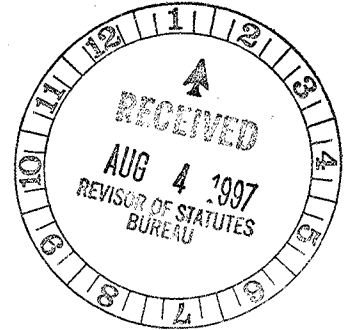


Clearinghouse Rule 96-092



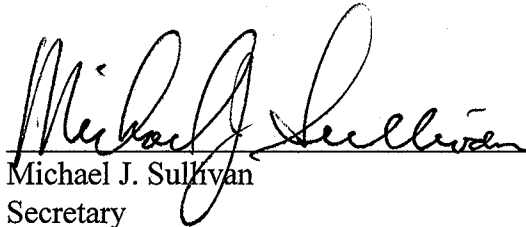
STATE OF WISCONSIN)
) SS
DEPARTMENT OF CORRECTIONS)

I, Michael J. Sullivan, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed rules, relating to qualified leave for inmates, were duly approved and adopted by the Department on August 4, 1997.

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the official seal of the
Department of Corrections
149 E. Wilson Street in the City of
Madison, this 4th day of August, 1997.

SEAL


Michael J. Sullivan
Secretary

96-092

10-1-97

ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND RECREATING RULES

The Wisconsin department of corrections proposes an order to repeal and recreate DOC 326, relating to leave for qualified inmates.

Statutory authority: ss. 303.068 (5) and 227.11 (2) (a), Stats.
Statutes interpreted: s. 303.068, Stats.

Analysis Prepared by the Department of Corrections

Some provisions of the department of corrections administrative rule relating to leave for qualified inmates have not been updated since the rule was created. With over 10 years of experience working with the rule, the department proposes to update the rule.

This rule permits a community custody inmate to be on unescorted leaves. Allowing community custody inmates unescorted leaves is consistent with the correctional goal of reintegration into the community. A conditional exposure to life outside an institution for an inmate who does not pose a threat to the public is a beneficial means of preparing the inmate for life outside prison.

This rule:

1. Provides that a qualified inmate may be granted unescorted leave for any of the following purposes:

- a. To visit a close family member who is seriously ill.
- b. To attend the funeral of a close family member.
- c. To contact a legitimate, verified potential employer through a prearranged interview. The requirements that the interview be legitimate, verified, and prearranged are additions to the rule.
- d. To screen for or diagnose or treat an injury, illness or disease, as pre-approved by the bureau of health services. The requirement that the health service be pre-arranged by the bureau of health services is an addition to the rule.

e. To visit a close family member to facilitate family reintegration and stability.

2. Creates and clarifies definitions.

3. Requires the following of an inmate to be eligible for unescorted leave:

a. To be housed in a minimum security facility. The proposed rule deletes the requirement that the inmate have the classification for at least 30 days prior to application.

b. To have a community custody status.

c. To demonstrate a need consistent with the purposes of the rule. The proposed rule adds this requirement.

d. To not be confined or have a criminal conviction for a violent offense or a history of assaultive behavior. The proposed rule adds this requirement.

e. To not be confined nor have a criminal conviction for escape. The proposed rule adds this requirement.

f. To remain in Wisconsin while on leave. The proposed rule adds this requirement.

g. To have leave granted for no more than 3 days exclusive of travel, unless an extension is granted, and have no more than 3 leaves during a calendar year. The proposed rule adds this requirement.

4. Requires an inmate or an employe on behalf of an inmate to apply for leave.

5. Requires the warden or superintendent to designate a staff member to conduct an investigation and verification of the application.

6. Requires the department to notify the assigned parole agent of the details of the approved leave. This is a new requirement in the proposed rule.

7. Requires the warden or superintendent, based on recommendations, to deny the leave or approve the leave and impose conditions. This is a change from the current rule which provides that the PRC shall deny the request for leave or make a recommendation to the superintendent to grant the leave.

8. Provides a process for review of a denial of leave. The proposed rule changes the current rule by providing that the superintendent's decision may be appealed to the warden, and that the warden's decision may be appealed to the administrator.

