or her social worker, and supervisor agree that a change of assignment is unnecessary or undesirable.

(d) The criteria for evaluating inmate diligence in performance for each assignment and any special criteria developed pursuant to par. (c) shall be available to inmates prior to commencement of the assignment and to the staff upon request.

(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.

(c) If extra good time credit is not recommended for an inmate for a particular month, he or she shall receive written notice of the decision from the supervisor, including the reasons for it, within 5 working days of the decision.

(d) An inmate may appeal a decision under sub. (4) to his or her supervisor within 5 days of receipt of notice. The supervisor shall have the authority to amend his or her earlier decision in favor of the inmate within 5 working days of the appeal. If amended, the registrar and the inmate shall receive written notification of the change and the reasons for it. Failure by the supervisor to render a decision within the allowed time shall signify an affirmation of the earlier decision, and the inmate shall be notified of this.

(e) If the supervisor fails to amend his or her earlier decision within the time allowed, the inmate may appeal to the superintendent within 5 working days after that time. If the superintendent fails to render a decision within 5 working days after the appeal, the decision of the supervisor under sub. (10) is affirmed, and the inmate shall be notified of this.

(f) Any question regarding an inmate's eligibility for credit under sub. (1) or (2) shall be referred to the superintendent for resolution.

(6) SCHEDULE OF GOOD TIME CREDIT. An inmate shall earn extra good time credit as follows:

Extra good time credit earned for a calendar month (in days)	Cumulative number of days in a calendar month in a status eligible for credit	Cumulative number of days in a calendar month in a status not entitling inmate to credit
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0	0	30
1	6	24
2	12	18
3	18	12
4	24	6
5	30	0

(a) If an inmate is entitled to extra good time for any fraction of a calendar day, that whole day shall be credited.

(b) An inmate shall earn fractions of one day of extra good time for each day in a status entitling the inmate to credit.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; renum. from HSS 302.27, cr. (1), Register, February, 1987, No. 374, eff. 3-1-87; r. (5) (intro.), renum. (5) (a) to (d) to be (c) to (f), cr. (5) (a) and (b), Register, June, 1989, No. 402, eff. 7-1-89.

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 subs. 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 himself 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.

History: Emerg. cr. eff. 4-1-88; emerg. am. eff. 9-8-88; cr. Register, December, 1988, No. 396, eff. 1-1-89.