

HSS 326

July 24, 1981
2:00 pm

CERTIFICATE

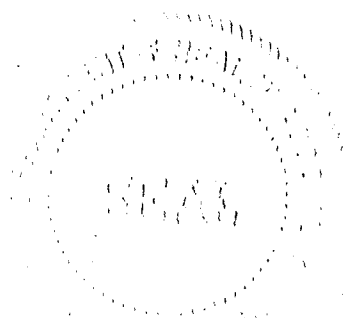
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

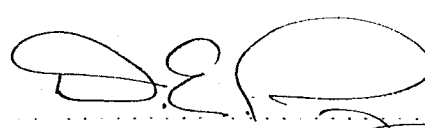
I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department do hereby certify that the annexed rules relating to leave for qualified inmates of adult correctional institutions were duly approved and adopted by this department on July 24, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such 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 St., in the city of Madison, this 24th day of July, A.D. 1981.



SEAL:



Donald E. Percy, Secretary
Department of Health and Social Services

10-1-81

ORDER OF THE DEPARTMENT OF HEALTH
AND SOCIAL SERVICES ADOPTING RULES

Relating to rules concerning leave for qualified inmates of adult correctional institutions.

Analysis prepared by the Department of Health and Social Services:

This chapter interprets section 56.068, Wis. Stats., which authorizes the Department of Health and Social Services to grant unescorted leave to inmates eligible for confinement in minimum security institutions. It provides that leaves may be granted only to visit a parent, child, spouse, brother or sister who is seriously ill; to attend the funeral of a parent, child, spouse, brother or sister; or to contact a prospective employer who has requested an interview. It also establishes criteria for leave, procedures for investigation, decision, and notification of local law enforcement officials.

Pursuant to the authority vested in the Department of Health and Social Services by section 56.068(5), Wis. Stats., the Department hereby adopts rules interpreting section 56.068, Wis. Stats., as follows:

Chapter HSS 326 of the Wisconsin Administrative Code is adopted to read:

Chapter HSS 326

Leave for Qualified Inmates

- HSS 326.01 Applicability
- HSS 326.02 Purpose
- HSS 326.03 Definitions
- HSS 326.035 Organization of Leave Program
- HSS 326.04 Eligibility for Leave Application
- HSS 326.05 Investigation
- HSS 326.06 Criteria for Reviewing Leave Application
- HSS 326.07 Conditions of Leave
- HSS 326.08 Procedure
- HSS 326.09 Denial of Application Not Reviewable in Inmate Complaint System
- HSS 326.10 Notification of Local Officials
- HSS 326.11 Custody of Inmate on Leave
- HSS 326.12 Expenses While on Leave
- HSS 326.13 Inmate Conduct While on Leave
- HSS 326.14 Sanctions
- HSS 326.15 Extensions of Leave
- HSS 326.16 Records
- HSS 326.17 Credit Toward Sentence While on Leave

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HSS 326.01 APPLICABILITY

This chapter is promulgated under the authority of s. 56.068(5), Stats., and interprets s. 56.068, 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. HSS 325, Wis. Adm. Code, and from work and study release of inmates which is regulated by ch. HSS 324, Wis. Adm. Code.

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HSS 326.02 PURPOSE

Leave for a qualified inmate is an unescorted and authorized absence from an institution to visit a close family member who is seriously ill, to attend the funeral of a close family member, or to contact prospective employers. An additional purpose of leave is to help prepare the inmate for reintegration into society. Leaves are also to be granted consistent with public protection. Decisions on leave applications shall be consistent with these goals.

NOTE: HSS 326.02 states the purposes of leave for qualified inmates. Selected inmates are allowed unescorted leave only for serious illness in the immediate family, death of a close family member, and employment interviews as provided under s. 56.068, Stats.

