

## **The Nuts and Bolts of Handling a Revocation Case SPD Conference 2019**

### **Before the Revocation Hearing:**

- Know your client's rights:
  - Right to attend the hearing, deny the allegations, be heard and present witnesses, present evidence, question witnesses, have an attorney, waive the hearing, receive a written decision stating the reasons for the decision based upon the evidence presented.
- Confer with your client as soon as possible to determine how they want to handle the revocation (i.e.: denial of some or all of the allegations vs. ATR proposal or argument over time forfeiture in E.S. cases, do they want to testify at the hearing, are there witnesses you may want to have testify, is there additional investigation that needs to be done)
- Request COMPAS notes from DOC file/View your client's DOC file.
  - You will need to have your client sign DOC releases. (See Attachments for DOC releases)
- Familiarize yourself with ATR options available and discuss this with the agent as soon as possible
  - Some options include sanctions, treatment in the community, TLP, GPS monitoring, Treatment Courts, Institutional ATRs (See Attachments for list of current Institutional ATRs).
- If the DOC will not agree to an ATR, prepare and submit an ATR Proposal. ATR Proposal must be submitted 5 working days (Monday-Friday, excluding legal holidays) before the hearing. \*This time limit also applies to an alibi defense.
  - Staff Attorneys- consult CSS for assistance with ATR proposal/testifying at the revocation hearing.
  - Private Attorneys: can request funding for expert to prepare ATR. (See Attachments for list of potential experts)
- Double-check the sentence credit listed in the packet, as the ALJ will ask you if you agree to that at the hearing. Be ready to address any additional sentence credit you believe your client is entitled to.
- If you have reason to doubt your client's competency to proceed, you must raise the issue with the ALJ. If the ALJ determines cause exists to doubt your client's competency, the ALJ will suspend the proceedings and refer the matter to the circuit court for appointment of examiner(s), a competency hearing and decision.
- Revocation hearing may be rescheduled for good cause. If you need an adjournment, email the agent and DHA. The following factors will be considered: timeliness of request, reason for change, whether client is detained, where client is detained, why client is detained, how long client has been detained, whether any party objects, length of any resulting delay, convenience or inconvenience to parties, witnesses, and division, whether client and attorney have had adequate notice and time to prepare for the hearing.
  - Make your request for an adjournment as soon as you know you need it to avoid the issue of untimeliness.

## The Revocation Hearing:

- The 50-day time limit to have the revocation hearing from time of detention is directory, not mandatory.
- The burden of proof is preponderance of the evidence.
- Hearsay is admissible in revocation proceedings. Admissibility is not the same as reliability. Hearsay evidence cannot form the basis for a violation unless it has sufficient indicia of reliability and there is good cause to dispense with confrontation of a live witness. *See State ex rel. Simpson v. Schwarz*, 2002 WI App 7, ¶ 20, 250 Wis. 2d 214, 640 N.W.2d 527.
  - The party offering the hearsay evidence must show that it is reliable and have a good explanation for not producing the witness. *Simpson* at ¶ 15.
  - Good cause “is always met when the evidence offered in lieu of an adverse witness's live testimony would be admissible under the Wisconsin Rules of Evidence.” *Simpson*
- Rules of evidence other than Ch. 905 with respect to privileges do not apply except you can object to repetitious or irrelevant questions and they may be excluded.
- The ALJ will go through the Department’s exhibits and mark them.
- Then the ALJ will ask if the defense has any exhibits. ATR proposal will be an exhibit.
  - Submit exhibits prior to the date of the hearing, since the hearings are now by video.
- ALJ will ask you if there are any admissions to the allegations. If you stipulate to any of them, the Department will not have to prove them.
- The Department will put on their case/call witnesses
- The agent testifies. The ALJ will ask the agent about the packet, whether ATRs were considered, etc. Be prepared to cross examine the agent, who is often the sole witness for DOC.
- Your case. Call your witnesses. They are subject to questioning by the Department and ALJ.
- The Department makes their argument, then you make your argument.
- In making the decision to revoke or not revoke your client, the ALJ decides:
  1. Whether your client committed the conduct underlying the alleged violations.
  2. If the client did, whether their conduct was a violation of their supervision rules.
  3. If the client violated the rules, whether they should be revoked, or whether there are appropriate alternatives to revocation.

\*\*ALJ must find a violation of a rule in order to revoke.

\*\*ALJ does not decide what specific ATR is appropriate, only that an alternative is appropriate.

ALJ cannot revoke unless he/she finds:

- a. confinement is necessary to protect the public from further criminal activity by the client; or
  - b. the client needs correctional treatment most effectively provided if confined; or
  - c. it would unduly depreciate the seriousness of the violation if supervision were not revoked.
- In E.S. cases, be prepared to argue the amount of time to be forfeited.

## **After the Revocation Hearing:**

**Time Limits (Decision and Administrative Appeal):** If your client wants to appeal, you are responsible for doing the administrative appeal, regardless of your merit determination.

- The ALJ has 10 working days to issue a decision, but can be extended for 5 days if cause and the ALJ notifies all parties of the reason for it.
- The decision will become final 10 days later unless either party appeals.
- An appeal must be filed within 10 days of the date of the decision. You can email the appeal to DHA and the agent. (if you don't get the other party a timely copy of the appeal, the appeal may be dismissed).
- The other party has 7 days to respond.
- The Administrator will issue a decision to modify, sustain, reverse, or remand the ALJ's decision, within 21 days, unless extended by the Administrator.

**\*\*Important:** Make sure your client knows that it's possible to get more time in an ES revocation appeal, from the Administrator.

**Writ of Certiorari:** Unlike the administrative appeal, filing is subject to the attorney's determination that the writ has merit. There is no administrative, statutory, or constitutional right to counsel for certiorari. SPD appointments for cert are discretionary.

- Must be filed within 45 days of the Administrator's decision.
- Must serve DHA, DOC Legal Counsel and DOJ.
- Should also serve the ADA on the underlying case.
- Time limits and filing requirements are strictly construed. (See Attachment E, sample writ).
- See attachments for sample writ
- See LAIP document, Prisoners' Guide to Challenging Revocation by Certiorari at [https://law.wisc.edu/fjr/laip/pro\\_se\\_revocation\\_manual\\_2015.pdf](https://law.wisc.edu/fjr/laip/pro_se_revocation_manual_2015.pdf).

### **Other things to remember:**

- An acquittal in a criminal case for conduct underlying an alleged violation does not preclude revocation for the same or similar conduct.
- A violation is proven when there is a JOC arising from conduct underlying an allegation.
- Failure to comply with requirements under Ch. 331 may be deemed harmless by DHA if it does not prejudice a fair proceeding or disposition.
- Additional allegations may be added at least 5 days prior to the hearing if they do not materially prejudice the client's right to a fair hearing.

**Preliminary Hearing:** Probable cause to believe the offender violated a rule or condition of supervision and a decision on custody pending the final hearing. These hearings are rare because they are not required where there has been any admission of any allegation, a finding of guilt in a misdemeanor or a bind over in a felony.

- Attorney may review evidence to be considered prior to the preliminary hearing

- Client has the right to be present, deny the allegation(s), present evidence, including witnesses, and receive a written decision (within a reasonable time)
- Hearing has to take place no later than 5 working days after client has received notice of the preliminary hearing, unless extended for cause (usually at the request of the defense).

### **Waiver of the Revocation Hearing:**

- In a probation case, once you know your client wants to waive, email the agent with that information and request that the Revocation Order and Warrant be filed. Once it is filed, follow up with Judicial Assistant to get the SAR scheduled. Make sure you have determined the maximum time available for each count/case and that you have discussed that with your client. Sometimes clients erroneously assume they will receive the sentence the Department is recommending.
- In an ES case, if your client waives, they will receive the sentence recommended by the Department. Talk to your client about the decision to have a reconfinement hearing at the institution and let the agent know they are waiving and would like a reconfinement hearing if that is the case. At a reconfinement hearing, your client can receive the same sentence, less, or more.

\*\*We do not represent the client at the reconfinement hearing.

- Client can withdraw the waiver prior to the issuance of the Revocation Order and Warrant, if they establish waiver was not knowingly, intelligently, or voluntarily made.

**Does Act 33 apply? 17 WI Act 33: Immunity for Aiders and Aided Persons in Drug Overdoses.** This act includes immunity for aiders and aided persons in drug overdose cases. Also includes ball jumping charges. For revocation, **the person must be offered an alternative.** It's not a bar to prosecution- the person has to be offered a deferred prosecution agreement. If they don't complete it, they can be prosecuted. (Sunset date 8/1/20)

**Protection of witnesses:** In both of the situations listed, you will have an opportunity to object to protection of the witness on the record before such action is taken.

- The identity of a witness may be withheld from your client if disclosing their identity would threaten the safety of the witness or another.
- Witness testimony may be taken outside the presence of your client if the ALJ finds there is a "substantial likelihood that the witness will suffer significant psychological or emotional trauma" if they testify in the presence of your client, or when there is a "substantial likelihood that the witness will not be able to give effective, truthful testimony" in the presence of your client.

In either situation, the ALJ shall indicate reasons for the decision and allow you an opportunity to submit questions to be asked of the witness.

**Additional Resources:** See Attachments for DOC Chapter 331 (Probation, Parole or Extended Supervision), Division of Hearings and Appeals HA Chapter 2 (Procedure and Practice for Corrections Hearings) and materials on the SPD Intranet Training page

**If you have additional questions, contact: Kelly Mattingly (SPD), Faun Moses (SPD), Vanessa Korias (CSS), and Lisa Marmet (ALJ)**

# Attachments

- Division of Hearings and Appeals HA Chapter 2 (Procedure and Practice for Corrections Hearings)
- DOC Chapter 331 (Probation, Parole or Extended Supervision)
- DOC releases
- List of current Institutional ATRs
- List of potential experts for ATRs
- Sample writ of certiorari

## Chapter HA 2

## PROCEDURE AND PRACTICE FOR CORRECTIONS HEARINGS

HA 2.01	Application of rules.
HA 2.02	Definitions.
HA 2.03	Service of documents.
HA 2.04	Witnesses and subpoenas.

HA 2.05	Revocation hearing.
HA 2.06	Good time forfeiture, reconfinement and reincarceration hearings.
HA 2.07	Transcripts.
HA 2.08	Harmless error.

**Division of Hearings and Appeals Note (CR 09-101):** For a further explanation of the provisions in ch. HA 2, see the appendix following the last section of this chapter.

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

**(2) SCOPE.** This chapter applies to corrections hearings under ss. 302.11 (7), 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. DOC 393.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527; CR 01-018: am. Register September 2001 No. 549, eff. 10-1-01; corrections in (1) made under s. 13.92 (4) (b) 7., Stats., Register May 2010 No. 653.

**HA 2.02 Definitions.** For purposes of this chapter:

**(1) "Administrative law judge"** means an administrative hearing examiner employed by the division of hearings and appeals.

**(2) "Administrator"** means the administrator of the division of hearings and appeals.

**(3) "Client"** means the person who is committed to the custody of the department of corrections and is the subject of the corrections hearing.

**(4) "Conditions"** means specific regulations imposed on the client by the court or department.

**(5) "Day"** means any working day, Monday through Friday, excluding legal holidays, except as specifically provided otherwise in s. HA 2.05 (4) (a).

**(6) "Department"** means the department of corrections.

**(7) "Division"** means the division of hearings and appeals.

**Division of Hearings and Appeals Note (CR 09-101):** "Offender" as used in this chapter was intended to have the same meaning as "client". A definition of "offender" will be created by future rule making.

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

**(9) "Rules"** means those written department regulations applicable to a specific client under supervision.

**(10) "Supervision"** means the control and supervision of clients exercised by the department of corrections.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92; CR 01-018: am. (8), Register September 2001 No. 549, eff. 10-1-01.

**HA 2.03 Service of documents. (1) BY THE DIVISION.** The division may issue decisions, orders, notices and other documents by first class mail, inter-departmental mail, electronic mail or by facsimile transmission.

**(2) BY A PARTY.** Unless specified otherwise by law or this chapter, materials filed by a party with the division may be delivered personally or by first class, certified or registered mail, inter-departmental mail, electronic mail or by facsimile transmission. All correspondence, papers or other materials submitted by a party shall be provided on the same date by that party to all other parties to the proceeding. No affidavit of mailing, certification, or admission of service need be filed with the division.

**(3) FILING DATE.** Materials mailed to the division shall be considered filed with the division on the date of the postmark. Materials submitted personally or by inter-departmental mail or electronic mail shall be considered filed on the date they are received by the division. Materials transmitted by facsimile shall be considered filed on the date they are received by the division as recorded on the division facsimile machine.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92; CR 09-101: am. Register May 2010 No. 653, eff. 6-1-10.

**HA 2.04 Witnesses and subpoenas.** An attorney may issue a subpoena to compel the attendance of witnesses under the same procedure as provided by s. 805.07 (1), Stats. The secretary of the department of corrections, or any person authorized by the secretary to act in his or her stead, may issue a subpoena to require the attendance of witnesses, on behalf of the department of corrections, in any community supervision revocation proceeding as provided by s. 301.045, Stats. If a person on community supervision is not represented by an attorney, the division or the administrative law judge may issue subpoenas as provided in ch. 885, Stats.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92; CR 09-101: am. Register May 2010 No. 653, eff. 6-1-10.

**HA 2.05 Revocation hearing. (1) NOTICE.** Notice of a final revocation hearing shall be sent by the division within 5 days of receipt of a hearing request from the department to the offender, the offender's attorney, if any, and the department's representative. The notice shall include:

- The date, time, and place of the hearing;
- The conduct that the client is alleged to have committed and the rule or condition that the offender is alleged to have violated;
- A statement of the rights established under sub. (2);
- Unless otherwise confidential or disclosure would threaten the safety of a witness or another, a list of the potential evidence and potential witnesses to be considered at the hearing which may include any of the following:

- Any documents.
- Any physical or chemical evidence.
- Results of a breathalyzer test.
- Any statements by the offender.
- Police reports regarding the allegation.
- Warrants issued.
- Photographs.
- Witness statements.

