

Chapter DOC 326

LEAVE FOR QUALIFIED INMATES

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Note: Chapter HSS 326 as it existed on November 30, 1984 was repealed and a new Chapter HSS 326 was created effective December 1, 1984. Several of the sections in Ch. DOC 326 have explanatory notes. These notes can be found in the appendix following the last section.

Note: Chapter HSS 326 was renumbered Chapter DOC 326 and revised under s. 13.93 (2m) (b) 1, 2, 6 and 7, Stats., Register, April, 1990, No. 412.

DOC 326.01 Authority and applicability. This chapter is promulgated under the authority of s. 303.068 (5), Stats., and interprets s. 303.068, Stats. It applies to the department and to all adult inmates in the legal custody of the department for correctional purposes. Unescorted leave for minimum security inmates under this chapter is distinguishable from temporary release of inmates with supervision which is regulated by ch. DOC 325, and from work and study release for inmates which is regulated by ch. DOC 324.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.02 Purpose. The purpose of this chapter is to permit a qualified minimum security inmate to be on unescorted leave from the institution for up to 3 days, exclusive of travel time, with a possible extension of another 3 days, exclusive of travel time, to visit a close family member who is seriously ill or for the purpose of facilitating eventual reintegration of the inmate into the family and the stability of the family, to attend the funeral of a close family member, to contact a prospective employer, or to be screened for, diagnosed, or treated for an injury or illness. A leave may be granted only if it is consistent with the public's need for protection. Decisions on leave applications are to be consistent with these goals.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.03 Definitions. In this chapter:

(1) "Close family member" means a parent, child, spouse, grandparent, brother or sister. "Parent" includes a person who was previously acting as a parent, as defined in s. 822.02 (8), Stats., for the inmate.

(2) "Department" means the department of corrections.

(3) "Division" means the department's division of adult institutions.

(4) "Classification chief" means the chief of classification of the division of adult institutions of the department of corrections or that person's designee.

(5) "Detainer" means a document filed with the department of corrections by another criminal justice agency to initiate transfer of custody upon release of the inmate from the department's custody.

(6) "Leave agreement" means the written statement, signed by the inmate, by which the inmate agrees to accept the responsibilities that the privilege of leave requires and agrees to abide by certain specified conditions of leave.

(7) "Leave condition" or "condition of leave" means a specific written requirement or limitation placed upon leave that has been granted.

(8) "Leave destination" means the physical location of the leave principal or event that is the justification for the leave.

(9) "Leave for qualified inmates" or "leave" means a privileged, authorized absence from an institution for one of the following purposes under s. 303.068, Stats.:

(a) To visit a close family member who is seriously ill;

(b) To attend the funeral of a close family member;

(c) To contact a prospective employer;

(d) To be screened, diagnosed or treated for an injury, illness or disease; or

(e) To visit a close family member to facilitate family reintegration and stability.

(10) "Leave principal" or "principal" means the individual approved during the eligibility review process as willing and able to assist in the leave and who has agreed to assist in the leave. "Leave principal" may include but is not limited to a member of the immediate family or a potential employer.

(11) "Misconduct" means behavior in violation of state or federal statutes, administrative rules of the department, the leave agreement or any conditions of leave.

(12) "Program review committee" or "PRC" means the committee described in s. DOC 302.18.

(13) "Regional chief" means the chief of a division of probation and parole region of the department of corrections, or that person's designee.

(14) "Reviewing authorities" means the program review committee and the superintendent.

(15) "Serious illness" means an illness from which death may be imminent in the oral or written, formal or informal, opinion of an attending physician.

(16) "Superintendent" means the superintendent of the institution or that person's designee.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.04 Eligibility for leave application. To be eligible to apply for a leave, an inmate shall meet the following requirements:

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(1) The inmate shall have a security classification of minimum or minimum/community residential confinement. If the inmate has a security classification of minimum, he or she shall have had that classification for at least 30 days prior to application.

(2) The leave shall be requested for one of the purposes under s. DOC 326.03 (9).

