

Chapter DOC 331

PROBATION-PAROLE REVOCATION PROCEDURE

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Note: Chapter HSS 31 was renumbered chapter DOC 331 and revised under s. 13.93 (2m) (b) 1., 2., 6. and 7., Stats., Register, September, 1991, No. 429.

Note: Several sections in this chapter have explanatory notes which can be found after the last section in the chapter.

DOC 331.01 Authority and applicability. (1) These rules are promulgated under the authority of s. 227.11, Stats. They interpret ss. 46.001, 46.03 (6), 53.11, 53.19, 53.31, 57.06, 57.072, 161.47, 971.17, and 973.10, Stats.; ss. 54.04 and 54.07, Stats. (1975); and ch. 48, Stats.

(2) This chapter applies to the adults on probation or parole and youth on aftercare in the legal custody of the department. This chapter will cease to apply to youth on the effective date of revocation rules relating specifically to youth.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; emerg. am. (2), eff. 9-25-89.

DOC 331.02 Definitions. The definitions under s. DOC 328.03 apply to this chapter.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

DOC 331.03 Revocation of probation and parole. (1) REVOCATION. A client's probation or parole may be revoked and the client transported to a correctional institution or court if the client violates a rule or condition of supervision.

(2) INVESTIGATION. A client's agent shall investigate the facts underlying an alleged violation and shall meet with the client to discuss the allegation within a reasonable period of time after becoming aware of the allegation.

(3) RECOMMENDATION. After investigation and discussion under sub. (2), the agent shall decide whether to:

- (a) Take no action because the allegation is unfounded;
- (b) Resolve alleged violations by:

1. A review of the rules of supervision followed by changes in them where necessary or desirable, including return to court;

2. A formal or informal counseling session with the client to reemphasize the necessity of compliance with the rules or conditions; or

3. An informal or formal warning that further violation may result in a recommendation for revocation; or

- (c) Recommend revocation for an alleged violation.

(4) REPORT. An agent shall report all alleged client violations of the rules or conditions of supervision to the agent's supervisor. The following shall be reported:

(a) The facts underlying the alleged violation, including conflicting versions regarding the nature and circumstances of the alleged violation;

(b) The agent's investigatory efforts and conclusions;

(c) A brief summary of the agent's discussion with the client;

(d) The agent's recommendation regarding disposition and the reasons for it;

(e) A statement as to the custody status of the client;

(f) Any pending criminal charges, guilt plea, confession, or conviction for the conduct underlying the alleged violation; and

(g) Reference to the client's prior adjustment, including but not limited to alleged violations, violations, and abscondings.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; r. (2) and (9), renum. (3) to (8), (10) and (11) to be HSS 31.05 to 31.12, Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.04 Preliminary hearing. (1) REQUIREMENT. If the agent's immediate supervisor reasonably concludes on the basis of the agent's report under s. DOC 331.03 (4) that revocation proceedings should be started, even if the agent did not recommend revocation, a preliminary hearing shall be held in accordance with this section, unless sub. (2) applies, to determine whether there is probable cause to believe that the client violated a rule or a condition of supervision.

(2) EXCEPTIONS. A preliminary hearing need not be held if one of the following is true:

(a) It is waived by the client in writing;

(b) The client has given and signed a written statement which admits the violation;

(c) There has been a finding of probable cause in a felony matter and the client is bound over for trial for the same or similar conduct;

(d) There has been an adjudication of guilt by a court for the same conduct that is alleged to be a violation of supervision; or

(e) The client is not being held in custody.

(3) MAGISTRATE. The preliminary hearing shall be held before a magistrate. The magistrate shall be a supervisor or supervisor's designee who has not been directly involved in the decision to initiate proceedings to revoke the client's probation or parole.