**(e)** A statement that whatever information or evidence is in the possession of the department is available from the department for inspection unless otherwise confidential;

**(f)** In parole revocation cases:

1. The department's recommendation for forfeiture of good time and any sentence credit in accordance with s. 973.155, Stats.; or

2. The department's recommendation for a period of reincarceration and any sentence credit in accordance with statutes.

**(g)** In extended supervision cases under s. 302.113 (9) (am), Stats., the department's recommended period of reconfinement.

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

(2) **AMENDMENTS.** Any notice information required under s. HA 2.05 (1) may be amended and additional allegations may be added by the department if the client and the attorney, if any, are given written notice of the amendment at least 5 days prior to the hearing and the amendment does not materially prejudice the client's right to a fair hearing.

(3) **OFFENDER'S RIGHTS.** The offender's rights at the hearing include any of the following:

(a) The right to attend the hearing in person or by electronic means.

(b) The right to deny the allegation.

(c) The right to be heard and to present witnesses.

(d) The right to present documentary evidence.

(e) The right to question witnesses.

(f) The right to the assistance of counsel.

(g) The right to waive the hearing.

(h) The right to receive a written decision stating the reasons for it based upon the evidence presented.

(4) **TIME.** (a) If a client is detained in a county jail or other county facility pending disposition of the hearing, the division shall begin a hearing within 50 calendar days after the person is detained by the department in the county jail or county facility. If not so detained, the hearing shall begin within a reasonable time from the date the hearing request is received.

(b) A hearing may be rescheduled or adjourned for good cause taking into consideration the following factors:

1. The timeliness of the request;

2. The reason for the change;

3. Whether the client is detained;

4. Where the client is detained;

5. Why the client is detained;

6. How long the client has been detained;

7. Whether any party objects;

8. The length of any resulting delay;

9. The convenience or inconvenience to the parties, witnesses and the division; and

10. Whether the client and the client's attorney, if any, have had adequate notice and time to prepare for the hearing.

(c) Any party requesting that a hearing be rescheduled shall give notice of such request to the opposing party.

(5) **PROTECTION OF A WITNESS.** (a) The identity of a witness may be withheld from the client if disclosure of the identity would threaten the safety of the witness or another.

(b) Testimony of a witness may be taken outside the presence of the client when there is substantial likelihood that the witness will suffer significant psychological or emotional trauma if the witness testifies in the presence of the client or when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the client at hearing. The administrative law judge shall indicate in the record that such testimony has been taken and the reasons for it and must give the client an opportunity to submit questions to be asked of the witness.

(c) The hearing examiner [administrative law judge] shall give the client and the client's attorney an opportunity on the record to oppose protection of a witness before any such action is taken.

(6) **PROCEDURE.** (a) The hearing may be closed to the public and shall be conducted in accordance with this chapter. The administrative law judge may conduct the hearing by video conference. The hearing may also be conducted by telephone conference if all parties agree. If all parties do not agree to conduct a hearing by telephone conference, the administrative law judge

may conduct the hearing by telephone conference if there is no factual dispute regarding the violations alleged by the department or when the administrative law judge determines that good cause exists to conduct the hearing by telephone conference. All witnesses for and against the offender, including the offender, shall have a chance to speak and respond to questions.

(b) The administrative law judge shall weigh the credibility of the witnesses.

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

(d) The administrative law judge may accept hearsay evidence.

(e) The rules of evidence other than ch. 905, Stats., with respect to privileges do not apply except that unduly repetitious or irrelevant questions may be excluded.

(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. A violation is proven by a judgment of conviction arising from conduct underlying an allegation.

(g) The administrative law judge may take an active role to elicit facts not raised by the client or the client's attorney, if any, or the department's representative.

(h) Alternatives to revocation and any alibi defense offered by the client or the client's attorney, if any, shall be considered only if the administrative law judge and the department's representative have received notice of them at least 5 days before the hearing, unless the administrative law judge allows a shorter notice for cause.

(i) The administrative law judge may issue any necessary recommendation to give the department's representative and the client reasonable opportunity to present a full and fair record.

(7) **DECISION.** (a) The administrative law judge shall consider only the evidence presented in making the decision.

(b) The administrative law judge 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 or whether there are appropriate alternatives to revocation. Violation of a rule or condition is both a necessary and a sufficient ground for revocation of supervision. Revocation may not be the disposition, however, unless the administrative law judge finds on the basis of the original offense and the intervening conduct of the client that:

a. Confinement is necessary to protect the public from further criminal activity by the client; or

b. The client is in need of correctional treatment which can most effectively be provided if confined; or

c. It would unduly depreciate the seriousness of the violation if supervision were not revoked.

4. Decide, if the client violated the rules or conditions of supervision, whether or not the department should toll all or any part of the period of time between the date of the violation and the date an order is entered, subject to credit according to s. 973.155, Stats.

5. Decide, if supervision is revoked, whether the client is entitled to any sentence credits under s. 973.155, Stats.

(c) If the administrative law judge 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.

(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 supervi-

sion. The administrative law judge may, but is not required to, announce the decision at the hearing.

(e) If an administrative law judge decides to revoke the offender's parole, the decision shall apply the criteria established in s. HA 2.06 (6) (b) and shall include a determination of:

1. Good time forfeited, if any, under ch. 302, Stats., and, for mandatory release parolees, whether the offender may earn additional good time; or

2. The period of reincarceration, if any, under ch. 302, Stats.

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

1. The nature and severity of the original offense;

2. The offender's institutional conduct record;

3. The offender's conduct and behavior while on community supervision;

4. The amount of reconfinement 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) (am), 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.

(h) The administrative law judge's decision shall be written and forwarded within 10 days after the hearing to the client, the client's attorney, if any, and the department's representative. An extension of 5 days is permitted if there is cause for the extension and the administrative law judge notifies the parties of the reasons for it.

(i) The administrative law judge's decision shall take effect and be final 10 days after the date it is issued unless the client or the client's attorney, if any, or the department's representative files an appeal under sub. (8).

(8) APPEAL. (a) The client, the client's attorney, if any, or the department representative may appeal the administrative law judge's decision by filing a written appeal with arguments and supporting materials, if any, with the administrator within 10 days of the date of the administrative law judge's written decision.

(b) The appellant shall submit a copy of the appeal to the other party who has 7 days to respond. An appeal may be dismissed if the other party does not receive a timely copy of the appeal.

(9) ADMINISTRATOR'S DECISION. (a) The administrator may modify, sustain, reverse, or remand the administrative law judge's decision based upon the evidence presented at the hearing and the materials submitted for review.

(b) The administrator shall forward a written appeal decision to the client, the client's attorney, if any, and the department's representative within 21 days after receipt of the appeal, unless the time is extended by the administrator.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92; am. (8) (a), Register, August, 1995, No. 476, eff. 9-1-95; CR 01-018: cr. (1) (g) and (h) and (7) (f) and (g), am. (7) (d), renum. (7) (f) and (g) to be (7) (h) and (i), Register September 2001 No. 549, eff. 10-1-01; CR 09-101: am. (1) (intro.), (b), (d) (intro.), 1. to 7., (f) 1., 2., (g), (h), (3) (intro.) to (h), (6) (a), (7) (c), (f), (h), (8) (b), cr. (1) (d) 8., r. (3) (i) Register May 2010 No. 653, eff. 6-1-10; correction in (7) (g) made under s. 13.92 (4) (b) 7., Stats., Register May 2010 No. 653; correction in (1) (h) made under s. 13.92 (4) (b) 7., Stats., Register March 2017 No. 735.

**HA 2.06 Good time forfeiture, reconfinement and reincarceration hearings.** (1) APPLICABILITY. This section applies to good time forfeiture hearings, reconfinement and reincarceration hearings when the offender has waived his or her right to a final revocation hearing.

(2) HEARING. Following receipt of a request from the department for a good time forfeiture, reconfinement or reincarceration hearing, the division shall conduct a hearing at the offender's assigned correctional institution. The administrative law judge may conduct the hearing in person or by telephone or video conference to determine the amount of good time to be forfeited or the period of reincarceration or reconfinement. In the case of good time forfeitures for mandatory release parolees, the division shall also determine whether or not good time may be earned on the forfeited good time.

(3) NOTICE. (a) Notice of the hearing shall be sent to the offender, the offender's agent and the correctional institution.

(b) The notice shall include:

1. The date, time, place of the hearing and the amount of time available for forfeiture, reconfinement or reincarceration, and;

2. A statement of the offender's rights as established under sub. (4).

(4) OFFENDER'S RIGHTS. The offender has the following rights at the hearing:

(a) To be present at the hearing in person or by telephone or video conference;

(b) To speak and respond to questions from the administrative law judge, and;

(c) To present written or documentary evidence.

(5) PROCEDURE. (a) The hearing shall be closed to the public and may be conducted by video conference. The hearing may also be conducted by telephone conference.

(b) The administrative law judge shall read aloud the department's recommendation and may admit into evidence the offender's institutional conduct record, any documents submitted by the department and any written, oral or documentary evidence presented by the offender.

(6) DECISION. (a) The administrative law judge shall consider only the evidence presented at the hearing in making the decision.

(b) The following criteria shall be considered by the administrative law judge in determining the amount of good time forfeited or the period of reincarceration:

1. The nature and severity of the original offense;

2. The client's institutional conduct record;

3. The client's conduct and behavior while on parole;

4. The amount of good time forfeiture or the period of reincarceration 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.

(c) The administrative law judge shall decide:

1. Whether good time should be forfeited, the amount of such forfeiture and, for mandatory release parolees, whether or not good time may be earned on the amount forfeited, or;

2. In the case of reincarceration hearings, the period of reincarceration.

3. In either case, sentence credit in accordance with s. 973.155 (1), Stats.

(d) The administrative law judge's decision shall be written and forwarded within 10 days after the closing of the record to the offender, the department's representative and the correctional institution.

(e) The administrative law judge's decision shall take effect and be final 10 days after the date it is issued unless the client or the department files an appeal under sub. (7).

(7) APPEAL. The offender or the department may appeal the administrative law judge's decision by filing a written appeal with arguments and supporting materials, if any, with the administrator within 10 days of the date of the administrative law judge's written decision. The appellant shall submit a copy of the appeal to the other party who has 7 days to respond.

**(8) ADMINISTRATOR'S DECISION.** (a) The administrator may modify, sustain, reverse, or remand the administrative law judge's decision based upon the evidence presented at the hearing and the materials submitted for review.

(b) The administrator shall forward a written appeal decision to the client and the department's representative within 21 days after receipt of the appeal, unless the time is extended by the administrator.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92; CR 09-101: am. (title), (1), (2), (3) (a), (b) 1., 2., (4) (intro.), (a), (5), (6) (c) 1., 2., (d), (7) Register May 2010 No. 653, eff. 6-1-10.

**HA 2.07 Transcripts.** Hearings shall be recorded electronically. The division shall prepare a transcript of the testimony only at the request of a judge who has granted a petition for certiorari review of a revocation decision or upon prepayment of the

cost of transcription of the record. The amount charged for each page of transcribed material shall be determined by the administrator and will be published in the public notice for access to records displayed at all division offices and on the internet at <http://dha.state.wi.us/home/RecordsPolicy.htm>. Any party may also record the hearing at his or her own expense.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92; am. Register, August, 1995, No. 476, eff. 9-1-95; CR 09-101: am. Register May 2010 No. 653, eff. 6-1-10.

**HA 2.08 Harmless error.** If any requirement of this chapter or ch. DOC 328 or 331 is not met, the administrative law judge or administrator may deem it harmless and disregard it if the error does not affect the client's substantive rights. Substantive rights are affected when a variance tends to prejudice a fair proceeding or disposition.

**History:** Cr. Register, December, 1991, No. 432, eff. 1-1-92.

## Chapter DOC 331

### PROBATION, PAROLE, OR EXTENDED SUPERVISION

#### REVOCATION PROCEDURES

DOC 331.01	Authority and applicability.
DOC 331.02	Definitions.
DOC 331.03	Violation of supervision.
DOC 331.04	Notice.
DOC 331.05	Preliminary hearing.
DOC 331.06	Final revocation hearing.
DOC 331.07	Waived revocation hearing.
DOC 331.08	Termination of revocation proceedings.

DOC 331.09	Concurrent criminal prosecution and acquittal in criminal proceeding.
DOC 331.10	Records.
DOC 331.11	Special revocation procedures.
DOC 331.12	Harmless error.
DOC 331.13	Post revocation hearing to determine good time forfeiture, reincarceration, or reconfinement time.

Note: Chapter HSS 31 was renumbered chapter DOC 331 and revised under s. 13.93 (2m) (b) 1., 2., 6. and 7., Stats., Register, September, 1991, No. 429. Chapter DOC 331 was repealed and recreated, Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.01 Authority and applicability.** (1) These rules are promulgated under the authority of s. 227.11, Stats. They interpret ss. 302.11, 302.113, 302.114, 302.335, 304.02, 304.06, 961.47, 971.17, and 973.10, Stats.

(2) This chapter applies to offenders on probation, parole, and extended supervision in the legal custody of the department.

History: CR 10-125; cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.02 Definitions.** The definitions in s. DOC 328.03 apply to this chapter. In addition, in this chapter:

(1) "Magistrate" means a supervisor or supervisor's designee who has not been directly involved in the decision to initiate proceedings to revoke the offender's supervision.

(2) "Reviewing authority" means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the offender waives a hearing.

History: CR 10-125; cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.03 Violation of supervision.** (1) INVESTIGATION. The department shall investigate the facts underlying an alleged violation of supervision and shall meet with the offender to discuss the allegation within a reasonable period of time after becoming aware of the allegation.

(2) RECOMMENDATION. After investigation and discussion under sub. (1), the agent and supervisor shall do one of the following:

- (a) Take no action because the allegation is unfounded.
- (b) Resolve alleged violations by any of the following:
  1. A review of the rules of supervision followed by changes in them where necessary or desirable, including return to court.
  2. A formal or informal counseling session with the offender to reemphasize the necessity of compliance with the rules or conditions.
  3. An informal or formal warning that further violation may result in a recommendation for revocation.
  4. Implementation of an alternative to revocation.
- (c) Recommend revocation for the alleged violation.