9. Requires notification of the details of the approved leave to the local officials before an inmate is released on leave. This is a change from the current rule which only requires that the local officials be notified.

10. Provides that all direct expenses of a leave are the responsibility of the inmate. This is a change from the current rule which provides that the direct expenses of leave shall be the responsibility of the inmate, the inmate's family, or another lawful source.

11. Provides for sanctions for an inmate who intentionally fails to report from a leave or violate conditions of leave or rules of the department.

SECTION 1. DOC 326 is repealed and recreated to read:

CHAPTER DOC 326

LEAVE FOR QUALIFIED INMATES

DOC 326.01 Authority and applicability	DOC 326.07 Notification of local officials
DOC 326.02 Purpose	DOC 326.08 Custody
DOC 326.03 Definitions	DOC 326.09 Expenses
DOC 326.04 Eligibility for leave application	DOC 326.10 Inmate conduct while on leave
DOC 326.05 Process for obtaining leave	DOC 326.11 Sanctions
DOC 326.06 Review of denial of leave	DOC 326.12 Good time credit on leave

DOC 326.01 AUTHORITY AND APPLICABILITY. This chapter is promulgated under the authority of s. 303.068 (5), Stats., and interprets s. 303.068, Stats. It applies to the department of corrections and to all inmates in the legal custody of the department. Community custody inmates may be permitted unescorted leaves under this chapter. Leaves under this chapter are distinguishable from temporary release of inmates with supervision which is regulated by ch. DOC 325, and from work and study release for inmates which is regulated by ch. DOC 324.

DOC 326.02 PURPOSE. This chapter provides for an eligible, community custody inmate to be considered for an unescorted leave from the institution.

DOC 326.03 DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the division of adult institutions or the administrator of the division of community corrections, department of corrections.

(2) "Bureau of health services" means bureau of health services, department of corrections.

(3) "Close family member" means the inmate's parent, child, spouse, grandparent, brother or sister. "Parent" includes a person who was previously acting as a parent, as defined in s. 822.02 (8), Stats., for the inmate.

(4) "Community custody" means that custody classification which permits inmates to participate in off-grounds activities.

(5) "Department" means the department of corrections.

(6) "History of assaultive behavior" means any prior arrests or charges for violent offenses, whether or not there was a conviction, and whether or not the offenses occurred inside or outside of the institution.

(7) "Leave agreement" means the written statement, signed by the inmate, by which the inmate agrees to accept the responsibilities that the privilege of the leave requires and agrees to abide by certain specified conditions of leave.

(8) "Leave for qualified inmates" or "leave" means the privilege of an unescorted, authorized absence from the institution for one of the verifiable purposes under s. DOC 326.02.

(9) "Serious illness" means a medical condition which is verified by a physician where death is imminent.

(10) "Superintendent" means the superintendent at a correctional center, or designee.

(11) "Violent offense" means a conviction for any offense in which there is actual or threatened bodily harm or any sexual offense.

(12) "Warden" means the warden at an institution, or designee.

DOC 326.04 ELIGIBILITY FOR LEAVE APPLICATION. To be eligible to apply for a leave, an inmate shall meet the following requirements:

(1) The inmate shall be housed in a minimum security facility as described in sec. DOC 302.06, including contract facilities,

and the inmate shall have a community custody status as defined in sec. DOC 302.05 (5).

(2) The inmate shall be able to demonstrate one of the following needs:

(a) To visit a close family member who is seriously ill.

(b) To attend the funeral of a close family member.

(c) To contact a legitimate, verified potential employer through a prearranged interview.

(d) To screen for or diagnose or treat an injury, illness or disease, as pre-approved by the bureau of health services.

(e) To visit a close family member to facilitate family reintegration and stability.

(3) The inmate shall not be confined, nor have a criminal conviction for a violent offense or a history of assaultive behavior.

(4) The inmate shall not be confined, nor have a criminal conviction for escape.

(5) The proposed leave is restricted to the state of Wisconsin.

(6) The proposed leave shall only be for a period of time necessary for the purpose of the leave, but no inmate may be granted a total of more than 3 leaves per calendar year and no leave may exceed 3 days exclusive of travel time unless an extension is granted, for cause, by the warden or superintendent.

