

## Chapter HSS 302

**ASSESSMENT AND EVALUATION, SECURITY  
CLASSIFICATION AND SENTENCE COMPUTATION  
IN ADULT CORRECTIONAL INSTITUTIONS**

HSS 302.01	Applicability of A&E process (p. 1)		WCI-Green Bay, and WCI-Taycheedah (p. 10)
HSS 302.02	Purposes of A&E (p. 2)	HSS 302.18	Program review (p. 10)
HSS 302.03	Duration of A&E process (p. 2)	HSS 302.19	Program review procedure (p. 11)
HSS 302.04	Restricted movement during A&E process (p. 2)	HSS 302.20	Inter-institution transfers (p. 13)
HSS 302.05	Orientation during A&E process (p. 2)	HSS 302.21	Sentence computation (p. 14)
HSS 302.06	Orientation in writing during A&E process (p. 3)	HSS 302.22	Ambiguity in sentence (p. 16)
HSS 302.07	Orientation for handicapped individuals during A&E process (p. 3)	HSS 302.23	Discretionary parole violators not subject to 1983 Wisconsin Act 528 (p. 16)
HSS 302.08	Orientation upon transfer (p. 3)	HSS 302.24	Mandatory release parole violators not subject to 1983 Wisconsin Act 528 (p. 16-1)
HSS 302.09	Recorded information (p. 4)	HSS 302.25	Parole violators subject to 1983 Wisconsin Act 528 (p. 16-1)
HSS 302.10	Orientation by residents during A&E process (p. 4)	HSS 302.26	Discretionary release for parole violators (p. 16-2)
HSS 302.11	Security classifications (p. 4)	HSS 302.27	Revocation of probation (p. 16-2)
HSS 302.12	Security classifications (p. 4)	HSS 302.28	Sentence credit (p. 16-2)
HSS 302.13	Institutional security classifications (p. 6)	HSS 302.29	Effect of escape on sentence (p. 16-3)
HSS 302.14	Criteria for security classification (p. 8)	HSS 302.30	Waiver of good time or entitlement to mandatory release (p. 16-3)
HSS 302.15	Program assignment (p. 9)	HSS 302.31	Extra good time for inmates not covered by 1983 Wisconsin Act 528 (p. 16-4)
HSS 302.16	Criteria for program assignment (p. 9)		Appendix (p. 17)
HSS 302.17	Procedure for program assignment and security classification at conclusion of A&E process at WCI-Waupun,		

## NOTE

Each section in this chapter has explanatory material which can be found in the appendix following HSS 302.27

HSS 302.01 Applicability of A&E process. (1) Every convicted offender sentenced or committed to a correctional institution shall participate in an orientation program, receive a security classification and assignment to an institution and be offered a vocational, job, school or program assignment (hereinafter "program assignment"), consistent with existing resources, as specified in this chapter.

(2) This initial process for orientation, security classification and program assignment shall be called "the assessment and evaluation process" (hereinafter "A&E"). In this chapter the term "convicted offender" includes a person sentenced to a correctional institution, a person committed to the department under ch. 975, Stat., and transferred to a correctional institution and a person assigned to a correctional institution after the revocation of probation, discretionary parole or mandatory release.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

Register, February, 1987, No. 374

**HSS 302.02 Purposes of A&E.** The purposes of A&E shall be the following:

- (1) A comprehensive assessment of a resident's social background, sentence structure, academic and vocational achievements;
- (2) A long-term and short-term evaluation of the academic, vocational, medical, social, treatment and security needs of a resident;
- (3) An orientation to the program resources of the division of corrections;
- (4) The motivation of the offender to become constructively involved in the correctional process;
- (5) The social reintegration of the offender through the formulation of an individualized plan to aid the newly confined resident to utilize resources effectively, to develop socially acceptable life goals and to permit the division to make efficient use of available resources; and
- (6) The protection of the public through planning for appropriate correctional treatment and supervision.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

**HSS 302.03 Duration of A&E process.** (1) A&E shall be completed not more than 6 weeks after the arrival of the offender at the institution to which the offender has been sentenced or assigned.

(2) In unusual circumstances, the director of A&E (hereinafter "director") may delay the starting time of the A&E Process.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

**HSS 302.04 Restricted movement during A&E process.** (1) During A&E, a resident may be separated from the general resident population until the institution physician is satisfied that the resident is not suffering from a communicable disease or the director is satisfied that the person need not be separated for the resident's safety.

(2) The director and the security director or their designees may evaluate residents upon their arrival at the institution and recommend to the superintendent that individuals be separated from the general population and each other and have their movement restricted for the duration of A&E. The superintendent may order such residents separated and their movement restricted if he or she believes that it is necessary for the safety and security of the individual resident or of the institution.

(3) If a resident is separated from the general resident population pursuant to this section, he or she shall be notified of the reasons in writing.