History: CR 10-125; cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.04 Notice.** Within a reasonable time after a determination under s. DOC 331.03 (2) (c), the department shall provide the offender with written notice that the department has recommended revocation. The notice shall contain all of the following:

(1) A statement describing the alleged violation and the rule violated.

(2) The offender's hearing rights, including the right to waive the hearing.

(3) The amount of any time available for good time forfeiture, reincarceration, or reconfinement.

(4) The amount of time recommended by the agent for good time forfeiture, reincarceration, or reconfinement.

History: CR 10-125; cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.05 Preliminary hearing.** (1) REQUIREMENT. When revocation is initiated, a magistrate shall conduct a preliminary hearing in accordance with this section to determine whether there is probable cause to believe that the offender violated a rule or a condition of supervision.

(2) EXCEPTIONS. A preliminary hearing need not be held if one of the following is true:

- (a) The offender waives the right to a preliminary hearing in writing.
- (b) The offender has given and signed a written statement which admits a violation.
- (c) There has been a finding of probable cause in a felony matter and the offender is bound over for trial for the same or similar conduct.
- (d) There has been an adjudication of guilt by a court for the same or similar conduct.
- (e) The offender is not being held in custody under the department's authority.
- (f) There has been a finding of probable cause for the same or similar conduct by a court or magistrate in another state.

(3) NOTICE OF PRELIMINARY HEARING. Written notice shall be given to the offender and either the offender's attorney or the state public defender. The notice shall include all of the following:

- (a) The rule or condition that the offender is alleged to have violated.
- (b) A statement that the offender has a right to a preliminary hearing to determine if there is probable cause to believe the offender has violated a rule or condition of supervision.
- (c) A statement that the offender has the right to waive the preliminary hearing.
- (d) A statement that the offender has a qualified right to be represented by an attorney at the preliminary hearing.
- (e) A statement that the offender or offender's attorney, if applicable, may review all relevant evidence to be considered at the preliminary hearing, except evidence that is determined to be confidential.
- (f) An explanation of the possible consequences of any decision.
- (g) An explanation of the offender's rights which shall include all of the following:

1. The right to be present.
2. The right to deny the allegation.
3. The right to present relevant evidence, including witnesses who can give relevant information regarding the violation of the rules or conditions of supervision.

4. The right to receive a written decision stating the reasons for the decision based on the evidence presented.

(4) **TIME AND PLACE.** The preliminary hearing shall take place as close as feasible to the area of the state in which the alleged violation occurred. It shall take place not sooner than one working day and not later than 5 working days after receipt by the offender of the notice of the preliminary hearing.

(5) **QUALIFIED RIGHT TO AN ATTORNEY.** If an attorney fails to appear at the preliminary hearing to represent the offender, the magistrate may either proceed with the hearing or postpone the hearing. The hearing shall be postponed to permit representation by an attorney if the offender, after being informed of his or her right to representation, requests an attorney based on a timely and plausible claim that he or she did not commit the alleged violation and the magistrate concludes either that the complexity of the issues will make it difficult for the offender to present his or her case or that the offender is otherwise not capable of speaking effectively for himself or herself.

(6) **DECISION.** (a) After the preliminary hearing the magistrate shall issue a written decision stating findings, conclusions and reasons for the decision. The decision shall be based on the evidence presented.

(b) The magistrate shall provide copies to the offender within a reasonable time after the preliminary hearing.

(c) If probable cause was found, the division of hearings and appeals shall be contacted in writing to request the scheduling of a final revocation hearing.

(d) If no probable cause was found the revocation process terminates without prejudice.

(7) **DETENTION PENDING FINAL HEARING.** (a) When there is a preliminary hearing, the magistrate shall decide if the offender is to be detained pending the outcome of the final hearing. When a preliminary hearing is not required because the case meets one of the criteria under sub. (2), a supervisor shall make the detention decision.

(b) The magistrate or supervisor shall consider factors including the following:

1. The offender is believed to be dangerous.
2. The offender is likely to flee.
3. The offender is likely to engage in criminal behavior before the revocation takes place.
4. The offender is likely to engage in an activity that does not comply with the rules and conditions of supervision.
5. The length of the term to be served upon revocation is great.

(c) A detained offender is not eligible for release, including temporary release for work.

(d) The detention decision made pursuant to par. (b) shall remain in effect until one of the following occurs:

1. The decision of the administrative law judge becomes final.
2. The offender is reinstated.
3. The violation warrant is vacated by the department.

(e) If the department requests review of the administrative law judge's decision, the custody decision made pursuant to par. (b) shall remain in effect.

(f) The secretary may alter the custody decision at any time if the public interest warrants it.

(8) **REISSUANCE OF NOTICE.** (a) If notice of the preliminary hearing is found to be improper and the impropriety itself results in the dismissal of the revocation proceedings, the department may issue a proper notice and begin the proceedings again.

(b) If a magistrate decides that there is no probable cause to believe the offender committed the violation and later the department learns of additional relevant information regarding the alleged violation, revocation proceedings may be started again with issuance of a new notice for the preliminary hearing.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.06 Final revocation hearing.** A final revocation hearing of an offender's supervision shall take place in accordance with procedures set forth in ch. HA 2.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.07 Waived revocation hearing.** (1) An offender may waive in writing the right to revocation hearing.

(2) The agent shall prepare and send the waiver and a record of documents supporting the recommendation for revocation to the secretary for decision within a reasonable period of time.

(3) The secretary shall issue a written decision to the offender, the offender's attorney, if applicable, the agent, and the supervisory staff member who recommended revocation within 10 days of receipt of the recommendation.

(4) The offender may withdraw a waiver prior to the secretary's decision if the offender establishes that it was not knowingly, voluntarily, or intelligently made.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.08 Termination of revocation proceedings.** (1) A supervisor may recommend to the regional chief that revocation proceedings be terminated at any time before the administrative law judge issues a decision.

(2) The regional chief shall determine if there is sufficient basis for terminating the revocation proceedings.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.09 Concurrent criminal prosecution and acquittal in criminal proceeding.** Any revocation action under this chapter may proceed regardless of a concurrent prosecution of the offender for the conduct underlying the alleged violation. An acquittal in a criminal proceeding for an offender's conduct underlying an alleged violation shall not preclude revocation of that offender's supervision for the same or similar conduct.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.10 Records.** A summary of all alleged violations, revocation actions, and proceedings under this section against an offender shall be maintained in the offender's record.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.11 Special revocation procedures.** All offenders under supervision by the department are subject to revocation under ss. DOC 331.03 to 331.10, except for an offender committed under s. 961.47, Stats. For an offender committed under s. 961.47, Stats., an agent shall proceed under s. DOC 331.03 (1) and (2) and shall, upon the approval of a supervisor, notify the committing court of the alleged violation and submit a report to the court within a reasonable time after becoming aware of the alleged violation. The court shall decide if the offender shall remain on probation under s. 961.47, Stats.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.12 Harmless error.** The secretary may deem a failure to comply with a requirement under this chapter as harmless error if it does not prejudice a fair proceeding or disposition.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

**DOC 331.13 Post revocation hearing to determine good time forfeiture, reincarceration, or reconfinement time.** (1) **APPLICABILITY.** (a) Good time forfeiture hearings apply to offenders who, before June 1, 1984, committed the crime for which they were sentenced to a period of incarceration in the Wisconsin state prison and chose not to have 1983 Wis. Act 528 apply.

(b) Reincarceration hearings apply to offenders who, between June 1, 1984, and December 30, 1999, committed the crime for which they were sentenced to a period of incarceration in the Wisconsin state prison and to any other offender who chose to have 1983 Wis. Act 528 apply, except offenders sentenced under s. 973.01, Stats.

(c) Reconfinement hearings apply to offenders who, on or after December 31, 1999, committed the crime for which they received a bifurcated sentence under s. 973.01, Stats.

(2) HEARING. The offender is entitled to a hearing under sub. (1) (a), (b), or (c) to determine the amount of good time to be forfeited, or the amount of reincarceration or reconfinement time to be served.

(3) WAIVER. The offender may waive, in writing, the right to a hearing. The waiver may be withdrawn by the offender prior to the decision if the offender establishes that it was not knowingly, voluntarily, or intelligently made.

(4) AMOUNT OF TIME AVAILABLE. The agent shall notify the reviewing authority of the amount of good time available for forfeiture, or the amount of reincarceration or reconfinement time available.

(5) CRITERIA. (a) For a proceeding under sub. (1) (a), the agent shall recommend to the reviewing authority that a specific amount

of good time be forfeited and whether good time should be earned upon the forfeited good time. For a proceeding under sub. (1) (b) or (c), the agent shall recommend a specific period of reincarceration or reconfinement. The amount of time may be expressed only in terms of years, months, and days. The agent shall include the reasons and facts consistent with the criteria listed in par. (b) that support the recommendation.

(b) In making a recommendation, the agent shall consider all of the following:

1. The nature and severity of the original offense.
2. The offender's institution conduct record.
3. The offender's conduct and behavior while on supervision.
4. The amount of time left before mandatory release if the offender is a discretionary release parolee.
5. The amount of time necessary to meet the goals and objectives of supervision under ch. DOC 328.
6. The amount of time necessary to protect the public from the offender's further criminal activity, to prevent depreciation of the seriousness of the violation or to provide a confined correctional treatment setting.
7. Other mitigating or aggravating circumstances.

History: CR 10-125: cr. Register June 2013 No. 690, eff. 7-1-13.

## AUTHORIZATION FOR DISCLOSURE OF NON-HEALTH CONFIDENTIAL INFORMATION

**NOTICE: DO NOT USE TO AUTHORIZE DISCLOSURE OF PROTECTED HEALTH INFORMATION. USE FORM DOC-1163A**

### INDIVIDUAL/AGENCY BEING AUTHORIZED TO RELEASE INFORMATION/RECORD(S)

NAME OF INDIVIDUAL / AGENCY		TELEPHONE NUMBER	FAX NUMBER
ADDRESS	CITY	STATE	ZIP CODE

### SUBJECT OF INFORMATION/RECORD(S)

NAME		IDENTIFYING/DOC NUMBER	DATE OF BIRTH
ADDRESS	CITY	STATE	ZIP CODE

### INFORMATION/RECORD(S) MAY BE RELEASED TO

NAME OF INDIVIDUAL / AGENCY		TELEPHONE NUMBER	FAX NUMBER
ADDRESS	CITY	STATE	ZIP CODE

### SPECIFIC INFORMATION AUTHORIZED FOR DISCLOSURE

**INSTRUCTIONS:** Check All That Apply

- Institution Social Service File** (Use DOC-1163A for disclosure of information relating to therapy/counseling provided by a social worker or any other health information.)
- Legal**
- Division of Community Corrections File** (Use DOC-1163A for disclosure of any health information.)
- Two-way Release** By checking this box I authorize the individual/agency named in this authorization, to **RELEASE TO EACH OTHER, only** the information/records listed for release on this form in the category(ies) below. I authorize this exchange of information on an ongoing basis for the duration of this authorization.

**I understand that the information I am authorizing for release may contain Personally Identifiable Information (PII) such as complete date of birth, driver's license number, state ID number or social security number.**

Check the category(ies) and sub-categories of information authorized for release.

#### EDUCATION

Identify Time Period Of Records: \_\_\_\_\_

- |   |  |  |   |
|---|--|--|---|
| <input type="checkbox"/> Regular education information/records (including attendance records) | <input type="checkbox"/> SPED information/record(s) e.g. IEP, MMPI, M-Team, etc. | <input type="checkbox"/> High school credits                               | <input type="checkbox"/> Disciplinary Actions |
| <input type="checkbox"/> High School Transcript   | <input type="checkbox"/> GED or HSED Scores                                      | <input type="checkbox"/> Vocational/technical school or college transcript |   |
| <input type="checkbox"/> Other: _____   |  |  |   |

Purpose:  To assist in educational/vocational planning  Other: \_\_\_\_\_

Purpose:  To complete PSI \_\_\_\_\_

#### EMPLOYMENT

Identify Time Period Of Records: \_\_\_\_\_

- |  |  |   |   |
|--|--|---|---|
| <input type="checkbox"/> Period(s) of employment   | <input type="checkbox"/> Job performance evaluation(s) | <input type="checkbox"/> Job attendance | <input type="checkbox"/> Job duties & title |
| Purpose: <input type="checkbox"/> To assist in career planning <input type="checkbox"/> Other: _____ |  |   |   |

Purpose:  To complete PSI \_\_\_\_\_

**OTHER**

Identify Time Period Of Records: \_\_\_\_\_

Type(s) or information/record(s): \_\_\_\_\_

Purpose:

**YOUR RIGHTS WITH RESPECT TO THIS AUTHORIZATION**

Signing of Authorization - I am under no legal obligation to sign this authorization. If I do, I have a right to receive a copy.

AODA Information - My educational information/record(s) may contain alcohol and other drug abuse information. If so, I must sign DOC-1163A or that information will be redacted before the education information/record(s) are released.

Re-disclosure of Education Information/Record(s) - If I authorize release of education information/record(s) to an individual or agency covered by federal or state laws that prohibit re-disclosure, the recipient cannot re-disclose the information/records without a signed information release from me, a court order or other specific authorization under the law. However, if I consent to release education information/record(s) to an individual/agency not covered by federal or state laws that prohibit re-disclosure, my private information/record(s) may not remain confidential.

Right to Inspect and/or Copy Education Information/Records - I have the right to inspect and copy my educational records as permitted under s. 118.125 Wis. Stats. I may be charged a reasonable fee for copies.

**AUTHORIZATION SIGNATURE**

**INITIAL ONE ONLY (Required)**

- Authorization expires as of: \_\_\_\_\_, (Date)
- Authorization expires: \_\_\_\_\_, month(s) from the date I sign this authorization.
- Authorization expires after the following action takes place:
- Authorization expires upon substantial change in criminal justice system status. (e.g., released from prison.)

