

and against the client, including the client, shall have a chance to speak and respond to questions by the client, the client's attorney, if any, and the department's representative.

(b) The hearing officer shall weigh the credibility of the witnesses and, where appropriate, state his or her conclusions in the hearing record.

(c) Evidence to support or rebut the allegation may be offered. Evidence gathered by means not consistent with this chapter, ch. HSS 328, or in violation of the law may be admitted as evidence at the hearing.

(d) The hearing examiner may accept hearsay evidence and may require the client or the client's attorney, if any, to submit questions to the hearing examiner to be asked of any witnesses questioned outside the presence of the client.

(e) Repetitious and irrelevant questions shall be forbidden.

(f) The department has the burden of proof to establish, by a preponderance of the evidence, that the client violated the rules or conditions of supervision.

(g) The examiner may take an active role to elicit facts regarding the alleged violation not raised by the client or the client's attorney, if any, or the department's representative.

(h) Alternatives to revocation and notice of an alibi defense offered by the client, the client's attorney, if any, and the department's representative shall be considered by the examiner if the examiner and the other party's representative have received them at least 5 days before the final hearing takes place, unless, for cause, the examiner allows a shorter notice.

(i) A verbatim record shall be kept of the testimony and evidence presented at the hearing.

(j) A continuance may be granted with the consent of both parties. The examiner may issue any necessary recommendation to give the department's representative and the client reasonable opportunity to present a full and fair record.

(6) DECISION. (a) After the hearing, the examiner shall consider only the evidence presented.

(b) The examiner shall:

1. Decide whether the client committed the conduct underlying the alleged violation;

2. Decide, if the client committed the conduct, whether the conduct constitutes a violation of the rules or conditions of supervision;

3. Decide, if the client violated the rules or conditions of supervision, whether revocation should result; and

4. Make specific findings as to dangerousness, whether a decision not to revoke would unduly depreciate the seriousness of the violation, whether there is a need for further correctional treatment, and whether this is best provided in an institutional setting.

(c) If the examiner finds that a client violated the rules or conditions of supervision, revocation shall not result unless the examiner finds that continuation of supervision would be inconsistent with the goals and objectives of supervision under ch. HSS 328. The specific goal or objective and the reason it would be inconsistent with continuation of supervision shall be expressly stated in the decision.

(d) If the examiner finds that the client did not violate the rules or conditions of supervision, revocation shall not result and the client shall continue with supervision under the established rules and conditions.

(e) The examiner shall issue a written decision, based upon the evidence and client's record, to either revoke or not revoke the client's probation or parole. Examiners are encouraged to make the decision at the hearing. The examiner may include recommendations about what action would be in the best interests of the client, what the role of the agent, supervisor or bureau should be in implementing such recommendations, or comments about any other matter relevant to the case.

(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.

(7) ORDER. The examiner's order stating the decision to revoke or not revoke and the reasons for it shall be written and forwarded within 10 working days after the hearing to the client, the client's attorney, if any, the agent's supervisor, the regional chief, and the department's representative. An extension of 5 working days is permitted if there is cause for the extension and the examiner notifies the parties of the reasons for it.

(8) EFFECT OF ORDER AND APPEAL. The examiner's order shall take effect and be final 10 working days after the date it is issued unless the client or the client's attorney, if any, or department's representative files an appeal with supporting materials under sub. (10) with the secretary.

(9) SYNOPSIS. If an appeal is filed, a synopsis of the testimony at the hearing shall be prepared by the examiner and forwarded to the secretary prior to the secretary's review. The synopsis may be either written or recorded.

(10) MATERIALS SUBMITTED FOR REVIEW. The client's attorney, if any, the client or the bureau shall submit all relevant materials, including petitions, letters, briefs and reply briefs, to the secretary and the other party. Materials submitted for review shall be filed with the secretary within 10 working days after the date of the decision. An extension of this time limit may be granted by the secretary. Materials postmarked within 10 working days after the date of the decision shall be considered to be filed within the 10 working day limit.

(11) **SECRETARY'S DECISION.** (a) The secretary shall review the synopsis, the examiner's decision, and all materials submitted for review under sub. (10).

(b) The secretary shall decide to modify, sustain, reverse, or remand the examiner's decision based upon the evidence presented at the hearing and the materials submitted for review.

(c) The secretary's written decision shall be forwarded to the client, the client's attorney, if any, the agent's supervisor, the regional chief, and the department's representative within 7 working days after receipt of the required materials for review, unless the time is extended.

History: Renum. from HSS 31.03 (3) and am. (1) (intro.) and (a), (2), (4) (d) and (5) (a), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (10), eff. 11-10-86; r. and recr. (1) (1), cr. (6) (f), Register, February, 1987, No. 374, eff. 3-1-87; am. (10), Register, May, 1987, No. 377, eff. 6-1-87.

