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10/30/09

CHAPTER 10

REVOCATION

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**.01 AUTHORITY**

Wisconsin Admin. Code Sections HA 2 and DOC 331  
Wisconsin Statutes 302.11

**.02 GENERAL STATEMENT**

An offender's supervision may be revoked if the offender violates a rule or condition of supervision. When supervision is revoked, the offender is either:

- returned to court for sentencing, or
- transported to a correctional institution to begin serving the sentence indicated by the Court.

Protection of the public is the primary consideration in any revocation decision.

**.03 TIME FRAMES**

These time frames only apply to cases where an Order to Detain (DOC-212) has been authorized by the Department.

If the offender is in custody, the offender should be interviewed within 3 working days.

The original 3 working day detention for investigation can be extended by completing a Detention Extension Request (DOC-212).

The supervisor may extend detention for 3 working days. The Regional Chief may extend for an additional 5 working days. If further extension is necessary, the Administrator may approve any additional time.

Once a decision to revoke has been made, the Notice of Violation and Hearing Rights (DOC-414) shall be served within 2 working days.

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**.03 TIME FRAMES (continued)**

On waived revocations, the "administrative packet" must be submitted to the Supervisor within 10 working days of the waiver. The Supervisor in turn must process the packet within 5 working days and submit to the Regional Office. The Chief or designee will process the waiver within 5 working days of receipt.

If required, a Preliminary Hearing shall be held within 15 working days of the date of detention. Under special circumstances, the Regional Chief or designee may allow an additional five working days. The Notice of Preliminary Hearing ([DOC-415](#)) must be served not less than one, or more than 5 working days from the date of the Preliminary Hearing.

The Final Revocation Hearing Request ([DOC-429](#)) must be submitted to the Supervisor immediately following a finding of probable cause at a Preliminary Revocation Hearing. If the offender waives the Preliminary Hearing, or if no Preliminary Hearing is required, the [DOC-429](#) must be submitted to the Supervisor within 1 working day of the custody decision.

For offenders being held in county jails, the Final Hearing must begin within 50 calendar days of the date of detention unless the hearing has been postponed for cause. Under special circumstances, at the request of the agent or defense counsel, the Division of Hearings & Appeals may allow an additional ten (10) calendar days. Failure to begin a hearing within these time requirements may result in the Sheriff releasing the offender with notice.

If a formal alternative to revocation has not been found and the offender has not signed an Alternative to Revocation Agreement ([DOC-250](#)), the packet must be submitted to the Supervisor within 10 working days of the service of the Notice of Violation, Recommended Action and Statement of Hearing Rights (DOC-414). The Supervisor in turn must process the packet within 5 working days and submit to the Regional Office. The Regional Office shall process the packet within 5 working days of receipt.

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**.03 TIME FRAMES (continued)**

A copy of the "hearing packet" should be submitted to the Division of Hearings & Appeals and the offender's defense counsel at least 10 calendar days before the date of the Final Hearing.

For sentence withheld cases only, the Revocation Order and Warrant, Revocation Summary ([DOC-1950](#)), signed waiver (or copy of the Administrative Law Judge's findings and recommendation), and a memorandum shall be submitted to the sentencing court within 10 calendar days of the effective date of revocation (the date the Revocation Order and Warrant is signed).

**.04 INVESTIGATION**

The agent investigates the facts underlying an alleged violation and meets with the offender to discuss the allegation within a reasonable period of time after becoming aware of the violation. After the investigation has been completed and it has been determined that a violation has occurred, the agent will review the following items with his/her supervisor:

- The facts underlying the alleged violation, including conflicting versions regarding the nature and circumstances of the alleged violation;
- The agent's investigatory efforts and conclusions;
- A brief summary of agent's discussion with the offender;
- Summary of victim statement;
- The agent's recommendation and justification regarding disposition;
- A statement as to the custody status of the offender;
- Any pending criminal charges, guilty pleas, confession, or conviction for the conduct underlying the alleged violation; and
- Reference to the offender's prior adjustment, including but not limited to, prior record, violations, alleged violations, and absconding.

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**.05 PLOTKIN ANALYSIS (ABA STANDARDS)**

Violation of a rule of supervision can be both a necessary and sufficient ground for the revocation of supervision. Revocation should not be the disposition unless at least one of the following is met:

- Confinement is necessary to protect the public from further criminal activity by the offender;
- The offender is in need of correctional treatment, which can most effectively be provided if he/she is confined;
- It would unduly depreciate the seriousness of the violation if supervision were not revoked.