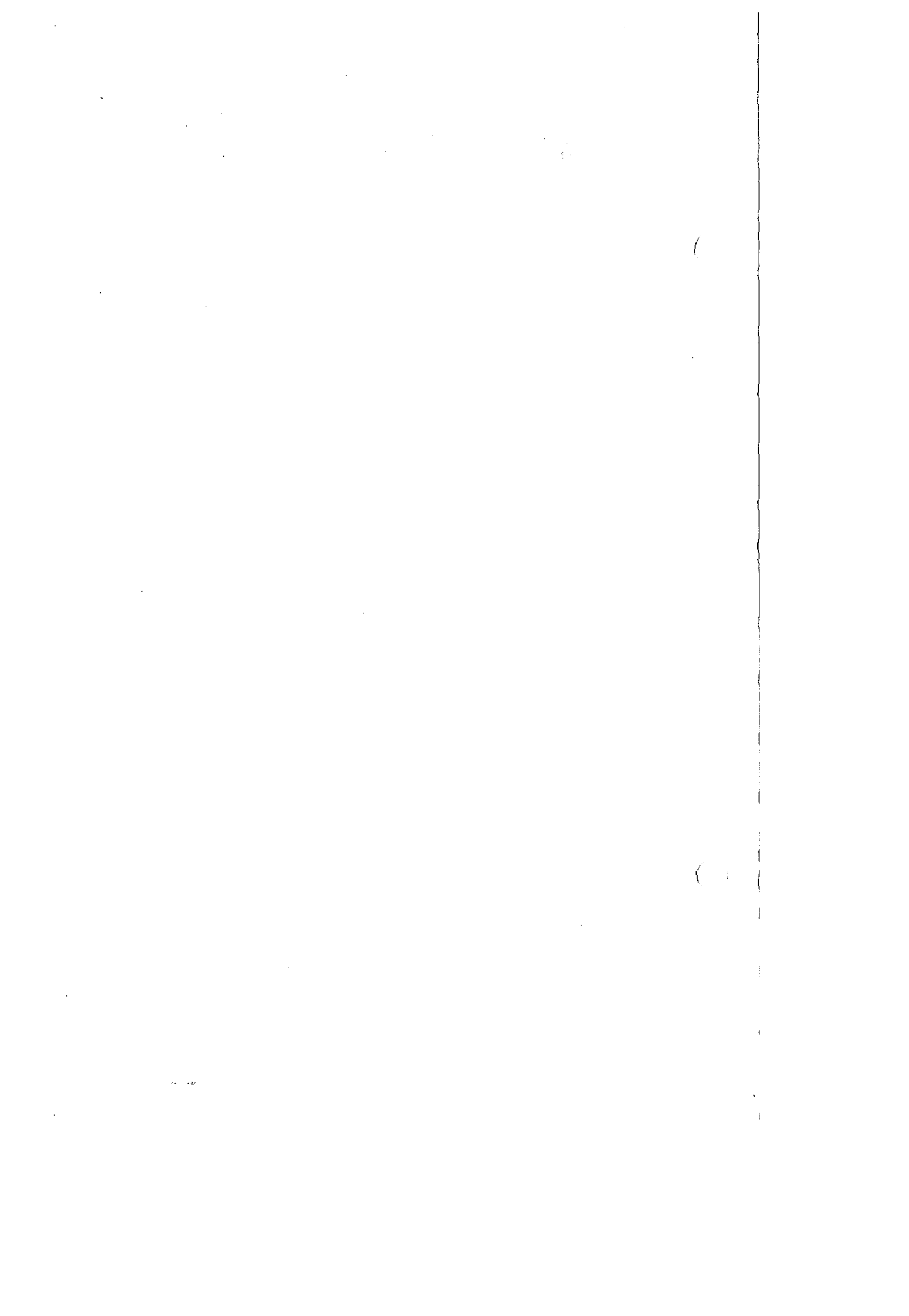
**HSS 302.05 Orientation during A&E process.** (1) The purposes of orientation are:

(a) To initiate the correctional process in a constructive and positive manner;

(b) To communicate to residents the objectives of the correctional process, the successful reintegration of the offender into the community, and the protection of the public;

Register, February, 1987, No. 374

(c) To communicate to residents the commitment of the whole correctional staff to the achievement of these correctional objectives and of



(a) To provide systematic review of the resident's academic, vocational, medical, social, treatment, and security needs and progress;

(b) To monitor the implementation and revision of plans developed during A&E and previous PRC meetings;

(c) To provide supplemental or alternative program recommendations;

(d) To provide supplemental recommendations regarding security needs; and

(e) To aid the resident's reintegration into society.

(3) Such review may occur before the time designated for the review:

(a) At the designation of the PRC or at its own direction, upon the recommendation of a staff member; or

(b) At the request of the resident or a staff member, provided there is a significant change of circumstances relevant to the classification or program assignment of the resident. A request for early review by the resident shall be made to the resident's social worker who shall forward it to the PRC.

