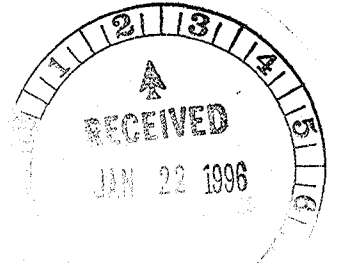


Clearinghouse Rule 95-106



CERTIFICATE

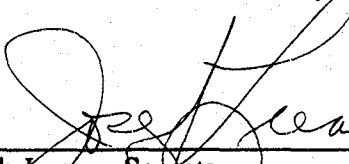
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Joseph Leean, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to youth aftercare conduct and revocation were duly approved and adopted by this Department on January 22, 1996.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 22nd day of January, 1996.

SEAL:



Joseph Leean, Secretary
Department of Health and Social Services

3-1-96
95-106

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING AND RECREATING RULES

To repeal and recreate chapter HSS 343, relating to the conduct of youth on aftercare supervision following their release from youth correctional institutions, and revocation of a youth's aftercare for violation of a rule or special condition of aftercare.

Analysis Prepared by the Department of Health and Social Services

Youths released from juvenile correctional institutions are ordinarily released to a status called "aftercare," which means that for a period of time after release they are supervised in the community by agent of the department or of a county department of social services or human services. About 889 youth are on aftercare supervision in Wisconsin at any one time.

Administrative rules relating to the expected conduct of youth on aftercare supervision and to actions that an agent may take in response to a youth's alleged violation of a rule or special condition of aftercare, including initiation of proceedings to revoke the aftercare status of a youth on state aftercare or to file a petition for change in placement for a youth on county aftercare, and return the youth to the correctional institution, are found in ch. HSS 343, Wis. Adm. Code.

This rulemaking order repeals and recreates ch. HSS 343 to implement changes made effective July 1, 1995 by 1993 Wisconsin Act 385 in provisions of ch. 48, Stats., relating to the administration of aftercare.

The principal change made by Act 385 in the administration of aftercare is to permit a county department providing aftercare supervision for a youth to revoke the youth's aftercare using the administrative revocation procedure currently used by the Department and set out in ch. HSS 343.

Act 385 also directs the Department to promulgate rules setting standards to be used by a hearing examiner to determine whether to revoke a youth's aftercare. There are already standards in ch. HSS 343. These are updated by this order and made to apply also to county revocation cases.

Rule changes are necessary so that the rules of conduct for youth on either state or county aftercare supervision are the same and so that standards and procedures for dealing with violations of expected conduct, including procedures to revoke a youth's aftercare status, are also the same.

The rule changes were made by emergency order effective July 1, 1995, when the

Act 385 changes in ch. 48, Stats., went into effect. These are the permanent rules to replace the emergency rules.

The rules provide that a revocation hearing be conducted within 30 days after a youth is taken into custody for an alleged violation. However, the time limit may be waived on the agreement of the aftercare provider, that is, the Department or county, the youth and the youth's attorney, if any. The party seeking revocation must prove to a hearing examiner, by a preponderance of the evidence, that the youth violated a condition of his or her aftercare. The hearing examiner determines whether to revoke a youth's aftercare and whether a youth found to have violated a condition of his or her aftercare needs to be confined in order to protect the public or to provide for the youth's rehabilitation.

The Department's authority to repeal and recreate these rules is found in ss. 48.357 (5)(g) and 227.11 (2), Stats. The rules interpret ss. 46.03 (6)(a) and (b), 48.19 to 48.21, 48.34 (4m) and (4n), 48.357 (5) and 48.48 (1), Stats.

SECTION 1. Chapter HSS 343 is repealed and recreated to read:

Chapter HSS 343
YOUTH AFTERCARE CONDUCT AND REVOCATION

- HSS 343.01 Authority and Purpose
- HSS 343.02 Applicability
- HSS 343.03 Definitions
- HSS 343.04 Responsibilities of the Aftercare Provider
- HSS 343.05 Expected Conduct
- HSS 343.06 Finding of Violation
- HSS 343.07 Staff Response to Alleged Violation
- HSS 343.08 Violation Report
- HSS 343.09 Preparation for Revocation Hearing
- HSS 343.10 Procedure for Youth on State Aftercare When Hearing Right is Waived
- HSS 343.11 Procedure for Youth on County Aftercare When Hearing Right is Waived
- HSS 343.12 Revocation Hearing
- HSS 343.13 Decision of the Administrator of the Division of Hearings and Appeals
- HSS 343.14 Appeal to Court

HSS 343.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 46.03 (6) (a) and (b), 48.19 to 48.21, 48.34 (4m) and (4n), 48.357 (4) and (5), 48.48 (1) and 227.11 (2), Stats., to establish rules of conduct for youth who are on either state or county aftercare supervision and standards and procedures for dealing with violations of the expected conduct, including procedures to revoke a youth's aftercare status or to change a youths placement pursuant to s.48.357, Stats.