(3) (a) If the purpose of leave is to contact a prospective employer, the inmate shall have a deferral, as defined in s. DOC 330.03 (2) of 6 months or less from the state parole commission, or shall be within 6 months of mandatory release or discharge or shall be in a community corrections center.

(b) An inmate serving a life sentence shall have attained parole eligibility prior to making application and shall meet all other criteria.

(c) The inmate may not have a Wisconsin probation or parole revocation proceeding pending.

(4) If the purpose of the leave is to obtain medical treatment, that treatment may not be in lieu of treatment already provided at the institution, except at the inmate's own expense.

(5) The inmate shall agree in advance to examinations such as urinalysis or breathalyzer test and personal or strip searches upon return to the institution or during the leave. Tests shall be conducted upon order of a law enforcement official, an official of the division of probation and parole or an official of the division of adult institutions. The inmate may not be granted a leave unless he or she agrees to these examinations.

(6) The leave principals shall consent to the leave. A failure to consent by any leave principal shall make the inmate ineligible.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84; r. and rec. (1), Register, September, 1990, No.417, eff. 10-1-90.

DOC 326.05 Criteria for leave. The criteria for granting or denying a leave application may include only the following:

(1) The inmate's eligibility under s. DOC 326.04.

(2) The risk of escape. In deciding whether an inmate presents a risk of escape, the following factors are relevant:

(a) The inmate's escape record;

(b) Detainers filed with respect to the inmate. The facts underlying a detainer shall be the relevant criteria; and

(c) Misconduct on a prior leave.

(3) The disciplinary record of the inmate.

(4) Any other matter consistent with the purposes of leave under s. DOC 326.02. Such matters may include, but are not limited to:

(a) The substantial likelihood of a severe negative reaction in the community to which the inmate is granted leave or in the community where the offense was committed; or

(b) The substantial likelihood that the inmate will be in physical danger while on leave.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.06 Conditions. (1) The reviewing authorities shall impose the following written conditions on all leaves granted:

(a) The leave shall be restricted to the state of Wisconsin;

(b) The leave shall be granted for a period of time necessary for the purpose of the leave, but no inmate may be granted a total of more than 3 leaves per calendar year under s. DOC 326.03 (5) (a) (b) and (e) combined, and no leave may exceed 3 days exclusive of travel time unless an extension is granted under par. (c); and

(c) One extension beyond the 3-day maximum period for a leave may be granted by the superintendent for reasons consistent with the purpose of the leave. The extension shall not exceed 3 days exclusive of travel time.

(2) The reviewing authorities may impose in writing the following additional conditions appropriate to specific applications:

(a) Geographic and travel conditions including travel routes, mode of transportation, the specific geographical confines within which the inmate is authorized to move, and other relevant restrictions; and

(b) Any condition on movement, conduct or communication consistent with the purposes of leave under s. DOC 326.02.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.07 Process for obtaining leave. (1) An inmate or an employe on behalf of the inmate shall apply for a leave far enough in advance of the requested departure date to permit investigation, review by the program review committee (PRC) and appeal of an adverse decision, by submitting an application and a signed leave agreement. The application shall contain details including time, dates, principals involved, and any other relevant information. An inmate shall submit the application to the institution social worker. An employe shall submit the application to the program review committee or institution social worker.

(2) An employe or designee of the department shall investigate and document the validity of the application for leave according to the following procedure:

(a) The employe or designee shall review the application for leave to verify the accuracy of the information in the application and the inmate's eligibility under s. DOC 326.04. This investigation may include contact with the principals named on the leave application and any other person who can verify the accuracy of the information in the application. If, upon investigation, the inmate is found ineligible, the employe or department designee shall note the reason for the ineligibility in writing on the application;

(b) If the inmate is eligible, the application shall be investigated by the employe or designee to ascertain all information that could be relevant to the reviewing authorities' decision based on the criteria for leave under s. DOC 326.05. This investigation may include contact with relevant law enforcement and criminal justice agencies, including the committing court. Detainers filed with respect to the inmate shall be investigated in the manner provided under s. DOC 302.14 (14);

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(c) The institution may provide the parole agent with basic leave plan information;

(d) The institution, with the assistance of the parole agent, if necessary, shall investigate other facts under s. DOC 326.06 needed by the reviewing authorities and note the results of the investigation on the appropriate form for the institution and field supervisor. In emergencies, the parole agent, with the approval of the field supervisor, may provide a verbal report to the institution; and

(e) The investigation shall be completed in a timely manner so an application may be reviewed prior to the requested leave date.