(4) Every correctional institution and camp shall have a PRC. Except at the camps, the PRC shall consist of not less than 4 permanent members which shall include:

(a) A member of the security staff holding the rank of lieutenant or higher, to be designated by the superintendent;

(b) The program review coordinator, to be designated by the classification chief;

(c) A member of the social services staff holding the rank of social services supervisor; and

(d) An educational representative in a supervisory class or a guidance counselor.

(5) The PRC in each camp shall consist of not less than 3 permanent members who shall include 3 of the following people:

(a) The social services specialist or supervisor;

(b) A social worker who shall serve as program review coordinator;

(c) A member of the security staff; or

(d) The camp superintendent or designee.

(6) A permanent member of the PRC may designate a single person to sit as an alternate, consistent with available staff. The designee need not hold the rank of the permanent member. In view of the importance of the PRC, the alternate should replace the permanent member as infrequently as possible.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

**HSS 302.19 Program review procedure.** (1) Before a resident's security classification, assignment to an institution and program assignment is reviewed by the PRC, the resident's social worker shall interview the

Register, February, 1987, No. 374

resident and inform the resident orally of the approximate date of the review, the criteria for review, the facts to be considered at the review, the fact that the resident has the option to appear before the PRC and must appear before a change in security classification or a transfer may be made.

(2) Before the scheduled PRC review, the resident's social worker shall:

(a) Make known to the PRC in writing the resident's view of the appropriate security classification, program assignment and assignment to an institution; and

(b) Make a written recommendation to the PRC as to the appropriate security classification, program assignment and assignment to an institution.

(3) If the resident appears, the coordinator shall inform the resident of the facts being considered, the criteria for the decision, and the recommendation of the social worker. The resident shall be afforded the opportunity to present additional facts, dispute facts being considered and state an opinion of the appropriate security classification and program assignment.

(4) The classification chief shall approve or disapprove changes in a resident's security classification and transfer upon the recommendation of the PRC.

(5) Each member of the PRC shall have one vote. A recommendation of security classification change, transfer, or approval for work or study release requires a unanimous vote of the PRC. A change in program assignment requires a majority vote of the PRC.

(6) The criteria to be applied are those stated in HSS 302.14 and 302.15 [302.16].

(7) If a vote of the PRC as to security classification, transfer, or approval for work or study release is not unanimous, the case shall be referred to the A&E director or designee and the superintendent or designee for a recommendation as to the security classification, transfer, or work or study release status. If they are unable to agree, the case shall be referred with comments but without recommendation to the classification chief for a decision. The resident's views, to the extent they differ from the PRC's, shall be forwarded to the classification chief. If the PRC vote on a program assignment results in a tie, the case shall be referred to the superintendent or his or her designee for a decision.

(8) Reasons for the recommendations as to the security classification and the decision as to program assignment shall be given to the resident in writing and shall include the specific facts relied upon and the criteria to which the facts were applied.

(9) An inmate may appeal the PRC's decision as to program assignment to the superintendent within 10 days after receipt of the decision.

(10) To the extent that the classification chief's decisions differ from the recommendations, reasons for the decision shall be provided to the

PRC and the resident in writing and shall include the facts relied upon and the criteria to which the facts were applied.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; am. (7), renun. (9) to be (10), cr. (9), Register, February, 1987, No. 374, eff. 3-1-87.

**HSS 302.20 Inter-institution transfers.** (1) The transfer of a resident from the one institution to another requires the approval of the classification chief. Except for a transfer made as a part of the initial security classification, assignment to an institution, and program assignment during the A&E process or as otherwise provided under this section, transfers may be approved only upon the recommendation of the PRC at the institution at which the resident is residing. If the resident has been transferred pursuant to sub. (2) below, the PRC of the institution at which the resident resided before such transfer has responsibility for the recommendation. If the PRC is unable to make an unanimous recommendation as to transfer, the procedure set forth in HSS 302.19 (7) and (8) shall be followed. The criteria for the transfer decision and recommendation are those in HSS 302.14 and 302.16.

(2) The PRC may review the security classification and program assignment and consider a resident for transfer due to a disciplinary infraction, only after disposition of the disciplinary case is completed by the adjustment committee. Before the PRC review, the adjustment committee shall inform the resident that such review may occur, and that the results and findings of fact at the disciplinary hearing may be considered in the program review process.

(3) Before a review as provided in sub. (2), the resident shall be afforded a disciplinary hearing. After such hearing, the adjustment committee shall forward to the PRC the results and specific findings of facts relating to the alleged disciplinary violations. The PRC may consider this information and shall consider all the criteria provided to HSS 302.14 and 302.16 before making a recommendation as to security classification and transfer and a decision as to program assignment. The procedure provided for in HSS 302.19 shall be followed in such review.

