

CR 85-131

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 rules relating to waiver of good time or entitlement to mandatory release for certain forensic patients at state mental health institutes were duly approved and adopted by this Department on January 10, 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 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 10th day of January, 1986.

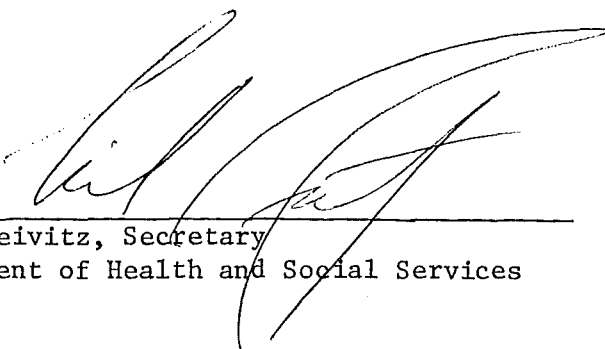
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JAN 13 1986

8:45 am

Revisor of Statutes  
Bureau

SEAL:

  
\_\_\_\_\_  
Linda Reivitz, Secretary  
Department of Health and Social Services

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
ADOPTING RULES

To create HSS 96, relating to waiver of good time or entitlement to mandatory release for certain forensic patients at state mental health institutes.

Analysis Prepared by the Department of Health and Social Services

Chapter HSS 96, Wis. Adm. Code, is created pursuant to a new session law, 1985 Wisconsin Act 27, which, in conjunction with s. 975.12, Stats., has the effect of requiring that sex crimes patients committed to the Department for treatment at a state mental health institute obtain the approval of the Department before they are allowed to waive the good time they have earned toward a reduction in the length of their institutionalization or their entitlement under s. 53.11(1), Stats., to mandatory release. Previously the statutes permitted waivers by patients without the Department's approval.

It is not often that a sex crimes patient would wish to remain at an institution beyond the date of mandatory release, but it is sometimes in both the patient's interest and also the public interest, as when a patient can benefit from further mental health treatment at the institution. Chapter HSS 96 makes clear that the Department will agree to a waiver by a patient only when both interests are served, and specifically only when the extended stay at the institution is for more mental health treatment that benefits the patient or is to modify a patient's release plan to take account of changed circumstances.

Similar rules, but with different criteria on the basis of which the Department will agree to a waiver, are being proposed by the Department in a separate rule-making order to cover waivers by inmates of its correctional institutions and persons on mandatory release parole from those institutions.

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 adopts rules interpreting ss. 46.03(1) and (5), 53.11, and 975.12, Stats., as follows:

SECTION 1. HSS 96 is created to read:

Chapter HSS 96  
WAIVER BY FORENSIC PATIENTS  
OF GOOD TIME OR ENTITLEMENT TO MANDATORY RELEASE

HSS 96.01 Purpose and authority  
HSS 96.02 Definitions  
HSS 96.03 Waivers

HSS 96.01 PURPOSE AND AUTHORITY. Persons who have been committed to the department under ch.975, Stats., may, with the approval of the department, waive the good time credit they have received toward a reduction of their maximum length of stay at the institution or, if they are not credited with good time, their entitlement under ss. 53.11 and 975.12(2), Stats., to mandatory release. This chapter establishes conditions and procedures for forensic patients who want to waive good time or mandatory release, and thereby remain longer at the institution, and contains the criteria which the department is to use in agreeing to waivers by patients. The chapter is promulgated under the authority granted to the department by ss. 53.11(8) and 227.014(2), Stats.

HSS 96.02 DEFINITIONS. In this chapter:

(1) "Department" means the Wisconsin department of health and social services.

(2) "Good time" means credit earned toward a reduction in a patient's maximum length of stay at an institution. It is expressed in number of days. A patient's maximum length of stay is the maximum term prescribed by law for the offense for which the patient was committed, less "good time"

that the patient has earned as provided in ss. 53.11 and 53.12, 1981-82 Stats.

(3) "Mandatory release" means the required release of a patient from an institution when the patient who earns good time has been at the institution for the maximum time prescribed by law for the offense for which the patient was committed, less good time received and jail time credit, or when the patient who does not earn good time has been at the institution for two-thirds of the maximum time prescribed by law for the offense for which the patient was committed.

(4) "Patient" or "forensic patient" means a person convicted of a crime who is committed to the department under s. 975.06, Stats., for specialized treatment.

(5) "Secretary" means the secretary of the department.

HSS 96.03 WAIVERS. (1) AUTHORITY. A patient may waive good time or may waive entitlement to mandatory release pursuant to s.29 of 1983 Wisconsin Act 528. Every waiver is subject to approval of the department.

Note: Since July 1, 1980 no defendant in a criminal trial has been committed to the Department for specialized treatment at a state mental health institute under the Sex Crimes Law, ch. 975, Stats. However, in October 1985 about 45 persons who were committed for treatment under that law were still confined at one of the institutes. Section 975.12(2), Stats., provides that commitments under s. 975.06, Stats., are subject to s.53.11, Stats., and so the changes made to s.53.11, Stats., by 1983 Wisconsin Act 528 and 1985 Wisconsin Act 27 apply also to these patients.

Under 1983 Wisconsin Act 528, the system for rewarding inmates for good behavior was changed from awarding good time off of sentence (length of commitment) for good behavior to establishing a mandatory release date at 2/3 of sentence (commitment) and providing for extension of that date for violation of institution regulations or for uncooperative behavior. That session law also provided in s.29 that while the change in system for rewarding good behavior or penalizing unsatisfactory behavior applies automatically to persons committing offenses occurring on or after June 1, 1984, anyone who committed an offense before that date and was received at the institution before or on that date could, by written request to the department made before October 1, 1984, be subject to the new system.

(2) CONDITIONS AND PROCEDURES. The patient who wants to waive good time or entitlement to mandatory release shall do this in accordance with the following conditions and procedures:

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

(b) Not less than 15 days nor more than 180 days of good time may be waived at one time. Similarly, a waiver may not result in extending the mandatory release date for less than 15 days or more than 180 days;

(c) Good time or mandatory release that is waived shall not be reinstated except for good cause related to the criteria under sub. (3) for approving a waiver;

(d) A request to be permitted to waive good time or mandatory release shall be made in writing by the patient; and

(e) The patient shall consult with his or her social worker regarding the request to waive good time or mandatory release before the department will consider approving the waiver.

(3) CRITERIA FOR APPROVAL. The secretary or a designee shall make decisions on waivers by patients. The secretary 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:

(a) The patient has not achieved maximum benefit from mental health treatment based on clinical judgment; or

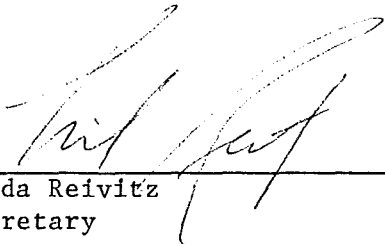
(b) Time is needed to reestablish a release plan that is no longer appropriate.

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 10, 1986

By:

  
\_\_\_\_\_  
Linda Reivitz  
Secretary

SEAL:



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1 West Wilson Street, Madison, Wisconsin 53702

Anthony S. Earl  
Governor

Linda Reivitz  
Secretary

January 10, 1986

RECEIVED

Mailing Address:  
Post Office Box 7850  
Madison, WI 53707

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

JAN 10 1986  
Revisor of Statutes  
Bureau

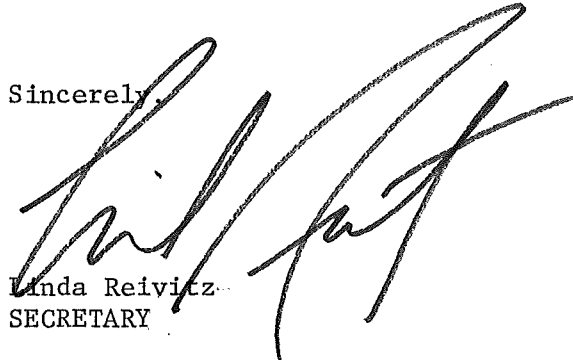
Dear Mr. Prestegard:

As provided in s. 227.023, Stats., there is hereby submitted a certified copy of HSS 96, administrative rules relating to waiver of good time or entitlement to mandatory release for certain forensic patients at state mental health institutes.

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