All of the following intermediate steps must be considered in every case as a possible alternative to revocation:

- A review of the rules of supervision followed by changes in them where necessary, including return to court;
- A formal or informal counseling session with the offender to re-emphasize the necessity of compliance with the rules or conditions;
- An informal or formal warning to the offender that any further violations may result in a recommendation for revocation.

**.06 ALTERNATIVES TO REVOCATION**

Alternatives to Revocation (ATR) shall be considered in all cases. Alternatives can be formal or informal in nature. An informal ATR is one utilized without serving an offender with a DOC-414.

A formal ATR is one utilized after the offender has been served a DOC-414 and has signed an Alternative to Revocation Agreement (DOC-250). A revocation packet is not required if the offender signs the Alternative to Revocation Agreement (DOC-250) within ten working days of service. Any additional material required will be based on the intake requirements of the designated program.

A formal ATR may include a Halfway House or Institution/Center placement.

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.06 ALTERNATIVES TO REVOCATION (continued)

In all cases where the department initiates revocation of an offender's probation, parole or extended supervision, the department must consider whether an appropriate alternative is available. An agent may continue to seek and consider ATRs at any time prior to issuance of a Revocation Order and Warrant.

An appropriate ATR may not be available when the decision is made to initiate revocation. In such a case, Revocation Hearing Request (DOC-429) should be submitted to the Division of Hearings and Appeals.

- If an appropriate ATR becomes available prior to the start of the Final Hearing, the agent should obtain a signed Alternative to Revocation Agreement (DOC-250), cancel the hearing, and withdraw the revocation request. The offender shall be released to the ATR.
- If an appropriate ATR is not available at the start of the Final Hearing, but one is expected to become available within a reasonable time, the agent may ask the Administrative Law Judge to reschedule the hearing. If the ATR becomes available, the agent shall obtain a signed DOC-250, cancel the hearing, and withdraw the revocation request. The offender shall be released to the ATR. If the ATR is not available within a reasonable time, the agent shall proceed with the revocation.

An ATR shall be considered "not available" if it cannot be implemented within 60 calendar days of the date the Notice of Violation (DOC-414) was served upon the offender. The Regional Chief may authorize an exception, upon request of the agent. The agent's request must confirm that the offender is eligible, suitable, and willing to enter the ATR; that the offender has been accepted by the ATR program provider; and that the ATR provider has established a date by which the offender can enter the program.

No hearing should be canceled before the offender enters the appropriate ATR program. The custody decision under DOC 331.04 does not apply after the revocation process is terminated.

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**.07 ATR PLACEMENT PROCEDURE**

- 1) Agent prepares and serves the DOC-414 and DOC-250. The offender must sign the DOC-250. The agent should also prepare amended Probation and Parole Rules (DOC-10). These amended rules should establish any necessary special rules including the requirement that the offender cooperate, participate, and successfully complete the ATR.
- 2) The ATR plan should be stated in the Chronological Log (DOC-90) and may also be noted in the Client Log of the OATS Program.
- 3) If a preliminary hearing has already been scheduled, the offender must sign a waiver of the preliminary revocation hearing, or probable cause must be established at the preliminary hearing. The magistrate may release the offender from custody with conditions that require participation in the ATR program. A Revocation Hearing Request (DOC-429) is submitted.
- 4) If a DOC-44 recommending revocation has already been processed, a second DOC-44 stating "Withdraw Revocation Request" must be submitted. If time has been stopped, check "Start Time." Time may not be tolled beyond the ATR start.

**.08 ATR INSTITUTION PLACEMENT PROCEDURE**

In addition to the steps outlined in 10.01.07, the following apply:

- 1) The offender being considered for an institution placement must be on supervision for a felony conviction or be a misdemeanor with an enhancer on an imposed and stayed prison sentence.
- 2) The agent or supervisor will consult with the facility superintendent and social worker concerning placement and program needs. The agent will provide relevant file documents for facility use. The agent will complete a Placement Plan-Alternative to Revocation (DOC-251). The agent will then complete and submit to the institution a referral packet per facility procedures.