(4) Pending such review by the PRC, the resident may be segregated from the general resident population. If an institution or camp is without the facilities necessary to do so, the resident may be transferred to a county jail pending the results of the disciplinary hearing and review of the resident's security classification and program assignment. If the sheriff's department is unable or unwilling to retain a resident, the resident may be transferred to another institution pending the disposition of the disciplinary infraction with the approval of the classification chief. Residents should be confined in county jails pursuant to this rule for as short a time as possible.

(5) If the resident is transferred to a county jail as provided in sub. (4), the disciplinary hearing and program and security review shall be held 3 less than 2 days of service of the report of the disciplinary infraction, with the consent of the resident. However, if the resident wishes additional time to prepare for the hearing and it is not possible for him or her to remain in the county jail or camp, the resident shall be transferred to a more secure institution for the hearing. In no event shall the disciplinary

hearing occur more than 10 calendar days from the date of the disciplinary report.

Note: In sub. (5) "3 less than 2 days" is an error. The department's intent was to state "not more than 3 days." See the explanatory note for this section in the appendix.

(6) A resident may be transferred without following the procedures set forth in this rule and in HSS 302.19 only for the following reasons:

- (a) A medical emergency; or
- (b) A security emergency.

(7) If a resident is transferred pursuant to sub. (6), the resident's program assignment, assignment to an institution and security classification shall be reviewed within 7 calendar days of such transfer by a PRC from the institution from which the resident was transferred and the procedure for review and transfer as set forth in HSS 302.19 shall be followed.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

**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

Register, February, 1987, No. 374



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

## HSS 302

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 to s. 973.155, Stats.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

**HSS 302.22 Ambiguity in sentence.** If a registrar is uncertain as to the terms of a sentence imposed on a resident, the registrar shall notify the court of the uncertainty in writing. The registrar shall also inform the resident in writing of the uncertainty and inform the resident of the legal services available at the institution to assist the resident.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

**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

Register, February, 1987, No. 374

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.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 9-10-86; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

**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.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 9-10-86; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

**HSS 302.245 Revocation of probation.** History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; r. Register, February, 1987, No. 374, eff. 3-1-87.

**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.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

**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.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

**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.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

**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.;

Register, February, 1987, No. 374

(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.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

**HSS 302.29 Effect of escape on sentence.** A resident who escapes from custody shall receive no credit toward the service of the sentence during the period the person is unlawfully absent from custody. A resident shall be regarded as unlawfully absent unless he or she is in the custody of law enforcement officials of any state or the United States in connection with the escape, except that the person shall be treated as unlawfully absent while in custody serving a sentence other than a sentence to a Wisconsin correctional institution.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; renum. from HSS 302.25, Register, February, 1987, No. 374, eff. 3-1-87.

**HSS 302.30. 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) 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. 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:

(a) Except in an emergency, an inmate'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 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 person on mandatory release may waive 360 days of good time at one time;

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

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

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

Register, February, 1987, No. 374

(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.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. am. eff. 8-5-85; am. Register, February, 1986, No. 362, eff. 3-1-86; renum. from HSS 302.26, Register, February, 1987, No. 374, eff. 3-1-87.

**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.

(2) **CONDITIONS FOR EARNING CREDIT.** In order to provide an incentive to inmates in approved work and study programs to develop and reinforce positive behavior, and to promote institutional order, an inmate shall earn extra good time credit if he or she is:

(a) Assigned to a vocational, job, school, or program assignment under ch. HSS 302 and surpasses the general average in diligence in labor or study for that assignment (see sub. (4));

(b) Involuntarily unassigned and:

1. His or her last assignment was terminated because of medical or psychological problems caused or aggravated by the assignment, which were verified by the clinical staff and which made it difficult or impossible to perform in the assignment, and the appropriate staff member was notified within 2 working days after termination of the last assignment, of the inmate's willingness to work at another assignment consistent with his or her abilities; or

2. Is eligible for an assignment but has not been offered one by the program review committee (PRC) under ch. HSS 302;

(c) In administrative confinement under ch. HSS 308 and was earning extra good time credit in his or her status immediately prior to this confinement;

(d) In observation under ch. HSS 311 and was earning extra good time credit in his or her status immediately prior to this confinement;

Register, February, 1987, No. 374

(e) In temporary lockup (TLU) under ch. HSS 303 and was earning extra good time credit in his or her prior status; or in TLU immediately after being in program adjustment, or control segregation under ch. HSS 303, and he or she was earning extra good time credit in the prior non-segregation status. If the inmate's status in TLU is a result of a disciplinary charge, he or she may earn extra good time credit until the time of the disposition of the charge. If found innocent, the inmate may continue to earn extra good time credit. If found guilty, the inmate shall not thereafter be eligible to earn extra good time credit until he or she leaves segregation;

(f) Participating in a correspondence course approved for study assignment by the PRC;

(g) Out of the institution for a court appearance or dental or medical appointment and he or she was earning extra good time credit in the status immediately prior to leaving the institution for such matters;

(h) In sick cell status and he or she was earning extra good time credit in the status immediately prior to this status; or

(i) In a hospital placement (including those inmates transferred to mental health or medical facilities) and was earning extra good time credit in the status immediately prior to this status.