**If no date/event is entered, this Authorization expires one year from the date of signing.**

**I have read or had read to me the contents of this authorization. I have had an opportunity to discuss and ask questions. By signing this authorization, I am confirming that it accurately reflects my wishes regarding disclosure of confidential information.**

SIGNATURE OF INDIVIDUAL WHO IS SUBJECT OF RECORD		DATE SIGNED
SIGNATURE OF OTHER PERSON LEGALLY AUTHORIZED TO CONSENT TO DISCLOSURE (If Applicable)	TITLE OR RELATIONSHIP TO INDIVIDUAL WHO IS SUBJECT OF RECORD	DATE SIGNED

**FAX OR PHOTOCOPY MAY BE TREATED AS ORIGINAL**

**DISTRIBUTION:**

Original- Individual/Agency authorized to release Information/Record(s); Official Record-Appropriate Offender Education/Social Service File, Release of Information Authorizations Section; Copy-Offender/Other Person Signing Release

## AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI)

### INDIVIDUAL / AGENCY BEING AUTHORIZED TO DISCLOSE PHI

NAME OF INDIVIDUAL / AGENCY		TELEPHONE NUMBER	FAX NUMBER
ADDRESS		CITY	STATE
			ZIP CODE

### SUBJECT OF PROTECTED HEALTH INFORMATION (PATIENT)

PATIENT NAME	DOC NUMBER	HOUSING UNIT	DATE OF BIRTH	TELEPHONE NUMBER
ADDRESS		CITY	STATE	ZIP CODE

### RECIPIENT OF PROTECTED HEALTH INFORMATION

NAME OF INDIVIDUAL / AGENCY		TELEPHONE NUMBER	FAX NUMBER
ADDRESS		CITY	STATE
			ZIP CODE

**NOTICE:** Records of the Department of Corrections that contain Protected Health Information (PHI) may include a Division of Adult Institutions and/or Division of Juvenile Corrections Health Care Record, Social Services File or Division of Community Corrections file. The records include those created by DOC and non-DOC health care providers. Disclosure of PHI can be written, electronic or verbal.  
**READ CAREFULLY AND CHECK APPROPRIATE BOXES.**

### SPECIFIC PROTECTED HEALTH INFORMATION AUTHORIZED FOR USE/ DISCLOSURE

**Two-Way Release** By checking this box, I authorize the individuals/agencies named in this authorization, to disclose to each other, the PHI identified below on an ongoing basis for the duration of this authorization.

**Check the box to the left if a copy of an entire record may be disclosed and explain below why the entire record is needed.** Entire record includes all the types of information listed below plus correspondence, consents/refusals, medication administration sheets, flow sheets and miscellaneous documents. **If this box is checked, no checkboxes in the section below need to be checked. If no start and end dates are given below, only the last 12 months will be provided.**

### DOCUMENTS AUTHORIZED FOR USE/DISCLOSURE

- |   |   |
|---|---|
| <input type="checkbox"/> Problem List<br><input type="checkbox"/> Record of Immunizations and TB test Results<br><input type="checkbox"/> Medical History/Physical Exam<br><input type="checkbox"/> Progress Notes<br><input type="checkbox"/> Prescriber's Orders/Medications<br><input type="checkbox"/> Consultations<br><input type="checkbox"/> Laboratory Results | <input type="checkbox"/> Medical Imaging Reports (X-Rays, MRIs, etc.)<br><input type="checkbox"/> Psychiatric (may include AODA/SUD diagnoses)<br><input type="checkbox"/> Psychological (may include AODA/SUD diagnoses)<br><input type="checkbox"/> AODA / SUD Program/Treatment Information<br><input type="checkbox"/> Optical<br><input type="checkbox"/> Dental<br><input type="checkbox"/> Patient Request Folder/OnBase (e.g. Health Service Requests, Medication/Medical Supply Refill Requests) |
|---|---|

**THIS AUTHORIZATION MAY INCLUDE MEDICAL, MENTAL HEALTH, DEVELOPMENTAL DISABILITY AND ALCOHOL/DRUG ABUSE/SUBSTANCE USE DISORDER INFORMATION, AND HIV TEST RESULTS, UNLESS EXCLUDED BELOW.**

**Describe time period of records by entering start and end dates.** If no dates are entered, FROM: \_\_\_\_\_ TO: \_\_\_\_\_ records for the most recent 12 months will be provided.

If Authorization is **limited** to specific medical or mental health conditions(s), describe: \_\_\_\_\_

**LOCATION:** I authorize the disclosure of my location knowing that this will reveal that I am in a mental health or AODA / SUD treatment facility.

### PURPOSE OR NEED FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION (check applicable category)

- Ongoing health care/treatment    
  Review by patient    
  Legal representation/proceedings (Court/Administrative)  
 Coordination of care or eligibility for services/benefits.    
  Review by family member/friend.  
 Other

PATIENT NAME

DOC NUMBER

**PATIENT RIGHTS**

Right to Receive Copy of This Authorization. Patients have a right to receive a copy of this form after signing it.

Right to Refuse to Sign This Authorization. DOC can not condition treatment or payment for treatment based on a patient's decision not to sign this form, except for research-related treatment and provision of health care solely for the purpose of creating PHI for disclosure to a third party.

Right to Withdraw This Authorization. Patients have the right to revoke this Authorization at any time by completing a Revocation of Authorization for Use/Disclosure of PHI (DOC-1163R), or equivalent. Revocation is effective when DOC, or other individual/agency authorized to disclose PHI, receives the form, and is not effective regarding the uses/disclosures of PHI made prior to receipt of the DOC-1163R, or equivalent.

Re-disclosure. If a patient authorizes disclosure to an individual/agency not covered by laws that prohibit re-disclosure, the PHI may be re-disclosed by that individual/agency.

Right to Inspect and/or Copy PHI. Patients have the right to inspect, and obtain copies of PHI for a reasonable fee used/disclosed based upon this form.

Authority to Sign DOC-1163A. A **minor** is a person under the age of 18 years. An **adult** is a person 18 years or older.

- Adults can sign the form regarding all types of PHI about themselves.
- A court appointed guardian of the person or an agent under an activated Power of Attorney for Health Care (POAHC) can sign the form for the incompetent adult or principal regarding all types of PHI, unless restricted by the Letters of Guardianship or POAHC document.
- A parent/guardian can sign the form for a minor child regarding medical/ physical health, mental health and developmental disability information.
- Minors 12-17 years can sign the form for AODA / SUD information about themselves. A parent/guardian can **not** access or authorize disclosure of AODA / SUD information about a minor child 12-17 years without consent of the minor.
- Minors 14 -17 years old can sign the form regarding mental health and developmental disability information about themselves from a community provider whose records are covered by s. 51.30, Wis. Stats.
- Minors 14 -17 years can sign the form regarding HIV test results about themselves. A parent/guardian can **not** access or authorize disclosure of HIV information about a minor child 14-17 years without consent of the minor.

**AUTHORIZATION EXPIRATION: DATE/EVENT**

This Authorization is in effect until the following date or event: \_\_\_\_\_

If no date/event is entered, this Authorization expires one year from the date of signing.

I have read or had read to me this Authorization form. I have had an opportunity to ask questions. By signing this Authorization, I am confirming that it accurately reflects my wishes regarding use and disclosure of my Protected Health Information.

SIGNATURE OF PATIENT		DATE SIGNED
SIGNATURE OF OTHER PERSON LEGALLY AUTHORIZED TO CONSENT TO DISCLOSURE (If Applicable)	TITLE OR RELATIONSHIP TO PATIENT	DATE SIGNED

**LIST OF DOCUMENTS/INFORMATION DISCLOSED BASED UPON THIS AUTHORIZATION**  
(Write on back-side of form or attach additional sheets if needed, include name and DOC number on each sheet)

INITIALS OF PERSON DISCLOSING PHI \_\_\_\_\_ DATE DISCLOSED \_\_\_\_\_ TIME DISCLOSED \_\_\_\_\_

**FACSIMILE OR PHOTOCOPY CAN BE TREATED AS ORIGINAL**

**DISTRIBUTION:** Original - Medical Chart, Consents/Refusals Section; or PSU Record, Legal Documents/Consents/Outside Records Section; Legal File, Right Side or Social Services File, Confidential Envelope; or DCC Offender Case File; Copy - Individual/Agency authorized to disclose PHI when other than DOC Copy - Patient /Other Person signing form

## INSTITUTION ATR's:

### REECC (Robert E. Ellsworth Correctional Center)-FEMALE:

#### **"A LOOK INSIDE" PROGRAM DESCRIPTION:**

"A Look Inside" is a 12-week ATR program that uses a multi-faceted approach to help participants gain insight into one's own destructive behaviors and promote positive life skills void of criminal activity. Focus is given to AODA Recovery and Relapse Prevention, Cognitive Thinking, Relationships and Family, Parenting, Domestic Violence and Trauma, Self Esteem and Assertiveness, and Anger Management. This gender responsive program utilizes group discussions, handouts, worksheets, role playing, journaling, videos, and one-to-one interaction with the program facilitator.

When not in structured programming, participants are encouraged to develop a more structured, healthy use of their leisure time. They may attend religious programs, various support groups, join the choir, work on completing their HSED/GED, use a variety of recreational equipment, use the library, and more.

**The program goals include:** To develop structured accountability for the participant's actions, to provide redirection and restoration to the community, to avoid long term detachment from family and community, to provide re-entry services planning for release, and to prevent destruction of families.

- Participants meet with Social Worker David Ireland from 8:00am–10:30am Tuesdays and Thursdays. Components include the basics of CGIP, Self Esteem, Relationships, Anger Management, Domestic Violence, Parenting, and all have an underlying AODA component.
- One of the teachers sees the participants Monday, Wednesday, and Friday mornings from 7:55am–10:15am for Thinking For A Change (replaces CGIP).
- Monday from 12:30pm–3:00pm participants meet with a contract provider for AODA Relapse Prevention.

The above mentioned components will allow the client to focus on her needs in a residential program free of outside distractions and secure enough to meet the Departments recommendation for treatment in a confined setting.

### TCI-FEMALE:

#### **AODA RESIDENTIAL (16 week program):**

- Participants are in structured activities from 8:00am-4:00pm Monday through Friday

- Participants receive and individualized treatment plan

The client will have the opportunity to have input into her recovery and programming. It will also help her identify and recognize behaviors that contribute to the cycle of her poor choices and drug use.

- AODA

The client has clearly identified substance abuse issues. The goal will be to teach her the skills she needs to maintain long-term sobriety so she can successfully function in the community without seeking the assistance of addictive substances and instead having healthy options available.

- Cognitive Behavioral Treatment

The client is in need of self-examination to be able to take responsibility for her behavior and decisions that result in her engaging in violations of her rules and that she is the one responsible for her actions and resulting consequences.

- Anger Management

The client will benefit from assistance in confrontation and conflict resolution.

- Health and Wellness Module

The client will learn practical ways to start developing healthy habits that can have a positive impact on her physical and mental health.

- Family Support Module

#### **AODA DUAL DIAGNOSIS PROGRAM (24 week program):**

- AODA
- Trauma Recovery and Empowerment
- Cognitive Behavioral Treatment
- Dialectical Behavioral Treatment
- Anger Management
- Grief and Loss
- Mental Health Education

#### **MSDF-MALE:**

**CBI-CC:** This Cognitive Behavioral Intervention is a comprehensive curriculum that is designed to provide a thorough intervention that broadly targets all criminogenic needs. As the name suggests, this intervention relies on a cognitive behavioral approach to teach participants

strategies to manage risk factors. The program places a heavy emphasis on skill building activities to assist with cognitive, social, emotional and coping skill development. The ATR program includes two dosage levels: 10 weeks and 20 weeks. The 10 week program is designed for individuals that have had previous structured cognitive based programming.

**CBISA:** Cognitive Behavioral Intervention for Substance Abuse. As the name of the curriculum suggests, this intervention relies on a cognitive behavioral approach to teach participants strategies for avoiding substance abuse. The program places heavy emphasis on skill building activities to assist with cognitive, social, emotional, and coping skill development. Such cognitive behavioral strategies have routinely demonstrated high treatment effects, including when used with a correctional population.

**T4C:** Thinking For A Change is a cognitive-behavioral curriculum developed by the National Institute of Corrections that concentrates on changing the criminogenic thinking of offenders. T4C is a cognitive-behavioral therapy (CBT) program that includes cognitive restructuring, social skills development, and the development of problem-solving skills.

#### **RCI-MALE:**

Racine Correctional Institution SOT ATR Program

75-120 day residential SOT program: Addresses minimization, behavior management, relapse prevention, and cognitive disorders

Must have an SOT need and previously participated in SOT programming and violations must increase risk to sex offend

SOT2 – Average risk with average or greater need. Violation is related to criminogenic need specific to sex offending. Offender has completed at least 30 hours of sex offender treatment previously.

SOT4 – Above average risk and above average need. Violation is related to criminogenic need specific to sex offenders. Violation is related to criminogenic need specific to sex offenders. Offender has completed at least 30 hours of sex offender treatment previously.

#### **WRC Mental Health:**

The WRC ATR programs are individualized, based on identified treatment needs, information provided from the assigned agent, offender input, and WRC treatment team assessment that involves the following WRC disciplines: Health Services (Nurse, Psychiatrist, Physician), Social Worker, Psychological Services Associate, Teacher, Recreation Therapist, Psychiatric Care Technicians, Psychiatric Care Supervisor, Institution Unit Supervisor, ATR Programs

Coordinator, and AODA Treatment Specialist (specifically for Dual Diagnosis/AODA program participants).