DOC 326.05 PROCESS FOR OBTAINING LEAVE. (1) The inmate or an employe on behalf of the inmate shall apply for a leave by submitting a completed, signed application and leave agreement.

(2) In completing these documents, the inmate shall be required to provide all necessary information, prove eligibility, and agree in advance to all conditions of the leave, including, but not limited to geographic and travel conditions, including travel routes and mode of transportation, the specific geographic confines within which the inmate is authorized to move, any other

condition on movement, conduct or communication consistent with the intent of this chapter, and any urinalysis or breathalyzer tests, personal or strip searches by department staff or law enforcement personnel.

(3) The warden or superintendent shall designate a staff member to investigate and verify the application information according to the following procedure:

(a) Verify that there are no outstanding detainers, pending charges, or revocations.

(b) Verify the accuracy of the information in the application and the inmate's eligibility under DOC 326.04. This investigation shall include contact with anyone who can verify the accuracy of the information in the application. If, upon investigation, the inmate is found ineligible, the staff member shall note the reason for the ineligibility on the application.

(c) Notify the parole agent assigned to the inmate of the details of the approved leave.

(d) Attempt to determine potential community reaction to the proposed leave, including, any input from the parole agent, local law enforcement authorities and district attorneys.

(4) The staff member designated under sub. (3) shall recommend approval or denial of the inmate's application for an unescorted leave and shall refer the recommendation to approve or deny the leave to the warden or superintendent. If a recommendation to deny the unescorted leave is based on insufficient time for institution staff to investigate, review or process the application prior to the requested leave departure date, the staff member shall advise the inmate that he or she may apply for a temporary leave under supervision as provided in ch. DOC 325.

(5) The warden or superintendent shall review any recommendation and shall do either of the following:

(a) Deny the leave.

(b) Approve the leave, and impose conditions. The inmate shall sign a statement agreeing to the conditions as a prerequisite to leave being granted.

DOC 326.06 REVIEW OF DENIAL OF LEAVE. (1) An inmate may appeal the superintendent's decision to the warden or the warden's decision to the administrator in writing within 5 days of the date of the decision denying leave. This may be extended for good cause at the discretion of the warden or administrator.

(2) The warden or administrator shall issue a decision within 10 days of receiving the request.

(3) The warden's or administrator's decision to deny a leave is final.

(4) Complaints about procedural violations, but not the warden's or administrator's final decision, shall be reviewed within the inmate complaint system under ch. DOC 310.

DOC 326.07 NOTIFICATION OF LOCAL OFFICIALS. Before an inmate is released on leave, the warden or superintendent shall notify the police chief of any community involved and the sheriff and district attorney of any county involved of the details of the approved leave.

DOC 326.08 CUSTODY. An inmate granted leave remains in the legal custody of the institution from which the inmate has taken leave or to which the inmate is assigned.

DOC 326.09 EXPENSES. All direct expenses of a leave shall be the responsibility of the inmate.

DOC 326.10. INMATE CONDITIONS WHILE ON LEAVE. (1) An inmate shall travel to and from the leave destination by the approved method of transportation and route.

(2) An inmate shall abide by all state statutes and rules, local ordinances, and policies and procedures of the department while on leave.

(3) An inmate shall comply with the leave agreement.

(4) An inmate shall at all times have a copy of the authorization of leave on the inmate's person.

DOC 326.11 SANCTIONS. (1) An inmate who intentionally fails to return from a leave as specified, or who intentionally leaves the approved route to or from the leave destination, may be treated as an escapee.

(2) An inmate who violates conditions of leave, the leave agreement or any rules of the department are subject to disciplinary action under ch. DOC 303.

(3) The warden or superintendent may cancel leave at any time.

DOC 326.12 GOOD TIME CREDIT ON LEAVE. Leave time is credited toward the service of the sentence. The time credit includes statutory and extra good time not covered by Sec. 973.155 Wis. Stats.