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**.08 ATR INSTITUTION PLACEMENT PROCEDURE (continued)**

- 3) The agent or supervisor will make arrangements for necessary medical screening. Resources include Medical Assistance cards, local public health service, P.O.S. funding, Indian Health Service, and medical and dental facilities at LHS (Lincoln Hills School) and EAS (Ethan Allen School).
- 4) The Division of Community Corrections agent will insure that all pending charges and detainers are resolved.
- 5) The facility staff will complete the Admission to Institution Form.
- 6) The agent will participate in person or by phone in program review and staffing on an ongoing basis.
- 7) Should the offender abscond or violate institutional rules, the facility superintendent or designee is authorized to sign the agent's name to apprehension and detention requests, with a copy to the agent.
- 8) Upon release, the facility will complete a release form. Circumstances may dictate an early release. Without the offender's agreement, placement may not be extended beyond the number of days stated on the DOC-250.

**.09 FAILURE TO SUCCESSFULLY COMPLETE ATR**

If the offender fails to complete a formal ATR, the agent is responsible for commencing revocation proceedings if appropriate. Any new violations of supervision, including failure to complete the ATR program, may be added as reasons for revocation. An amended Outline Receipt and Notice of Violation (DOC-414) must be served on the offender.

A preliminary hearing is not needed if the offender has signed a written statement admitting one or more of the violations. The previously signed DOC-250 may be used as such an admission.

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**.10 REVOCATION OF PAROLE**

All revoked parolees are entitled to due process on loss of good time. The Administrative Law Judge makes this decision at the time of the final revocation hearing. In the case of waived final hearings, the parolee retains the right to a good time/reincarceration hearing, which may also be waived. If this hearing is waived, the Regional Chief or designee makes the final decision on the amount of good time to be forfeited or the amount of reincarceration time to be served. If the hearing is requested, a Good Time Forfeiture/Reincarceration Hearing Request ([DOC-429A](#)) will be forwarded to the Division of Hearings and Appeals.

There are two laws that affect sentence reduction: (Inmates serving sentences for offenses committed on or after 12/31/99 are not eligible for sentence reduction).

Old Law: Inmates serving a term for an offense committed prior to June 1, 1984, can earn two types of good time: statutory good time and industrial good time. Inmates sentenced for crimes committed before June 1, 1984, had an opportunity to choose to be included under the new law.

New Law: The concept of "Good Time" does not exist under new law. The Mandatory Release date is automatically established at two-thirds of the length of the sentence. The MR date may be extended for institution misconduct. The new law automatically applies to all cases in which the crime was committed between June 1, 1984, and December 31, 1999.

**.11 REVOCATION OF EXTENDED SUPERVISION**

An offender whose term of extended supervision is revoked is entitled to due process regarding the length of time for reconfinement. The Administrative Law Judge makes this determination at the final revocation hearing. If the offender waives the final revocation hearing but does not waive the good time forfeiture/reincarceration/reconfinement hearing, the agent shall submit a Good Time Forfeiture/Reincarceration Hearing Request ([DOC-429A](#)). The Division of Hearings and Appeals will schedule a hearing at the institution where the offender is confined.

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**.12 PROCEDURE**

An offender's good time forfeiture/reincarceration/reconfinement time information may be obtained by sending a Revocation Information Request (DOC-416) to the Registrar at Dodge Correctional Institution. The agent must send the DOC-416 as soon as it appears that a recommendation will be made for revocation.

An offender's good time forfeiture/reincarceration/reconfinement time information may be obtained any time a parolee or offender on extended supervision is alleged to have committed a violation that may warrant revocation. The request can be sent prior to the offender being placed in custody by marking "NA" in the "Date of Custody" field of the DOC-416. If the DOC-416 has not been sent in at the time the offender is in custody, the agent must send the DOC-416 to DCI as soon as it appears that a recommendation will be made for revocation.

Unless the DOC-416 is sent prior to custody, the dates of violation and custody on the DOC-416 will be the same as the agent uses on the DOC-44. The DOC-416 will be returned to the agent indicating the amount of time available for forfeiture/reincarceration/reconfinement and whether the Old Law, New Law, or TIS applies.

The agent will, after supervisory consultation, make a specific forfeiture/reincarceration recommendation in the Revocation Summary (DOC-24 or DOC-1950), on the DOC-44, and on the DOC-414. If the final revocation hearing and the forfeiture/reincarceration/reconfinement hearing are waived, the Secretary's Designee may increase or decrease the recommended amounts for good time forfeiture/reincarceration/reconfinement time.