**Mental Health ATR:** ATR offenders enrolled in the **mental health ATR program** will likely be involved in programming for **16-18 weeks** for a successful program completion, with some flexibility in the length of stay for individualized needs. This type of ATR offers an individualized approach to include mental health assessment by clinical treatment staff, opportunity for mental health stability, mental health educational programming in a core group titled Illness Management and Recovery (IMR), and the development of a wellness plan. The weekly group schedule will include a minimum of 3 hours per week. Additional treatment programming, clinical sessions, and pre-release modules are encouraged in accordance with the offender's needs, interests, functioning, and agent/treatment team recommendations. The offender is an active participant in the design of his treatment plan.

**Dual Diagnosis/AODA ATR:** ATR offenders enrolled in the **dual diagnosis/AODA ATR program** will likely be involved in programming between **6-9 months** for successful program completion. This type of ATR offers a core group, Successful Treatment and Recovery (STAR), which includes focus on mental health, alcohol/drug use, lifestyle patterns and behaviors, and other aspects of community living in an effort to provide participants with a solid and healthy foundation in preparation for successful return to the community.

The offender is an active participant in designing his own treatment plan. The program requires participation in the Core AODA treatment Group (STAR), which meets four hours each week, the Emotional Management Skills group, which meets 2 hours per week, Illness Management and Recovery (IMR), which meets 4 hours per week, as well as participation in the Applying Wellness and Recovery Every Day (AWARE) program, to develop an individualized wellness plan (totaling a minimum of 10 hours per week). All aspects (Core group, EMS, IMR, AWARE) are required to successfully complete the ATR. Additional treatment programming, clinical sessions, and pre-release modules are encouraged in accordance with the offender's needs, interests, functioning, and agent/treatment team recommendations. Completion of treatment is determined upon presentation of a series of assignments and a final project discussing their treatment journey.

*\*Core Programming includes curriculum from Matrix, Integrated Dual Disorder Treatment (IDDT), and Helping Men Recover.*

**Additional WRC Treatment & Program Opportunities Considered for ATR Offenders:**

- Pre-Release Program Modules
  - Job Skills
  - Culinary Skills

- Community Supervision
- Men's Health Education
- Leisure and Physical Fitness
- Financial Literacy and RENT SMART
- Relationships
- Driver's Education/Information
- Social Skills
- Mental Health Support Groups
- Mental Health Educational Groups
- Thinking for a Change
- School-Based and Self Enrichment Classes
- Healthy Relationships
- Parenting
- Dialectical Behavioral Therapy (\*Pending availability and length of placement)
- Men's Trauma Support Group and Individual Counseling (\*Pending availability and length of placement)
- On-Unit and Institution Work Opportunities
  - Kitchen
  - Maintenance/Custodial
  - Cleaning/Swamper (Bathrooms, Shower, Hallway, etc.)
  - Vocational Workshop

Experts who have done a PSI for SPD or offered to do a PSI for SPD:

Lisa Andreas, Dane County, 608-237-8991  
Katie Baxter, Marinette, 715-938-2320  
Bridget Bonneville, Ashland, 715-209-8519  
Jessica Carrier, Dane County, 608-358-3358  
Gary Forrest, Appleton, 920-739-9227  
Nora Franklin, Coon Valley, (608) 498-3228  
Travis Gaetz, Eau Claire, 715-223-9773  
Barry Hargan, Milwaukee, 262-250-7655  
\*Aimee Hasenfus, Dane County, 608-239-1510  
Tiffany Hofer, Elm Grove, 414-943-3115  
\*Paul Hyland, Fond du Lac, 920-395-1415  
\*Jeff Johnson, Wausau, 715-581-9165  
Paul Johnson, Spooner, 715-416-2842  
Jackie Miller, Bowler, 715-881-0544  
Jennifer Nelles, Wausau, 715-370-0444  
Kahli Nelson, Waupaca, 715-429-0656  
Victoria Pappas, Brookfield, 262-788-6923  
John Reitan, Eau Claire, 715-382-6421  
Justin Rooney, La Crosse, 608-433-6749  
Jacqueline Schmidt, Muskego, 414-418-0126  
Michael Schuetz, Keenan, 715-897-3767  
Gerald Shupe, West Bend, 262-393-9356  
Bill Weaver, Lake Nebagamon, 218-591-3636  
Timothy Williams, Fond du Lac, 920-395-1415  
Laura Zobrack, White Bear Lake, 651-486-3922

\*Experts who have done an ATR for SPD or offered to do an ATR for SPD

Experts don't always let us know when they discontinue offering services or when their contact information changes, so this list may not be completely up to date.

For more information on requesting an expert, call the Assigned Counsel Division or see the Assigned Counsel Division section, "Expert Guidelines" tab on the SPD website:

<https://www.wisprd.org/index.php/for-the-legal-practitioner/spd-assigned-counsel-division/expert-guidelines>

STATE OF WISCONSIN, ex rel,

[REDACTED],

Petitioner,

PETITION FOR WRIT  
OF CERTIORARI

Case No. 13-CV-[REDACTED]

-vs-

BRIAN HAYES,  
Administrator,  
Division of Hearings and Appeals,  
his agents, employees, or those acting  
by his direction, or on his behalf,  
Respondent.

**TRIAL JUDGE**  
**BARBARA W. MCCRORY**

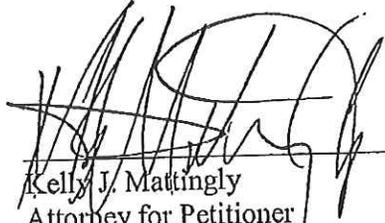
2013 DEC 19 AM 10:36  
ROCK COUNTY WI  
FILED

[REDACTED], by his attorney, Kelly J. Mattingly, petitions the court for a writ of certiorari.

In support of this petition, Kelly J. Mattingly, having been first duly sworn, alleges the following:

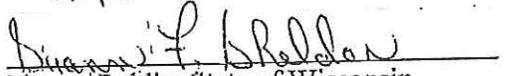
1. I am an attorney licensed to practice law in the state of Wisconsin, and I represent and appear for the petitioner in this action.
2. The petitioner is incarcerated at the Dodge Correctional Institute as the result of an Order revoking his extended supervision, which was signed by the respondent's designee on November 7, 2013.
3. Petitioner seeks review of the above, referenced Order, which is final, having been issued following appeal to the respondent of the Decision of the Administrative Law Judge dated October 11, 2013. (Copies of the Order and both Decisions, as well as the petitioner's letter of Appeal to the respondent, are attached hereto, and incorporated by reference.)
4. As grounds for this petition, petitioner asserts that the respondent violated his right to due process by finding that he violated his rules of supervision as alleged in Allegations 1, 4 and 6, without the benefit of substantial evidence to prove the alleged violations, which respondent then used to justify a forfeiture of 100 % of petitioner's available time. In doing so, the respondent acted in an arbitrary and capricious manner. Petitioner asserts that both the Department of Corrections and the Division of Hearings and Appeals, which the respondent heads, acted in a manner so as to represent their will rather than their judgment.

Therefore, the petitioner requests that this court issue a writ of certiorari commanding the respondent to return before this court the complete record of the proceedings complained of in this petition and upon such return to determine that the actions of the respondent complained of by the petitioner should be reversed and adjudged null and void.



Kelly J. Mattingly  
Attorney for Petitioner  
State Bar No. 01009937

Subscribed and sworn to before me  
this 19 day of December, 2013.



Suzanne P. Sheldon  
Notary Public, State of Wisconsin  
My Commission: exp 8/6/17

STATE OF WISCONSIN, CIRCUIT COURT, ROCK COUNTY

COUNTY

For Official Use

FILED  
ROCK COUNTY WI  
2013 DEC 19 PM 3:37  
ELORED MIELKE  
CLERK OF CIRCUIT COURT

Order on Prisoner's Petition  
for Waiver of Prepayment  
of Fees/Costs

State ex rel. [REDACTED]

-vs-

Brian Hayes

Case No. 13-CV-[REDACTED]

COURT FINDINGS AND ORDER

Document Review Determination (Check box 1 or 2):

1. The prisoner has submitted all required documentation.
2. The petition is DENIED because the prisoner failed to provide the following documentation:
- a. Exhaustion of all available administrative remedies (required if the underlying proposed action relates to prison or jail conditions):
    - documents the prisoner provided to the administrative agency as part of the administrative proceeding;
    - documents from the administrative agency provided to the prisoner related to the administrative proceeding; and/or,
    - documents included as part of any administrative appeal.
  - b. Original Wisconsin Department of Justice certification (form DJ-LS-22) concerning prior dismissals dated within thirty days of the date of the petition. Document to have raised seal; a copy is insufficient.
  - c. Authorization to withhold money from prisoner trust fund account (on DOC form 1930 provided by the Department of Corrections).
  - d. A certified copy of the prisoner trust fund account for the six months preceding the date of the petition.
  - e. A properly completed affidavit of indigency (form CV-438).
  - f. Sufficient copies of the pleadings.
  - g. Other: \_\_\_\_\_

If box #1 is checked, proceed to the exhaustion of administrative remedies determination.  
If box #2 is checked, do not consider the remaining sections.

Exhaustion of Administrative Remedies Determination (Check box 3 or 4):

3. The prisoner has either exhausted all available administrative remedies or is not required to do so because the underlying proposed action does not relate to jail or prison conditions.
4. The prisoner has not exhausted all available administrative remedies. The petition to proceed without prepayment of filing fees and costs is DENIED.

If box #3 is checked, proceed to the three dismissals determination.  
If box #4 is checked, do not consider the remaining sections.

Three Dismissals Determination (Check box 5 or 6):

5. The prisoner has not accumulated three or more dismissals pursuant to §801.02(7)(d), Wisconsin Statutes, or is not subject to the 'Three Dismissals' rule because s/he has sufficient funds within his/her trust fund and/or release account to pay the filing fee in full.
6. The prisoner has, on three or more prior occasions, while he or she was incarcerated, imprisoned, confined or detained in a jail or prison, brought an appeal, writ of error, action or special proceeding, including a petition for a common law writ or certiorari, that was dismissed by a state or federal court for the reasons listed in §802.05(3)(b) 1 to 4. The petition to proceed without prepayment of filing fees and costs is DENIED.

If box #5 is checked, proceed to the economic status determination.  
If box #6 is checked, do not consider the remaining section.

**Economic Status Determination** (Check box 7, 8, or 9):

- 7. The petition is GRANTED because:
  - The prisoner is indigent;
  - The prisoner authorized in writing the agency having custody of the prisoner's prison trust fund and/or release account to forward payments from the prisoner's account to the clerk of court each time the amount in the account exceeds \$10 until the fees or costs are paid in full.

The agency having custody of the prisoner's prison trust fund and/or release account shall freeze the prisoner's trust fund account while such payments are being made and shall forward the payments to the clerk of court as provided by law.

The action may be commenced without prepayment of filing fees. The sheriff shall serve all necessary documents without prepayment of service fees. If the prisoner receives a money judgment or monetary settlement, the amount shall be used to pay the filing and service fees waived by this order which have not been reimbursed pursuant to the priority schedule in §806.025(2), Wisconsin Statutes.

The clerk of court shall notify the custodian at the prisoner's facility of the total filing fees, costs and service fees as soon as ascertainable.

- 8. The petition is CONDITIONALLY GRANTED. The court finds the prisoner to be partially indigent because the prisoner has assets in his/her trust fund account to partially pay the filing and service fees.

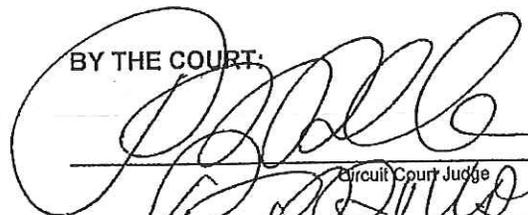
Upon payment by the prisoner of \$ \_\_\_\_\_ (the balance in his/her trust fund and/or release account as shown by the certified copy of his/her trust account statement) or the required filing fee, whichever is less, this action may be filed and all necessary documents may be served by the sheriff. If payment is not made within 30 days of this Order, the petition is DENIED.

The clerk of court shall notify the custodian at the prisoner's facility of the total filing fees, costs and service fees as soon as ascertainable.

The agency having custody of the prisoner's prison trust fund and/or release account shall freeze the prisoner's trust fund and/or release account until the deposits in that account are sufficient to pay the balance owed and shall forward the balance to the clerk of court as provided by law.

- 9. The petition is DENIED because the court finds the prisoner not indigent. The filing and service fees must be paid in full before commencement of this matter.

BY THE COURT:

  
 \_\_\_\_\_  
 Circuit Court Judge  
 Name Printed or Typed  
 \_\_\_\_\_  
 Date  
 12/19/15

Distribution:

1. Clerk of Court (Original)
2. Petitioner
3. Department of Justice, Civil Litigation Unit  
P.O. Box 7857, Madison, WI 53707-7857
4. Department of Corrections Facility at which petitioner is incarcerated  
(Dodge Correctional Institution, if out of state)

Please Print or Type

FILED  
2013 DEC 19 AM 10:36  
ROCK COUNTY WI  
FILED

Prisoner's Petition for Waiver of Prepayment of Fees/Costs - Affidavit of Indigency

State ex rel. [redacted] -vs-

Brian Hayes

Case No. 13-CV- [redacted]

(The prisoner must provide the following to the Clerk of Court at the time of filing:

- The original and one copy of this affidavit and attachments.
Sufficient copies of the pleadings for potential service on all named defendants.)

Under oath I state that:

- 1. I am unable to pay the costs of this action, special proceeding or appeal or to give security for those costs, and request waiver of prepayment of those costs because of poverty.
2. I have not had three or more appeals, writs of error, actions or special proceedings dismissed by a state or federal court for any of the reasons listed in §802.05(3)(b)1-4, Wisconsin Statutes.
3. I have attached and incorporated into this affidavit:
4. I [X] have [ ] have not committed an offense on or after September 1, 1998.

5. I [ ] am [X] am not employed. Name of employer:
6. I earn \$ 2 gross [X] weekly. [ ] every two weeks. [ ] twice monthly.. [ ] monthly.