Note: DOC 326.02. DOC 326.02 states the purposes of leave for qualified inmates. Selected inmates are allowed unescorted leave only for a serious illness of the close family member, to attend the funeral of a close family member, for employment interviews, for medical purposes, or to facilitate family reintegration and stability as provided under s. 303.068, Stats. Leaves are considered a privilege not a right. They provide an incentive for inmates to exhibit appropriate behavior in the institution. Leaves for the purposes of family reintegration provide a special incentive for inmates.

Allowing selected inmates unescorted leave is consistent with the correctional goal of eventual reassimilation of the offender into the community. A conditional exposure to life outside an institution for an inmate who does not pose a threat to the public is beneficial as a means of preparing an inmate for life outside a structured prison environment.

Leave for qualified inmates has direct and immediate benefits. Permitting an inmate to visit a seriously ill relative or attend a funeral is important in maintaining family ties. The inmate can be with the family in these most difficult periods, can show his or her concern for the family, and can share the burden that frequently accompanies illness or death in a family. It strengthens family ties, helps the inmate work through feelings of pain and sorrow, and assists in the inmate's adjustment in the institution and after release. Leave is also granted to promote

family stability and the reintegration of the inmate into the family. In some cases a person who is not the natural parent has actually raised the inmate.

Ch. DOC 326 and s. 303.068, Stats., allow leave for an inmate to contact a prospective employer. This contact away from the institution and staff enables an inmate to experience independent responsibility prior to release, thereby reducing the adjustment necessary after release. This independent responsibility can give the individual the self-confidence necessary for successful reintegration into society. The inmate has an opportunity to plan for life on the outside and to secure a position upon release by expanding the potential for employment. Employment opportunities are limited for someone with a criminal record. Many employers are unwilling to hire a person they have not seen or interviewed. Leaves for job-seeking remove this obstacle to obtaining employment.

Leaves granted for medical reasons, like other types of leaves, are granted only upon the warden's or superintendent's approval. The bureau of health services should be consulted before deciding to grant leave for this purpose. The chapter does not allow an inmate to select his or her own health care provider or type of treatment in lieu of the treatment already provided in the institution.

The purpose of leave is to fulfill the correctional goals of reintegration. This is to be achieved consistent with the protection of the public.

Note: DOC 326.03. "Leave" is sometimes called "furlough" in the institutions.

Note: DOC 326.04. This section establishes the minimum requirements to be eligible for leaves. Simply meeting these requirements does not mean that an inmate is entitled to leave.

Although an inmate who is eligible for leave is likely to be a low escape risk due to the eligibility requirements of s. DOC 326.04, and unescorted and supervised visit to the community, offers more freedom of movement than any previous experience the inmate has had in the correctional system. An unescorted leave presents an opportunity for escape. An inmate with a record of escapes may be more likely to take advantage of this opportunity, and therefore,

no inmate is eligible for leave who is confined or have a criminal conviction for escape.

The duration of leave is limited to 3 days, excluding travel time. The duration of leave may be extended by the warden or superintendent. An extension may be granted, for example, if a seriously ill family member dies while the inmate is on leave and the inmate wants to attend the funeral. Also, an employer may request a second interview with an inmate who is on leave for an employment interview. No more than 3 leaves is granted in a calendar year.

Note: DOC 326.05. DOC 326.05 described the procedures for obtaining a leave. Subsection (1) allows either an inmate or an employe on behalf of the inmate to apply for the leave. An employe should not apply for a leave on behalf of an inmate if the inmate does not want the leave. Some leaves which cannot be planned in advance, such as some funerals or sick bed visits, may not allow sufficient time to process the application. In such cases the inmate may apply for a temporary leave under supervision as provided in ch. DOC 325. Subsection (2) allows the imposition of leave conditions as provided in s. DOC 326.04 (2). Having the inmate sign a statement agreeing to the conditions ensures that the inmate knows what those conditions are.

Subsection (3) describes the process of investigating leave applications. First, a staff member must review each application to determine whether the information in the application is accurate and whether the inmate is eligible for the leave under the criteria in s. DOC 326.04. If the information is inaccurate and can be corrected, the investigator should do so. If the inmate is ineligible for the leave, there is no reason to continue processing the application.