(4) NOTICE. Written notice of the preliminary hearing shall be given to the client and either the client's attorney or the state public defender if the client claims to be or appears indigent and is not represented by a private attorney. The notice shall include:

(a) The rule or condition that the client is alleged to have violated;

(b) The facts underlying the alleged violation;

(c) A statement that the client has a right to a preliminary hearing before an impartial magistrate who shall determine if there is probable cause to believe the person has committed the alleged violation;

(d) A statement that the client has the right to waive the preliminary hearing;

(e) A statement that the client has a qualified right to be represented by an attorney at the preliminary hearing;

(f) A statement that the client and client's attorney, if any, may review all relevant evidence in the client's supervision file to be considered at the preliminary hearing, unless that evidence is otherwise confidential, such as the identity of confidential informants;

(g) An explanation of the possible consequences of any decision; and

(h) An explanation of the client's rights at the preliminary hearing which include:

1. The right to be present;
2. The right to deny the allegation and speak on his or her behalf;
3. The right to present relevant evidence, including witnesses who can give relevant information regarding the violation of the rules or conditions of supervision;
4. The right to receive a written decision stating the reasons for the decision based on the evidence presented; and
5. A qualified right to an attorney. If an attorney fails to appear at the preliminary hearing to represent the client, the magistrate may either proceed with the hearing or postpone the hearing. The hearing shall be postponed to permit representation by an attorney if the client, after being informed of his or her right to representation, requests an attorney based on a timely and colorable claim that he or she did not commit the alleged violation and the magistrate concludes either that the complexity of the issues will make it difficult for the client to present his or her case or that the client is otherwise not capable of speaking effectively for himself or herself.

(5) DETENTION PENDING FINAL HEARING. (a) When there is a preliminary hearing, the magistrate shall decide if the client is to remain in detention or is to be taken into custody and detained pending the outcome of the final hearing. When there is no preliminary hearing because the case meets one of the criteria under sub. (2), the agent's immediate supervisor shall make that decision.

(b) Detention is advisable and consistent with the goals and objectives of this chapter if one of the following is true:

1. The client is believed to be dangerous;
2. There is a likelihood that the client will flee;
3. The client is likely to engage in criminal behavior before the revocation takes place;
4. The client is likely to engage in an activity that does not comply with the rules and conditions of supervision; or
5. The length of the term to be served upon revocation is great.

(c) A detained client is not eligible for release during working hours or for any other partial release from detention.

(d) The detention decision made pursuant to par. (b) shall remain in effect until the date that the decision of the hearing examiner takes effect and becomes final. If the final decision of the hearing examiner is to reinstate the client or to not revoke the client's supervision, and the department requests review of that finding, the custody decision made pursuant to par. (b) shall remain in effect pending a decision by the secretary. The secretary may alter the custody decision at any time if the public interest warrants it.

(6) TIME AND PLACE. The preliminary hearing shall take place as close as feasible to the area of the state in which the alleged violation occurred. It shall take place not sooner than one working day and not later than 5 working days after receipt by the client of the service of notice of the preliminary hearing. The time limits do not apply if the preliminary hearing has been postponed under sub. (4) (h) 5. or if the time limits are waived in writing by the client.

(7) DECISION. (a) After the preliminary hearing, the magistrate shall decide based upon the evidence presented whether there is probable cause to believe that the client committed the conduct and that the conduct constitutes a violation of the rules or conditions of supervision. The revocation process terminates without prejudice if the magistrate concludes that there is no probable cause.

(b) The magistrate shall issue a written decision stating his or her findings and conclusions and giving reasons for the decision. The decision shall be based on the evidence presented. The magistrate shall provide copies to the client within a reasonable time after the preliminary hearing. If probable cause was found, the immediate supervisor shall contact the hearing examiner's office in writing and request the scheduling of a final revocation hearing.

(8) REISSUANCE OF NOTICE. (a) If notice of the preliminary hearing is found to be improper and the impropriety in itself results in the dismissal of the revocation proceedings, the department may issue a proper notice and begin the proceedings again.