- 7. I have received or been entitled to receive money from the following sources within the past 12 months (list total amount):
pension, annuities or life insurance payments: \$ 0
disability or worker's compensation payments: \$ 0
gifts, loans or inheritances: \$ 400
rent payments, interest or dividends: \$ 0
business, profession or self employment: \$ 0
other: \$ 0

- 8. I have the following cash assets:
savings accounts: \$ 0
checking accounts: \$ 0
cash: \$ 0
money owed me: \$ 0
any other cash assets: \$ 0

\* TRUST FUND ACCOUNT INFORMATION WAS NOT AVAILABLE AT THE TIME OF FILING AND WILL BE PROVIDED UPON RECEIPT.

9. I have the following other assets (list value):

- real estate: .....\$ 0
- stocks, bonds, securities and financial instruments: .....\$ 0
- automobiles: .....\$ 0
- computers, audio-visual equipment, other personal property: ...\$ 0
- jewelry, antiques, objects of art or other valuable property : .....\$ 0

10. I have not transferred any funds or other assets in the past 12 months except as follows (describe any transfers):

---

11. I have not assigned my rights to any funds or other assets since first incarcerated except as follows (describe any assignments):

---

12. I have the following legal obligations:

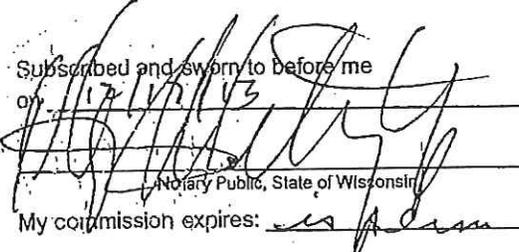
Obligation	Amount Actually Paid Per Month	Amount Actually Paid in Last Six Months
<input type="checkbox"/> Child Support	\$ <u>0</u>	\$ <u>0</u>
<input type="checkbox"/> Restitution	\$ <u>0</u>	\$ <u>0</u>
<input type="checkbox"/> Fines/Costs	\$ <u>0</u>	\$ <u>0</u>
<input type="checkbox"/> Other:	\$ <u>0</u>	\$ <u>0</u>

13. My spouse  is  is not employed. Name of employer: \_\_\_\_\_  
 14. My spouse earns \$ \_\_\_\_\_ gross  weekly.  every two weeks  twice monthly  monthly.

15. My spouse receives monthly income totaling the amount of \$ \_\_\_\_\_ from:  
 Pension  Social Security  Unemployment compensation  
 Disability  Student loans/grants  Other: \_\_\_\_\_

16. I have the following miscellaneous expenses: \_\_\_\_\_

---

Subscribed and sworn to before me  
 on 12/17/13  
  
 Notary Public, State of Wisconsin  
 My commission expires: 12/31/14

I understand that if my financial situation changes,  
 I must notify the court immediately.

  
 Signature \_\_\_\_\_ Date 12/17/13

12/19/2013 14:02  
DOCK11

WISCONSIN DEPARTMENT OF CORRECTIONS  
DODGE CORRECTIONAL INSTITUTION

TRUST ACCOUNT ACTIVITY STATEMENT  
FROM 06/19/2013 TO 12/19/2013

CERTIFIED COPY  
Certified by *Conrad Kueffel*, December 19, 2013

DOC#: ██████████  
NAME: ██████████  
DOB: 06/15/1980  
LOCATION: DCI-A-22-40  
ACCOUNT ACTIVITY

START BALANCE:\$ 0.00  
END BALANCE:\$ 973.51  
AVERAGE MONTHLY BALANCE:\$ 122.35  
AVERAGE MONTHLY DEPOSITS:\$ 173.81  
NUMBER OF DAYS IN PERIOD: 184

DATE	INST	TRANSACTION DESCRIPTION	RECEIPT/ INFO NUMBER	AMOUNT	DEPOSIT
				0.00	
11/13/2013	DCI	CASH ON ARRIVAL		1.20	YES
11/18/2013	DCI	412 /AE1 REG/FUL 24 @0.05 04/12/12-11/16/13		50.00	YES
11/20/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	(20.04)	
11/21/2013	DCI	COMMISSARY REGULAR SALE #7704384	██████████	531.64	YES
11/21/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	50.00	YES
11/21/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	50.00	YES
11/26/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	(17.99)	
11/27/2013	DCI	COMMISSARY REGULAR SALE #7711892	██████████	50.00	YES
11/27/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	0.97	
11/29/2013	DCI	COMMISSARY RETURN #7711892		3.60	YES
12/02/2013	DCI	412 /AE1 REG/FUL 72 @0.05 11/17/13-11/30/13		50.00	YES
12/03/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	(18.71)	
12/05/2013	DCI	COMMISSARY REGULAR SALE #7720365	██████████	50.00	YES
12/05/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	50.00	YES
12/06/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	50.00	YES
12/11/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	(18.99)	
12/12/2013	DCI	COMMISSARY REGULAR SALE #7728094	██████████	50.00	YES
12/16/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	4.00	YES
12/16/2013	DCI	412 /AE1 REG/FUL 80 @0.05 12/01/13-12/14/13		50.00	YES
12/18/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	25.01	YES
12/18/2013	DCI	MAIL ROOM RECEIPTS (AUTO)	██████████	(17.18)	
12/19/2013	DCI	COMMISSARY REGULAR SALE #7736852			

AUTHORIZATION TO WITHHOLD MONEY FROM ACCOUNTS

RECEIVED  
2013 DEC 19 AM 10:35

I, [REDACTED]  
(Print Plaintiff's Name) (I.D. Number, e.g. DOC No.)

wish to commence a lawsuit described as follows:

STATE OF IOWA v. BRIAN HAYES  
Name(s) of defendant(s)

Rock County Circuit Court  
Name of court (e.g. Circuit Court for Dodge County)

REVOCATION DECISION  
Subject of the lawsuit (e.g. disciplinary ticket #)

If the court permits me to commence this lawsuit, by my signature below I authorize the agency having custody of my prison trust fund account to forward payments from my account to the clerk of court each time the amount in the account exceeds \$10 until the costs and fees are paid in full.

[REDACTED]  
(Signature of Plaintiff)

12/17/13  
(Date)

CUSTODIAN:

Give inmate a copy after he or she signs it.

When suit is filed and served, enter court case number here: \_\_\_\_\_

A COPY OF THIS FORM MUST ACCOMPANY CIRCUIT COURT FORM CV-438 OR CV-440, PRISONER'S AFFIDAVIT OF INDIGENCY



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

DJ-LS-22, rev. 05/11

J.B. VAN HOLLEN  
ATTORNEY GENERAL

Kevin M. St. John  
Deputy Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Betty Kruse  
Paralegal  
kruseel@doj.state.wi.us  
608/267-2780  
FAX 608/267-8906

Instruction To Offender: You must send original Certification to the Court.

**CERTIFICATION  
AS TO THREE OR MORE DISMISSALS  
UNDER WIS. STAT. § 801.02(7)(d)**

OFFENDER NAME: [REDACTED]

DOC OFFENDER NUMBER: [REDACTED]

RECEIVED  
JUL 19 10 35 AM '13  
STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

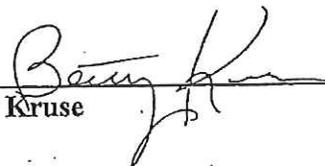
THE UNDERSIGNED CERTIFIES THAT:

X The Wisconsin Department of Justice has no records showing that this offender has three or more dismissals within the meaning of Wis. Stat. § 801.02(7)(d).

— The Wisconsin Department of Justice has records it believes show that this offender has three or more dismissals within the meaning of Wis. Stat. § 801.02(7)(d). These records are public records within the meaning of Wis. Stat. §§ 908.03(8), 909.015(7), and 909.02(4), in that they are on file in the offices of the Wisconsin Department of Justice, reflect the activities of that Department, and set forth matters observed by that Department pursuant to duty imposed on it by law. True copies of these records are attached hereto and their case name, number, and venue are as follows:

This certification was requested by attorney Kelly Mattingly by telephone on December 9, 2013.

Witness under my hand and the official seal of the Wisconsin Department of Justice, Office of the Attorney General, this 9<sup>th</sup> day of December, 2013.

  
Betty Kruse



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator  
819 North 6th Street  
Room 92  
Milwaukee, WI 53203-1685

Telephone: (414) 227-4781  
FAX: (414) 227-3818  
E-mail: doadh@milwaukee.wisconsin.gov  
Internet: http://dha.state.wi.us

October 11, 2013

[REDACTED]  
[REDACTED]  
Rock County Jail  
200 East Highway 14  
Janesville, WI 53545

**DECISION:** Enclosed is a copy of the decision issued in your case. The decision will take effect and be final 10 working days after the date it was issued unless an administrative appeal is filed under sec. HA 2.05(8), Wis. Admin. Code.

**ADMINISTRATIVE APPEAL:** Either party may appeal the decision by filing an administrative appeal under sec. HA 2.05(8), Wis. Admin. Code. The appeal should be addressed to Wayne J. Wiedenhoef, Acting Administrator, Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, Wisconsin, 53705-5400. A copy of the appeal should also be sent to the opposing party.

**ANY ADMINISTRATIVE APPEAL IN THIS CASE MUST BE FILED ON OR BEFORE October 25, 2013.**

A copy of an administrative appeal must also be sent to all other parties. Failure to do so may result in a dismissal of the appeal. See sec. HA 2.03(2), Wis. Admin. Code.

**JUDICIAL REVIEW:** Judicial review of a revocation decision may be obtained by writ of certiorari in the county in which you were last convicted of an offense for which you were on supervision. See Wis. Stat. §801.50(5). Any action seeking a remedy available by certiorari made on behalf of a prisoner as that term is used in Wis. Stat. §801.02(7) must be commenced within 45 days of the decision to be reviewed. See Wis. Stat. §893.735.

The petition for writ of certiorari should name the division administrator as the respondent and must be filed with the appropriate court and then served on the Division of Hearings and Appeals at 5005 University Avenue, Suite 201, Madison, Wisconsin 53705-5400. A copy of the petition and writ should also be sent to the Department of Corrections, Office of Legal Counsel, 3099 East Washington Avenue, P.O. Box 7925, Madison, Wisconsin 53707-7925.

/ME

Enclosures

cc: Attorney: Kelly Mattingly - Public Defender - Janesville - via e-mail  
Agent: 10513, Kostas Korias-2837 Liberty Lane, Janesville, - via e-mail  
Supervisor: 105, Marla Bell - via email



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator  
819 North 6th Street  
Room 92  
Milwaukee, WI 53203-1685

Telephone: (414) 227-4781  
FAX: (414) 227-3818  
E-mail: doadhamilwaukee@wisconsin.gov  
Internet: http://dha.state.wi.us

---

In the Matter of [REDACTED]

**DECISION**

[REDACTED]  
Rock County Jail  
200 East Highway 14  
Janesville, WI 53545

---

Hearing in the matter of the recommended revocation of the extended supervision of [REDACTED] was held at the Rock County Jail, Janesville, Wisconsin, on October 7, 2013, before Martha C. Carlson, Administrative Law Judge, Wisconsin Division of Hearings and Appeals.

**Extended supervision revoked.**

APPEARANCES: [REDACTED] appeared in person and by Attorney Kelly Mattingly.

The Division of Community Corrections appeared by Kostas Korias, agent.

**ALLEGATIONS:**

1. On or about 5/18/13, [REDACTED], by his own admission, made attempts and succeeded in having telephone contact with a victim of previously assaultive behavior. This behavior is in violation of Community Supervision rule 1 and Sex Offender Rule(s) 1, signed by him on 1/16/13.
2. On or about 5/20/13, [REDACTED], by his own admission, failed to return to RVCP halfway house, as directed, making his whereabouts and activities unknown from that date until his present arrest. This behavior is in violation of Community Supervision rules 1, 4, 7, 14, and 16 and Sex Offender Rule(s) 5 signed by him on 1/16/13.
3. From on or about 5/20/13 to 8/10/13, [REDACTED], by his own admission, moved from his address of record to an unapproved address without prior approval and/or notification to his agent. This behavior is in violation of Community Supervision rules 1 and Sex Offender Rule(s) 5 signed by him on 1/16/13.
4. From on or about 5/20/13 to 8/10/13, [REDACTED], by his own admission, participated in public events in which minors and teenagers were present without permission, approval, justification, or necessity. This behavior is in violation of Community Supervision rules 1, 24, and Sex Offender Rule(s) 2 signed by him on 1/16/13.

5. From on or about 4/16/13 to 8/10/13, [REDACTED] accessed, maintained, and interacted with others on social networks (Facebook) and had an email presence which was unknown to his agent and was not approved. This behavior is in violation of Community Supervision rules 1, 4, 7, 14, and 16 and Sex Offender Rule(s) 14 signed by him on 1/16/13.
6. From on or about 4/16/13 to 8/10/13, [REDACTED] while on social networks (Facebook), posted untrue and inaccurate information about his status as a person on supervision in an attempt to disguise the fact that he is supervised under sex offender rules. This behavior is in violation of Community Supervision rules 1 and Sex Offender Rule(s) 14 signed by him on 1/16/13.

#### FINDINGS OF FACT, CONCLUSIONS OF LAW

On April 4, 2006, [REDACTED] was convicted of Felony Bail Jumping in Rock County Case No. 04-CF-398. On February 5, 2009, Mr. [REDACTED] was sentenced to 2 years of initial confinement, followed by 3 years of extended supervision.

Mr. [REDACTED]'s supervision has been revoked twice for having sex with a minor resulting in pregnancy, accessing the internet, having contact with minors, and changing his residence without permission.

Mr. [REDACTED] was released to the current period of supervision on April 16, 2013.

#### *Allegation 1*

In support of allegation 1, the Department presented the statement of Mr. [REDACTED] given to the Department on August 15, 2013. (Exhibit 5). In that statement, Mr. [REDACTED] admits to having contact with [REDACTED]. Specifically, Mr. [REDACTED] states, "On May 18 I called [REDACTED] who is the mother of my child [REDACTED]. I did not know that I was talking to her directly. I just wanted to leave a message that I would be working and sending money soon...I understand now that contacting her is a violation of my rules as she is one of my victims." [REDACTED] was previously revoked for having sexual contact with [REDACTED] while she was underage. Ms. [REDACTED] became pregnant as a result of the sexual encounter.

