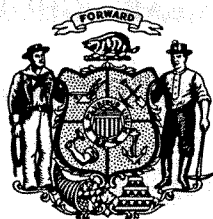


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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-018

AN ORDER to renumber HA 2.05 (7) (f) and (g); to amend HA 2.01 (1) and (2), 2.02 (8) and 2.05 (7) (d); and to create HA 2.05 (1) (g) and (h) and 2.05 (7) (f) and (g), relating to the revocation of extended supervision of persons serving a bifurcated sentence under the truth-in-sentencing provisions of 1997 Wisconsin Act 283.

Submitted by **DIVISION OF HEARINGS AND APPEALS**

02-22-01 RECEIVED BY LEGISLATIVE COUNCIL.

03-19-01 REPORT SENT TO AGENCY.

RNS:SPH:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 01-018

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In SECTION 1 of the rule, the title to s. HA 2.01 should not be shown. The title to s. HA 2.01 (2) should be in solid capital letters. [See s. 1.05 (3) (c) and (2) (c), Manual, respectively.]

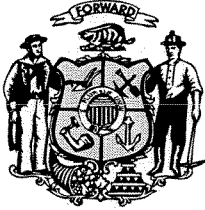
b. In SECTIONS 2 to 6, the full rule citation should precede the text. For example, in SECTION 2, "HA 2.02" should precede "(8)".

c. An entire rule subunit that is being created should not be underscored. See SECTIONS 3 and 6.

5. Clarity, Grammar, Punctuation and Use of Plain Language

SECTION 6 of Clearinghouse Rule 01-018 creates s. HA 2.05 (7) (f) and (g). The new language requires an administrative law judge to apply the criteria in s. HA 2.06 (6) (b) when revoking a period of extended supervision. However, s. HA 2.06 (6) (b) relates to the criteria that an administrative law judge should consider in determining the amount of good time forfeited or the period of reincarceration. Additionally, the specific criteria set forth in s. HA 2.06 (6) (b) 3. refer to "conduct and behavior while on parole."

Although an administrative law judge will probably understand what is expected by the cross-reference to s. HA 2.06 (6) (b), either that provision should be revised to specifically encompass the "extended supervision" terminology associated with 1999 Act 283, relating to "truth-in-sentencing", or the criteria should be listed in s. HA 2.05 (7) (f) and (g).



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

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PROPOSED ORDER OF THE DIVISION OF HEARINGS AND APPEALS RENUMBERING, AMENDING AND CREATING RULES

The Division of Hearings and Appeals proposes an order to renumber HA 2.05 (7) (f) and (g); to amend HA 2.01 (1) and (2), HA 2.02 (8), HA 2.05 (7) (d); and to create HA 2.05 (1) (g) and (h), and HA 2.05 (7) (f) and (g) relating to the revocation of extended supervision of persons serving a bifurcated sentence under the Truth-in-Sentencing provisions of 1997 Wisconsin Act 283.

Statutory authority: Wis. Stat. s. 301.035.

Statutes interpreted: Wis. Stat. ss. 302.113 (9) and 302.114 (9).

Analysis Prepared by the Division of Hearings and Appeals:

These revisions are required as a result of the enactment of the Truth-in-Sentencing provisions of 1997 Wisconsin Act 283. That Act abolished parole for crimes committed on and after December 31, 1999 and replaced it with a Truth-in-Sentencing bifurcated sentence. The bifurcated sentence provisions require a judge to impose a sentence with two parts. The first part is a period of prison confinement. The second, called "extended supervision", is a period of community supervision administered by the Department of Corrections. Like parole, the extended supervision may be revoked if the offender violates the rules of supervision and the offender may be returned to prison. Unless waived by the offender, the offender is entitled to an administrative due process revocation hearing before the Division of Hearings and Appeals. The proposed rule changes will modify the existing corrections revocation provisions of chapter HA 2 to include the revocation of Truth-in-Sentencing extended supervision.

Rule Text:

SECTION 1. HA 2.01 (1) and (2) are amended to read:

HA 2.01 Application of rules. (1) AUTHORITY. These rules are promulgated under the authority of s. 301.035 (5), Stats., and interpret ss. 302.11 (7), 302.113 (9) (a), 302.114 (9) (a), 938.357 (5), 973.09, 973.10, 973.155, 975.10 (2) and ch. 304 Stats.

(2) Scope. This chapter applies to corrections hearings under ss. 302.11 (7), 302.113 (9) (a), 302.114 (9) (a), 973.10, 975.10 (2), and ch. 304 Stats. The procedural rules of general application contained in this chapter also apply to youth aftercare revocation proceedings in any situation not specifically dealt with in ch. ~~HSS-343~~ DOC 393.

SECTION 2. HA 2.02 (8) is amended to read:

(8) "Revocation" means the removal of a client from ~~probation or parole or youth aftercare supervision~~ probation, parole, extended supervision or youth aftercare supervision.

SECTION 3. HA 2.05 (1) (g) and (h) are created to read:

(g) In extended supervision cases under s. 302.113 (9) (a), Stats., the department's recommended period of incarceration.

(h) In extended supervision cases under s. 302.114 (9) (a), Stats., for persons serving a life sentence, the department's recommended period of time for which the offender shall be incarcerated before being eligible for release to extended supervision.

SECTION 4. HA 2.05 (7) (d) is amended to read:

(d) The administrative law judge shall issue a written decision based upon the evidence with findings of fact and conclusions of law stating the reasons to revoke or not revoke the client's ~~probation or parole~~ supervision.

SECTION 5. HA 2.05 (7) (f) and (g) are renumbered HA 2.05 (7) (h) and (i).

SECTION 6. HA 2.05 (7) (f) and (g) are created to read:

no underscore

check ¹
(f) If an administrative law judge decides to revoke a period of extended supervision under s. 302.113 (9) (a), Stats., the decision shall apply the criteria established in s. HA 2.06 (6) (b) and shall include a determination of the period of incarceration.

↓
(g) If an administrative law judge decides to revoke a period of extended supervision for an offender serving a life sentence under s. 302.114 (9) (a), Stats., the decision shall apply the criteria established in s. HA 2.06 (6) (b), and shall include a determination of the period of time for which the offender shall be incarcerated before being eligible for release to extended supervision.

Initial Regulatory Flexibility Analysis:

The proposed revisions will have no impact on small business.

Fiscal Estimate:

There is no fiscal effect.

Notice and Public Hearing:

Notice and Public Hearing are required.

Contact Information:

The agency person responsible for the internal processing of these rules and the person to be contacted if there are any substantive questions on the rules is:

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