(3) CONDITIONS UNDER WHICH EXTRA GOOD TIME CREDIT SHALL NOT BE EARNED. An inmate shall not earn extra good time credit if the conditions under sub. (1) are not satisfied or if he or she:

(a) Is voluntarily unassigned;

(b) Is involuntarily unassigned for reasons other than those stated under sub. (1) (b), for instance, to simply avoid work or study;

(c) Is in adjustment segregation;

(d) Is in program segregation;

(e) Is in control segregation;

(f) Refuses to accept a work or study assignment offered by the PRC;  
or

(g) Is in voluntary confinement—unless the inmate requested placement in this status upon the recommendation of, or with approval of the security director for the purpose of ensuring the inmate's safety and the inmate was earning extra good time prior to such placement.

(4) CRITERIA FOR AWARDING EXTRA GOOD TIME CREDIT. The division shall establish reasonably uniform written criteria that shall be used for the awarding of extra good time credit for all vocational, job, school, and program assignments with similar necessary skills and responsibilities within all adult correctional facilities.

(a) To the extent that is necessary because of the unique requirements of a vocational, job, school or programming assignment each supervisor shall establish additional reasonable criteria consistent with the necessary skills and responsibilities of that assignment that shall be used to evaluate an inmate's diligence in that assignment for the purpose of awarding extra good time credit.

(b) The criteria under sub. (3) or (4) shall be the only criteria used in the determination of whether to award credit and shall state what is meant by "the general average in diligence in labor or study" for that assignment.

(c) If a inmate is not capable of performing in his or her assignment at the level of "the general average in diligence," for instance, because of poor dexterity skills or mental, developmental, or physical disabilities that have been confirmed through clinical testing, the supervisor shall develop new reasonable criteria for evaluation consistent with the skills and responsibilities of that assignment and the special disabilities of the inmate, if the inmate, his or her social worker, and supervisor agree that a change of assignment is unnecessary or undesirable.

(d) The criteria for evaluating inmate diligence in performance for each assignment and any special criteria developed pursuant to par. (c) shall be available to inmates prior to commencement of the assignment and to the staff upon request.

(5) **MONTHLY PERFORMANCE EVALUATION.** Each supervisor shall make a monthly written evaluation of the inmate's performance. Such an evaluation shall indicate whether or not extra good time credit is recommended for an inmate. If extra good time credit is not recommended, the reasons for this decision shall be noted on the evaluation.

(a) If extra good time credit is not recommended for an inmate for a particular month, he or she shall receive written notice of the decision from the supervisor, including the reasons for it, within 5 working days of the decision.

(b) An inmate may appeal a decision under sub. (4) to his or her supervisor within 5 days of receipt of notice. The supervisor shall have the authority to amend his or her earlier decision in favor of the inmate within 5 working days of the appeal. If amended, the registrar and the inmate shall receive written notification of the change and the reasons for it. Failure by the supervisor to render a decision within the allowed time shall signify an affirmation of the earlier decision, and the inmate shall be notified of this.

(c) If the supervisor fails to amend his or her earlier decision within the time allowed, the inmate may appeal to the superintendent within 5 working days after that time. If the superintendent fails to render a decision within 5 working days after the appeal, the decision of the supervisor under sub. (10) is affirmed, and the inmate shall be notified of this.

(d) Any question regarding an inmate's eligibility for credit under sub. (1) or (2) shall be referred to the superintendent for resolution.

(6) **SCHEDULE OF GOOD TIME CREDIT.** An inmate shall earn extra good time credit as follows:



## HEALTH AND SOCIAL SERVICES

HSS 302 16-7

Extra good time credit earned for a calendar month (in days)	Cumulative number of days in a calendar month in a status eligible for credit	Cumulative number of days in a calendar month in a status not entitling inmate to credit
0	0	30
1	6	24
2	12	18
3	18	12
4	24	6
5	30	0

(a) If an inmate is entitled to extra good time for any fraction of a calendar day, that whole day shall be credited.

(b) An inmate shall earn fractions of one day of extra good time for each day in a status entitling the inmate to credit.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; renum. from HSS 302.27, cr. (1), Register, February, 1987, No. 374, eff. 3-1-87.

## Appendix

of correctional treatment. Six months is typical limit for such review. *American Bar Association*, supra, Standard 3.5 (6).

A review may occur at any time at the designation of the PRC or at the request of the resident. To avoid abuse of the process, there must be a change in relevant circumstances to compel early review at a resident's request. For example, early completion of a program or a modification of sentence would be a relevant change. HSS 302.18 (3). Such requests are typically granted.