Note: For additional procedural rules of general application to youth aftercare revocation proceedings promulgated by the Division of Hearings and Appeals, see ch. HA 2.

HSS 343.02 APPLICABILITY. This chapter applies to the department, to counties that operate an aftercare program and to all youth on aftercare supervision.

HSS 343.03 DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the division of youth services, or that person's designee.

(2) "Administrator of the division of hearings and appeals" means the administrator of the division of hearings and appeals in the Wisconsin department of administration.

(3) "Aftercare" means the status of a youth who is supervised outside of an institution by the department or a county department following release from an institution by action of OJOR, after participation in the youth corrective sanctions program by action of OJOR, following placement by the department subsequent to an examination under s. 48.50, Stats., or by action of a court under s. 48.366 (5) (b), Stats., until expiration of the youth's commitment term or court order.

(4) "Aftercare provider" means the department or a county department, whichever has been designated under s. 48.34 (4n), Stats., to provide aftercare supervision.

(5) "Agent" means a department or county department staff member designated by a supervisor to provide aftercare supervision of a youth which may include a county social worker or a county case manager.

(6) "Alternate care placement" means the placement of a youth in a residential living arrangement other than the parental home.

(7) "Bureau director" means the director of the division's bureau of community resources and girls programming or that person's designee.

(8) "County department" means a county department under s. 46.21, 46.22 or 46.23, Stats., that administers aftercare supervision.

(9) "County director" means the director of the county department under s. 46.21, 46.22 or 46.23, Stats., or that person's designee.

(10) "County intake worker" means a person designated under s. 48.06 (3), Stats., to provide intake services under ss. 48.067 and 48.20, Stats.

- (11) "Day" means a calendar day.
- (12) "Department" means the Wisconsin department of health and social services.
- (13) "Division" means the department's division of youth services.
- (14) "Division of hearings and appeals" means the division of hearings and appeals in the Wisconsin department of administration.
- (15) "Hearing examiner" means an attorney employed by the Wisconsin department of administration as an administrative law judge to conduct revocation hearings under this chapter.
- (16) "Institution" means a secure correctional facility for youth operated by the department.
- (17) "OJOR" means the division's office of juvenile offender review.
- (18) "Parent" means a biological parent, an adoptive parent or a legal guardian.
- (19) "Remedial behavior" means actions or steps taken to correct errant or violation behavior such as skill-building, education or community service.
- (20) "Summary disposition" means an informal determination that a violation was committed and a consequence other than revocation should occur.
- (21) "Superintendent" means the superintendent of an institution, or that person's designee.
- (22) "Supervision" means the rights and duties of the department under ss. 48.34(4n) and 48.505, Stats., with respect to a youth placed in an institution or on aftercare by a judge or by the department.
- (23) "Supervisor" means a department or county department employe responsible for the administration of aftercare services, or that person's designee.
- (24) "Youth" means a person supervised by the department or county department

under s. 48.34 (4m) or (4n), 48.366 or 973.013 (3m), Stats., regardless of the person's age.

(25) "YCSP" or "youth corrective sanctions program" means the program under s. 48.533, Stats., of close monitoring of a youth's activities and behavior in the community.

HSS 343.04 RESPONSIBILITIES OF THE AFTERCARE PROVIDER. The state or county aftercare provider shall make reasonable efforts to ensure that a youth on aftercare:

(1) Is free from discrimination based on race, national origin, color, creed, sex, age, sexual orientation, marital status, political affiliation, handicap, ethnicity, religion or ancestry.

(2) Is protected from abuse or neglect.

(3) Is provided with accessible and usable services, and any reasonable accommodations or auxiliary aids and services needed to benefit from treatment and other programs.

(4) Is provided with an interpreter if his or her ability to speak, understand, read or write English is limited.

(5) Is placed in his or her parent's home when this is consistent with treatment needs and the protection of the public.

(6) Is involved in planning for his or her treatment.

(7) Has access to the courts.

(8) Has access to department or county agency and community programs and services consistent with the protection of the public.