If the inmate is found eligible for the leave and the information is verified, the investigation continues. The investigation's purpose is to make sure that all information that could be relevant to the decision to grant or deny the leave is included in the application. Investigation also protects the public. All the inmate's assertions must be verified and the leave principals willing to cooperate. Investigation may include contact with many outside people, including law enforcement and criminal justice agencies and the committing court. It also includes investigation for detainers.

Following the investigation, the application and recommendation is referred to the warden or superintendent. The warden or superintendent approves and imposes conditions on the leave or denies the leave.

In some instances, an offense may have received unusually intense publicity and substantial community reaction may have been aroused. In such a case the presence of the offender might cause negative reactions. The staff member is required to consider the likelihood of such severe negative community reactions. If investigation reveals substantial likelihood that the community will become aroused, then, in the best interests of the community and of the inmate, leave should not be granted. If investigation reveals substantial threat to the safety of the inmate in the community, the leave should not be granted.

Note: DOC 326.06. DOC 326.06 allows an inmate to request the warden or administrator to review a denial of a leave. This request must be made within 5 days of the decision to deny the leave. The time limit protects the inmate's ability to get review and also ensures that the review process does not unnecessarily delay the leave process. The warden or administrator may, but does not have to, review any procedural irregularities of the leave review. The warden's or administrator's main task in reviewing leave applications is to decide whether to override the actual decision of the reviewing authorities. The warden's or administrator's decision to deny a leave is final.

An inmate may request a review of procedural irregularities in the leave process by going through the inmate complaint system.

Note: DOC 326.08. This section makes clear that legal custody of an inmate on leave remains with the department, thereby avoiding confusion about who has legal custody of the inmate if the inmate is not within the institution.

Note: DOC 326.10. This section specifies conduct that is expressly controlled while the inmate is on leave. These provisions must be a part of the leave agreement so the inmate is aware of them. Violation of any of the these provisions may subject an inmate to the sanctions under s. DOC 326.11.

Note: DOC 326.11. DOC 326.11 provides for escape or misconduct while an inmate is on leave. An inmate may be treated as an

escapee if that inmate leaves the area designated in the leave agreement or if the inmate fails to return from leave. Since an inmate is in the custody of the department, a violation of this subsection is an "intentional escape from custody" under s. 946.42 (3), Stats. This escape could be prosecuted as a new offense.

Subsection (2) provides for sanctions for misconduct, other than escape, while the inmate is on leave. An inmate may be disciplined under ch. DOC 303 for violation of conditions of leave or the leave agreement, department rules under ch. DOC 303. Subsection (3) also gives the warden or superintendent the right to cancel leave at any time.

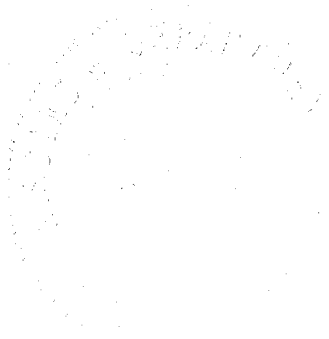
This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

Dated: 9/20/97

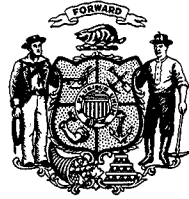
By: Michael J. Sullivan
Michael J. Sullivan
Secretary

Seal:



Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary

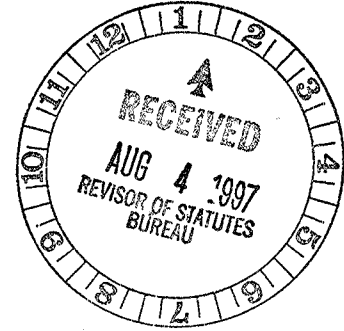


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State of Wisconsin Department of Corrections

August 4, 1997

Bruce Munson
Revisor of Statutes Bureau
131 West Wilson Street, Room 800
Madison, Wisconsin 53703-3222



Dear Mr. Munson:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified and uncertified copy of DOC 326, relating to leave for qualified inmates.

Sincerely,

Handwritten signature of Michael J. Sullivan in cursive.
Michael J. Sullivan

Attachment