Rule 1 of Mr. [REDACTED]'s Standard Sex Offender Rules reads, "You shall have no contact with [REDACTED] nor any prior victims of your offenses nor their family members without prior agent approval. This includes face-to-face, telephone, mail, electronic, third party, or 'drive by' contact." (Exhibit 8). Mr. [REDACTED] signed those rules on January 16, 2013.

Mr. [REDACTED] testified at the final revocation hearing that he was not aware it was a violation to speak with [REDACTED] until after he spoke with her on May 18, 2013. [REDACTED] indicated that he has a child with [REDACTED] and is allowed to have reasonable visitation with the child upon reasonable notice. [REDACTED] did not present any court order or other official documentation from family court to confirm [REDACTED]'s periods of placement with the child.

Rule 1 of Mr. [REDACTED]'s Standard Sex Offender Rules, as written, prohibits [REDACTED] from having contact with any prior victims of his offenses. While the rule does not explicitly mention [REDACTED] by name, [REDACTED] is well aware that he was previously revoked for having sexual contact with [REDACTED] while she was a minor. The language "...nor any prior victims of your offenses..." puts [REDACTED] on reasonable notice that he is not to have contact with any and all prior victims. Regardless of whether [REDACTED] believed she was a victim, she was under the age of 18 when she had sexual intercourse with [REDACTED]. Additionally, the rule refers to victims of prior "offenses". In this context, the word "offenses" encompasses more than a criminal charge or a criminal conviction. While [REDACTED] was not convicted of a criminal offense as a result of his relationship with [REDACTED], the relationship was nonetheless a violation of his rules of community supervision which Mr. [REDACTED] was subsequently revoked for. Therefore, Mr. [REDACTED] was on reasonable notice that he was to have no contact with [REDACTED]. For those reasons, allegation 1 has been established.

*Allegations 2, 3, & 5*

At the start of the final revocation hearing, Mr. [REDACTED] stipulated to allegations 2, 3, and 5. Based upon Mr. [REDACTED]'s stipulation, allegations 2, 3, and 5 have been established.

*Allegation 4*

In support of allegation 4, the Department presented the statement of Mr. [REDACTED] given to the Department on August 15, 2013. (Exhibit 5). Specifically, Mr. [REDACTED] stated, "I participated in two races on the middle of June at a track in Deerfield... There were persons under 18 on the bleachers during those races. I did not have permission to do races." Agent Korias confirmed that he had not given Mr. [REDACTED] permission to participate in any BMX bike races.

Rule 24 of the Rules of Community Supervision prohibit Mr. [REDACTED] from being on the premises of any place frequented by children without prior approval from his agent. Mr. [REDACTED] testified that minors are present during the BMX bike races that he participates in. Mr. [REDACTED], however, testified that minors are not allowed into the racing area.

The language of Rule 24 specifically prohibits Mr. [REDACTED] from being on the premise of any area frequented by children. Agent Korias' testimony and Mr. [REDACTED]'s admission in his statement confirm that Mr. [REDACTED] was not given permission to participate in BMX bike races. For those reasons, allegation 4 has been established.

*Allegation 6*

The Department alleges that Mr. [REDACTED] provided false information by stating that he was in the service when in fact he was incarcerated. Additionally, the Department alleges that Mr. [REDACTED] made statements that he owned a business when he, in fact, does not own any business. In support of allegation 6, the Department presented the statement given by Mr. [REDACTED] to the Department on August 15, 2013. (Exhibit 5). Additionally, the Department presented printouts from Mr. [REDACTED]'s Facebook accounts. (Exhibits 6 and 10).

The submitted Facebook printouts do not include any entries by Mr. [REDACTED] from the time period in question indicating that he owns a business or stating that he was in military service when he was in fact incarcerated.

However, Mr. [REDACTED] admits in his statement, "I made untrue statement that I was deployed in the service to explain my absence due to incarceration."

This examiner agrees with the Department that Mr. [REDACTED]'s admitted statement is not in the best interests of the public welfare or his rehabilitation. While Mr. [REDACTED] may deny committing the offense for which he was on bond for when he missed a scheduled court appearance, Mr. [REDACTED] is supervised by the Department under sex offender rules. Agent Korias testified that one of the issues that the Department is concerned with is Mr. [REDACTED]'s pattern of grooming and taking advantage of other individuals. Mr. [REDACTED]'s admitted conduct in posting that he was gone for two years because he was deployed would lead anyone who read Mr. [REDACTED]'s statement to believe that he was in active military service. This invites individuals to praise or commend Mr. [REDACTED] for his service to his country and may also be an impetus for people to contact Mr. [REDACTED] and seek a relationship with him. Given the Department's concerns with Mr. [REDACTED]'s past behavior of grooming and taking advantage of others, Mr. [REDACTED]'s posting encouraged behavior that is not in the best interests of the public or Mr. [REDACTED]'s rehabilitation. For those reasons, allegation 6 has been established.

#### *Appropriateness of Revocation*

According to the Supreme Court in *State ex rel. Plotkin v. H&SS Department*, 63 Wis. 2d 535 (1974), the Department need only show one of three criteria to justify its request for revocation: (1) confinement is necessary to protect the public from further criminal activity by the defendant; (2) the defendant's rehabilitative needs would best be addressed in a prison setting; or (3) it would unduly depreciate the seriousness of the violation if the defendant's supervision were not revoked.

In this case, the Department has demonstrated all three *Plotkin* criteria. In the short period of time that Mr. [REDACTED] has been on the current period of supervision, he has continued to violate the rules of his supervision by accessing the internet without the permission of his agent, attending events where minors were present, posting inaccurate information on social media, having contact with a prohibited individual, and absconding from supervision. While these are not criminal offenses, Mr. [REDACTED]'s complete disregard for his rules of supervision put him at a much greater risk to the community. Moreover, the Department was unable to supervise Mr. [REDACTED] while he was in absconder status, again putting the community at greater risk of criminal activity by Mr. [REDACTED]. Confinement is therefore necessary to protect the public from further criminal activity by Mr. [REDACTED]. While Mr. [REDACTED] could very well benefit from CGIP counseling, any treatment is best provided in a confined setting to ensure that Mr. [REDACTED] remains available for and compliant with treatment. Finally, it would unduly depreciate the seriousness of the proven violations if Mr. [REDACTED]'s supervision was not revoked. There are no appropriate Alternatives to Revocation due to Mr. [REDACTED]'s disregard for his rules of community supervision.

*Period of Re-confinement*

Mr. ██████ has 1 year, 6 months, and 11 days available for re-confinement, of which the Department recommends that he serve the entire remaining amount.

Re-confinement is determined according to the criteria in Wis. Admin. Code §HA 2.06 (6)(b). Those criteria are: (a) the nature and severity of the original offense; (b) the institutional conduct record; (c) the conduct and behavior while on supervision; and (d) the period of re-confinement needed to protect the public from the risk of further criminal activity, to prevent depreciation of the seriousness of the violation or to provide confined correctional treatment.

Mr. ██████ was convicted of one count of felony bail jumping. The bail jumping charge arose from Mr. ██████ missing a scheduled court hearing in Case No. ██████. The original charge against Mr. ██████ in that case was Sexual Assault of a Child under the age of 13. According to the criminal complaint, a ten year-old child reported on or about March 31, 2004 that she had a sexually transmitted disease. (Exhibit 9). The child indicated that she had had sexual contact with Mr. ██████ and that he had touched her genitalia and buttocks. As previously noted, Mr. ██████ was not convicted of that offense, but was supervised by the Department as a Sex Offender because of it.

There is no information contained in the record regarding any negative institutional conduct on the part of Mr. ██████ so it is presumed that he conducted himself appropriately while in the institution.

Upon his release from the institution, Mr. ██████ was placed in a halfway house. Within one month, Mr. ██████ had absconded from supervision, leaving his activities and whereabouts unknown to the Department. Absconding is a serious violation that goes to the heart of supervision since there can hardly be any supervision if the agent does not know where the supervisee is. See *State ex. rel Shock v. Dept. of H. & S. Serv.*, 77 Wis. 2d 362, 253 N.W.2d 55, 58 (1977). Absconding inherently carries with it a greater potential for criminal activity since the parolee is not subject to constant or intensive surveillance, scrutiny, or monitoring.

Mr. ██████'s adjustment on the current period of supervision was overwhelmingly negative, as he absconded from supervision only weeks after his release. During the period of absconding, Mr. ██████ moved to an unapproved residence, participated in events where minors were present, accessed the internet, had contact with a prohibited individual, and posted false information about his status as a parolee on Facebook. This indicates that Mr. ██████'s pattern of criminal thinking has not changed, despite a significant period of incarceration. Mr. ██████'s behavior additionally demonstrates that he does not respect his rules of community supervision and is therefore an extremely poor risk to remain in the community. Given all of this, I agree with the Department that re-confinement for the remaining time available is appropriate to prevent undue depreciation of the seriousness of the proven violations and also to protect the community from further criminal activity by Mr. ██████.

*Custody Credit*

Mr. ██████ is entitled to custody credit from August 10, 2013 until his receipt at the institution.

ORDER

It is hereby ordered that the extended supervision of Mr: ██████ be revoked, that he be incarcerated for 1 year, 6 months, and 11 days, and that he receive the above-listed custody credit.

Given under my hand at the city of Milwaukee this 11th day of October, 2013

/s \_\_\_\_\_  
Martha C. Carlson  
Administrative Law Judge  
Division of Hearings and Appeals  
MCC/mcc

This decision may be appealed to the Administrator of the Division of Hearings and Appeals as provided in Wis. Admin. Code § HA 2.05(8). If such an administrative appeal is filed, a copy of the appeal must be sent to the opposing party.



# Wisconsin State Public Defender

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Kelli S. Thompson  
State Public Defender

Catherine Dorl  
Trial Division Director

Eric Nelson  
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October 25, 2013

Brian Hayes, Administrator  
Division of Hearings and Appeals  
5005 University Avenue, Suite 201  
Madison, WI 53705-5400

RE: In The Matter of [REDACTED]

Dear Mr. Hayes:

The Department of Corrections requested revocation of [REDACTED] extended supervision and a hearing was held before Administrative Law Judge Martha Carlson on October 7, 2013. In a Decision dated October 11, 2013, the Administrative Law Judge granted the Department's request and entered an Order revoking Mr. [REDACTED] supervision and re-incarcerating him for the balance of his time remaining which is 1 year, 6 months and 11 days. Mr. [REDACTED] now appeals the re-confinement portion of the decision, but not the revocation Order itself, on the grounds that the Administrative Law Judge's re-incarceration decision was arbitrary and capricious and represents her will, not her judgment.

Mr. [REDACTED] admitted to allegations 2, 3 and 5. He further acknowledged that these violations formed a sufficient basis to revoke. His argument with the Department, and now the Administrative Law Judge, was over what amount of time is necessary and sufficient to punish these violations. Mr. [REDACTED] contends that, because all of the allegations are violations of supervision and there was no new criminal conduct either alleged or proven, there was no reason to deviate from the Department's guidelines. The Department's main argument in support of forfeiting 100% of his remaining time, the relevance of which is unclear, seems to be that Mr. [REDACTED] is facing a consecutive period of probation. The Department twice *alleges* in its packet that, although these are category II violations, several aggravating factors have increased the recommendation to 100%. Nowhere in the packet nor on the record at hearing, however, are those factors ever specified or elaborated upon.

While Mr. [REDACTED] understands that the guidelines are binding upon neither the Department nor the Administrative Law Judge, he nonetheless asserts that they were developed by the Department so that individuals facing revocation and re-incarceration were treated as uniformly and fairly as possible. He further asserts that the Administrative Law Judge's re-incarceration decision, though discretionary, must be firmly rooted in the evidence and that she must give reasons in the record for that decision. *George v. Schwarz*, 2001 WI App 72; 242 Wis. 2d 450; 626 N.W.2d 57 (Ct. App. 2001). The court in *George* likened the Administrative Law Judge's re-incarceration decision to that of the trial judge's sentencing decision and said that, "In exercising that responsibility, both are required to engage in "reasoning based on facts that are of record or that are reasonably derived by inference from the record, and a conclusion based on a logical rationale founded upon proper legal standards.'" *Id.* at P24, citing *State v. Wagner*, 191 Wis. 2d 322, 332, 528 N.W.2d 85 (Ct. App. 1995). The Administrative Law Judge, like a judge, is "...required to independently arrive at an appropriate disposition. They are not to blindly accept or adopt sentencing or re-incarceration recommendations from any particular source." *Id.* Mr. [REDACTED]

asserts that the Administrative Law Judge's re-incarceration decision does not meet this standard in that it is not supported by the evidence and that she blindly accepted the recommendation of the Department.

With regard to allegation 1, though there was no specific no contact provision with [REDACTED], the Administrative Law Judge found that Mr. [REDACTED] had violated his rules by having contact with her. The rule alleged to have been violated was that "You shall have no contact with [REDACTED] nor any prior victims of your offenses ..." <sup>1</sup> Mr. [REDACTED] argued that this rule failed to provide adequate notice of what conduct would violate the rule. He offered evidence which established that the Department did not consider Ms. [REDACTED] to be a victim of Mr. [REDACTED] because she was allowed to visit him while in prison and in fact did so more than once, bringing their infant daughter with her on one occasion. The Department will not allow individuals who have been designated a victim to be placed on a list of approved visitors. Ms. [REDACTED] wrote to the Department, explained, apparently convincingly, why she was not a victim, and was placed on the approved visitor's list. Mr. [REDACTED] further argued that, because the Department did not consider her to be his victim, it was reasonable for him to believe that Rule 1 of the Standard Sex Offender Rules did not apply to her and that he first understood that he was not to have contact with her when informed by his agent after the fact. The Administrative Law Judge reads the rule very broadly, (which should be avoided when giving notice of what type of conduct will lead to a loss of liberty), and found that Mr. [REDACTED] should have known that Ms. [REDACTED] was a prior victim of his offenses, even though neither Ms. [REDACTED] nor the Department believed it to be so. <sup>2</sup> In order to support this conclusion, the Administrative Law Judge was forced to re-define the term "offense" in a manner that had never been explained to Mr. [REDACTED]. Mr. [REDACTED] asserts that this finding is arbitrary and capricious and represents the Administrative Law Judge's will, not her judgment.