(9) Has his or her educational, vocational, drug or alcohol abuse, mental health and other treatment needs addressed.

(10) May visit, use the mail and communicate with family members and an attorney within reasonable guidelines regardless of placement.

(11) May participate in authorized recreational, leisure-time and religious activities.

HSS 343.05 EXPECTED CONDUCT. (1) Every youth on aftercare shall be informed verbally and in writing of the rules and special conditions of aftercare, including conduct rules and any additional specific rules that may be issued to a youth by the youth's agent. The following rules shall apply to all youth on aftercare:

- (a) The youth shall avoid conduct that violates a criminal law or municipal ordinance.
- (b) The youth shall report any arrest or police contact to his or her agent within 72 hours.
- (c) The youth shall cooperate with his or her agent and fully participate in his or her aftercare treatment plan.
- (d) The youth shall be truthful with his or her agent at all times.
- (e) The youth shall keep all appointments scheduled for him or her by an agent.
- (f) The youth shall report to and inform his or her agent of his or her whereabouts and activities as directed.
- (g) The youth shall obtain advance permission from his or her agent to quit a job or change jobs or to drop out of an educational or vocational program or change educational or vocational programs, except that when this is not possible the youth shall notify the agent of the change no later than 72 hours after it takes place.
- (h) If the youth resides with his or her parents, the youth shall notify the agent of the family's change of residence in advance of the change, except when this is not possible, the youth shall notify the agent no later than 72 hours after it takes place.
- (i) If the youth is in an alternate care placement, the youth shall obtain advance permission from his or her agent before requesting or making a change of residence.
- (j) The youth shall obtain advance permission from his or her agent to leave the state of Wisconsin.

(k) The youth may not purchase, own, carry or possess a firearm, knife or weapon, or ammunition, without the advance permission of the youth's agent. An agent may not grant a youth permission to possess a firearm if the youth is prohibited from possessing a firearm under s. 941.29, Stats., or federal law.

(l) The youth may not use or possess any drug listed in subch. II of ch. 161, Stats., any drug paraphernalia as defined in s. 161.571 (1), Stats., or any prescription drug except as prescribed for the youth by a licensed physician.

(m) The youth shall submit to and cooperate with searches of the youth's person, living quarters and property and with tests ordered by a staff member consistent with the law, including urinalysis, breathalyzer and blood tests.

(n) The youth shall follow any additional specific rules that may be issued to the youth by the youth's agent. These may include rules concerning:

1. Companions.
2. Hours.
3. Possession or use of intoxicants.
4. Medical, mental health or dental attention.
5. Family responsibilities.
6. Support of self, including income earned and unearned and its sources.
7. Educational and vocational obligations.
8. Job attendance.
9. Counseling or therapy.
10. Court obligations.
11. Reporting to the agent.

12. Conditions to be met when residing in an alternate care placement.
13. Purchasing, trading, selling or operating a motor vehicle.
14. Borrowing money or making a purchase on credit.

(2) A youth shall follow all special conditions that may be placed on the youth's aftercare by order of the department, or by the court if the youth is under extended jurisdiction under s. 48.366, Stats., to achieve the goals and objectives of aftercare supervision.

(3) A youth shall sign a written copy of the aftercare rules and special conditions placed upon the youth's aftercare.

(4) A youth's agent may modify or supplement the youth's conduct rules at any time. The agent shall give written notice to the youth as promptly as practical.

HSS 343.06 FINDING OF VIOLATION. A youth may be found to have violated a rule or special condition or aftercare under s. HSS 343.05 only if:

- (1) The youth committed the conduct prohibited by the rule or special condition of aftercare; or
- (2) The youth was convicted of violating, or was adjudicated delinquent for having violated, a criminal law or municipal ordinance.

HSS 343.07 STAFF RESPONSE TO ALLEGED VIOLATION. (1)
INVESTIGATION. An agent who has reason to believe that a youth on aftercare has violated a rule or special condition of aftercare shall investigate the matter. The investigation shall include a meeting with the youth to discuss the allegation of the violation within a reasonable period of time after the agent becomes aware of the alleged violation.