(b) If a magistrate decides that there is no probable cause to believe the client committed the violation and later the department learns of additional relevant information regarding the alleged violation, revocation proceedings may be started again with issuance of a new notice for the preliminary hearing.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.06 Procedure when revocation hearings are waived.

(1) If a final revocation hearing was waived, the supervisor may recommend revocation. A waiver may be withdrawn by the client prior to the secretary's decision if the client establishes that it was not knowingly, voluntarily, or intelligently made.

(2) If the supervisor recommends revocation, the recommendation shall include the reasons for it and the facts underlying the alleged violation. A record of waivers, confessions, convictions for the conduct underlying the alleged violation, or evidence of a client's guilty pleas or continuation of a criminal proceeding following a determination of probable cause for the conduct underlying the alleged violation shall be prepared. The complete record shall be sent to the secretary within a reasonable period of time after acceptance of the waivers, confession, or record of the guilty plea or conviction.

(3) The secretary shall decide whether to revoke the client's probation or parole.

(4) The secretary's decision shall state the reasons for it based upon the information provided and shall be delivered to the client, the client's attorney, if any, the regional chief, and the supervisory staff member who recommended revocation within 10 days of receipt of the recommendation.

History: Renum. from HSS 31.03 (4), Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.07 Termination of revocation proceedings.

The supervisor may recommend to the regional chief that revocation proceedings be terminated without revocation of a client's probation or parole or that the client be released from custody status, or both, at any time before the hearing examiner's decision is issued, if there is sufficient reason for doing so. The regional chief shall decide.

History: Renum. from HSS 31.03 (5), Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.08 Concurrent criminal prosecution and acquittal in criminal proceeding.

All revocation actions under this chapter shall proceed regardless of any concurrent prosecution of the client for the conduct underlying the alleged violation. An acquittal in a criminal proceeding for a client's conduct underlying an alleged violation shall not preclude revocation of that client's probation or parole for that same conduct.

History: Renum. from HSS 31.03 (6), Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.09 Records.

A summary of all alleged violations, revocation actions, and proceedings under this section against a client shall be maintained in the client's record.

History: Renum. from HSS 31.03 (7), Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.10 Transport to a correctional institution.

A client shall be transported to a correctional institution or to court for sentencing as soon as it is feasible after a revocation decision becomes final.

History: Renum. from HSS 31.03 (8), Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.11 Special revocation procedures. All clients are subject to revocation under ss. DOC 331.03 to 331.10 except as noted under this section. Those clients committed under s. 161.47 or 971.17, Stats., or s. 54.04 or 54.07, Stats. (1975), shall follow the revocation procedures under this section and ss. DOC 331.07 to 331.09 as follows:

(1) If a client committed under s. 161.47, Stats., allegedly violates the rules or conditions of supervision, an agent shall proceed as noted under s. DOC 331.03 (2) to (4) and shall, upon the approval of a supervisor, notify the committing court of the alleged violation and submit a report under s. DOC 331.03 (4) to the court within a reasonable time after becoming aware of the alleged violation. If the court decides that the client should remain on probation, supervision shall continue under the previous rules and conditions unless they are modified by the court.

(2) Clients committed under s. 971.17, Stats., may only have their parole revoked by the court.

(3) If a client committed under s. 54.04, Stats. (1975), allegedly violates the rules or conditions of probation, field staff shall proceed as noted under ss. DOC 331.03 (2) to (4) and 331.04 except that a case review shall be held and a decision issued by the supervisor within 96 hours after the detention of the client for the alleged misconduct. The supervisor may extend this time limit for good cause. If the supervisor recommends revocation, the agent shall notify the committing court of the decision within a reasonable period of time. The court shall determine whether revocation shall occur. No final revocation hearing may be held by the department. If the court decides that the client should remain on probation, supervision shall continue under the previous rules and conditions unless they are modified by the court.

(4) If a client committed under s. 54.07, Stats. (1975), allegedly violates the rules or conditions of parole, field staff shall proceed as noted under ss. DOC 331.03 (2) to (4) and 331.04 except that a case review shall be held and a decision issued by the supervisory staff member within 96 hours after the detention of the client for the alleged misconduct. A final revocation hearing shall then be held in accordance with this section.

History: Renum. from HSS 31.03 (10), Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.12 Harmless error. If any time requirement under this chapter is exceeded, the secretary may deem it harmless and disregard it if it does not affect the client's substantive rights. Substantive rights are affected when a variance tends to prejudice a fair proceeding or disposition involving a client.

History: Renum. from HSS 31.03 (11) and am., Register, August, 1985, No. 356, eff. 9-1-85.

DOC 331.13 Good time forfeiture hearing. (1) APPLICABILITY. This section applies to a client who, before June 1, 1984, committed the crime for which he or she was sentenced and did not choose to have 1983 Wis. Act 528 apply to him or her.

(2) AMOUNT OF TIME AVAILABLE FOR FORFEITURE. (a) Prior to a client's preliminary hearing under s. DOC 331.04, the client's agent shall contact in writing the registrar of the institution which has the client's record and advise the registrar to provide the amount of the client's total good time that is available for forfeiture upon revocation of the client's parole supervision.

(b) The agent shall notify the hearing examiner's office before the final revocation hearing of the amount of good time available for forfeiture.

(3) CRITERIA. (a) The agent shall recommend to the hearing examiner's office prior to the final revocation hearing that a spe-

cific amount of good time be forfeited and whether good time should be earned upon the forfeited good time upon revocation of a client's supervision. This amount of time shall be expressed in terms of days, months or years, or any combination of days, months and years. The amount of time may not be expressed in terms of fractions or percentages of time periods. The agent shall send with his or her recommendation the reasons and facts consistent with the criteria listed in par. (b) that support the recommendation.

(b) The following shall be considered by the agent in recommending the amount of good time forfeited and whether good time may be earned on the amount of good time forfeited:

1. The nature and severity of the original offense;
2. The client's institution conduct record;
3. The client's conduct and behavior while on parole;
4. The amount of time left before mandatory release if the client is a discretionary release parolee;
5. Whether forfeiture would be consistent with the goals and objectives of field supervision under ch. DOC 328;
6. Whether forfeiture is necessary to protect the public from the client's further criminal activity, to prevent depreciation of the seriousness of the violation or to provide a confined correctional treatment setting which the client needs; and
7. Other mitigating or aggravating circumstances.

(c) The agent's supervisor shall review the agent's recommendation for a forfeiture, and the agent's recommendation shall be included in the client's chronological history along with the supervisor's comments on the recommendation.

(5) RECORDS. Relevant records relating to the forfeiture of good time shall be maintained as part of the client's record.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; removed (4) under 1989 Wis Act 107.

DOC 331.14 Reincarceration hearing. (1) APPLICABILITY. This section applies to a client who, on or after June 1, 1984, committed the crime for which he or she was sentenced, and to any other client who chose to have 1983 Wis. Act 528 apply to him or her.

(2) AMOUNT OF TIME AVAILABLE FOR REINCARCERATION. (a) Before an agent requests a final revocation hearing under ch. HA 2, the agent shall, in writing, request the registrar of the institution which has the client's record to provide the amount of time remaining on the client's sentence, which is the entire sentence less time served in custody prior to release to field supervision.

(b) The agent shall notify the hearing examiner's office before the final revocation hearing of the amount of time available for reincarceration.

(3) CRITERIA. (a) The agent shall recommend to the hearing examiner a specific period of reincarceration upon revocation of a client's supervision. This amount of time shall be expressed in terms of days, months or years, or any combination of days, months and years. The amount of time may not be expressed in fractions or percentages of time periods. The agent shall send with his or her recommendation the reasons and facts consistent with the criteria listed in par. (b) that support the recommendation.