Allowing selected inmates unescorted leave is consistent with the correctional goal of eventual reassimilation of the offender into the community. A conditional exposure to life outside an institution, for those inmates who do not pose a threat to the public, is beneficial as a means of preparing an inmate for life outside a structured prison environment.

Leave for qualified inmates has direct immediate benefits. Permitting an inmate to visit a seriously ill relative or attend a funeral is important in maintaining family ties. The inmate can be with the family in these most difficult periods, can show his or her concern for the family, and can share the burden that frequently accompanies illness or death in a family. It strengthens family ties, helps the inmate work through feelings of pain and sorrow, and assists in the inmate's adjustment in the institution and after release.

Ch. HSS 326 and s. 56.068, Stats., allow leave for an inmate to contact a prospective employer who requests an interview. This contact away from the institution and staff enables an inmate to experience independent responsibility prior to release, thereby reducing the adjustment necessary after release. This independent responsibility can give the individual the self-confidence necessary for successful reintegration into society. The inmate has an opportunity to plan for life on the outside and to secure a position upon release by expanding the potential for employment. Employment opportunities are limited for someone with a criminal record. Many employers are unwilling to hire a person they have not seen or interviewed. Leaves for job interviews remove this obstacle to obtaining employment.

A significant benefit of the leave program is that it affords inmates an opportunity to get some relief from the tensions of prison life. Interviews with inmates in other states with leave programs reveal that the inmates feel a leave can make time within the institution easier and gives them something to look forward to. See Project: Temporary Release in New York State Correctional Facilities, 38 Alb. L. Rev. 691, 727 (1974). If an inmate has a positive attitude about life in the institution, adjustment problems are minimized.

For helpful discussions about leave programs, see Project: Temporary Release in New York State Correctional Facilities, 38 Alb. L. Rev. 691 (1974); National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1973); Washington, D.C., Department of Corrections, A Review of D.C. Department of Corrections Furlough Program (1974).

HSS 326.03 DEFINITIONS

In this chapter:

- (1) "Department" means the department of health and social services.
- (2) "Division" and "DOC" mean the division of corrections of the department of health and social services.
- (3) "Classification chief" means the chief of classification of the division of corrections or designee.
- (4) "Detainer" means a document filed with the division of corrections by another criminal justice agency to initiate transfer of custody upon release from division custody.
- (5) "Leave for qualified inmates," "leave," or "furlough" means a privileged authorized absence from an institution for one of the following purposes under s. 56.068, Stats.:
 - (a) To visit a parent, child, spouse, brother, or sister who is seriously ill;
 - (b) To attend the funeral of a parent, child, spouse, brother, or sister; or
 - (c) To contact a prospective employer who has requested an interview.

- (6) The "leave agreement" is an agreement, signed by the inmate, in which the inmate agrees to accept the responsibilities that the privilege of leave requires and voluntarily agrees to abide by certain conditions specified in the agreement.
- (7) A "leave condition" or "condition of leave" means a specific written requirement or limitation placed upon leave that has been granted.
- (8) The "leave destination" means the physical location of the leave principal or event that is the justification for the leave.
- (9) The "leave review committee" means the standing committee that reviews applications for leave transmitted from the institution social worker assigned to investigate the application. Its members are appointed by the superintendent or regional chief and shall consist of three members including:
- (a) A unit supervisor or member of the security staff who holds a supervisory position;
 - (b) A member of the social services staff who holds a supervisory position or the liaison agent to the facility where the inmate resides; and
 - (c) A staff member from any other area and rank appointed by the superintendent or regional chief.

- (10) "Misconduct" means behavior in violation of state or federal statutes, administrative rules of the department, the leave agreement, or any conditions of leave.
- (11) "Principals" or "leave principals" means individuals, approved as willing and able during the eligibility review process, who have consented to and will assist in the leave, including the immediate family, potential employers, or others.
- (12) "Regional chief" means the chief of a bureau of community corrections region of the division of corrections, or designee.
- (13) "Reviewing authorities" means the leave review committee, the superintendent or regional chief, and the classification chief.
- (14) A "serious illness" means an illness from which death may be imminent in the opinion of an attending physician. The physician's opinion need not be a written or formal opinion. The physician's opinion does not prevent the leave review committee from evaluating "serious illness" under s. HSS 326.06.
- (15) "Superintendent" means the superintendent of an institution, or designee.