(2) **ACTION.** If the agent following the investigation under sub. (1) concludes that the youth committed the violation, he or she shall take one of the following actions:

(a) **Counseling.** 1. 'Procedure.' An agent may review the rules and special conditions of the youth's aftercare with the youth, inform the youth that he or she has

determined that the conduct is in violation of a rule or special condition of aftercare and discuss remedial behavior with the youth. Counseling is the appropriate course of action when one or more of the following conditions exists:

- a. The youth is unfamiliar with the rule or special condition.
- b. The youth has not violated the same or closely related rule or special condition recently.
- c. The youth is unlikely to repeat the behavior if warned and counseled.
- d. The youth's ability to function is impaired due to mental illness or developmental disability.
- e. The staff member believes that for some other reason summary disposition or revocation is not advisable.

2. 'Record.' A brief written record describing the youth's violation and the counseling given to the youth by the agent shall be maintained in the youth's supervision file. A violation report under s. HSS 343.08 is not required.

(b) Summary disposition. 1. 'Procedure.' An agent may inform the youth that he or she believes the youth's conduct is in violation of a rule or special condition of aftercare. After reviewing the rules and special conditions of the youth's aftercare with the youth, the agent may do one or more of the following:

- a. Modify or supplement the rules for the youth's aftercare.
- b. Warn and counsel the youth.
- c. Require remedial behavior.
- d. Increase the restrictiveness of the youth's supervision.

2. 'Report.' The agent shall prepare a violation report in accordance with s. HSS 343.08 when the agent imposes a summary disposition on a youth.

3. 'Agent and supervisor disagreement.' The supervisor shall make the decision when an agent and a supervisor disagree on whether there has been a violation or on whether to impose a summary disposition.

4. 'Appeal.' a. A youth may appeal a summary disposition to a supervisor verbally or in writing at any time during its imposition. The supervisor shall issue a written decision within 7 days after receipt of the appeal.

b. A youth's appeal does not by itself reverse or delay the imposition of a summary disposition.

c. A youth on state aftercare may appeal the supervisor's decision to the bureau director in writing at any time during imposition of the summary disposition. The bureau director shall issue a written decision within 10 days after receipt of the appeal. The summary disposition is not stayed pending a decision on an appeal. The bureau director's decision on an appeal shall be noted in the youth's supervision file.

d. A youth on county aftercare may appeal county department supervisor's decision according to the procedures of the county department.

(c) Initiation of revocation proceedings. 1. 'Recommendation of agent.' A youth's agent may recommend to his or her supervisor that aftercare revocation proceedings be initiated. If the agent does make that recommendation, the agent shall discuss the matter in detail with the supervisor. The discussion shall include the facts relating to the youth's alleged violation of a rule or special condition and the youth's past conduct. The seriousness of the youth's past conduct and alleged violation shall be taken into account. The reasons that counseling and a summary disposition are inappropriate shall be discussed.

2. 'Decisions.' The agent, with supervisory approval, shall decide whether to initiate revocation proceedings and whether the youth should be placed in custody pending the outcome of the proceedings. The decision shall be based upon the alleged violation and the youth's past conduct. If the decision is to proceed with revocation, the agent, with supervisory approval, shall decide if the youth should be taken into custody under s. 48.19, Stats.

3. 'Agent and supervisor disagreement.' a. When a state aftercare agent and his or her supervisor disagree on whether to initiate aftercare revocation proceedings or on whether

to have a youth taken into custody, the agent may appeal the supervisor's decision to the bureau director.

b. When a county aftercare agent and his or her supervisor disagree on whether to initiate aftercare revocation or on whether to have a youth taken into custody, they shall follow the procedures of the county department.

4. 'Youth under extended jurisdiction.' a. When a decision is made under subd. 2 to initiate revocation proceedings for a youth under extended jurisdiction under s. 48.366, Stats., the department shall file a petition with the committing court pursuant to s. 48.366 (5), Stats., requesting revocation of the youth's aftercare supervision.

b. The aftercare revocation procedures of s. HSS 343.09 do not apply to a youth under extended jurisdiction.

(d) Taking a youth into custody. 1. 'Arrangements for taking a youth into custody.' When a youth's agent decides under subd. 2 that a youth should be taken into custody under s. 48.19, Stats., the aftercare provider shall arrange for the youth to be taken into custody according to department or county department procedures, as appropriate.

2. 'Release of youth after taking custody.' The person taking the youth into custody under s. 48.19, Stats., may immediately release the youth to the aftercare provider under s. 48.20 (2) (cm), Stats., or deliver the youth to a county intake worker who will determine whether the youth should be held in physical custody under s. 48.205, Stats., or released.

3. 'Departmental release and return to the institution.' When a youth under the supervision of the department is released to the department, the department shall decide whether to return the youth to the institution pending revocation proceedings.