HA 2.05(6)(f) states in pertinent part: "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." Mr. [REDACTED] called Steven Thurner, an investigator with the State Public Defender, to testify at the hearing. In the absence of an objection from the Department, the Administrative Law Judge asked why he was being called. Defense counsel explained that Mr. Thurner had interviewed Ms. [REDACTED] and would rebut and add to what was already in the record in the form of her written statement to the agent. Again, without objection from the Department, the Administrative Law Judge indicated that Mr. Thurner's testimony would be hearsay, and that she would not allow it. Counsel objected that Ms. [REDACTED] written statement was also hearsay and in light of the Administrative Law Judge's decision to exclude Mr. Thurner's testimony, moved to strike Ms. [REDACTED] statement from the record. Counsel argued that Mr. [REDACTED] was being prevented from testing her statement by any means because the Department had failed to produce her at the hearing and had failed to show cause why they could not do so. *See:* HA 2.05(6)(c). The Administrative Law Judge argued that the defense could have subpoenaed her to the hearing. Counsel objected that the Department had the sole responsibility to prove the allegations and that Administrative Law Judge was reversing the burden of proof as to allegation 1. The Administrative Law Judge was visibly upset by counsel's assertion. Mr. [REDACTED] asserts that this exchange and the ruling which resulted is further evidence that the Administrative Law Judge acted arbitrarily and

<sup>1</sup> [REDACTED] was the complaining witness in the charge originally filed in [REDACTED]. Mr. [REDACTED] was alleged to have had sexual contact with her, which resulted in her contracting a sexually transmitted disease. Blood tests proved conclusively that Mr. [REDACTED] could not have been the source of the disease and the prosecutor moved to dismiss the charge. Mr. [REDACTED] was convicted of one count of bail jumping for missing court while out on bond on the original charge. Mr. [REDACTED] has always maintained his innocence as to the original charge, a position the Department and, apparently, the Administrative Law Judge refuse to accept.

<sup>2</sup> Included in an offer of proof, (which became necessary when the Administrative Law Judge excluded part of the defense case), was evidence that Ms. [REDACTED] told Investigator Steven Thurner that she did not originally identify herself as Mr. [REDACTED] victim to his agent. She indicated that it was the agent who insisted to her, more than once during their conversation that she was a victim, and assertion that she repeated in her written statement.

capriciously and that she exercised her will to endorse the Department's recommendation rather than her independent judgment.

With respect to allegation 4, the administrative Law Judge found that Mr. [REDACTED] has gone on the premises of a place frequented by children when he participated in BMX races, without the permission of his agent. First, Mr. [REDACTED] did not have a rule preventing him from participating in BMX races, but because the Department alleged it, the Administrative Law Judge blindly accepted it and found it to be so. Further, the Administrative Law Judge's finding ignores the uncontroverted evidence presented by Mr. [REDACTED] that any children in attendance at the races were not allowed access to the pit area where Mr. [REDACTED] and the other racers were located, and that the track area was separated from the stands by a fence. Mr. [REDACTED] asserts his participation in these races is analogous to walking by a school where children are present. As long as he does not stop and attempt to have contact, and the Department presented no evidence thè he did so here, he has violated no rule.

Allegation 6 and the Administrative Law Judge's findings with respect to allegation 6 defy all reason, fairness and logic. Mr. [REDACTED] admitted that he posted on Facebook that he was deployed to explain his absence during a period of incarceration for his bail jumping conviction, in effect admitting that he made an untrue statement on Facebook, though none of the 44 pages submitted by the Department contained any such statement. He did so because he was embarrassed about going to prison. It is not violation of supervision to tell stories to friends on Facebook. Mr. [REDACTED] is not a registered sex offender, yet the Department and the Administrative Law Judge treat him as though he were.<sup>3</sup> The Administrative Law Judge speculates that posting this information may be an impetus for others to seek a relationship with them. That may be so, but unless it is a sexual or romantic relationship they are seeking, it does not implicate the rules of supervision. Notice is about fairness. It is fundamentally unfair to incarcerate someone for more than 18 months because of something that some third party *might possibly* do in response to a posting on Facebook. Further, the type of tortured logic and intellectual gymnastics that went into the Administrative Law Judge's decision with respect to allegation 6 once again reveals the arbitrary and capricious nature of her decision, as well as a clear bias in favor of the Department's position.

Under HA 2.03(6)(b), the criteria to be considered in determining the amount of re-incarceration to impose are, 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 supervision; 4) The amount of good time forfeiture or the period of re-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.

In addressing the nature and seriousness of the original offense, the Administrative Law Judge and the Department ignore the offense for which Mr. [REDACTED] is on supervision and instead focus on an alleged offense which blood tests conclusively proved that he could not have committed. The Administrative Law Judge fails to even mention that in her decision. She does acknowledge that the charge was dismissed, but is quick to point out the he was supervised by the Department as a sex offender. This is an irrelevant fact, which serves only one purpose, i.e., to bolster the position of the Department and justify the decision to take 100% of Mr. [REDACTED] available time. The fact that the Department can and will

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<sup>3</sup> While Mr. [REDACTED] was incarcerated, the Department's psychologist, Dr. Robert DeYoung, performed an assessment and evaluation of Mr. [REDACTED] treatment needs and specifically stated the Psychological Services did not recommend any institutional sex offender treatment.

October 25, 2013

call Mr. [REDACTED] a sex offender does not make it so, nor does it transform the original offense from a bail jumping for missing court into a sexual assault.

The Administrative Law Judge presumed that Mr. [REDACTED] conducted himself appropriately while institutionalized because there was no evidence to the contrary, an exercise she is apparently unwilling to engage in with respect to any other aspect of this case, as demonstrated by the rest of her written decision. In addressing the third and fourth re-incarceration criteria the Administrative Law Judge restates his violations during supervision, the most serious of which is, undoubtedly, absconding. Mr. [REDACTED] did not deny that he absconded, but asserts that, during this period of supervision, he committed no crimes, a fact that the Administrative Law Judge seems unwilling to acknowledge or presume from the lack of evidence. The Department's guidelines distinguish between rules violations and criminal behavior for a reason. Deviating from those guidelines requires aggravating factors presented in the behavior for reason. Deviating from those guidelines requires aggravating factors presented in the form of specific evidence, not just an assertion that there are aggravating factors. Finally, the Administrative Law Judge's decision must be based upon the evidence, not innuendo, pat language and a desire to agree with the Department. *See, George. 2001 WI App 72 (Ct. App. 2001).*

Therefore, for all the above and foregoing reasons, Mr. [REDACTED] respectfully requests that you modify the Administrative Law Judge's re-incarceration decision to more closely conform to the evidence presented and the guidelines customarily relied upon by the Department

Sincerely,

/s/

Kelly J. Mattingly  
Attorney at Law

cc: [REDACTED]  
Agent Kostas Korias

State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS



██████████  
██████████  
Rock County Jail  
200 East Highway 14  
Janesville, WI 53545

APPEAL DECISION

RE: The Appeal filed in your Extended Supervision case

After review of this appeal pursuant to Wis. Stats. § 301.035, the Decision and Order of the Administrative Law Judge is:

Sustained

for the following reasons:

Mr. ██████████ is on supervision for bail jumping, but being supervised as a sex offender based upon previous allegations by CRW, a then 10-year-old girl, that he gave her a sexually transmitted disease. The department has authority to supervise him as a sex offender regardless of the fact that he was not ultimately convicted of sexually assaulting CRW. The administrative law judge's recognition of this fact shows mere accuracy, not bias as alleged in the appeal. Mr. ██████████ supervision on the bail jumping case has been twice previously revoked for having sex with CRW, who was still a minor and which resulted in her pregnancy. On the current period of supervision, the department prohibited him from having contact with the child that came of his illicit sexual affairs with CRW. The department also explicitly prohibited him from having contact with the child's family members (which would include her mother CRW) and any other victims of his prior offenses (which would include CRW since she was the victim in two previous revocations). Therefore, I agree with the administrative law judge that Mr. ██████████ violated his supervision as alleged when he had telephone contact with CRW during this period of supervision (allegation 1). I further agree with the administrative law judge that Mr. ██████████ violated his supervision by participating in a public BMX racing event where minors and teenagers were present (allegation 4). Mr. ██████████ is correct that his rules did not specifically prohibit BMX racing, but his interpretation of Rule 24 is incorrect as the rule does not require actual contact with minors for a violation. Rather, the rule exists to minimize the risk of contact with minors by prohibiting Mr. ██████████ from being even on the premises of places frequented by children, which clearly includes the public BMX racing event. I further agree with the administrative law judge that Mr. ██████████ violated his supervision by posting untrue information on his facebook account that would lead people to believe his absence from the site was attributed to being deployed when really he was incarcerated (allegation 6). For reasons aptly explained in the underlying decision, providing this false information was not in the best interest of the public or ██████████ rehabilitation. Mr. ██████████ does not dispute that he also violated his

supervision by absconding from a halfway house within a month of his release to supervision, changing his residence without agent approval or subsequent notification, and using social networking and email (allegations 2, 3 and 5). He further acknowledges that revocation is warranted as a result. On appeal, he takes issue with the underlying order for re-confinement of the entire remaining sentence of 1 year, 6 months and 11 days, which the department recommended.

Contrary to the assertions on appeal, the underlying decision acknowledges that the violations do not rise to the level of criminal offenses. This does not necessarily mean, however, that re-confinement of the maximum remaining sentence is inappropriate. The seriousness of the violations is aggravated by the fact that Mr. [REDACTED] supervision has been twice previously revoked with no deterrent effect on him, as evidenced by his return to violating a mere month after his re-release to the community. Furthermore, the instant violations are largely repetitive of the same conduct for which he was twice previously revoked, evidencing an insolent unwillingness to follow the rules and a corresponding risk to the public. Although [REDACTED] did not repeat the violation of having sex with CRW during this period of supervision, he did have contact with her in violation of his rules. He also accessed the internet, placed himself in a public place frequented by minors, and changed his residence. Similar conduct was involved in both of his previous revocations. Most seriously, he absconded from supervision altogether for several months and did not end his absconding period voluntarily. Under the totality of the circumstances, the ordered period of re-confinement is appropriate and necessary to prevent undue depreciation of the seriousness of the violations and to provide adequate community protection. The underlying decision is sustained in its entirety.

Date 7th day of November,  
2013

/s

Brian Hayes, Administrator  
Division of Hearings and Appeals  
5005 University Avenue  
Suite 201  
Madison, WI 53705-5400  
(608) 266-7709  
Fax (608) 264-9885

cc: CRU  
Agent Kostas Korias, 2837 Liberty Lane, Janesville  
Attorney Kelly Mattingly

#### NOTICE OF APPEALS RIGHTS

Judicial review of a revocation decision may be obtained by writ of certiorari in the county in which you were last convicted of an offense for which you were on supervision. See Wis. Stat. §801.50(5). Any action seeking a remedy available by certiorari made on behalf of a prisoner as that term is used in Wis. Stat. §801.02(7) must be commenced within 45 days of the decision to be reviewed. See Wis. Stat. §893.735.

The Petition for writ of certiorari should name the division administrator as the respondent and must be filed with the appropriate court and then served on the Division of Hearings and Appeals at 5005 University Avenue, Suite 201, Madison, Wisconsin 53705-5400.

REVOCATION  
ORDER  
AND  
WARRANT

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS



#10513

TO THE ATTENTION OF ANY PAROLE OFFICER, PROBATION OFFICER, PEACE OFFICER OR ANY OFFICER authorized to serve criminal process and to the SUPERINTENDENT or OTHER PERSON in charge of any jail, penitentiary, lockup or other place of detention:

In the matter of:

Client Name [REDACTED]				Case (Client) Number [REDACTED]	
Status Being Revoked	Date Client Granted Status	Committing Court	County of Commitment	Court Case #	Return to Court
Extended Supervision	4-16-13	Cir. Br. 2	Rock	[REDACTED]	No

WHEREAS, the above-named was granted the status(es) noted above,

AND WHEREAS, on May 18, 2013 the above-named violated the conditions of such status(es) as determined by the Division on October 11, 2013.

THEREFORE, in accordance with the provisions of Chapter 304 and/or Chapter 973 of the Wisconsin Statutes, it is now ordered that said probation(s), parole(s) and/or mandatory release parole(s) be and hereby is (are) revoked effective the date of this order.

YOU ARE COMMANDED, in the name of the State of Wisconsin, and this shall be your authority to execute this order to apprehend and hold said probationer/parolee for the following disposition:

- Return to the Wisconsin Dodge Correctional Institution.
- Return to the above-noted Wisconsin Court(s) for sentencing pursuant to §973.10(2) or for commitment pursuant to §975.06 of the Wisconsin Statutes.
- Return to the County Jail.

AND YOU, the Superintendent of said institution, are hereby authorized and directed to receive the aforesaid and keep him/her until discharged pursuant to law.

Witness my hand and the Seal of the Wisconsin Division of Hearings and Appeals at Madison, Wisconsin, this

7th day of November, 2013



*Diane E. Norman*

Division of Hearings and Appeals  
Diane E. Norman, Assistant Administrator

Jail Credit Due # Days	From	Thru	Period of Reincarceration/Reconfinement (ch. 302, Wis. Stats.) 1 Yrs 6 Mos 11 Days
From 8-10-13 until his receipt at the institution.			Amount of Good Time Forfeited Yrs Mos Days
			Is Good Time To Be Earned on Forfeited Good Time? Yes No
			Tolled Time (If applicable) Yrs Mos Days

\*If yes, attach copy of findings/waiver to Court's copy of Revocation Order & Warrant