The purposes of the review are stated in HSS 302.18 (2) and are self-explanatory. See note to HSS 302.02. Sometimes, effective review may require additional testing. If so, the PRC should refer the resident to an appropriate testing site.

HSS 302.18 (4) and (5) require every institution and camp to have a program review committee. Because it is essential that the review be meaningful and that there be experienced decision makers, it is required that members of the PRC be permanent and hold relatively high rank. The members of the PRC in the camp hold lower rank, only because staff there are limited. Because there is a single social services supervisor for the camp system, that member typically votes by telephone on PRC decisions and recommendations.

To insure permanence, HSS 302.18 (6) limits the use of alternates. Each PRC member may designate only one permanent alternate who should sit only in unusual circumstances. The phrase "consistent with available staff" is used to permit small institutions to vary from the single alternate requirement. This is necessary to avoid having the same staff member sit on the adjustment committee and PRC, when the case was referred to PRC by the adjustment committee. It is also necessary to avoid requiring a resident's social worker from sitting on the PRC at small institutions.

Note: HSS 302.19. HSS 302.19 provides the procedure for the review and change of classification and program assignment. The division's classification chief has final decision making authority for all security classification changes and transfers. HSS 302.19 (4). The PRC has this authority for program assignments. HSS 302.19 (5). Inmates may appeal the PRC's decision as to program assignment to the superintendent. HSS 302.19 (9).

Typically, the classification chief's decision is made on the recommendation of the PRC. If a recommendation for transfer or change of security classification is not unanimous, all recommendations are considered.

If there is not unanimity as to the change in security classification, transfer or approval for work or study release, the A&E director and the superintendent or designee have the authority to make a recommendation as to the security classification and placement in an institution. If they cannot agree, the issue goes to the classification chief without a formal recommendation but with comments. If there is a tie vote as to program assignment, the superintendent or designee has the authority to make that decision.

The same principles discussed in the note to HSS 302.16 dictate the criteria for program review. There is no need to repeat them here. The resident's social worker must interview the resident and make a recommendation. This is desirable to ensure continued review of the resident's status by the social worker.

The resident has the option to appear before the PRC. In the camp system, the distance of the resident from the PRC may require that the personal appearance be before a single member of the committee. This should occur as infrequently as possible. The resident must appear before a change in security classification or a transfer may be made. HSS 302.19 (1).

The procedure for decision making at the end of the A&E process and periodically thereafter by the program review committee may seem cumbersome. However, the assignments made at these stages have a substantial impact upon the quality of life of a resident and upon parole release decisions. For example, a person at a minimum security institution is accorded more freedom than a person at a maximum security institution. Successful adjustment at a camp might influence the parole release decision. So correctional authorities and residents have a substantial interest in ensuring that classification decisions are made in a careful way, by experienced people after a thorough development and review of the facts.

With roughly 5000 inmates in the Wisconsin correctional system, review of each inmate every 6 months means that there are ten thousand reviews per year, exclusive of reviews due to changed circumstances. This large volume of work means that responsibility must be delegated at each institution. Yet uniformity is also desirable. For these reasons, decision making is structured to include staff at the institutional level while leaving final authority with the division's classification chief.

Decision making throughout these rules is structured to ensure fairness and thoroughness.

Note: HSS 302.20. Typically, inter-institution transfers will be made routinely as part of the A&E and program review process. This is stated in HSS 302.20 (1). The transfer decision is part of the A&E and PRC process.

While it is true that there is wide discretion vested in correctional authorities to transfer residents, in Wisconsin this may only be done consistent with the overall review of a resident's status. *Meachum v. Fano*, 427 U.S. 215 (1976); *Montayne v. Haymes*, 427 U.S. 236 (1976).

When a resident is alleged to have violated a disciplinary rule and this may require review of his security classification and program assignment, the procedure set forth in HSS 302.20 must be followed. It is designed to insure that there is a factual basis for the transfer and the finding of a disciplinary infraction, to give the resident an adequate opportunity to be heard on the issue of whether an infraction occurred and whether transfer is desirable, and to insure that all facts relevant to program assignment and security classification are considered. Thus, a disciplinary infraction is only one factor to be considered in reviewing these matters. This substantially conforms to the suggestions of the *American Bar Association*, supra and *Krantz, et. al., Model Rules and Regulations On Prisoners' Rights And Responsibilities*.

Several provisions of the rule require comment. Subsection (4) permits segregation of the resident pending review by the PRC. This is apart from any segregation which is imposed for the violation. Three working days is adequate time to provide for a decision as to program and security classification.

