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Revisor of Statutes
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CERTIFICATE

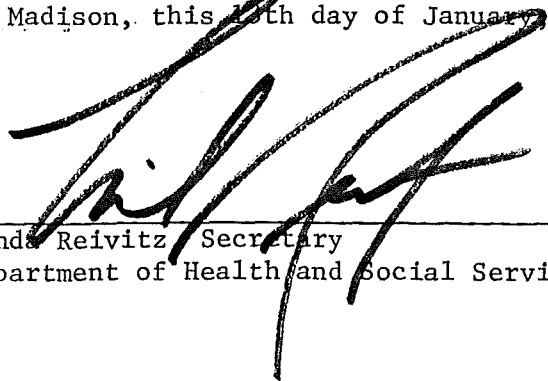
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of said Department, do hereby certify that the annexed amendments to rules relating to waivers of good time or entitlement to mandatory release for inmates in adult correctional facilities and mandatory release parolees were duly approved and adopted by this Department on January 13, 1986.

I further certify that this 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 TESIMONY 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 13th day of January, 1986.



Linda Reivitz, Secretary
Department of Health and Social Services



3-1-86

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AMENDING RULES

To amend HSS 302.26, relating to waivers of good time or entitlement to mandatory release for inmates in adult correctional facilities and mandatory release parolees.

Analysis Prepared by the Department of Health and Social Services

Section HSS 302.26, Wis. Adm. Code, is amended to implement a new session law, 1985 Wisconsin Act 27, which requires inmates of adult correctional institutions to obtain the approval of the Department before they are allowed to waive good time or their entitlement under s. 53.11(1), Stats., to mandatory release. The mandatory release date is the date upon which an inmate must be released on parole from the correctional institution if he or she has behaved in a proper manner. Under 1983 Wisconsin Act 528, the mandatory release date is established at 2/3 of the sentence. Prior to that Act, inmates earned good time which diminished the length of their incarceration. Inmates who committed offenses prior to June 1, 1984, earn good time under the old law unless they have chosen to have 1983 Wisconsin Act 528 apply to them. The Department cannot hold an inmate beyond his or her mandatory release date unless the inmate is disciplined for a serious infraction of the rules or the inmate waives his or her entitlement to good time or mandatory release. The effect of a waiver is to lengthen the inmate's period of incarceration. A person who has been paroled after reaching his or her mandatory release date may also waive entitlement to good time or mandatory release and return to a correctional institution if the Department approves the waiver.

The situations in which an inmate or mandatory release parolee would wish to remain incarcerated beyond his or her mandatory release date are rare. However, there have been instances of inmates and parolees requesting waivers, and for a variety of reasons. Section HSS 302.26, as amended, makes clear that it is only for specified reasons that an inmate who is eligible for release will be allowed to remain incarcerated, or a person on mandatory release parole will be permitted to return to the institution. The Department is given the authority to deny a proposed waiver if the waiver will not promote a correctional objective. The overall consideration is whether the waiver will promote the inmate's reintegration into society. The rule lists criteria on the basis of which the Department will decide to allow a waiver. Completion of medical treatment or an educational program or more time for release planning are listed as appropriate reasons for waivers because further incarceration in those situations would enhance reintegration. It is not appropriate for inmates or persons on mandatory release to request waivers in order to avoid parole supervision or lengthy periods of incarceration in another jurisdiction, particularly since continuation of incarceration represents a financial burden to the state and may contribute to overcrowding or security problems at the correctional facility. In order to maintain consistency, the relevant bureau directors evaluate the criteria and make the waiver approval decisions.

ORDER

Pursuant to the authority vested in the Department of Health and Social Services by ss. 53.11(8) and 227.014(2), Stats., the Department of Health and Social Services hereby amends rules interpreting ss. 46.03(6) and 53.11, Stats., and 1985 Wisconsin Act 27, as follows:

SECTION 1. HSS 302.26 is amended to read:

HSS 302.26. WAIVER OF GOOD TIME OR ENTITLEMENT TO MANDATORY RELEASE.

(1) In this section "good time" means credit which diminishes an inmate's period of incarceration, and includes both statutory good time, under s. 53.11(1981-82), Stats., which is credit for good conduct and performing all required duties, and extra good time, which is credit for diligence and which is earned according to the conditions and procedures set forth in s. HSS 302.27. Inmates who committed crimes before June 1, 1984, and did not choose to have 1983 Wisconsin Act 528 apply to them earn good time.

(2) ~~A resident and a parolee~~ An inmate or a person on mandatory release may waive good time and an inmate or person on mandatory release who committed an offense on or after June 1, 1984, or who makes a written request to the department pursuant to s. 29 of 1983 Wisconsin Act 528, may waive entitlement to mandatory release. pursuant to the following conditions: All waivers are subject to approval by the department.

(3) The inmate or person on mandatory release who wants to waive good time or mandatory release shall do this in accordance with the following conditions and procedures:

(1) (a) Except in an emergency, an inmate's request to waive good time or mandatory release may be waived shall be made not less than 30 days before and not more earlier than 90 days before the projected mandatory release date and not later than 30 days before that date;

(2) (b) Not less than ~~30~~ 15 days and not more than 180 days of good time may be waived at one time, and similarly a waiver may not result in extending the mandatory release date for less than 15 days or more than 180 days, except that a parolee or person on mandatory release may waive 360 days of good time at one time;

(3) (c) Good time or mandatory release that is waived shall not be reinstated, except for good cause;

(4) (d) ~~Waiver of~~ A request to waive good time or mandatory release must be shall be made in writing by the resident inmate or parolee person on mandatory release in writing; and

(5) (e) The ~~resident inmate must~~ shall consult with his or her social worker and the ~~parolee person on mandatory release must~~ shall consult with his or her parole agent before the department will make a decision to approve a waiver of ~~waiving~~ good time or of mandatory release.