4. 'Custody hearing requirement.' If the youth is held in physical custody under s. 48.205, Stats., a custody hearing shall be held in accordance with s. 48.21, Stats. If the youth is released to the supervision of the aftercare provider under s. 48.20, Stats., either by the person who took the youth into custody under s. 48.19, Stats., or by the intake worker, no custody hearing under s. 48.21, Stats., is required.

(e). Retaining a youth in custody. 1. 'Decision.' For youth on state aftercare, the supervisor shall decide whether the youth should remain in custody pending the outcome of

revocation proceedings.

2. 'Retention criteria.' A youth may not remain in custody pending the outcome of the revocation proceedings unless at least one of the following criteria are met:

- a. The youth is believed to be dangerous.
- b. The youth presents a substantial risk of fleeing.
- c. The youth presents a substantial risk of engaging in criminal behavior prior to the revocation hearing.
- d. The youth presents a substantial risk of repeatedly engaging in an activity which violates a rule or condition of aftercare supervision.

3. 'Notification and right to appeal decision.' The supervisor's decision to take a youth into custody shall be written, stating one or more of the criteria for custody under s. 48.19, Stats., and the facts upon which the decisions to initiate revocation and take the youth into custody are based. The written decision shall be issued no later than 7 days after the date the youth is taken into custody and a copy shall be sent to the youth. The written decision shall inform the youth that he or she may appeal the supervisor's custody decision to the bureau director in writing at anytime prior to the revocation hearing. The bureau director shall respond in writing to the youth within 7 days after receipt of the youth's appeal. The custody decision of the supervisor remains in effect pending decision on the appeal.

HSS 343.08 VIOLATION REPORT. (1) The youth's agent shall prepare a violation report when the response to a violation is a summary disposition or the initiation of revocation proceedings. The violation report shall be in writing and include all of the following:

- (a) A description of the alleged misconduct including any conflicting versions of the nature and circumstances of the alleged violation.
- (b) The alleged victim's statement or a statement of the impact on the alleged victim.
- (c) The youth's statement.

(d) A description of any alleged violations of the law, guilty plea, confession, pending charges, prosecutor's recommended disposition or conviction for the conduct underlying the alleged aftercare violation, if known.

(e) A list of all rules and special conditions the youth allegedly violated.

(f) A description of the agent's investigation and statement of the agent's conclusions.

(g) Information about the custody status of the youth.

(h) A recommendation of revocation and the reasons for the recommendation, or a description of the specific summary disposition imposed under s. HSS 343.07 (2)(b).

(2) The violation report shall be maintained in the youth's supervision file.

(3) A copy of the violation report prepared by an agent shall be submitted to the agent's supervisor who shall review and approve it.

HSS 343.09 PREPARATION FOR REVOCATION HEARING. (1) NOTICE.

In preparation for a revocation hearing for a youth on state aftercare, the aftercare provider shall personally serve the youth with written notice of the hearing. If a youth is held in physical custody under s. 48.205, Stats., or has been returned to the institution under s. HSS 343.07 (2)(c) 5. c., service shall be within 7 days after the youth was taken into custody under s. 48.19, Stats. If the youth is not in physical custody under s. 48.205, Stats., and is not at the institution, service shall be made at least 14 days prior to the scheduled revocation hearing. The notice shall also be sent to the hearing examiner's office and either the appropriate public defender's office or to the youth's attorney. The notice shall include all of the following:

(a) A statement of the alleged violation.

(b) A statement of the rule or special condition the youth allegedly violated.

(c) A statement that a revocation hearing has been scheduled under this section and an explanation of the youth's rights at that hearing which shall include all of the following:

1. The right to be present.
2. The right to deny the allegation and speak on his or her own behalf.
3. The right to present evidence.
4. The right to present witnesses and the right to question witnesses in accordance with s. HSS 343.12 (2)(a) and (b).
5. The right to be represented by an attorney.
6. The right to receive a written decision stating the reasons for the decision based upon the evidence and testimony presented.

(d) A statement of the evidence to be considered at the hearing which may include:

1. Documents.
2. Physical and chemical evidence.
3. Results of a breathalyzer test.
4. Incriminating statements by the youth.
5. All police reports regarding the allegation.
6. All warrants issued relating to the allegation.
7. Relevant photographs.

(e) A statement that the youth has the right to waive the revocation hearing in accordance with sub. (3), in which case the secretary will decide whether to revoke the youth's aftercare.

(f) A statement that whatever relevant information or evidence is in the possession of the department is available for inspection unless the hearing examiner under s. HSS 343.12 (2)(b) determines that the information or sources of information may be kept confidential.