HSS 326.035 ORGANIZATION OF LEAVE PROGRAM

- (1) To obtain leave an inmate shall:
 - (a) Make application under s. HSS 326.08(1);
 - (b) Meet all the basic eligibility requirements under s. HSS 326.04, which all inmates must meet; failure to do so automatically precludes the granting of leave;
 - (c) Be selected by the reviewing authorities using the criteria of s. HSS 326.06 and the procedure of s. HSS 326.08; and
 - (d) Receive a written decision under s. HSS 326.08(6).
- (2) All applications for leave shall be investigated under s. HSS 326.05.
- (3) Appropriate local officials shall be notified under s. HSS 326.10 upon the granting of leave.
- (4) The status of an inmate on leave is defined in s. HSS 326.11, and the inmate's conduct while on leave is regulated under s. HSS 326.13. Payment of expenses is governed by s. HSS 326.12.
- (5) Sanctions for violations of statutes, rules, the leave agreement, or conditions are provided for in s. HSS 326.14.

(6) The record keeping requirements for the leave program are contained in
s. HSS 326.16.

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HSS 326.04 ELIGIBILITY OF INMATE FOR APPLICATION

To be eligible to apply, an inmate shall meet the following requirements:

- (1) An inmate shall have a security classification of minimum for 30 days prior to application.
- (2)
 - (a) If the purpose of leave is an employment interview, inmates shall have a defer of six months or less from the state parole board or shall be within six months of target release date under the mutual agreement program, mandatory release, or discharge.
 - (b) If the purpose of leave is to visit an ill relative or to attend a funeral, the inmate need not be within any particular time of parole release, target release under the mutual agreement program, mandatory release, or discharge.
 - (c) Inmates serving a life sentence shall have attained parole eligibility prior to making application and shall meet all other criteria.
 - (d) Inmates shall not have a Wisconsin probation or parole revocation proceeding pending.
 - (e) Inmates shall sign the leave agreement and agree to abide by all provisions contained therein.

- (3) Inmates shall agree in advance to examinations such as urinalysis or breathalyzer tests and a personal or strip search upon return to the institution or during the leave. Tests shall be conducted upon order of law enforcement officials, officials of the division's bureau of community corrections, or officials of the division's bureau of adult institutions.
- (4) The leave principals must consent to the leave. A failure to consent by any leave principal shall make the inmate ineligible.
- (5) The leave shall be requested for one of the purposes under s. HSS 326.03(4).

NOTE: HSS 326.04 sets the minimum requirements for eligibility for application under the leave program. Meeting these criteria does not entitle an inmate to leave, but does entitle the inmate to have the application reviewed. Initially, an application will be reviewed by the institution social worker, who determines whether the basic requirements of this section are met. Following investigation, the application is forwarded to the leave review committee, which must evaluate it under the criteria of HSS 326.06.

Subsection (1) states that inmates must be classified as minimum security for at least 30 days prior to application. Inmates with a minimum security classification are considered lesser escape risks because they are not likely to do something to adversely affect their release. See: HSS 302.14 and note regarding criteria for security classification; and HSS 326.15 and note regarding sanctions for discussions of escape risk.

The requirement that the inmate be classified minimum for 30 days prior to application was adopted so newly classified inmates will have adequate time to adjust to new rules and procedures that may accompany a minimum security classification. This period of adjustment is important.

Subsection (2)(a) requires that if the purpose of leave is an employment interview, the inmate be within six months of release date or have a defer of less than six months from the state parole board. Inmates closest to release benefit from the reintegration opportunities of an employment interview and a job when released. Inmates with a long time to serve do not need an employment interview until they are within six months of release.