(4) The director of the division's bureau of adult institutions or a designee shall make decisions on waivers by inmates, and the director of the division's bureau of community corrections or a designee shall make decisions on waivers by mandatory release parolees. The director or designee shall evaluate each request according to the criteria in this subsection and shall make a

record of the reasons for the decision. Waiver requests may be approved only if extension of incarceration or new incarceration does not contribute to unreasonable overcrowding or threaten institutional security and only if:

(a) An inmate or person on mandatory release wants to complete an on-going course of medical treatment or care for an illness or injury which began in the correctional facility;

(b) An inmate wants to complete an educational or vocational program begun in the correctional facility;

(c) Time is needed to reestablish a release plan that is no longer functional; or

(d) Another objective that promotes the individual's reintegration into society will be accomplished.

Note: HSS 302.26. Residents Inmates and persons on mandatory release parole may on occasion occasionally wish to waive good time or entitlement to mandatory release. Usually, this is to permit the service of a sentence imposed elsewhere in a Wisconsin institution or to enable the resident to remain in an institution for medical treatment. Because a waiver has serious implications for parties other than the person requesting the waiver, it must be subject to approval of the Department.

The overall goal in the decision to permit the waiver of good time or of entitlement to mandatory release is to promote the individual's reintegration into society. Superficial compliance with any of the criteria is not sufficient. The institution staff and the bureau director must exercise their judgment to decide if the waiver will help the inmate or mandatory release parolee cope with the outside world. This decision should take into account the views of the inmate's social worker at the institution or the parolee's parole agent. The department's bureau of correctional health services should be consulted if the reason for the request is to complete medical treatment. Examples of inappropriate considerations which do not promote reintegration into society are avoidance of parole supervision, avoidance of detainers, and desire to serve lengthy periods of another jurisdiction's sentence in Wisconsin. A waiver may be allowed if an inmate has minimal time remaining on his or her sentence from another jurisdiction, since transferring the inmate for such a short time could disrupt release planning and cause administrative difficulties.

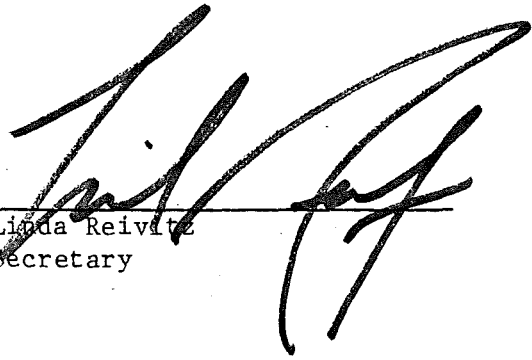
The requirements of HSS 302.26~~(1)~~ (3)(b) are to enable the registrar to do the necessary administrative work for a waiver. The rule forbidding the waiver of more than 6 months of good time at once is to ~~insure~~ ensure that the ~~resident inmate~~ inmate does not waive too much good time at once, because once waived the time may not be reinstated, except for good cause. Good cause would be shown if the circumstances which caused the waiver changed. HSS 302.26~~(3)~~(3)(c). Circumstances might change and make wholesale waiver of good time undesirable. For example, a sick ~~resident inmate~~ inmate might recover more rapidly than anticipated. The requirement that at least ~~30~~ 15 days be waived at once is to avoid undue administrative burden. The requirement of a written waiver is to ~~insure~~ ensure that proper records are kept. The requirement of consultation with a social worker or agent is to ~~insure~~ ensure that the ~~resident inmate~~ inmate or mandatory release parolee understands the consequences of a waiver.

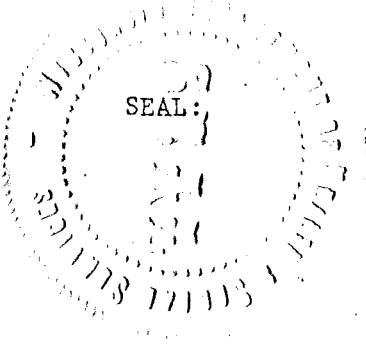
The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Department of Health and
Social Services

Dated: January 13, 1986

By:


Linda Reivitz
Secretary



6-27-12/493



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1 West Wilson Street, Madison, Wisconsin 53702

Anthony S. Earl
Governor

January 13, 1986

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JAN 13 1986

Revisor of Statutes
Bureau

Linda Reivitz
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

Mr. Orlan Prestegard
Revisor of Statutes
9th Floor - 30 on the Square
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in s. 227.023, Stats., there is hereby submitted a certified copy of HSS 302.26, administrative rules relating to waivers of good time or entitlement to mandatory release for inmates in adult correctional facilities and mandatory release parolees.

These rules are also being submitted to the Secretary of State as required by s. 227.023, Stats.

These rule changes do not affect small businesses as defined in s. 227.016(1)(a), Stats.

Sincerely,

Linda Reivitz
SECRETARY

Enclosure