(g) The date, time and place of the hearing.

(2) REISSUANCE OF NOTICE. When the notice of a revocation hearing is found to be improper and the impropriety by itself results in the dismissal of the revocation proceedings, the department or county department may issue a proper notice for the revocation hearing.

(3) WAIVER. (a) A youth served with notice under sub. (1) or sub. (2) may waive the right to an attorney or the right to a revocation hearing, or both the right to an attorney and the right to a revocation hearing, if the youth waives the right or rights knowingly and voluntarily and in writing.

(b) An agent may not accept a waiver from a youth who is less than 15 years old at the time of the waiver unless the youth's attorney approves of the waiver. An agent may not accept a waiver from a youth of any age who the agent reasonably believes may lack the mental capacity to waive his or her rights. A youth 15 years of age or older shall be permitted to consult an attorney before the youth waives any rights.

(c) To be valid, the waiver shall be signed in the presence of a witness who is an adult. The witness may not be an employe of the department unless this is impractical.

(4) INFORMATION PACKET. At least 5 days prior to a hearing, the youth and the youth's attorney, if any, shall be sent copies of the following documents:

(a) The court order placing the youth under the supervision of the department or county department.

(b) The aftercare rules and special conditions signed by the youth.

(c) The violation report.

(d) The case history review summary.

(e) A statement from any unavailable witness and a statement explaining why the witness is unavailable.

(f) The division's request for administrative action form.

(g) The division's aftercare revocation notice, rights, acknowledgement and waiver form.

(5) REVIEW OF EVIDENCE. At least 2 days prior to a hearing, the youth and the youth's attorney, if any, may review all evidence to be submitted by the department at the hearing, except evidence that the hearing examiner determines is nondisclosable such as the identity of confidential informants.

(6) HARMLESS ERROR. When a procedural requirement under this chapter is not met by the aftercare provider, the error shall be harmless and disregarded if it does not substantially affect the rights of the youth. Rights are substantially affected when a variance from a requirement prejudices a fair revocation proceeding for the youth.

(7) CONCURRENT PROSECUTION. All revocation proceedings under this chapter may proceed regardless of any concurrent prosecution of a youth for the conduct underlying the alleged aftercare violation. Dismissal or an acquittal in a court proceeding for a youth's conduct underlying an alleged violation does not preclude revocation of that youth's aftercare for the same conduct.

(8) DECISION TO TERMINATE REVOCATION PROCEEDINGS. (a) At any time during the revocation proceedings, the agent and the agent's supervisor may consider whether to terminate the revocation proceedings in order to implement an alternative course of action. The agent, with supervisory approval, shall decide whether to terminate the proceedings. The agent's supervisor has decisionmaking authority when the agent and the supervisor disagree on whether to terminate the revocation proceedings.

(b) A state aftercare agent may appeal the decision of his or her supervisor to the bureau director.

(c) A county aftercare agent may appeal the decision of his or her supervisor according to procedures of the county department.

HSS 343.10 PROCEDURE FOR YOUTH ON DEPARTMENT AFTERCARE WHEN HEARING RIGHT IS WAIVED. (1) SUPERVISOR'S RECOMMENDATION.

When a youth on state aftercare under s. HSS 343.09 (3) waives his or her right to a revocation hearing, the supervisor may recommend that the secretary revoke the youth's aftercare.

(2) **RECORD.** When the supervisor recommends revocation under sub. (1), the supervisor shall forward the youth's revocation notice and waiver, and all documents required under s. HSS 343.09 (5), to the secretary within 14 days after acceptance of the waiver unless the secretary grants an extension for cause.

(3) **SECRETARY'S DECISION.** (a) The secretary shall review the documents under sub. (2) and, on the basis of that review, shall decide whether to revoke the youth's aftercare. The secretary shall issue the decision in writing, stating the reasons for it, based upon the documents.

(b) The decision shall be forwarded to the youth, the youth's attorney, if any, and the agent within 14 days after the secretary receives the documents.

(c) If the youth is in custody at an institution or if the decision is made to revoke, the decision shall also be forwarded to the institution within 14 days after the secretary receives the documents.

HSS 343.11 PROCEDURE FOR YOUTH ON COUNTY AFTERCARE WHEN HEARING RIGHT IS WAIVED. (1) **SUPERVISOR'S RECOMMENDATION.** When a youth on county aftercare waives under s. HSS 343.09 (3) his or her right to a revocation hearing, the supervisor may recommend that the county director revoke the youth's aftercare.