Sub. (5) requires the disciplinary hearing to be held within 3 working days of service of the report of the infraction, with the permission of the resident, if he or she is in a county jail. Such confinement is necessary because camps are unable to segregate residents due to a lack of facilities. Rather than require transfer to a more secure institution, it is thought more desirable to permit the resident to reside in a county jail until the outcome of the disciplinary hearing and program review. This permits the resident to have the hearing and review in a place where he or she can call on witnesses and a staff advocate familiar with the setting in which the infraction is alleged to have occurred, if they are necessary. Less hardship is visited on the resident by having the resident remain close by if a transfer does not ultimately occur.

If 3 working days is insufficient time for the resident to prepare for the hearing, the resident may be transferred to a more secure institution. This is because county jails are usually unwilling to hold residents for more than 3 working days. If a particular jail is willing to hold a person for longer than 3 working days, transfer should be unnecessary.

Subsections (6) and (7) provide for emergency transfers. If a resident's physical or mental health requires transfer or if there is a major security problem, it is necessary to have the authority for emergency transfers. A review of the resident's program assignment and security classification is required within 7 days of such a transfer. A "security emergency" is defined in s.HSS 306.23 (1).

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 felones. Sections 57.06 and 973.01, Stats.; *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, Register, February, 1987, 374

## Appendix

ered 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 6-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. Corballo*, 82 Wis. 2d 61, 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 6 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 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 on so on. Section 53.11, Stats.; 53.11, *State ex. rel. Gergenfurner 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 inmates'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.

**Note:** HSS 302.22. HSS 302.22 requires the registrar to notify the court and resident if there is uncertainty as to what sentence or sentences were imposed. It is sometimes difficult to understand the terms of a sentence, particularly when there are multiple convictions and when a resident is sentenced as a repeater. The rule also requires that special notice be given to the resident of legal services, because the issue usually arises early in the A & E process, before the resident has been seen by a law student.

**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. Sections 53.11, 53.12, 57.07 (2) (1978), Stats. *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.

**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.

**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.

**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.

**Note:** HSS 302.29. HSS 302.29 deals with credit provisions for escapes. It states that the person resumes receiving credit for the sentence from which he or she escapes when the person is taken into custody. Because a resident often has no control over when he or she is returned to a Wisconsin correctional institution, it is thought that fairness requires credit for all time in custody, unless the custody is pursuant to a sentence in a jurisdiction outside Wisconsin. Custody is thus defined differently than in HSS 302.23. This is based on s. 973.15 (7) (1977), Stats. cf. s. 57.072 (2) (1977), Stats. Therefore, while an escapee awaits extradition or return to the institution, credit is to be given.

**Note:** HSS 302.30. Inmates and persons on mandatory release parole may on occasion wish to waive good time or entitlement to mandatory release. Because a waiver has serious implications, Register, February, 1987, 374

## Appendix

tions 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 (3) (a) 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 ensure that the 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) (c). Circumstances might change and make a wholesale waiver of good time undesirable. For example, a sick inmate might recover more rapidly than anticipated. The requirement that at least 15 days be waived at once is to avoid undue administrative burden. The requirement of a written waiver is to ensure that proper records are kept. The requirement of consultation with a social worker or agent is to ensure that the inmate or mandatory release parolee understands the consequences of a waiver.

Note: HSS 302.31. 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 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.

Sub. (1) (a) puts into rule form the requirements of s. 53.12 (1), Stats. Assignment to a vocational, job, school, or program in accordance with ch. HSS 302 is a prerequisite for earning extra good time credit. In addition, an inmate must surpass "the general average" (s. 53.12 (1), Stats.) for that assignment as determined by his or her supervisor in accordance with the criteria established for such an evaluation of that particular assignment. It is anticipated that most inmates will perform at this average level. The term "average" does not mean that half of the inmates in a particular assignment should lose extra good time credit each month. If that was the intent underlying the provision, the word "mean" would have been used instead of "average."

Subsection (1) (b) provides for extra good time credit to certain inmates who are involuntarily unassigned. Subsection (2) (b) denies credit to others involuntarily unassigned. Legal support for these provisions is found in an attorney general's opinion, 37 *Op. Atty. Gen.* 452 (1948). The opinion dealt with awarding good time to a county jail prisoner sentenced under the Huber Law, but for whom the sheriff is unable to secure employment. The opinion says such a prisoner is entitled to good time under such conditions.

Subsection (1) (b) 1 provides that an inmate who is involuntarily unassigned and whose last assignment was terminated because of medical or psychological problems resulting from, or aggravated by, the assignment may be entitled to extra good time credit if the appropriate staff member was notified of the inmate's willingness to accept another assignment within the specified period of time. Examples of what this provision is meant to include are situations when an inmate develops a serious physical reaction (e.g., hives or rash) from chemicals he or she must use in the course of the assignment; when an inmate develops or aggravates a hay fever condition while working on a camp farm; when an inmate has an emotional disturbance that results in placement in observation; and upon release the clinical psychologist, psychiatric social worker, or physician decides that it is in the inmate's best interests not to return to the previous assignment because of fear of a possible recurrence of the emotional turmoil. In such cases, the inmate shall receive extra good time credit if the other provision of the subsection is met. Subsection (1) (b) 2 is meant to deal with those situations in which an inmate has not received an assignment from the PRC.