(b) The following criteria shall be considered by the agent in recommending a period of reincarceration and by the hearing examiner under s. HA 2.06 in determining the period of reincarceration:

1. The nature and severity of the original offense;
2. The client's institutional conduct record;
3. The client's conduct and behavior while on parole;
4. The period of reincarceration that would be consistent with the goals and objectives of field supervision under ch. DOC 328; and
5. The period of reincarceration that is necessary to protect the public from the client's further criminal activity, to prevent

depreciation of the seriousness of the violation or to provide a confined correctional treatment setting which the client needs.

(c) The agent's supervisor shall review the agent's recommendation for a specific period of incarceration and the agent's recommendation shall be included in the client's chronological history along with the supervisor's comments on the recommendation.

(5) RECORDS. Relevant records relating to reincarceration shall be maintained as part of the client's record.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; removed (4) under 1989 Wis. Act 107; correction in (2) (a) and (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1998, No. 510.

DOC 331.15 Tolled time. (1) In this section, "tolled time" means the period of time between the date of a client's violation and the date the client's probation or parole is reinstated or revoked.

(2) The period of a client's probation or parole ceases to run during tolled time in accordance with s. 57.072, Stats., subject to sentence credit for time the client spent in custody pursuant to s. 973.155 (1), Stats. If a client is subsequently reinstated rather than revoked, time shall be tolled only if the reinstatement order concludes that the client did in fact violate the rules or conditions of his or her supervision.

(3) The amount of time to be tolled is officially determined by a hearing examiner or is the secretary's decision in accordance with s. DOC 331.13 or 331.14.

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

DOC 331.16 Reinstatement. (1) GENERAL. Reinstatement may only take place in accordance with this section.

(2) DEFINITION. For purposes of this section, "reinstatement" means the return of a client to field supervision after either:

(a) A client's personal written admission of a violation of the rules or conditions of supervision; or

(b) A finding by a hearing examiner or the secretary under this chapter that the client committed a violation of the rules or conditions of supervision sufficient to warrant revocation.

(3) ADMISSION. (a) A client may knowingly and voluntarily make a written admission, signed and witnessed, of a violation of the rules or conditions of supervision sufficient to warrant revocation, and request reinstatement. The request shall acknowledge:

1. The date of the violation; and

2. That the client is aware that the period between the date of violation and the date of reinstatement or revocation may be tolled, i.e., the period of the client's commitment term ceases to run during this period of time.

(b) A staff member may accept a client's written admission and request, and shall submit it with the report under s. DOC 331.03 (4) to a supervisory staff member.

(c) The supervisory staff member shall decide whether to accept the admission and request, recommend reinstatement, and forward the admission, request and recommendation to the secretary for approval, or continue with revocation proceedings. Reinstatement shall only be recommended when it is consistent with the goals and objectives of supervision under ch. DOC 328. The recommendation shall include a statement of the reasons for it.

(d) The secretary shall decide within 5 working days after receiving an admission and request and the supervisory staff member's recommendation whether to order reinstatement. A copy of the secretary's decision, stating the reasons for it, shall be sent to the client and the supervisory staff member.

(e) If the secretary decides that reinstatement should not occur, the revocation process may be initiated in accordance with s. DOC 331.03.

(4) FINDING OF VIOLATION BY HEARING EXAMINER. (a) Under ch. HA 2, a hearing examiner may order a client reinstated after finding that the client committed a violation of the rules or conditions of supervision. Reinstatement may only be ordered when it is consistent with the goals and objectives of supervision under ch. DOC 328. The order shall include a statement of the reasons for it.

(b) The date of a client's violation and the date that the client was reinstated shall be stated in the hearing examiner's order for reinstatement.

(c) A hearing examiner's order for reinstatement may be appealed to the secretary in accordance with ch. HA 2.

(5) RECORDS. Relevant records relating to a client's reinstatement shall be maintained as part of the client's records.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; corrections in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1998, No. 510.