(2) **RECORD.** When the recommendation under sub. (1) is to revoke the youth's aftercare, the notice of revocation and waiver and all documents required under s. HSS 343.09 (5) shall be forwarded to the county director within 14 days after acceptance of the waiver, unless the county director grants an extension for cause.

(3) **COUNTY DIRECTOR'S DECISION.** (a) The county director shall review the documents under sub. (2) and, on the basis of that review, shall decide whether to revoke the youth's aftercare. The county director shall issue the decision in writing, stating the reasons for it based upon the documents.

(b) Copies of the decision shall be forwarded to the youth, the youth's attorney, if any, and the agent within 14 days after the county director receives the documents.

(c) The decision and all documents required under s. HSS 343.09 (5), shall be forwarded to the division and to the receiving institution within 14 days after the county

director receives the documents.

HSS 343.12 REVOCATION HEARING. (1) **TIME.** (a) **General.** A revocation hearing for a youth on state or county aftercare shall convene within 30 days after the date the youth is taken into custody under s. 48.19, Stats., for the alleged violation in Wisconsin unless the hearing is postponed under par. (b) or sub. (2)(f).

(b) **Waiver of revocation hearing time limit.** The 30-day time limit requirement may be waived only upon agreement of the aftercare provider, the youth and the youth's attorney, if any.

(2) **PROCEDURE.** (a) **General.** A revocation hearing shall be closed to the public and conducted before a hearing examiner. At the hearing, the hearing examiner shall read a statement of the alleged violation to those in attendance. The aftercare provider shall present the case for revocation and respond to questions by the hearing examiner and the youth or the youth's attorney, if any. The youth or his or her attorney, if any, shall then present the youth's case. In the course of the hearing, the youth and all witnesses for and against the youth shall have an opportunity to speak and shall be permitted to respond to questions by the youth or the youth's attorney, if any, the aftercare provider and the hearing examiner. Any physical or other evidence allowed under par. (c) to show that the youth did or did not commit the alleged violation or violations and any affirmative defenses, mitigating or aggravating factors and suggestions regarding appropriate dispositions may be presented to and shall be considered by the hearing examiner.

(b) **Witnesses and sources of information.** 1. a. Except as provided in this paragraph, the hearing examiner shall require that sources of information be identified and that subpoenaed witnesses appear and testify at the revocation hearing.

b. For youth on state aftercare, the department's legal counsel shall issue subpoenas for the state's witnesses.

c. For those youth on county aftercare, the county department's legal counsel shall issue subpoenas for the county's witnesses.

d. The youth's attorney shall issue subpoenas for defense witnesses.

2. Anyone seeking permission to withhold the name of a source of information or the

name of a witness when there is a significant risk of physical or psychological harm to the witness or another person, or requesting that the testimony of a named or unnamed witness be taken outside the presence of the youth, shall contact the hearing examiner.

3. If the hearing examiner finds that there is a significant risk of physical or psychological harm to a witness or another person, the hearing examiner may permit nondisclosure of the name of a source of information or the name of a witness.

4. The hearing examiner may question a witness outside the presence of the youth when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the youth at a hearing.

5. A hearing examiner shall request the aftercare provider, the youth and the youth's attorney, if any, to submit relevant questions to the hearing examiner to be asked of any witness questioned outside of their presence. When a hearing examiner questions a witness outside the presence of the aftercare provider or the youth or the youth's attorney, if any, a general summary of the testimony shall be provided to the aftercare provider, the youth and the youth's attorney, if any, and each shall have the opportunity to rebut the testimony through further questioning of the witness by the hearing examiner or by submission of other evidence.

6. The hearing examiner shall disclose the receipt of any ex parte communication and the questioning of a witness outside the presence of the aftercare provider or the youth or the youth's attorney, if any, under this paragraph and provide each party a summary of that testimony from the record prepared under sub. (3).

(c) Evidence. A hearing examiner shall consider any relevant testimony and evidence whether or not it would be admissible in a court of law. Hearsay evidence is admissible.

(d) Burden of proof. The aftercare provider shall prove by a preponderance of the evidence that the youth violated one or more of the rules or special conditions of his or her aftercare.

(e) Alibi defense. An alibi defense offered on the youth's behalf shall be considered by the hearing examiner if the hearing examiner and the aftercare provider receive notice of the defense no less than 5 days before the revocation hearing unless the hearing examiner

allows shorter notice for cause.