Subsection (1) (c)-(e) recognizes that administrative confinement, observation, and TLU are nonpunitive statuses and the inmate may earn extra good time if he or she was earning

extra good time credit in his or her status immediately prior to this placement. If the inmate is participating in an approved institution work or study program while in this status and satisfies the criteria under sub. (1) (a), credit shall also be granted. Additionally, an inmate placed in TLU from administrative confinement, program, or control segregation may earn extra good time credit if he or she was earning credit in the nonsegregation status prior to placement in segregation. However, if an inmate remains in TLU after the disposition of a disciplinary charge as guilty, he or she shall not be eligible to earn extra good time credit from the date of the disposition through placement into segregation, if any is imposed.

Subsection (1) (f) recognizes that an inmate may want to receive extra good time credit for participating in a correspondence course program. Extra good time credit shall be granted for such study involvement if the PRC approves of such study in accordance with ch. HSS 302, and credit shall be granted for the inmate's involvement only subsequent to the PRC decision.

Similarly, sub. (1) (h) and (i) provide that an inmate shall earn extra good time credit while in sick cell status or hospital placement under the stated conditions. Credit shall be awarded for nonassignment as well as assignment-related medical conditions.

Subsection (2) states specific conditions under which an inmate may not earn extra good time credit. This provision is meant to complement sub. (1) in denoting an inmate's eligibility for credit. Problems in determining an inmate's eligibility for credit under these sections are to be referred to the superintendent for resolution.

Subsection (3) requires that all assignments with similar skills and responsibilities in all of the correctional facilities have reasonably uniform criteria. This requirement ensures that each inmate in the system is evaluated uniformly on the basis of reasonable criteria consistent with the skills and responsibilities of the assignment independent of institution placement. It also necessitates interinstitution communication among supervisors who, with their experience, can provide for development of the most sound criteria for evaluation.

Subsection (3) (c) is a refinement of sub. (3) (b). In most cases, a supervisor may properly assume that each assigned inmate is capable of earning extra good time credit in that assignment. However, at times an inmate may be incapable of performing in the assignment at a level that would entitle him or her to credit, because of poor dexterity skills or mental, physical, or medical disabilities that have been confirmed through clinical testing. In these special cases, the supervisor should consult with the inmate and appropriate staff and develop new criteria consistent with the inmate's special disabilities as well as the skills and responsibilities of that assignment. Of course, the inmate may be placed in another assignment more tailored to his or her abilities but, if this is undesirable or impossible, every effort should be made to accommodate the inmate.

An example might be helpful here. Suppose that an inmate with a physical disability is assigned to the yard maintenance crew at the Kettle Moraine Correctional Institution. An inmate not so disabled might be required under the criteria developed pursuant to sub. (5) to perform a given amount of work of a certain quality in set amount of time to earn extra good time credit. However, a disabled inmate may not be able to perform at this level despite diligence. In this case, new criteria should be established to take this inmate's disability into account in the decision to award extra good time credit. It would seem reasonable to reduce the amount of required work and its quality in a given amount of time. By reducing the quality and quantity of work for a disabled person we are simply recognizing that the person with equal or greater diligence than a nondisabled person may nonetheless produce less. This inability to produce an equal amount of work should not deny credit to the inmate. To the contrary, diligence should earn credit.

Subsection (4) states that additional reasonable criteria used to evaluate an inmate's performance in an assignment must be established if a job has unique requirements. This requirement ensures that all inmates are treated fairly and that each inmate knows the level of performance required. The evaluation of performance must be based on diligence and effort in an assignment and not on the quantity or quality of work product.

Subsection (4) (d) authorizes the superintendent to resolve any questions regarding an inmate's eligibility under subs. (1) and (2). This is necessary because subs. (1) and (2) may not categorize the full range of inmate statuses, and questions may arise regarding time spent in certain statuses in relation to credit earned. It is anticipated that a question will be resolved within 30 days after the date of referral to the superintendent.

Section 53.12 (1), Stats., provides for "a diminution of time at a rate of one day for each 6 days during which he shows diligence." As stated earlier, it is anticipated that most inmates will perform adequately in their assignments and will earn credit each month. Since projected credit is granted upon entry, this would require no monthly administrative computations. Monthly recomputation would be required, however, for those who fail to perform adequately or who spend time in any status noted under sub. (2). In these cases, the table under sub. (5)

**Appendix**

should be used in computing earned credit for a particular month. This provides for fairness to inmates and reduces unnecessary paperwork.

Subsection (5) (a) also provides that an inmate who is entitled to extra good time for a fraction of a day is credited with the whole day. Thus, an inmate who works part of a day in a shop which is closed for part of the day due to an equipment failure receives credit for the full day.