The proximity of parole eligibility is a prime restraint on escape. Subsection (2)(c) requires inmates serving a life sentence to be eligible for parole before application for leave is allowed.

Subsection (2)(d) requires any Wisconsin probation or parole revocation proceedings to be concluded before an inmate becomes eligible for leave. Again, this requirement is to prevent escape. By requiring the process to be complete, both the inmate and the reviewing authorities will have a clear picture of how these proceedings will affect time to be served.

The possibility of escape when an inmate has substantial time left to serve or is unsure of time because of pending proceedings was also identified in Project: Temporary Release in New York State Correctional Facilities, 38 Alb. L. Rev. 691, 733-735 (1974).

~~Subsection (3) requires inmates to agree to submit to certain tests upon return to the institution or during leave to determine whether the inmate has complied with the provisions of the leave agreement and related rules.~~

Subsection (4) requires the consent of the leave principals as a condition of eligibility. Thus leave will not be granted in cases where family conflict is likely to occur. Such family conflict would be detrimental to reintegration. Should a leave principal withdraw consent after leave is granted, HSS 326.15(3) applies and the leave will be cancelled.

Under subsection (5) the social worker shall deny an applicant as ineligible if the request is not for one of the purposes under HSS 326.03(4). If a physician says that a close family member is seriously ill, the investigating social worker has no discretion to make an additional review of this opinion. However, the leave review committee is not bound by the physician's opinion.

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HSS 326.05 INVESTIGATION

- (1) Each application for leave shall be reviewed by the institution social worker or personnel of the bureau of community corrections, or both, for the purpose of verifying the accuracy of the information in the leave application and the inmate's eligibility under s. HSS 326.04. This shall include contact with the principals named on the leave application and any other person who can verify the accuracy of an application for leave.

- (2) If the inmate is eligible, the application shall be investigated by the institution social worker and personnel of the bureau of community corrections to ascertain all information that could be relevant to the reviewing authorities' decision based on the criteria for leave under s. HSS 326.06. This investigation shall include contact with the relevant law enforcement agencies and may include contact with the committing court, the district attorney's office of the county of commitment, the chief of police of the city of visitation, the sheriff of the county of visitation, and the district attorney of the county of visitation. Detainers filed with respect to the inmate shall be investigated in the manner provided under s. HSS 302.14(14), Wis. Admin. Code.

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

NOTE: HSS 326.05 requires an investigation of every leave application submitted by an eligible leave applicant. The investigation must be completed in

sufficient time to allow the leave review committee, the superintendent or regional chief, and the classification chief adequate time to review the application. Timely investigation is necessary to prevent de facto denial of an application. HSS 326.09(1) requires the inmate to submit the application within a reasonable time prior to the requested date of departure.

The investigation protects the public. All the inmate's assertions must be verified and the leave principals must be willing to cooperate.

The investigation of a detainer will most likely be done for security classification purposes prior to leave applications. However, in some instances a detainer may not have been filed at the time of security classification or an investigation may not have been made. Subsection (2) requires an investigation in those cases using the same procedures outlined in HSS 302.14(14) for investigation for security classification.

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HSS 326.06 CRITERIA FOR LEAVE

The criteria used by the leave review committee, the superintendent or regional chief, and the classification chief for granting or denying a leave application shall include only the following:

- (1) The inmate's eligibility under s. HSS 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 the detainer shall be the relevant criteria; and
 - (c) Misconduct on a prior leave.
- (3) The disciplinary record of the inmate, including whether the inmate has received a recent major conduct report.
- (4) Any other matter consistent with the purposes of leave under s. HSS 326.02. Such matters may include, but are not limited to:

(a) 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; and

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

Subsection (1) requires the reviewing authorities (leave review committee, superintendent or regional chief, and classification chief) to determine whether eligibility exists, which is a check on the social worker's determination of eligibility. See HSS 326.04 and HSS 326.09(2)(a) and notes.