(f) Postponement and continuance. The hearing examiner may postpone a hearing only when the youth or the youth's attorney, if any, requests or agrees to a delay of a specified number of days or for other good cause as determined by the hearing examiner.

(3) **RECORD.** The hearing examiner shall keep a record of the testimony and evidence presented at an aftercare revocation hearing.

(4) **DECISION.** (a) After a hearing, the hearing examiner shall consider the relevant testimony and evidence presented at the hearing. The decision may not be based solely on unreliable hearsay. The hearing examiner shall decide:

1. Whether the youth behaved in the manner described in the notice under s. HSS 343.09 (1).

2. If the youth behaved in that manner, whether the behavior constitutes a violation of the rules or special conditions of his or her aftercare.

3. If the youth committed a violation, whether revocation should result.

(b) Revocation may not be the result unless the hearing examiner, based on the offense for which the youth was placed under aftercare supervision, the youth's prior juvenile record and the youth's conduct since release to aftercare, makes one or more of the following determinations:

1. Confinement is necessary to protect the public from further violations of the law by the youth.

2. The youth is in need of correctional treatment which can most effectively be provided in an institution.

3. In making the determination in subd. 1. and 2. above, the hearing examiner may consider:

a. The nature and severity of the youth's prior delinquent record.

- b. The nature and severity of the committing delinquent offense.
- c. The nature and severity of the violation conduct.
- d. The youth's adjustment on aftercare supervision.
- e. Aggravating or mitigating circumstances.
- f. The youth's treatment needs.
- g. Treatment provided to the youth during aftercare supervision.
- h. The resources or services available to meet the youth's treatment needs.
- i. Previous treatment received by the youth.
- j. The youth's compliance with treatment.

(c) The hearing examiner's decision with a statement of reasons to support it shall be committed to writing and the written decision shall be mailed to the youth, the youth's attorney, if any, and the aftercare provider in accordance with the timelines specified in ch. HR 2, the rules of the division of hearings and appeals. The hearing examiner may have an extension of 7 days to write up and mail the decision if there is cause for the extension and the examiner notifies, in writing, the youth, the youth's attorney, if any, and the aftercare provider of the reasons for the extension.

(5) EFFECTIVE DATE OF DECISION AND APPEAL. The hearing examiner's decision shall take effect and be final 14 days after the date it is issued unless the youth, the youth's attorney, if any, or the aftercare provider files a written appeal, together with any relevant materials, with the administrator of the division of hearings and appeals, and provides copies to the other parties, within that time.

(6) RECORD OF TESTIMONY. When an appeal is filed under sub. (5), the hearing examiner shall forward the recorded account of the testimony at the hearing to the administrator of the division of hearings and appeals prior to the review by the administrator of the division of hearings and appeals under s. HSS 343.13 (1).

HSS 343.13 DECISION OF THE ADMINISTRATOR OF THE DIVISION OF HEARINGS AND APPEALS. (1) The administrator of the division of hearings and appeals shall review the hearing examiner's decision, the record of the testimony and all materials submitted for and against the appeal and shall decide, based only upon those materials, to affirm, reverse or modify the hearing examiner's decision or remand the case to the hearing examiner for further fact-finding.

(2) The written decision of the administrator of the division of hearings and appeals shall be mailed to the youth, the youth's attorney, if any, the supervisor and the agent within 14 days after receipt of all appropriate materials unless the administrator of the division of hearings and appeals extends the time period for cause.

(3) The written decision of the administrator of the division of hearings and appeals shall be the final administrative decision and shall take effect immediately.

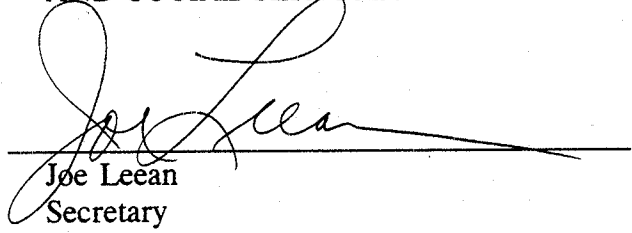
HSS 343.14 APPEAL TO COURT. A hearing examiner's revocation decision may also be appealed to the circuit court which ordered the youth to be placed with the department. An appeal to the administrator of the division of hearings and appeals is not required prior to filing an appeal with the court.

The repeal and rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

WISCONSIN DEPARTMENT OF HEALTH
AND SOCIAL SERVICES

Date: January 22, 1996

By: _____


Joe Lean
Secretary

SEAL: