

CR 86-171

CERTIFICATE

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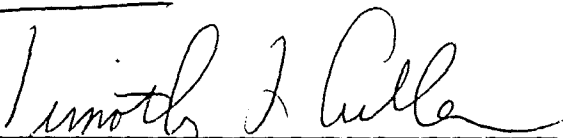
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Revisor of Statutes
Bureau

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

I, Tim Cullen, 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 the effect of parole violation and the effect of inmate violation of institution conduct rules on the length of time that an inmate is incarcerated in an adult correctional institution were duly approved and adopted by this Department on January 8, 1987.

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 8th day of January, 1987.



Tim Cullen, Secretary
Department of Health and Social Services

SEAL:

3-1-87

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, RENUMBERING, AMENDING,
AND CREATING RULES

To repeal HSS 302.245, 328.24, 328.25 and 328.26; to renumber HSS 302.25, 302.26 and 302.27; to amend HSS 302.31 Note (1st paragraph), as renumbered, 303.11(6), 303.68(1)(a) and Note (1st paragraph), 303.71(7), 313.05(5), 326.15, and 328.13(1)(b); to repeal and recreate HSS 31.05(1)(i), 302.21, 302.23, 302.24, 303.84(1)(i), (2) and Note, and 308.04(12)(g); and to create HSS 31.05(6)(f), 31.13, 31.14, 31.15, 31.16, 302.25, 302.26, 302.27, 302.28, and 302.31(title) and (1), relating to the effect of parole violation and the effect of inmate violation of institution conduct rules on the length of time that an inmate is incarcerated in an adult correctional institution.

Analysis Prepared by the
Department of Health and Social Services

Nearly all inmates are released from adult correctional institutions to be supervised by agents of the Department before the expiration of their sentences. This is done by means of either discretionary parole, which is by decision of the Parole Board under s. 57.06, Stats., or by mandatory release parole, which is by administrative action under s. 53.11, Stats.

This order implements 1983 Wisconsin Act 528 which changed the basis for determining the length of an inmate's stay at a correctional institution. Instead of crediting the inmate with "good time" off of sentence for good conduct and for diligence in performing work and other assignments, subject to forfeiture for misconduct or nonperformance of duties, the new system involved establishing the inmate's mandatory release date at 2/3 of sentence and permitting extension of that date for misconduct. Act 528 directed the Department to promulgate rules to implement the new system. The session law went into effect on June 1, 1984, and applies to all inmates sentenced for crimes committed on or after June 1, 1984. However, inmates sentenced for crimes committed before June 1, 1984, are given 60 days from the time they are received at a prison to petition the department to have the new law apply to them. Of those persons who have so far been convicted and sentenced for crimes committed before June 1, 1984, many have not chosen to have it apply to them. This means that one group of inmates is subject to the new law and another group remains under the old law. Consequently, the proposed rules differentiate between the two groups and the requirements that apply to each.

Act 528 made four major changes in the good time law. It (1) eliminated industrial good time, also called extra good time; (2) automatically reduced the length of institutional stays by one-third the length of the sentence, with extension possible for misconduct; (3) increased punishment for institutional misconduct; and (4) provided equal treatment for discretionary parole violators and mandatory release parole violators. The session law also pushed ahead the parole eligibility date for inmates serving a life sentence, from 11 years and 3 months to 13 years and 4 months. These changes are reflected in the changes made in the Department's rules by this order.

The order gives authority to Department hearing examiners to allow or disallow the earning of good time credit under ss. 53.11 and 53.12, Stats., on the amount of good time forfeited when an individual's parole supervision is revoked; adds a hearing on whether a parolee should be reincarcerated following revocation of field supervision, and for how long; updates rules on sentence computation, good time forfeiture hearings, tolled time, reinstatement of a client to field supervision following a violation of the rules or conditions of supervision, and credit received by parole violators who are returned to an institution; and revises the schedule of penalties for inmates who violate conduct rules in correctional institutions, by extending the mandatory release date of an inmate covered by Act 528 by up to 40 days when the inmate violates a conduct rule or refuses or neglects to perform required or assigned duties, and in addition extends it by 50% of the number of days that the inmate is placed in segregation status.

The department's authority to repeal, renumber, amend and create these rules is found in ss. 46.03(6), 53.11(8) and 227.11(2), Stats. The rules interpret ss. 46.03(6), 53.04, 53.07, 53.08, 53.11, 53.12, 56.07, 57.06, 57.072 and 973.155, Stats., and s. 29 of 1983 Wisconsin Act 528.

Pursuant to the authority vested in the Department of Health and Social Services by ss. 46.03(6), 53.11(8) and 227.11(2), Stats., the Department hereby repeals, renumbers, amends and creates rules interpreting ss. 46.03(6), 53.04, 53.07, 53.08, 53.11, 53.12, 56.07, 57.06, 57.072, and 973.155, Stats., and s. 29 of 1983 Wisconsin Act 528, as follows:

SECTION 1. HSS 31.05(1)(i) is repealed and recreated to read:

HSS 31.05(1)(i) In parole revocation cases:

1. The agent's recommendation for forfeiture of good time pursuant to s. HSS 31.13 and any sentence credit given in accordance with s. 973.155, Stats., for a client who committed a crime before June 1, 1984, and did not choose to have 1983 Wisconsin Act 528 apply to him or her; or

2. The agent's recommendation for a period of reincarceration pursuant to s. HSS 31.14 and any sentence credit given in accordance with s. 973.155, Stats., for a client who committed a crime on or after June 1, 1984, or for any client who chose to have 1983 Wisconsin Act 528 apply to him or her.

SECTION 2. HSS 31.05(6)(f) is created to read:

HSS 31.05(6)(f) If an examiner decides to revoke the client's probation or parole, the written decision shall include a determination of sentence credit in accordance with s. 973.155(1), Stats., and of:

1. The good time forfeited, if any, pursuant to s. HSS 31.13(4)(f), for the client who committed the crime for which he or she was sentenced before June 1, 1984, and did not choose to have 1983 Wisconsin Act 528 apply to him or her; or

2. The period of reincarceration, if any, pursuant to s. HSS 31.14(4)(f), for the client who committed the crime for which he or she was sentenced on or after June 1, 1984, and for any client who chose to have 1983 Wisconsin Act 528 apply to him or her.

SECTION 3. HSS 31.13, 31.14, 31.15 and 31.16 are created to read:

HSS 31.13 GOOD TIME FORFEITURE HEARING. (1) APPLICABILITY. This section applies to a client who, before June 1, 1984, committed the crime for which he or she was sentenced and did not choose to have 1983 Wisconsin Act 528 apply to him or her.

(2) AMOUNT OF TIME AVAILABLE FOR FORFEITURE. (a) Prior to a client's preliminary hearing under s. HSS 31.04, the client's agent shall contact in writing the registrar of the institution which has the client's record and advise the registrar to provide the amount of the client's total good time that is available for forfeiture upon revocation of the client's parole supervision.

(b) The agent shall notify the hearing examiner's office before the final revocation hearing of the amount of good time available for forfeiture.

(3) CRITERIA. (a) The agent shall recommend to the hearing examiner's office prior to the final revocation hearing that a specific amount of good time be forfeited and whether good time should be earned upon the forfeited good time upon revocation of a client's supervision. This amount of time shall be expressed in terms of days, months or years, or any combination of days, months and years. The amount of time may not be expressed in terms of fractions or percentages of time periods. The agent shall send with his or her recommendation the reasons and facts consistent with the criteria listed in par. (b) that support the recommendation.

(b) The following shall be considered by the agent in recommending the amount of good time forfeited and whether good time may be earned on the amount of good time forfeited:

1. The nature and severity of the original offense;
2. The client's institution conduct record;

3. The client's conduct and behavior while on parole;
4. The amount of time left before mandatory release if the client is a discretionary release parolee;
5. Whether forfeiture would be consistent with the goals and objectives of field supervision under ch. HSS 328;
6. Whether forfeiture is necessary to protect the public from the client's further criminal activity, to prevent depreciation of the seriousness of the violation or to provide a confined correctional treatment setting which the client needs; and
7. Other mitigating or aggravating circumstances.

(c) The agent's supervisor shall review the agent's recommendation for a forfeiture, and the agent's recommendation shall be included in the client's chronological history along with the supervisor's comments on the recommendation.

(4) HEARING. (a) General. Unless the client waives his or her right to the hearing in accordance with par. (c), a hearing shall be held before an impartial hearing examiner who shall determine, based upon the criteria listed in sub. (3)(b), the evidence presented and the client's record, what amount of good time shall be forfeited and whether or not good time may be earned on the forfeited good time following revocation of a client's parole supervision.

This hearing may be held in conjunction with the final revocation hearing under s. HSS 31.05.

(b) Notice. 1. The client and the client's agent shall be given written notice of the client's right to:

a. A hearing to be held in accordance with this section;

b. Receive a written decision stating the reasons for the decision based upon the evidence presented; and

c. Have the decision reviewed in accordance with par. (h).

2. The notice shall include the date, time and place of the hearing and the amount of good time available for forfeiture.

(c) Waiver. 1. A client may waive his or her right to a hearing under this section, if this is done knowingly and voluntarily. The waiver shall be in writing. A waiver of a good time forfeiture hearing may be processed with a waiver of a revocation hearing under s. HSS 31.06. A copy of the client's chronological history, revocation summary and the agent's recommendation under sub. (3)(a) shall be sent to the secretary within a reasonable period of time after acceptance of the waiver.

2. The secretary shall decide whether good time should be forfeited and, if so, the amount of time to be forfeited and whether good time may be earned on the amount forfeited. A forfeiture of time shall be expressed in terms of days, months or years, or any combination of days, months and years. The amount of

good time forfeited may not be expressed in fractions or percentages of time periods.

(d) Time. The good time forfeiture hearing shall take place either:

1. During or immediately following the final revocation hearing under s. HSS 31.05; or

2. If the client waived his or her right to a final revocation hearing, within a reasonable period of time after the secretary issues a decision under s. HSS 31.06 revoking the client's parole.

(e) Procedure. The hearing examiner shall read aloud the agent's recommendation and the client and agent may speak and respond to questions from the examiner. The examiner may admit into evidence the client's institutional conduct record, any documents submitted by the agent to support revocation and forfeiture of good time, and any other relevant documents submitted by the agent or client. A verbatim record of the hearing shall be kept.

(f) Decision. 1. After the hearing, the examiner shall consider only the record of the final revocation hearing, if any was held, any record kept under this chapter, the revocation decision and the reasons for it, testimony at the hearing, and the client's record.

2. The examiner shall determine:

a. Whether good time should be forfeited and whether or not good time may be earned on the amount forfeited; and

b. If good time should be forfeited, the specific number of days, months or years, or any combination of days, months and years, that shall be forfeited. The amount of good time forfeited may not be expressed in fractions or percentages of time periods.

3. Good time may not be forfeited unless the examiner finds that forfeiture is necessary to protect the public from the client's further criminal activity, to prevent depreciation of the seriousness of the violation or to provide a confined correctional treatment setting which the client needs. The specific goal or objective and the reason it would be inconsistent with the continuation of supervision shall be expressly stated in the decision. No more good time may be forfeited than is necessary to achieve these goals and objectives.

4. The examiner shall issue a written decision, based upon the criteria listed in sub. (3)(b), the evidence presented and the client's record, indicating the forfeiture or non-forfeiture of the client's good time, whether or not good time may be earned on the amount forfeited, the amount of time tolled in accordance with s. 57.072, Stats., and the sentence credit earned pursuant to s. 973.155(1), Stats.

(g) Order. The examiner's written order stating the decision and the reasons for it shall be mailed within 10 working days after the hearing to the client and the division. The time limits start on the day after the end of the hearing and include the date of mailing. If a hearing was held under par. (d) 1, this order shall be incorporated into the order under s. HSS 31.05 (7).

(h) Effect of order and request for review. 1. An order pursuant to a hearing under par. (d) 1 shall take effect and be reviewed in accordance with s. HSS 31.05(8).

2. An order pursuant to a hearing under par. (d) 2 or (c) shall take effect and be final 10 days after the date it was mailed unless the client or the division requests a review of the forfeiture decision by the secretary within that time. Written notice of the request shall be sent to the secretary and the other party.

3. The hearing examiner shall notify the registrar at the institution where the client is to be received following revocation as soon as possible after the forfeiture decision becomes final and shall send a copy of the order to the registrar within 10 working days after its effective date.

(i) Materials submitted for review. All materials submitted to aid the secretary in review of the forfeiture decision shall be received by the secretary within 10 working days after the request for review is received by the secretary. An extension of this time limit may be granted by the secretary.

(j) Secretary's decision. 1. The secretary shall review the record of the hearing, the revocation decision and the reasons for it, the client's record, and all materials submitted for review under par. (i).

2. The secretary shall decide to modify, reverse or affirm the examiner's forfeiture decision based upon the evidence presented.

3. The secretary's written decision, stating the reasons for it, shall be mailed to the client and the agent within 10 days after the date that all materials under par. (i) are due. The secretary may extend the time limit by informing the client and agent in writing of the extension. Specific reasons for the extension shall be included in the notice of extension.

(5) RECORDS. Relevant records relating to the forfeiture of good time shall be maintained as part of the client's record.

Note: HSS 31.13. This section applies to clients who are not subject to 1983 Wisconsin Act 528 because they committed crimes before June 1, 1984, and did not choose to have the act apply to them. Clients on discretionary or mandatory release parole who are not subject to Act 528 and who have their supervision revoked under this chapter are entitled to a forfeiture hearing under this section. The hearing is held to determine the amount of good time credit a client should forfeit, if any, and whether good time may be earned on the amount forfeited as a result of a violation.

To ensure a fair, effective, and reasonably speedy revocation and forfeiture process which does not hinder the correctional process, several important features have been incorporated into this section.

First, an agent must contact the registrar from the institution which has the client's record prior to the preliminary hearing to determine the amount of time available for forfeiture. The amount of time may significantly affect the client's decision to waive his or her rights to a final revocation hearing under this chapter, the client's interest in proposing alternatives to revocation, as well as the supervisory staff member's and hearing examiner's decision to pursue revocation. Hence, the amount of good time available for forfeiture must be included in the notice of the hearing.

Second, the agent must recommend that a specific amount of time be forfeited and whether good time may be earned in the future on the amount forfeited. For the reasons stated above, this should be included in the notice of the final revocation hearing and the forfeiture hearing and in the client's record.

Third, unless it is waived by the parolee, a good time forfeiture hearing must be held during or immediately after a final revocation hearing, or within a reasonable time after a secretary's decision to revoke a client's parole. Since the factual basis for loss of good time credit has been adequately and fairly explored at the final revocation hearing or by the secretary, and since a final written decision to revoke must exist prior to an effective forfeiture decision, additional procedures are unnecessary. Sillman v. Schmidt, 394 F. Supp. 1370 (W.D. Wis. 1975).

Fourth, the department must exercise good judgment in determining how much good time, if any, the parolee will forfeit and whether good time may be earned in the future on the amount forfeited. Putnam v. McCauley, 70 Wis. 2d 256 (1975). (The decision in Putnam is not retroactive. State ex. rel. Renner v. DHSS, 71 Wis. 2d 112 (1976).) Only that much time should be forfeited as will achieve the goals and purposes of revocation.

See HSS 31.15 for a discussion of tolled time.

HSS 31.14 REINCARCERATION HEARING. (1) APPLICABILITY. This section applies to a client who, on or after June 1, 1984, committed the crime for which he or she was sentenced, and to any other client who chose to have 1983 Wisconsin Act 528 apply to him or her.

(2) AMOUNT OF TIME AVAILABLE FOR REINCARCERATION. (a) Before an agent requests a final revocation hearing under s. HSS 31.05, the agent shall, in writing, request the registrar of the institution which has the client's record to provide the amount of time remaining on the client's sentence, which is the entire sentence less time served in custody prior to release to field supervision.

(b) The agent shall notify the hearing examiner's office before the final revocation hearing of the amount of time available for reincarceration.

(3) CRITERIA. (a) The agent shall recommend to the hearing examiner a specific period of reincarceration upon revocation of a client's supervision. This amount of time shall be expressed in terms of days, months or years, or any combination of days, months and years. The amount of time may not be expressed in fractions or percentages of time periods. The agent shall send with his or her recommendation the reasons and facts consistent with the criteria listed in par. (b) that support the recommendation.

(b) The following criteria shall be considered by the agent in recommending a period of reincarceration and by the hearing examiner under sub.

(4)(a) in determining the period of reincarceration:

1. The nature and severity of the original offense;

2. The client's institutional conduct record;
3. The client's conduct and behavior while on parole;
4. The period of reincarceration that would be consistent with the goals and objectives of field supervision under ch. HSS 328; and
5. The period of reincarceration that is necessary to protect the public from the client's further criminal activity, to prevent depreciation of the seriousness of the violation or to provide a confined correctional treatment setting which the client needs.

(c) The agent's supervisor shall review the agent's recommendation for a specific period of incarceration and the agent's recommendation shall be included in the client's chronological history along with the supervisor's comments on the recommendation.

(4) HEARING. (a) General. A hearing shall be held before an impartial hearing examiner who shall determine, based upon the criteria listed in sub. (3)(b) and the evidence presented, the period of time the client should be reincarcerated following revocation of the client's parole supervision, unless the client waives his or her right to the hearing in accordance with par. (c). This hearing may be held in conjunction with the final revocation hearing.

(b) Notice. The client and the client's attorney shall be given written notice of the client's right to:

1. A hearing to be held in accordance with this section;

2. Receive a written decision stating the reasons for it based upon the evidence presented; and

3. Have the decision reviewed in accordance with par.(h). The notice shall include the date, time and place of the hearing.

(c) Waiver. 1. A client may waive his or her right to a hearing under this section, if this is done knowingly and voluntarily. The waiver shall be in writing. A waiver of a reincarceration hearing may be processed with a waiver of a revocation hearing under s. HSS 31.06. A copy of the client's chronological history, revocation summary and the agent's recommendation under sub. (3)(a) shall be sent to the secretary within a reasonable period of time after acceptance of the waiver.

2. The secretary shall decide whether the client should be reincarcerated and, if so, the length of time. The period of reincarceration shall be expressed in terms of days, months or years, or any combination of days, months and years. The amount of good time forfeited may not be expressed in fractions or percentages of time periods.

(d) Time. A hearing shall take place either: 1. During or immediately following a final revocation hearing under s. HSS 31.05; or

2. If the client waived his or her right to a final revocation hearing, within a reasonable time after the secretary or the secretary's designee issues a decision under s. HSS 31.06 revoking the client's parole.

(e) Procedure. The hearing examiner shall read aloud the agent's recommendation and the client and agent may speak and respond to questions from the examiner. The examiner may admit into evidence the client's institutional conduct record, any documents submitted by the agent to support revocation and reincarceration, and any other relevant documents submitted by the agent or client. A verbatim record of the hearing shall be kept.

(f) Decision. 1. After the hearing, the examiner shall consider only the record of the final revocation hearing, if any was held, any record kept under this chapter, the revocation decision and the reasons for it, testimony at the hearing and the client's record.

2. The examiner shall determine:

a. Whether a client should be reincarcerated; and

b. If reincarceration is appropriate, the specific period in days, months or years, or any combination of days, months and years. The period of reincarceration may not be expressed in fractions or percentages of time periods.

3. Reincarceration may not be ordered unless the examiner finds that not to do so would subject the public to the client's further criminal activity, depreciate the seriousness of the violation or deprive the client of confined correctional treatment which he or she needs. The specific goal or objective and the reason it would be inconsistent with the continuation of supervision shall be expressly stated in the decision. The examiner shall order that the client be reincarcerated no longer than is necessary to achieve the goals and objectives of supervision.

4. The examiner shall issue a written decision, based upon the evidence presented and the client's record, indicating the period of reincarceration ordered, if any.

(g) Order. The examiner's written order stating the decision and reasons for it shall be mailed within 10 working days after the hearing to the client and the division's representative and agent. The time limits start on the day after the end of the hearing and include the date of mailing. If a hearing was held under par. (d)1, this order shall be incorporated into the order under s. HSS 31.05(7).

(h) Effect of order and request for review. 1. An order pursuant to a hearing under par. (d)1 shall take effect and be reviewed in accordance with s. HSS 31.05(8).

2. An order pursuant to a hearing under par. (d)2 or (c) shall take effect and be final 10 days after the date it was mailed unless the client or the division requests a review by the secretary within that time. Written notice of the request shall be sent to the secretary and the other party.

3. The hearing examiner shall notify the registrar at the institution where the client is to be received following revocation as soon as possible after the decision becomes final and shall send a copy of the order to the registrar within 10 working days after its effective date.

(i) Materials submitted for secretary's review. All materials submitted by the client or the bureau to aid the secretary in review of the examiner's

decision shall be received by the secretary within 10 working days after the request for review is received by the secretary. An extension of this time limit may be granted by the secretary.

(j) Secretary's decision. 1. The secretary shall review the record of the hearing, the revocation decision and the reasons for it, the client's record, and all materials submitted for review under par. (i).

2. The secretary shall decide to modify or affirm the examiner's reincarceration decision, based upon the evidence presented.

3. The secretary's written decision, stating the reasons for it, shall be mailed to the client and the agent within 10 days after the date that all materials under par. (i) are due. The secretary may extend the time limit by informing the client and agent in writing of the extension. Specific reasons for the extension shall be included in the notice of extension.

(5) RECORDS. Relevant records relating to reincarceration shall be maintained as part of the client's record.

Note: HSS 31.14. This section applies to clients who are subject to 1983 Wisconsin Act 528 because they committed crimes on or after June 1, 1984, or because they chose to have the act apply to them. Clients on discretionary or mandatory release parole who are subject to the act and who have their supervision revoked under this chapter are entitled to a reincarceration hearing. The hearing is held to determine how much, if any, of the remainder of a client's sentence he or she should serve in prison. The remainder of a client's sentence is the entire sentence, less time served in custody prior to release. To ensure a fair, effective, and reasonably speedy revocation and reincarceration decision which does not impede the correctional process, features similar to the forfeiture hearing procedures described in s. HSS 31.13 have been incorporated into this section.

HSS 31.15 TOLLED TIME. (1) In this section, "tolled time" means the period of time between the date of a client's violation and the date the client's probation or parole is reinstated or revoked.

(2) The period of a client's probation or parole ceases to run during tolled time in accordance with s. 57.072, Stats., subject to sentence credit for time the client spent in custody pursuant to s. 973.155 (1), Stats. If a client is subsequently reinstated rather than revoked, time shall be tolled only if the reinstatement order concludes that the client did in fact violate the rules or conditions of his or her supervision.

(3) The amount of time to be tolled is officially determined by a hearing examiner or is the secretary's decision in accordance with s. HSS 31.13 or 31.14.

Note: HSS 31.15. Time is only "tolled" for clients whom the department decides have violated terms of their probation or parole sufficiently to warrant revocation. A client who commits a violation loses credit for having served time on his or her sentence for the days between the date of the violation, as determined by the agent, and the date of a decision to reinstate or revoke. For example, a client who absconds for 6 months, and is returned to custody for an additional 3 months before a decision on revocation is rendered, is tolled 9 months. However, the time the client is in custody between the violation and the reinstatement decision is credited back to the client. The client in the example would get back 3 months of the 9 months tolled, for an effective tolled time of 6 months. This effective tolled time is then added to the end of the client's period of commitment to the department. The client in the example would remain under the department's custody for 6 months longer than the court initially ordered. See ss. 57.072 and 973.155, Stats., for further explanation.

Section 57.072, Stats., provides for a tolling of time on a client's probation or parole during the period of time between the effective date of a client's violation and the date that the client's supervision was reinstated or revoked subject to credit for time spent in custody in accordance with s. 973.155 (1), Stats.

HSS 31.16 REINSTATEMENT. (1) GENERAL. Reinstatement may only take place in accordance with this section.

(2) DEFINITION. For purposes of this section, "reinstatement" means the return of a client to field supervision after either:

(a) A client's personal written admission of a violation of the rules or conditions of supervision; or

(b) A finding by a hearing examiner or the secretary under this chapter that the client committed a violation of the rules or conditions of supervision sufficient to warrant revocation.

(3) ADMISSION. (a) A client may knowingly and voluntarily make a written admission, signed and witnessed, of a violation of the rules or conditions of supervision sufficient to warrant revocation, and request reinstatement. The request shall acknowledge:

1. The date of the violation; and

2. That the client is aware that the period between the date of violation and the date of reinstatement or revocation may be tolled, i.e., the period of the client's commitment term ceases to run during this period of time.

(b) A staff member may accept a client's written admission and request, and shall submit it with the report under s. HSS 31.03 (4) to a supervisory staff member.

(c) The supervisory staff member shall decide whether to accept the admission and request, recommend reinstatement, and forward the admission, request and recommendation to the secretary for approval, or continue with revocation proceedings. Reinstatement shall only be recommended when it is consistent with the goals and objectives of supervision under ch. HSS 328. The recommendation shall include a statement of the reasons for it.

(d) The secretary shall decide within 5 working days after receiving an admission and request and the supervisory staff member's recommendation whether to order reinstatement. A copy of the secretary's decision, stating the reasons for it, shall be sent to the client and the supervisory staff member.

(e) If the secretary decides that reinstatement should not occur, the revocation process may be initiated in accordance with s. HSS 31.03.

(4) FINDING OF VIOLATION BY HEARING EXAMINER. (a) Under s. HSS 31.05(7), a hearing examiner may order a client reinstated after finding that the client committed a violation of the rules or conditions of supervision. Reinstatement may only be ordered when it is consistent with the goals and objectives of supervision under ch. HSS 328. The order shall include a statement of the reasons for it.

(b) The date of a client's violation and the date that the client was reinstated shall be stated in the hearing examiner's order for reinstatement.

(c) A hearing examiner's order for reinstatement may be appealed to the secretary in accordance with s. HSS 31.05(8) to (11).

(5) RECORDS. Relevant records relating to a client's reinstatement shall be maintained as part of the client's records.

Note: HSS 31.16. Reinstatement is an alternative to revocation of a client's supervision after a finding or admission that the client violated the rules or conditions of supervision.

Subsections (3) and (4) provide the only procedures for reinstatement. A client who has been given notice of revocation proceedings under this chapter may be reinstated by the hearing examiner or secretary. Reinstatement in lieu of any pending revocation proceedings is also possible. But here, it is important to provide the client wishing to admit he or she committed the violation with complete information regarding the consequences of such an action, e.g., the exact period of time that will be tolled and the amount of good time that may be forfeited or the period of reincarceration that may be ordered if reinstatement is ordered. It is only when the client is aware of the consequences of an admission and request for reinstatement that it may be knowingly and intelligently given. In addition, an admission and request must not be coerced. Only voluntary admissions and requests for reinstatement may be accepted.

The secretary may make the final decision about reinstatement to provide for uniformity and fairness in decisionmaking.

See s. HSS 31.15 regarding tolled time.

SECTION 4. HSS 302.21 is repealed and recreated to read:

HSS 302.21 SENTENCE COMPUTATION. (1) TIMELINESS IN COMPUTING DATES AND INFORMING INMATES. (a) Within 10 working days after a person arrives at a correctional institution following sentencing or after an inmate returns from escape, the registrar shall compute the inmate's parole eligibility date, projected mandatory release date and projected discharge date, and shall inform the inmate in writing of these dates.

(b) Within a reasonable time after an inmate arrives at a correctional institution following revocation of probation, discretionary parole or mandatory release parole, the registrar shall inform the inmate in writing of the inmate's

parole eligibility date, projected mandatory release date and projected discharge date.

(c) Within a reasonable time after the registrar becomes aware of any change in an inmate's parole eligibility date, projected mandatory release date or projected discharge date, the registrar shall inform the inmate in writing of that change. For an inmate not covered by 1983 Wisconsin Act 528, the projected mandatory release date may change due to loss of good time or failure to earn extra good time. For an inmate who, on or after June 1, 1984, committed the crime for which he or she was sentenced and for other inmates who chose to have 1983 Wisconsin Act 528 apply to them, the mandatory release date may be extended as a penalty for misconduct under ch. HSS 303.

(2) DETERMINATION OF PAROLE ELIGIBILITY DATE. (a) Except for an inmate serving a life sentence and as otherwise specified in chs. HSS 302 to HSS 326, an inmate who committed a crime before November 3, 1983, shall be eligible for parole when one-half of the minimum sentence for the crime for which the person was convicted less all credit to which the inmate is entitled pursuant to s. 973.155, Stats., has been served. An inmate who committed a crime on or after November 3, 1983, shall be eligible for parole when 25% of the sentence imposed, or 6 months, whichever is greater, less all credit to which the inmate is entitled pursuant to s. 973.155, Stats., has been served. However, in no case may any inmate be eligible for parole before 60 days has elapsed from the date of the inmate's arrival at the institution. If an inmate was sentenced for more than one crime, he or she shall be eligible for parole on each sentence in order to be considered for parole. If an inmate has received a consecutive sentence, the inmate may not begin serving the consecutive sentence for purposes

of parole eligibility until the person has become eligible for parole on the first sentence.

(b) 1. An inmate serving a life sentence who is not covered by 1983 Wisconsin Act 528 is eligible for parole after serving 11 years and 3 months, a period which may be extended for misconduct by forfeiture of good time under ch. HSS 303.

2. An inmate serving a life sentence who is covered by 1983 Wisconsin Act 528 is eligible for parole after serving 13 years and 4 months, a period which may be extended for misconduct under ch. HSS 303.

(3) DETERMINATION OF PROJECTED MANDATORY RELEASE DATE. (a) For an inmate not covered by 1983 Wisconsin Act 528:

1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, and provided that the inmate earns all the statutory and extra good time for which he or she is eligible unless good time is waived or forfeited in accordance with this chapter and ch. HSS 303;

2. The projected mandatory release date shall be the maximum term to which the inmate was sentenced, reduced by any sentence credit granted pursuant to s. 973.155, Stats., and by the statutory and extra good time the inmate may earn during the sentence. Statutory good time shall be credited from the beginning date of the inmate's sentence. Extra good time shall be credited beginning on the date following the inmate's date of arrival at the institution;

3. The registrar, in determining the projected mandatory release date of an inmate who is serving consecutive sentences for crimes which occurred before the person was committed under any of the sentences, shall treat the sentences as one continuous sentence for the purposes of good time credit; and

4. The registrar, in determining the projected mandatory release date of an inmate who is serving a consecutive sentence for a crime which was committed while the person was serving another sentence or on parole, shall treat the second sentence as a separate sentence. Accordingly, statutory good time shall be computed on the second sentence as if it were a first sentence.

(b) For an inmate covered by Wisconsin Act 528:

1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, unless that date is extended pursuant to s. HSS 303.84 for violation of a disciplinary rule or the resident waives entitlement to mandatory release in accordance with this chapter;

2. The projected mandatory release date shall be two-thirds the maximum term to which the inmate was sentenced, reduced by any sentence credit granted pursuant to s. 973.155, Stats. Inmates whose crimes were committed before June 1, 1984, but who chose to have 1983 Wisconsin Act 528 apply to them shall have their mandatory release dates extended by prior forfeitures of statutory and extra good time for misconduct in the institution or on parole. Inmates covered by 1983 Wisconsin Act 528 do not earn statutory or extra good time; and

3. The registrar, in determining the projected mandatory release date of an inmate who is serving consecutive sentences, shall treat all consecutive sentences, no matter when the crimes were committed, as one continuous sentence.

(c) For any inmate:

1. The registrar, in determining the projected mandatory release date of an inmate serving concurrent sentences imposed at the same time, shall consider the longer sentence as controlling. Each sentence shall begin on the date the sentence is imposed, less any sentence credit granted pursuant to s. 973.155, Stats; and

2. The registrar, in determining the projected mandatory release date of an inmate serving concurrent sentences imposed at different times, shall treat each sentence as beginning on the date that it was imposed, less any sentence credit granted pursuant to s. 973.155, Stats.

Note: HSS 302.21. 1983 Wisconsin Act 528 applies only to inmates who were sentenced for crimes committed on or after June 1, 1984. Inmates who committed crimes before June 1, 1984, have 60 days from the time they are received at a prison to petition the department to have 1983 Wisconsin Act 528 apply to them. Since the act affects computation of a resident's mandatory release date, this rule differentiates, where appropriate, between those residents who are covered by the act and those who are not.

HSS 302.21 (1) requires the computation of 3 critical dates in an inmate's life and notice to the inmate of them. They are the parole eligibility date, the projected mandatory release date and the projected discharge date. The latter 2 are "projected" because they may be altered.

Newly sentenced offenders are distinguished from others under HSS 302.21 (1). Because registrars have the necessary information to determine the dates for those recently sentenced, they can provide the information within 10 days.

An inmate not covered by 1983 Wisconsin Act 528 whose discretionary parole or mandatory release parole has been revoked must await a determination as to how much good time is forfeited before the dates can be set. An inmate covered

by 1983 Wisconsin Act 528 whose discretionary parole or mandatory release parole has been revoked must await a determination of how much of the remainder of his or her sentence must be served. An inmate whose probation was revoked but whose sentence was withheld must await sentencing before the dates are determined. After sentencing, they are informed of the dates.

For inmates who committed crimes before November 3, 1983, and who therefore are not covered by 1983 Wisconsin Act 64, parole eligibility, except for crimes with a mandatory eligibility date, is one-half the minimum sentence. The minimum sentence is one year for felonies. Wis. Stat. 57.06; 973.01; Edelman v. State, 62 Wis. 2d 613, 215 N.W.2d 386 (1973). For inmates who committed crimes on or after November 3, 1983, and who therefore are covered by 1983 Wisconsin Act 64, parole eligibility is 25% of the sentence imposed for the offense or 6 months, whichever is greater. Parole eligibility should not be equated with a grant of parole. Eligibility simply means the person may be considered for parole. It does not mean the person will be granted parole, necessarily. For all inmates there is a requirement that an inmate serve 60 days in a state institution before obtaining eligibility.

For example, an inmate not covered by 1983 Wisconsin Act 64 with a 5-year sentence for burglary is eligible for parole after 6 months. An inmate covered by the act with the same sentence is eligible for parole after 1 year and 3 months. An inmate who receives 2 consecutive 5 year sentences imposed at the same time is eligible for parole after serving one year if not covered by 1983 Wisconsin Act 64, and after 2 years 6 months if covered by the act. The inmate begins satisfying parole eligibility requirements on the second sentence upon satisfying eligibility requirements on the first. HSS 302.21(2)(a).

For inmates not covered by 1983 Wisconsin Act 528 the projected mandatory release date is reached by crediting the resident with statutory good time in the amount of one month for the first year, 2 for the second and so on to a maximum of 6 months for the sixth year and every year thereafter; and by crediting extra good time at the rate of one day for every 6 of satisfactory work or study. An inmate receives statutory good time but not extra good time for county jail time. The inmate does not receive extra good time for the period by which his or her sentence is reduced by statutory good time. See ss 53.11 and 53.12, Stats., and State ex. rel. Hauser v. Carballo, 82 Wis. 2d 51, 261 N.W.2d 133 (1978).

The discharge date is reached by taking the beginning date of the sentence, projecting the maximum period imposed by the court minus county jail time.

A few examples help explain this process for inmates not covered by 1983 Wisconsin Act 528.

An inmate with a single 5-year sentence which had a beginning date of 5-16-74 has a projected discharge date of 5-16-79. Such a person may earn one year, three months of statutory good time pursuant to s. 53.11, Stats., and six months, 13 days of extra good time pursuant to s. 53.12, Stats., in which case the inmate's projected mandatory release date would be 8-3-77.

If the same inmate had 2 concurrent 5-year sentences imposed on the same date, the projected discharge date would be the same as in the example above. HSS 302.21 (3)(c)1.

If a an inmate received 2 terms of 5 years to be served consecutively for a total sentence of 10 years, and one sentence was imposed on 5-16-74 and the other on 6-16-74, but both crimes were committed before 5-16-74, the projected maximum discharge date would be 5-16-84. The inmate could earn 3 years, 9 months of statutory good time and 10 months, 22 days of extra good time. The projected mandatory release date would be 9-24-79. HSS 302.21 (3)(a)3.

If an inmate with a single 5-year sentence imposed on 5-16-74 received a second 5-year concurrent sentence imposed 3 months later on 8-16-74, the inmate's new projected maximum discharge date would be 8-16-79. The inmate's new projected mandatory release date would be 11-3-77. HSS 302.21 (3)(c)2.

An inmate with a single 5-year term imposed on 5-16-74 who received a second 5-year term, imposed on 8-16-74, to be served consecutively, for a crime committed while the resident was serving the first sentence, would have a new projected maximum discharge date of 5-16-84. The new projected mandatory release date would be 10-20-80. HSS 302.21 (3)(a)4. It should be noted that the inmate can receive only one month of statutory good time on the second sentence during its first year, 2 during its second year and so on. Wis. Stat. 53.11, State ex. rel. Gergenfurtner v. Burke, 7 Wis. 2d 668, 97 N.W.2d 517 (1959).
State ex. rel. Stenson v. Schmidt, 22 Wis. 2d 314, 125 N.W.2d 634 (1964).

For those inmates covered by 1983 Wisconsin Act 528, the maximum discharge date is reached by taking the beginning date of the sentence, adjusting it for county jail time and projecting the maximum period imposed by the court. The projected mandatory release date is established at two-thirds of the court-imposed sentence. Inmates do not earn statutory or extra good time. However, the mandatory release date may be extended for infractions of the department's rules.

The following examples explain the process for inmates covered by 1983 Wisconsin Act 528:

An inmate with a single 5-year sentence which had a beginning date of 5-16-83 has a projected maximum discharge date of 5-16-88. The court-imposed sentence is reduced by 1/3 or 1 year and 8 months, so that the mandatory release date is established at 9-16-86;

If the same inmate had 2 concurrent 5-year sentences imposed on the same date, the projected mandatory release and projected maximum discharge dates would be the same as in the example above. HSS 302.21(3)(c)1;

If an inmate received 2 terms of 5 years to be served consecutively for a total sentence of 10 years, and the first sentence was imposed on 5-16-83, the projected maximum discharge date would be 5-16-93. The projected mandatory release date would be 1-16-90, no matter when the second sentence was imposed. HSS 302.21 (3)(b)3; and

If an inmate with a single 5-year sentence imposed on 5-16-83 received a second 5-year concurrent sentence imposed 3 months later on 8-16-83, the inmate's new projected maximum discharge date would be 8-16-88. The inmate's new projected mandatory release date would be 12-16-86. HSS 302.21(3)(c)2.

SECTION 5. HSS 302.23 and 302.24 are repealed and recreated to read:

HSS 302.23 DISCRETIONARY PAROLE VIOLATORS NOT SUBJECT TO 1983 WISCONSIN

ACT 528. (1) This section applies to inmates who, before June 1, 1984, committed the crime for which they were sentenced and did not choose to have 1983 Wisconsin Act 528 apply to them.

(2) In this section, "discretionary parole violator" means an inmate released by the parole board under s. 57.06(1)(a), Stats., who violated parole prior to his or her mandatory release date.

(3) A discretionary parole violator shall receive credit toward the satisfaction of the sentence from the beginning date of the sentence until the date of violation of parole determined by a department hearing examiner.

(4) A discretionary parole violator shall receive credit as determined by a department hearing examiner for all time from the date of placement in custody after violation to the date of return to the institution, including statutory good time for the period during which the parolee was in custody. In this subsection, "in custody" means any time the parolee spent confined, as described in s. 973.155(1), Stats., in connection with the violation.

(5) A discretionary parole violator may not be released until he or she has served the sentence to the recomputed mandatory release date plus tolled time defined in s. HSS 31.15 and forfeited good time less good time earned on the forfeited good time in accordance with the hearing examiner's decision. The maximum discharge date shall be extended by the amount of time tolled.

(6) A department hearing examiner may require a discretionary parole violator to serve forfeited statutory and extra good time. The amount of good time forfeited may not exceed the good time earned as of the date of violation. The hearing examiner may allow a discretionary parole violator to earn good time on the amount forfeited. If allowed, good time shall be earned at the rate applicable on the date of violation as a continuous sentence.

Note: HSS 302.23. HSS 302.23 deals with credit toward satisfaction of sentence for parolees whose discretionary parole is revoked. This section applies only to inmates not subject to 1983 Wisconsin Act 528. For inmates who committed crimes on or after June 1, 1984, or other inmates who chose to have 1983 Wisconsin Act 528 apply to them sentence credit as described in s. HSS 302.25 is treated the same for mandatory release and discretionary parolees.

Discretionary parole violators receive credit for the whole period under supervision. Subsection (4) requires that credit be given for periods in Wisconsin custody after violation, either pursuant to a "hold" or in connection with the course of conduct that leads to violation. See s. 973.155(1), Stats. Statutory and extra good time may be subject to forfeiture, but only so much as has been earned to the date of violation. Wis. Stats. ss. 53.11, 53.12, 57.07(2) (1978). State ex. rel. Hauser v. Carballo, 82 Wis. 2d 51, 261 N.W. 2d 133 (1978). A discretionary parole violator must serve his or her sentence to the mandatory release date plus tolled time. Tolled time is the period of time not in custody pursuant to s. 973.155(1), Stats., between the date of a parolee's violation and the date the parolee is revoked.

HSS 302.24 MANDATORY RELEASE PAROLE VIOLATORS NOT SUBJECT TO 1983

WISCONSIN ACT 528. (1) This section applies to inmates who, before June 1, 1984, committed the crimes for which they were sentenced and did not choose to have 1983 Wisconsin Act 528 apply to them.

(2) In this section, "mandatory release parole violator" is a person who violated parole after the mandatory release date, regardless of how the person was originally released.

(3) A mandatory release parole violator shall receive credit toward the satisfaction of sentence from the beginning date of the sentence to the mandatory release date.

(4) A mandatory release parole violator shall receive credit as determined by a department hearing examiner for all time from the date of placement in custody after the mandatory release date to the date of return to the institution, including statutory good time for the period during which the parolee was in custody. In this subsection, "in custody" means any time the parolee spent confined, as described in s. 973.155(1), Stats., in connection with the violation.

(5) A department hearing examiner may require a mandatory release parole violator to serve forfeited statutory and extra good time. The amount of time forfeited may not exceed the amount of time from the mandatory release date to the maximum discharge date. The hearing examiner may allow a mandatory release parole violator to earn good time on the amount forfeited. If allowed, good time shall be earned at the rate applicable on the mandatory release date as a continuous sentence.

(6) A mandatory release parole violator's maximum discharge date may be extended by an amount of time no greater than the amount of time tolled under s. HSS 31.15 plus the period from the mandatory release date to the date of violation.

Note: HSS 302.24. HSS 302.24 deals with credit toward satisfaction of sentence for parolees whose mandatory release parole is revoked. This section applies only to inmates not subject to 1983 Wisconsin Act 528. For inmates who committed crimes on or after June 1, 1984, or other inmates who chose to have 1983 Wisconsin Act 528 apply to them, sentence credit as described in s. HSS

302.25 is treated the same for mandatory release and discretionary parolees. This section puts into rule form the requirements of State ex. rel. Hauser v. Carballo, 82 Wis. 2d 41, 261 N.W.2d 133 (1978) and ss. 973.155, 53.11(7), and 57.072, Stats.

SECTION 6. HSS 302.245 is repealed.

SECTION 7. HSS 302.25, 302.26, and 302.27 are renumbered HSS 302.29, 302.30, and 302.31(2) to (6), and HSS 302.31 Note (1st paragraph), as renumbered, is amended to read:

Note: HSS 302.31 (1st paragraph). HSS 302.31 deals with the award of extra good time credit to inmates not covered by 1983 Wisconsin Act 528. That act eliminates extra good time for those inmates who committed crimes on or after June 1, 1984, and to others who chose to have the act apply to them. Extra good time credit is available to inmates not under the act who are assigned to approved vocational, job, school, or program assignments. An inmate shall-earn earns extra good time credit only if he or she meets certain conditions and criteria. Extra good time credit is granted to provide incentives to inmates in work and study programs to develop and reinforce positive behavior. See American Correctional Association's Manual of Standards for Adult Correctional Institutions (1977), standard 4391.

SECTION 8. HSS 302.25, 302.26, 302.27 and 302.28 are created to read:

HSS 302.25 PAROLE VIOLATORS SUBJECT TO 1983 WISCONSIN ACT 528. (1) This section applies to inmates who, on or after June 1, 1984, committed the crimes for which they were sentenced and to other inmates who chose to have 1983 Wisconsin Act 528 apply to them.

(2) In this section, "a parole violator" means a discretionary parole violator, as defined in s. HSS 302.23, or a mandatory release parole violator, as defined in s. HSS 302.24.

(3) A parole violator shall receive credit toward the satisfaction of the sentence from the beginning date of the sentence to the date of release to field supervision.

(4) A parole violator shall receive credit as determined by a department hearing examiner for all periods during which the parolee was in custody following the date of release. In this subsection, "in custody" means any time the parolee spent confined, as described in s. 973.155(1), Stats., in connection with the violation.

(5) A department hearing examiner may require a parole violator to serve a period of confinement in a correctional institution up to the remainder of the sentence. The remainder of the sentence is the entire sentence less time served in custody prior to release to field supervision. This period of confinement is subject to extensions for misconduct in accordance with ch. HSS 303.

(6) A parole violator's maximum discharge date shall be reestablished by counting the number of days equal to the remainder of the sentence beginning from the date of custody after violation of parole.

Note: HSS 302.25. HSS 302.25 deals with credit toward satisfaction of sentence for parolees subject to 1983 Wisconsin Act 528, who are persons who committed crimes on or after June 1, 1984, or other persons who chose to have the act apply to them. The act makes no distinction between mandatory release and discretionary parolees for purposes of receiving credit. This section puts into rule form the requirements of ss. 973.155 and 53.11(7)(a), (1983) Stats. The inmate receives credit only for those periods served in custody prior to parole and time served in custody after release if the custody was in connection with the course of conduct that led to violation. The hearing examiner may order the inmate to serve the entire sentence, less time served in custody.

HSS 302.26 DISCRETIONARY RELEASE FOR PAROLE VIOLATORS. Nothing in this chapter shall limit the authority of the parole board to grant a discretionary parole in accordance with ch. HSS 30 to an inmate who had been previously paroled, revoked and returned to the institution.

HSS 302.27 REVOCATION OF PROBATION. When probation is revoked, the probationer shall receive credit toward the satisfaction of sentence as follows:

(1) If the probationer has already been sentenced, the term of the sentence shall begin on the date the probationer enters the prison. The length of the term shall be reduced by the sentence credit granted pursuant to s. 973.155(1), Stats.;

(2) If the probationer has not been sentenced, he or she shall be returned to court for sentencing and, unless the sentence is consecutive, the term of the sentence shall begin on the date of sentencing; and

(3) Every probationer whose probation is revoked shall receive credit toward the satisfaction of the sentence, including sentence credit in accordance with s. 973.155(1), Stats., for all periods during which the probationer was in custody. Probationers not subject to 1983 Wisconsin Act 528 shall receive credit for statutory good time earned while in this custody. Probationers subject to 1983 Wisconsin Act 528 are not eligible to earn good time.

Note: HSS 302.27. This section deals with credit provisions for people whose probation is revoked. People who have been sentenced prior to revocation are treated slightly differently from those whose sentencing is deferred until after revocation. Subsection (1) provides that if the probationer has been sentenced, the term begins when the probationer enters prison. If sentencing was deferred, the term of the sentence begins on the date it is imposed unless it is ordered consecutive. This difference has limited practical effect. The

provisions of s. 973.155, Stats., give both categories of people identical credit. Therefore the difference does not enlarge the total period of confinement. Subsection (3) states the requirements of s. 973.155, Stats. in rule form.

HSS 302.28 SENTENCE CREDIT. (1) A department hearing examiner shall, upon proper proof and verification, make sentence credit determinations and issue appropriate orders in the following situations:

(a) When parole is revoked and sentence is credited subject to the provisions of ss. HSS 302.23, 302.24, and 302.25;

(b) When probation is revoked for a probationer whose sentence was imposed and stayed; and

(c) When judgments were entered prior to May 17, 1978, the effective date of s. 973.155, Stats.;

(2) In situations not covered by sub. (1) the department may not make sentence credit determinations and shall refer requests for sentence credit to the sentencing court.

SECTION 9. HSS 302.31 (title) and (1) are created to read:

HSS 302.31 EXTRA GOOD TIME FOR INMATES NOT COVERED BY 1983 WISCONSIN ACT
528. (1) This section does not apply to inmates who committed crimes on or after June 1, 1984, and to other inmates who chose to have 1983 Wisconsin Act 528 apply to them.

SECTION 10. HSS 303.11 (6) is amended to read:

HSS 303.11 (6) Conditions in TLU shall, insofar as feasible, be the same as those in the status ~~the inmate was formerly in~~ from which the inmate came prior to TLU placement. ~~An inmate who was earning compensation and extra good time credit shall continue to do so.~~ If the inmate had been earning compensation, he or she shall continue to earn compensation. If 1983 Wisconsin Act 528 does not apply to the inmate, he or she shall continue to earn extra good time credit. The inmate may be required to wear mechanical restraints, as defined in s. HSS 306.09(1), while outside the cell if the superintendent or his or her designee determines that the use of mechanical restraints is necessary to protect staff or inmates or to maintain the security of the institution.

SECTION 11. HSS 303.68(1)(a) and Note (1st paragraph) are amended to read:

HSS 303.68(1)(a) A "major penalty" is adjustment segregation as defined in ss. HSS 303.69 and 303.84, program segregation as defined in ss. HSS 303.70 and 303.84, loss of earned good time or extension of mandatory release date under s. HSS 303.84, or all 3 where imposed as a penalty for violating a disciplinary rule. Any minor penalty may be imposed for a violation where a major penalty could be imposed. Restitution may be imposed in addition to or in lieu of any major penalty.

Note: HSS 303.68 (1st paragraph). For the reasons given in the note to HSS 303.64 and in Wolff v. Mc Donnell, 418 U.S. 539 (1974), greater procedural safeguards are used when a greater punishment is possible. The dividing line between the 2 types of formal hearing is the same as the one used in Wolff, supra. If segregation, extension of the mandatory release date or loss of good time is imposed, then all of the Wolff safeguards apply. If other lesser punishments are used, then a less formal procedure is used. In order to preserve the option of using a major punishment, the security office will designate a conduct report as containing a "major offense" whenever it seems possible that either segregation, extension of the mandatory release date or

loss of good time will be imposed by the adjustment committee. Some offenses must always be considered major offenses; these are listed in sub. (3). Violations of other sections will be considered individually and it is left to the security director's discretion whether to treat an offense as major or minor. However, guidelines for the exercise of this discretion are given in sub. (4).

SECTION 12. HSS 303.71 (7) is amended to read:

HSS 303.71 (7) GOOD TIME. An inmate in controlled segregation earns ~~extra good time and~~ compensation if he or she ~~was doing so~~ earned compensation in the previous status. If 1983 Wisconsin Act 528 does not apply to the inmate, he or she earns extra good time if he or she earned extra good time in the previous status.

SECTION 13. HSS 303.84(1)(i), (2) and Note are repealed and recreated to read:

HSS 303.84 (1)(i) Loss of good time for an inmate whose crime was committed before June 1, 1984, and who did not choose to have 1983 Wisconsin Act 528 apply to him or her, or extension of the mandatory release date for an inmate whose crime was committed on or after June 1, 1984, and for other inmates who chose to have 1983 Wisconsin Act 528 apply to them; or

(2) Punishment imposed pursuant to sub. (1) is subject to the following:

(a) Adjustment segregation, program segregation and loss of good time or extension of the mandatory release date, whichever is applicable, may be imposed for a single major offense. At one hearing, the maximum penalty is the most severe penalty the inmate could receive for any single offense of which he or she is found guilty. The duration of a penalty may not exceed the duration shown in Table 303.84.

TABLE 303.84

SCHEDULE OF PENALTIES
(Maximum in days)

	<u>Adjustment</u>	<u>Program</u>	<u>Good</u>	<u>Extension</u>	
	<u>Segregation</u>	<u>Segregation</u>	<u>Time</u>	<u>of Mandatory</u>	
			<u>Loss</u>	<u>Release Date</u>	
				<u>Under 1983</u>	
				<u>Wisconsin</u>	
				<u>Act 528*</u>	
Offenses against bodily security					
303.12	Battery	8	360	20	40
303.13	Sexual assault--intercourse	8	360	20	40
303.14	Sexual assault--contact	8	360	20	40
303.15	Sexual conduct	4	120	10	20
303.16	Threats	5	180	10	20
303.17	Fighting	8	180	20	40
Offenses against institutional security					
303.18	Inciting a riot	8	360	20	40
303.19	Participating in a riot	6	360	10	20
303.20	Group resistance and petitions	4	180	10	20
303.21	Conspiracy	Maximum for completed offense			
303.22	Escape	8	360	20	40
303.23	Disguising identity	8	180	20	40
Offenses against order					
303.24	Disobeying orders	6	180	10	20
303.25	Disrespect	8	180	10	20
303.26	Soliciting staff	8	360	20	40
303.27	Lying	5	60	10	20
303.271	Lying about staff	8	360	20	40
303.28	Disruptive conduct	5	360	10	20
303.29	Talking	4	60	0	0
303.30	Unauthorized forms of communication	5	60	10	20
303.31	False names and titles	4	60	0	0
303.32	Enterprises and fraud	6	120	5	10
303.33	Attire	4	60	0	0
Offenses against property					
303.34	Theft	8	360	20	40
303.35	Damage or alteration of property	8	180	15	30
303.36	Misuse of state property	4	60	0	0
303.37	Arson	8	360	20	40
303.38	Causing an explosion or fire	6	180	15	30
303.39	Creating a hazard	6	120	10	20
303.40	Unauthorized transfer of property	5	120	0	0
303.41	Counterfeiting and forgery	8	360	20	40

TABLE 303.84 (continued)
 SCHEDULE OF PENALTIES
 (Maximum in days)

	<u>Adjustment</u>	<u>Program</u>	<u>Good</u>	<u>Extension</u>	
	<u>Segregation</u>	<u>Segregation</u>	<u>Time</u>	<u>of Mandatory</u>	
			<u>Loss</u>	<u>Release Date</u>	
				<u>Under 1983</u>	
				<u>Wisconsin</u>	
				<u>Act 528*</u>	
Contraband offenses					
303.42	Possession of money	8	360	20	40
303.43	Possession of intoxicants	8	360	20	40
303.44	Possession of drug paraphernalia	8	360	20	40
303.45	Possession, manufacture and alteration of weapons	8	360	20	40
303.46	Possession of excess smoking materials	4	60	0	0
303.47	Possession of contraband--miscellaneous	6	120	10	20
303.48	Unauthorized use of the mail	8	360	20	40
Movement offenses					
303.49	Punctuality and attendance	5	120	5	10
303.50	Loitering	4	120	5	10
303.51	Leaving assigned area	5	120	10	20
303.511	Being in unassigned area	5	120	10	20
303.52	Entry of another inmate's quarters	8	360	20	40
303.53	Posted policies and procedures related to movement	6	120	10	20
Offenses against safety and health					
303.54	Improper storage	4	60	5	10
303.55	Dirty quarters	4	60	0	0
303.56	Poor grooming	4	60	0	0
303.57	Misuse of prescription medication	8	360	20	40
303.58	Disfigurement	5	120	10	20
Miscellaneous					
303.59	Use of intoxicants	8	360	20	40
303.60	Gambling	4	60	5	10
303.61	Refusal to work or attend school	4	60	5	10
303.62	Inadequate work or study performance	4	60	5	10
303.63	Violation of institutional policies and procedures	6	180	10	20
303.631	Violating conditions of leave	8	360	20	40
303.06	Attempt	Maximum for completed offense			
303.07	Aiding and abetting	Maximum for completed offense			

*Does not include the mandatory extension of 50 percent of the number of days spent in segregation status required under par. (e).

(am) More than one minor penalty may be imposed for a single offense and both a major and minor penalty may be imposed for a major offense.

(b) Loss of accumulated good time or extension of the mandatory release date may be imposed as a penalty only where the violation is listed as a major offense under s. HSS 303.68(3) or is designated as a major offense by the security director because of its nature or the inmate's prior record.

(c) 1. For those inmates to whom 1983 Wisconsin Act 528 does not apply, the number of days of good time lost on one occasion may be based on the number of prior occasions on which the inmate lost good time but shall not exceed the following:

<u>Number of prior occasions good time lost</u>	<u>Maximum number of days good time lost</u>
None	5
One	10
2 or more	20

2. For those inmates to whom 1983 Wisconsin Act 528 applies, the number of days the mandatory release date is extended on one occasion may be based on the number of prior occasions on which the inmate lost good time or had his or her mandatory release date extended but shall not exceed the following:

<u>Number of prior occasions good time lost or mandatory release date extended</u>	<u>Maximum number of days mandatory release date extended</u>
None	10
One	20
2 or more	40

(d) Restitution may be imposed in addition to any other penalty.

(e) For those inmates to whom 1983 Wisconsin Act 528 applies, in addition to other penalties imposed in accordance with this subsection, the inmate's mandatory release date shall be extended by the number of days equal to 50 percent of the number of days spent in adjustment, program or controlled segregation status.

Note: HSS 303.84. There are 2 limits on sentences which can be imposed for violation of a disciplinary rule: (1) A major penalty cannot be imposed unless the inmate either had a due process hearing or was given the opportunity for one and waived it; and (2) only certain lesser punishments can be imposed at a summary disposition. Major penalties are program and adjustment segregation, loss of good time for those inmates to whom 1983 Wisconsin Act 528 does not apply, and extension of mandatory release date for those inmates who committed offenses on or after June 1, 1984, and other inmates who chose to have 1983 Wisconsin Act 528 apply to them. See HSS 303.74. This section limits both the types and durations of penalties.

In every case where an inmate is found guilty of violating a disciplinary rule, one of the penalties listed in sub. (1) must be imposed. More than one penalty may be imposed. For example, if adjustment segregation is imposed, program segregation may also be imposed. Loss of good time or extension of mandatory release date, whichever is applicable, may be imposed in conjunction with either or both of these penalties. The inmate will then serve his or her time in each form of segregation and lose good time or have his or her mandatory release date extended. Similarly, more than one minor penalty may be imposed for a single offense. A major and minor penalty may be imposed for a major offense.

Sentences for program segregation may only be imposed for specific terms. The possible terms are 30, 60, 90, 120, 180 and in some cases, 360 days. This is contrary to, for example, adjustment segregation where terms from 1-8 days may be imposed. The specific term represents the longest time the inmate will stay in segregation unless he or she commits another offense. However, release prior to the end of the term is possible. HSS 303.70 provides that a placement in program segregation may be reviewed at any time and must be reviewed at least every 30 days.

The terms in sub. (2) (a) are maximums and should rarely be imposed.

The limits on loss of good time or extension of the mandatory release date which are found in sub. (2)(c) are required by s. 53.11(2), Stats. Prior to the 1983 amendments, this statute limited the number of days of good time which could be lost to 5 for the first offense, 10 for the second, and 20 for each subsequent offense. Those limitations are still applicable to inmates who committed offenses before June 1, 1984, and did not choose to have 1983 Wisconsin Act 528 apply to them.

1983 Wisconsin Act 528 amended s. 53.11 (2), Stats., in three specific ways. First, it replaced the concept of "good time" with extension of the mandatory release date. Second, it allowed an extension of an inmate's mandatory release date by not more than 10 days for the first offense, 20 for the second, and 40 for each subsequent offense. The adjustment committee must impose this extension of the mandatory release date. The third change the statute made was the mandatory extension of an inmate's mandatory release date by a number of days equal to 50% of the number of days spent in segregation. This number must be calculated when the inmate is released from segregation, since the inmate may not spend the full amount of time in segregation to which he or she was sentenced. 1983 Wisconsin Act 528 applies to inmates who committed offenses on or after June 1, 1984, and other inmates who chose to have the act apply to them.

Section 53.11, Stats., follows current practice by limiting loss of good time or extension of the mandatory release date to major offenses.

SECTION 14. HSS 308.04 (12) (g) is repealed and recreated to read:

HSS 308.04 (12) (g) Who is eligible may earn extra good time credit in accordance with ch. HSS 302, and all inmates may earn compensation in accordance with ch. HSS 309;

SECTION 15. HSS 313.05 (5) is amended to read:

(5) A recommendation concerning extra good time for those inmates to whom 1983 Wisconsin Act 528 does not apply shall be included in the evaluation. The criteria for an extra good time recommendation shall be those under s. HSS ~~302.27-(3)-to-(6)~~ 302.31 (4) to (6).

SECTION 16. HSS 326.15 is amended to read:

HSS 326.15 GOOD TIME CREDIT ON LEAVE. Leave time is credited toward service of the sentence. The time credit includes statutory and extra good time for inmates not covered by 1983 Wisconsin Act 528.

SECTION 17. HSS 328.13 (1) (b) is amended to read:

HSS 328.13 (1) (b) That he or she must waive good time or entitlement to mandatory release in accordance with s. HSS 302.26 302.30, Wis. Adm. Code, to return to or remain in an institution beyond the mandatory release date;

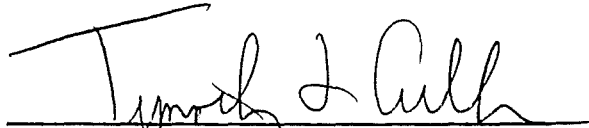
SECTION 18. HSS 328.24, 328.25, and 328.26 are repealed.

The repeals and 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 by s. 227.22(2), Stats.

Department of Health and Social Services

Dated: January 8, 1987

By:


Tim Cullen, Secretary

Seal:

9-24-18/54/96-bh



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1 West Wilson Street, Madison, Wisconsin 53702

Tommy Thompson
Governor

Tim Cullen
Secretary

January 8, 1987

RECEIVED

JAN 9 1987

Revisor of Statutes
Bureau

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. 227.20, Stats., there is hereby submitted a certified copy of HSS 31, 302, 303 and 328, administrative rules relating to the effect of parole violation and the effect of inmate violation of institution conduct rules on the length of time that an inmate is incarcerated in an adult correctional institution.

These rules apply to parolees and to inmates of adult correctional institutions. The rules do not affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,


Tim Cullen
SECRETARY

Enclosure