



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

David H. Schwarz, Administrator
5005 University Avenue, Suite 201
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
E-mail: dha.mail@dha.state.wi.us
Internet: <http://dha.state.wi.us>

CLEARINGHOUSE RULE 01-018

ORDER of the Division of Hearings and Appeals

AN ORDER to renumber HA 2.05 (7) (f) and (g); to amend HA 2.01 (1) and (2), 2.02 (8) and 2.05 (7) (d); and to create HA 2.05 (1) (g) and (h) and 2.05 (7) (f) and (g), relating to the revocation of extended supervision of persons serving a bifurcated sentence under the truth-in-sentencing provisions of 1997 Wisconsin Act 283.

Analysis Prepared by the Division of Hearings and Appeals.

These rules are required as a result of the enactment of the truth-in-sentencing provisions of 1997 Wisconsin Act 283. That act abolished parole for crimes committed on and after December 31, 1999 and replaced it with a truth-in-sentencing bifurcated sentence. The bifurcated sentence provisions require a judge to impose a sentence with two parts. The first part is a period of prison confinement. The second, called "extended supervision", is a period of community supervision administered by the Department of Corrections. Like parole, the extended supervision may be revoked if the offender violates the rules of supervision and the offender may be returned to prison. Unless waived by the offender, the offender is entitled to an administrative due process revocation hearing before the Division of Hearings and Appeals. The proposed rule changes will modify the existing corrections revocation provisions of chapter HA 2 to include the revocation of truth-in-sentencing extended supervision.

Text of the rule.

SECTION 1. HA 2.01 (1) and (2) are amended to read:

HA 2.01 (1) **AUTHORITY.** These rules are promulgated under the authority of s. 301.035 (5), Stats., and interpret ss. 302.11 (7), 302.113 (9) (a), 302.114 (9) (a), 938.357 (5), 973.09, 973.10, 973.155, 975.10 (2) and ch. 304 Stats.

(2) **SCOPE.** This chapter applies to corrections hearings under ss. 302.11 (7), 302.113 (9) (a), 302.114 (9) (a), 973.10, 975.10 (2), and ch. 304 Stats. The procedural rules of general application contained in this chapter also apply to youth aftercare revocation proceedings in any situation not specifically dealt with in ch. ~~HSS 343~~ DOC 393.

SECTION 2. HA 2.02 (8) is amended to read:

HA 2.02 (8) "Revocation" means the removal of a client from ~~probation or parole or youth aftercare supervision~~ probation, parole, extended supervision or youth aftercare supervision.

SECTION 3. HA 2.05 (1) (g) and (h) are created to read:

HA 2.05 (1) (g) In extended supervision cases under s. 302.113 (9) (a), Stats., the department's recommended period of incarceration.

(h) In extended supervision cases under s. 302.114 (9) (a), Stats., for persons serving a life sentence, the department's recommended period of time for which the person shall be incarcerated before being eligible for release to extended supervision.

SECTION 4. HA 2.05 (7) (d) is amended to read:

HA 2.05 (7) (d) The administrative law judge shall issue a written decision based upon the evidence with findings of fact and conclusions of law stating the reasons to revoke or not revoke the client's ~~probation or parole~~ supervision. The administrative law judge may, but is not required to, announce the decision at the hearing.

SECTION 5. HA 2.05 (7) (f) and (g) are renumbered HA 2.05 (7) (h) and (i).

SECTION 6. HA 2.05 (7) (f) and (g) are created to read:

HA 2.05 (7) (f) If an administrative law judge decides to revoke a period of extended supervision under s. 302.113 (9) (a), Stats., the administrative law judge shall include a determination of the period of incarceration taking into consideration the following criteria:

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 amount of incarceration that is necessary to protect the public from the risk of further criminal activity, to prevent the undue depreciation of the seriousness of the violation or to provide confined correctional treatment.

(g) If an administrative law judge decides to revoke a period of extended supervision for a person serving a life sentence under s. 302.114 (9) (a), Stats., the decision shall consider the criteria established in s. HA 2.05 (7) (f), and shall include a determination of the period of time for which the person shall be incarcerated before being eligible for release to extended supervision.

Effective date.

This rule shall take effect as provided in s. 227.22 (2) (intro.), Statutes.

Dated: _____

Agency: _____

David H. Schwarz, Administrator
Division of Hearings and Appeals