Subsection (2) makes the risk of escape a relevant criterion. Although an inmate who is eligible for leave is likely to be a low escape risk due to the eligibility requirements of HSS 326.04, this subsection was adopted because leave, an unescorted and unsupervised visit to the community, offers more freedom of movement than any previous experience the inmate has had in the correctional system. An unescorted leave presents an opportunity for escape. An inmate with a record of escapes may be more likely to take advantage of this opportunity, and the committee is to consider this under subsection (2)(a). However, this is not an automatic exclusion from eligibility and should not be treated as such.

Subsection (2)(b) allows detainers to be considered as relevant to escape risk, but HSS 302.14(14) and note govern the weight to be given detainers for purposes of the leave program. It is not the detainer itself, but the facts underlying it that are relevant to leave applications. See HSS 326.05 and HSS 302.14(14) and notes on detainers.

Subsection (2)(c) gives the reviewing authorities discretion to consider misconduct on a prior leave. Misconduct on leave is punishable through the disciplinary procedure or in court. Allowing a denial of a future leave based on that misconduct prevents those inmates who have a history of violating leave requirements from enjoying the privilege of leave. Subsection (2)(c) should encourage inmates to follow all the rules and conditions of leave, since failure to do so could jeopardize chances of future leave.

Subsection (3) permits the disciplinary record of the inmate to be taken into consideration. A recent serious conduct report might indicate that the inmate is an escape risk due to poor institutional adjustment.

Subsection (4) allows the reviewing authorities to consider any facts relevant to the purpose of leave. HSS 326.02 states that the purpose of leave is to fulfill the correctional goals of reintegration. This is to be achieved consistent with the protection of the public. The reviewing authorities must include in the decision the facts they consider to be relevant and their reasoning as to relevance. Subsection (4) lists two concerns that are relevant to these purposes, but there may be others.

In some instances, an offense may have received unusually intense publicity and substantial community reaction may have been aroused. In such a case the presence of the offender might cause a negative reaction. Subsection (4)(a) requires the reviewing authorities to consider the likelihood of such a severe negative community reaction. If the investigation under HSS 326.05 reveals a substantial likelihood the community will become aroused, then, in the best interests of the community and of the inmate, leave should not be granted. If investigation reveals substantial threat to the safety of the inmate in the community, the leave should not be granted.

~~This subsection should be used only if the community reaction was or is likely~~
to be much greater than the usual negative reaction that occurs when a similar
offense is committed or when an offender convicted of a similar offense visits a
community. The inmate on leave will be released soon and may return to the
community very shortly.

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HSS 326.07 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 under s. HSS 326.02, but no inmate may be granted more than 3 leaves per calendar year, and no leave may exceed 3 days unless an extension is granted under s. HSS 326.16.

- (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;
 - (b) Any condition on movement or conduct consistent with the purposes of leave under s. HSS 326.02.

- (3) A leave shall not be granted as a reward for good behavior or granted or denied for reasons other than those specified in this chapter.

~~NOTE: Subsection (1)(a) recognizes the requirement of s. 56.068(4), Stats.,~~
that a leave is restricted to the confines of the state of Wisconsin.

Subsection (1)(b) limits the duration of leave to a period of time necessary for the leave. For example, an employment interview may be completed in one morning if it is close to the institution, or it may take several days if great distances are involved.

Subsection (2) grants the reviewing authorities discretion to impose additional conditions on specific leaves. Subsection (2)(a) allows the reviewing authorities to consider conditions on movement in addition to the requirements of subsection (1)(a). These conditions should be imposed only when considered necessary to prevent an inmate from abusing leave. To comply with HSS 326.09(5) and (6), the reason for imposing the condition and the underlying facts upon which the decision was based must be written.