**HSS 31.06 Procedure when revocation hearings are waived.** (1) If a final revocation hearing was waived, the supervisor may recommend revocation. A waiver may be withdrawn by the client prior to the secretary's decision if the client establishes that it was not knowingly, voluntarily, or intelligently made.

(2) If the supervisor recommends revocation, the recommendation shall include the reasons for it and the facts underlying the alleged violation. A record of waivers, confessions, convictions for the conduct underlying the alleged violation, or evidence of a client's guilty pleas or continuation of a criminal proceeding following a determination of probable cause for the conduct underlying the alleged violation shall be prepared. The complete record shall be sent to the secretary within a reasonable period of time after acceptance of the waivers, confession, or record of the guilty plea or conviction.

(3) The secretary shall decide whether to revoke the client's probation or parole.

(4) The secretary's decision shall state the reasons for it based upon the information provided and shall be delivered to the client, the client's attorney, if any, the regional chief, and the supervisory staff member who recommended revocation within 10 days of receipt of the recommendation.

History: Renum. from HSS 31.03 (4), Register, August, 1985, No. 356, eff. 9-1-85.

**HSS 31.07 Termination of revocation proceedings.** The supervisor may recommend to the regional chief that revocation proceedings be terminated without revocation of a client's probation or parole or that the client be released from custody status, or both, at any time before the hearing examiner's decision is issued, if there is sufficient reason for doing so. The regional chief shall decide.

History: Renum. from HSS 31.03 (5), Register, August, 1985, No. 356, eff. 9-1-85.

**HSS 31.08 Concurrent criminal prosecution and acquittal in criminal proceeding.** All revocation actions under this chapter shall proceed regardless of any concurrent prosecution of the client for the conduct underlying the alleged violation. An acquittal in a criminal proceeding for a

Register, May, 1987, No. 377

## HSS 31

client's conduct underlying an alleged violation shall not preclude revocation of that client's probation or parole for that same conduct.

History: Renum. from HSS 31.03 (6), Register, August, 1985, No. 356, eff. 9-1-85.

**HSS 31.09 Records.** A summary of all alleged violations, revocation actions, and proceedings under this section against a client shall be maintained in the client's record.

History: Renum. from HSS 31.03 (7), Register, August, 1985, No. 356, eff. 9-1-85.

**HSS 31.10 Transport to a correctional institution.** A client shall be transported to a correctional institution or to court for sentencing as soon as it is feasible after a revocation decision becomes final.

History: Renum. from HSS 31.03 (8), Register, August, 1985, No. 356, eff. 9-1-85.

**HSS 31.11 Special revocation procedures.** All clients are subject to revocation under ss. HSS 31.03 to 31.10 except as noted under this section. Those clients committed under s. 161.47 or 971.17, Stats., or s. 54.04 or 54.07, Stats. (1975), shall follow the revocation procedures under this section and ss. HSS 31.07 to 31.09 as follows:

(1) If a client committed under s. 161.47, Stats., allegedly violates the rules or conditions of supervision, an agent shall proceed as noted under s. HSS 31.03(2) to (4) and shall, upon the approval of a supervisor, notify the committing court of the alleged violation and submit a report under s. HSS 31.03(4) to the court within a reasonable time after becoming aware of the alleged violation. If the court decides that the client should remain on probation, supervision shall continue under the previous rules and conditions unless they are modified by the court.

(2) Clients committed under s. 971.17, Stats., may only have their parole revoked by the court.

(3) If a client committed under s. 54.04, Stats. (1975), allegedly violates the rules or conditions of probation, field staff shall proceed as noted under ss. HSS 31.03(2) to (4) and 31.04 except that a case review shall be held and a decision issued by the supervisor within 96 hours after the detention of the client for the alleged misconduct. The supervisor may extend this time limit for good cause. If the supervisor recommends revocation, the agent shall notify the committing court of the decision within a reasonable period of time. The court shall determine whether revocation shall occur. No final revocation hearing may be held by the department. If the court decides that the client should remain on probation, supervision shall continue under the previous rules and conditions unless they are modified by the court.

(4) If a client committed under s. 54.07, Stats. (1975), allegedly violates the rules or conditions of parole, field staff shall proceed as noted under ss. HSS 31.03 (2) to (4) and 31.04 except that a case review shall be held and a decision issued by the supervisory staff member within 96 hours after the detention of the client for the alleged misconduct. A final revocation hearing shall then be held in accordance with this section.

History: Renum. from HSS 31.03 (10), Register, August, 1985, No. 356, eff. 9-1-85.

**HSS 31.12 Harmless error.** If any time requirement under this chapter is exceeded, the secretary may deem it harmless and disregard it if it does not affect the client's substantive rights. Substantive rights are affected

Register, May, 1987, No. 377

DEPARTMENT OF HEALTH AND SOCIAL SERVICES 84-1  
HSS 31

when a variance tends to prejudice a fair proceeding or disposition involving a client.

History: Renum. from HSS 31.03 (11) and am., Register, August, 1985, No. 356, eff. 9-1-85.

Register, May, 1987, No. 377