(3) Following the investigation, the application shall be referred to the institution's program review committee. In its review and decision-making the PRC shall follow the procedures and employ the criteria under s. DOC 302.19 and this chapter. All inconsistencies between this chapter and ch. DOC 302 shall be resolved in favor of this chapter.

(4) The PRC shall either:

(a) Deny the leave; or

(b) Make a recommendation to the superintendent to grant the leave.

(5) The superintendent shall review any recommendation of the PRC to grant a leave and shall decide whether or not to grant the leave. He or she shall impose leave conditions in accordance with s. DOC 326.06. The inmate shall sign a statement agreeing to the conditions as a prerequisite to leave being granted.

(6) The decision of the superintendent, if leave is granted, or the PRC or superintendent, if leave is denied, and the reasons for the decision shall be given to the inmate in writing and shall include the specific facts and criteria on which the decision is based.

(7) The superintendent shall notify the classification chief of a decision to grant a leave as soon as possible after the decision is made.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.08 Review of denial of leave. (1) An inmate may appeal the PRC's denial of a leave to the superintendent in writing within 5 days of the date of the written decision denying leave. The superintendent for good cause may grant more time for an inmate to ask for review. The superintendent shall review the PRC's decision and reasons for denying leave. The superintendent is not required to review complaints about violations of procedures of the leave process. The superintendent shall issue his or her decision within 10 days of receiving the request. The superintendent's decision to deny a leave is final.

(2) Complaints about violations of procedures of the leave process, but not about the PRC's or superintendent's final decision, shall be reviewed within the inmate complaint system under ch. DOC 310.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.09 Notification of local officials. Before an inmate is released on leave, the superintendent shall notify the police chief of any community involved and the sheriff and district attorney of any county involved.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.10 Custody. An inmate granted leave remains in the legal custody of the institution from which the inmate has taken leave or to which the inmate is assigned.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.11 Expenses. All direct expenses of a leave shall be responsibility of the inmate, the inmate's family or another lawful source.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.12 Inmate conduct while on leave. The following provisions apply when leave is granted and shall be included in the leave agreement:

(1) An inmate shall travel to and from the leave destination by a method of transportation and on a route approved by the reviewing authorities;

(2) An inmate shall not enter into contracts or agreements without prior approval of the appropriate correctional authority, except that an inmate may enter into a contract to begin employment following release. Prohibited contracts include, but are not limited to, purchase of property, time payments and marriage;

(3) An inmate shall not take into his or her body any alcoholic beverage or controlled substance, except as authorized by a physician;

(4) An inmate shall comply with the leave agreement including the conditions of the leave, and with all statutes, ordinances and administrative rules under this chapter; and

(5) The inmate shall at all times have on his or her person a copy of the leave authorization and the conditions of leave.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.13 Sanctions. (1) An inmate who intentionally fails to return from leave or who intentionally leaves the area designated as the limits of confinement according to the leave conditions may be treated as an escapee.

(2) Inmates who violate conditions of leave, the leave agreements or any rules of the department are subject to disciplinary action under ch. DOC 303.

(3) The superintendent may cancel leave at any time for misconduct by the inmate or upon request of a leave principal.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.14 Records. (1) Appropriate records regarding leaves shall be kept.

(2) The records shall include a monthly listing of inmates granted leaves or extensions. The superintendent shall submit a monthly list to the administrator of the division of adult institutions. The list shall include the name, number, leave destination, and dates involved.

(3) The records shall permit an evaluation of the leave program.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

DOC 326.15 Good time credit on leave. Leave time is credited toward service of the sentence. The time credit includes statutory and extra good time for inmates not covered by 1983 Wis. Act 528.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84; am. Register, February, 1987, No. 374, eff. 3-1-87.