Subsection (3) prevents use of the leave program for disciplinary or other purposes not directly related to the leave program. However, the inmate's prior disciplinary violations may be considered as a criterion under HSS 326.06(4). Discipline is dealt with by the disciplinary processes under ch. HSS 303. For example, when an inmate violates a disciplinary rule, it should be dealt with in a disciplinary proceeding and, possibly, program review procedures that contain hearing and review. Denial of leave should not be relied on in lieu of these procedures. This subsection also protects the inmate from being judged in two separate forums. However, if misconduct occurred on a prior leave, the leave may be denied on that basis under HSS 326.06(2)(c).

HSS 326.08 PROCEDURE FOR APPLICATION AND REVIEW

- (1) The inmate shall initiate the process by submitting an application and signed leave agreement to the institution social worker within a reasonable time prior to the requested departure date. The application must contain details including time, dates, principals involved, and any other relevant information.
- (2) The validity of the inmate's request for leave shall be investigated under s. HSS 326.05 by employees of the department and documented. The following procedure is recommended:
 - (a) The institution social worker should review the application and determine eligibility under HSS 326.04. Documentation of all persons contacted will be entered in the chronological social service file. If, upon investigation, the social worker finds the inmate ineligible, the social worker shall note the reason for ineligibility in writing on the application.
 - (b) The institution social worker should provide the parole agent with basic leave plan information.
 - (c) The social worker, with the assistance of the parole agent if necessary, should investigate other facts under s. HSS 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.

- (3) Following investigation, the application with appropriate documentation shall be referred for review and decision under sub. (4) and s.56.068, Stats.
- (4) Review shall be as follows:
 - (a) The leave review committee shall conduct the initial review. Unanimous approval by the committee must be obtained for a recommendation to grant leave. If unanimous approval is not obtained, the application is denied at this level. Before making a decision, the committee may request that the inmate make an oral statement or answer questions.
 - (b) If the application is approved by the leave review committee, or if it is denied and the inmate requests review, the superintendent or regional chief shall review it and make a recommendation to approve or deny. The inmate may supply a written response to the decision of the leave review committee.
 - (c) The application shall be transmitted with the recommendation of the superintendent or the regional chief to the division of corrections classification chief, who shall review the application and make a final decision.

- (5) The reviewing authorities shall impose the leave conditions in accordance with s. HSS 326.07. The inmate shall sign a statement agreeing to the conditions as a prerequisite to leave being granted.
- (6) The decisions of the reviewing authorities and the reasons for the decisions shall be given to the inmate in writing and shall include the specific facts and criteria on which the decisions are based.

NOTE: Subsection (1) requires that the inmate initiate the process. The division should provide appropriate forms that clearly show what information is required for the three types of leave. The application is to be submitted to the institution social worker, who reviews it for inmate eligibility under HSS 326.04.

Subsection (2)(b) recommends that the institution social worker provide the parole agent with the basic information. The parole agent may assist in determining eligibility under HSS 326.04 and HSS 326.06.

Provision was made to allow the parole agent, with approval, to give an oral report because some leave applications, especially those involving a serious illness or funeral, must be investigated and acted on so quickly that transmitting written material would be too time consuming.

Subsection (4) outlines the three level procedure for review of an application. The leave review committee reviews the application first. The committee may request the inmate to appear and give a statement or answer questions. A personal appearance is not expressly granted since the committee is not required to meet as a group, but may hold discussions and vote by telephone.

The inmate is protected against the committee relying on misinformation because subsection (6) requires a written decision with the reasons for the decision and the facts relied on. If the information is incorrect, the superintendent or regional chief may be notified of this by the inmate.

Unanimous approval is required for a recommendation to grant leave. If the recommendation is to approve or if the inmate requests review, the application must be reviewed by the second level, which is the superintendent or regional chief. The inmate may supply the facts or reasons he or she believes show error by the leave review committee. Regardless of the recommendation by the superintendent or regional chief, the classification chief has the final decision.

The three level review procedure serves two major objectives: 1) It ensures that the public will be adequately protected against an unwarranted leave being granted. The danger of an inmate committing a crime or escaping while on leave is diminished when a thorough review by institution people as well as the classification chief is provided. 2) It guarantees the inmate the right to have someone who is not in the day-to-day life at the housing facility (i.e., the classification chief) review the application if the leave review committee denies it. This procedure increases objectivity.

Subsection (5) requires that leave conditions be imposed in writing and that the inmate agree to them. This ensures that the inmate knows the leave conditions. (See: HSS 326.07 and note on leave conditions.)

Subsection (6) requires the decisions of the reviewing authorities to be in writing and requires the decisions to include specific facts and criteria upon

which the decisions are based. This provides a means of monitoring decisions to ensure compliance with this chapter. The written decision also provides the basis for appeal under subsection (4) and protects the inmate from arbitrary exercise of discretion.

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HSS 326.09 DENIAL OF LEAVE NOT REVIEWABLE IN THE INMATE COMPLAINT SYSTEM

Denial of a specific application for leave is not reviewable in the inmate complaint system, under ch. HSS 310, Wis. Admin. Code, but complaints about violations of the procedures of the leave process may be reviewed within the inmate complaint system.

NOTE: HSS 326.10 prevents the use of the inmate complaint system as a forum for appeal from denial of specific applications for leave. This section limits complaints pertaining to leave to alleged violations of the procedures themselves. For example, if an eligible inmate's application was not reviewed, a violation of procedural requirements occurred and is properly reviewable in the complaint system. A complaint pertaining to the reviewing authorities' interpretation of facts under the criteria of HSS 326.06 and a denial of leave based on this interpretation would not be reviewable in the inmate complaint system.

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HSS 326.10 NOTIFICATION OF LOCAL OFFICIALS

Upon approval of an application for leave by the division's classification chief, the superintendent or regional chief shall notify the police chief, the sheriff, and the district attorney of the county involved, as required under s. 56.068(2), Stats.

NOTE: Local officials must be notified whenever leave is granted. Notifying local officials of the presence of an unescorted inmate protects the public. It also reduces the possibility that local authorities would mistakenly apprehend the inmate if they saw him or her in the community.

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HSS 326.11 CUSTODY

- (1) An inmate granted leave remains in the legal custody of the institution where the inmate resides or is assigned.

- (2) While on leave, an inmate shall carry a copy of the leave authorization and conditions of leave.

NOTE: Subsection (1) states that legal custody remains with the department, and subsection (2) requires the inmate to carry a copy of the leave authorization which states that legal custody is with the department and contains specific information such as the inmate's name, dates of leave, destination, and purpose of the leave.

These two subsections avoid confusion about who has responsibility for the inmate. The leave authorization facilitates identification of an inmate if, while on leave, he or she is mistakenly or rightfully apprehended by law enforcement officials and notifies authorities of the conditions of the leave.

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HSS 326.12 EXPENSES

All direct expenses of a leave shall be the responsibility of the inmate, the family, or another lawful source.

NOTE: This section fixes the responsibility for the expenses of a leave. A study of the New York leave program concluded that its cost was insubstantial since inmates who participate pay their own expenses. See Project: Temporary Release in New York State Correctional Facilities, 38 Alb. L. Rev. 691, 718-719 (1974). The section does not require inmates to prepay the expenses. Thus, institutions may lend money for leave to inmates, who then repay the loan out of future earnings.

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HSS 326.13 INMATE CONDUCT WHILE ON LEAVE

The following provisions apply when leave is granted and shall be included as part of 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, purchases of property, time payments, and marriage.
- (3) An inmate shall not take into his or her body any alcohol, drugs, or medication, except as authorized by a physician.
- (4) An inmate shall comply with all statutes, administrative rules, the leave agreement, and conditions of the leave.
- (5) The inmate shall carry a copy of the leave authorization and the conditions of leave as required by s. HSS 326.12(2).

NOTE: This section specifies conduct that is expressly controlled while the inmate is on leave. These provisions must be part of the leave agreement so the inmate is aware of them. Since the inmate is in the legal custody of the

department while on leave, subsection (2) was included to avoid potential legal problems associated with these activities. Violation of any of the provisions of HSS 326.14 may subject an inmate to the sanctions under HSS 326.16.

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HSS 326.14 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 agreement, or any rules of the division may be subject to disciplinary action under ch. HSS 303, Wis. Admin. Code.
- (3) The superintendent or regional chief may cancel leave at any time for misconduct by the inmate or upon request of a leave principal.

NOTE: HSS 326.15 provides sanctions for escape or misconduct, or withdrawal of the consent of a leave principal while an inmate is on leave.

Under subsection (1) an inmate may be treated as an escapee if that inmate leaves the area designated in the leave agreement or if the inmate fails to return from leave. Since an inmate is in the custody of the department, a violation of this subsection is an "intentional escape from custody" under s. 946.42(3), Stats., as affected by chs. 173, 354, and 418, laws of 1977. This escape could be prosecuted as a new offense.

Subsections (2) and (3) are sanctions for misconduct, other than escape, while the inmate is on leave. These provisions include possible institution discipline under ch. HSS 303, program review under ch. HSS 302, or cancellation of leave. Subsection (3) also gives the superintendent the right to cancel

leave when a leave principal requests it. Since consent of the leave principal is necessary to grant leave, withdrawal of consent must result in cancellation. Cancellation as a result of the withdrawal of consent of a leave principal is not necessarily for misconduct. For example, an employer may be called away on urgent business and be unable to keep an interview appointment, or a family member may become unable or unwilling to act as a leave principal.

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HSS 326.15 EXTENSIONS

An extension beyond the three-day maximum period for a leave may be granted by the superintendent or regional chief if consistent with the purpose of the leave. Such extension shall not exceed three days.

NOTE: The power to grant extensions is specifically authorized under s. 56.068(3), Stats. An extension may be granted, for example, if a seriously ill family member dies while the inmate is on leave and the inmate wants to attend the funeral. Also an employer may request a second interview with an inmate who is on leave for an employment interview.

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HSS 326.16 RECORDS

- (1) Appropriate records regarding leaves shall be kept.
- (2) These records shall include a monthly listing of inmates granted a leave. The monthly list shall be submitted to the director of the division's bureau of adult institutions. The list shall include the name, number, leave destination, and dates involved.
- (3) These records should permit an evaluation of the leave program.

NOTE: The record keeping requirements for the leave program are outlined in this section. One objective of record keeping is evaluation of the program as structured by these rules.

Subsection (2) requires that a monthly listing of inmates granted leave be compiled and submitted to the bureau of adult institutions. These sections ensure that adequate records about the number of leaves granted are maintained so the division can comply with the requirements of s. 56.068(3), Stats.

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HSS 326.17 GOOD TIME CREDIT ON LEAVE

Leave time is credited toward service of the sentence. The time credit includes state and extra good time.

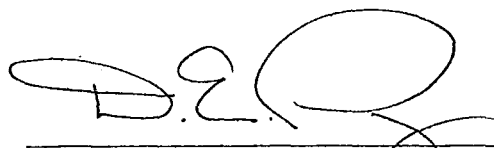
NOTE: Since an inmate is in the legal custody of the department and participating in an authorized correctional program while on leave, HSS 326.18 requires that the inmate be given full credit toward his or her sentence for this time. (See HSS 302.21 and note regarding sentence computation.)

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The 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 section 227.026(1), Wis. Stats.

Dated this 24th day of
July, 1981.

Department of Health and
Social Services



Donald E. Percy, Secretary