The forfeiture recommendation for each case must be stated in years, months, and days.

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**.12 PROCEDURE (continued)**

Under the Old Law, the agent must recommend whether or not good time is to be earned on forfeited time when the violation prompting revocation occurred after the MR date. If the violation occurred prior to MR, good time will automatically be earned on forfeited good time.

**.13 DECISION GUIDELINES**

Once the registrar returns the information on the amount of good time/reincarceration/reconfinement time available, the agent calculates an appropriate recommendation. The agent reviews the recommendation with the supervisor at a case staffing for accuracy and supervisory approval.

The agent applies the penalty schedule for the most serious violation committed by the offender to determine the range of forfeiture/reincarceration/reconfinement.

Recommendation for good time forfeiture, extended supervision reconfinement, or parole reincarceration time shall be consistent with the penalty schedule. Deviation from the penalty schedule must be approved by the Regional Chief or designee. The justification for exceeding the penalty schedule and approval of the Regional Chief shall be addressed in the Revocation Summary (DOC-24 or DOC-1950).

**.14 OLD LAW DECISION GUIDELINES**

The following seven factors shall be considered by the agent and supervisor in arriving at a good time forfeiture recommendation:

- the nature and severity of the original offense;
- the offender's institution conduct record;
- the offender's conduct and behavior while on parole;

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**.14 OLD LAW DECISION GUIDELINES (continued)**

- the amount of time left before mandatory release if the offender is a discretionary release parolee;
- whether forfeiture would be consistent with the goals and objectives of field supervision under Chapter 328 of the Administrative Code;
- whether forfeiture is 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 which the offender needs;
- other mitigating or aggravating circumstances.

For violations after the MR date, a recommendation shall be made on whether good time is to be earned on time forfeited. For discretionary parole violators, by law, time will be earned on forfeited good time and no recommendation is necessary.

**.15 NEW LAW AND EXTENDED SUPERVISION DECISION GUIDELINES**

The following five factors shall be considered by the agent and supervisor in arriving at a reincarceration/reconfinement recommendation:

- the nature and severity of the original offense;
- the offender's institution conduct record;
- the offender's conduct and behavior while on parole;
- consistent with the goals and objectives of field supervision under Chapter 328 of the Administrative Code; and
- the period of reincarceration that is 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 which the offender needs.

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.16 REINCARCERATION RECOMMENDATIONS

The agent must first determine the category that best contains the most serious allegation. The agent must then make the calculation for the recommendation based upon the amount of time available using the following penalty schedule. Exceptions to the penalty schedule require the approval of the regional chief or designee.

The agent's final recommendation shall not be less than 6 months. If there is less than 6 months available, then the agent will recommend 100% time available. When dealing with multiple, consecutive cases, do not recommend the minimum 6 months on each case. It is only required that the final recommendation be a total of at least 6 months.

.17 PENALTY SCHEDULE

The Regional Chief or designee must approve any deviation from the penalty schedule and any reincarceration recommendation in excess of 5 years.

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**.17 PENALTY SCHEDULE (continued)**

Up to 15% of time available, but not less than 6 months    Up to 30% of time available, but not less than 6 months    Up to 60% of time available, but not less than 6 months

CATEGORY I	CATEGORY II	CATEGORY III
Rules violations	Assaultive Misdemeanors	Crimes against persons and the use of weapons
EMP violations	Possession of weapons	Homicide, Manslaughter
Drug, Possession, Use	Property felonies	Death/Injury by OWI
Resisting, Obstructing	Drugs, delivery	Felony sexual assaults
Bail Jumping	Possession with intent to deliver	Arson
Misd theft	Special Rules violations-SO	
Retail theft		
Program/Treatment failures		
Non-criminal threats		
ATR Violations		

Mitigating and Aggravating Circumstances

This system anticipates using the penalty schedule to calculate a recommendation for incarceration and subsequent extended supervision or parole supervision. Mitigating and aggravating circumstances may be used to support recommendations that vary from the penalty schedule but will require the approval of the Regional Chief or designee.

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**.17 PENALTY SCHEDULE (continued)**

Mitigating Factors:

1. Recognition should be given to lengthy periods of supervision served crime free;
2. Violation and crime free preceding present revocation;
3. Completion or amenable to treatment program(s);
4. Pattern of stable and responsible behaviors in the community;
5. Involvement in current violation is minimal or offender is follower;
6. Victim(s) statements(s);
7. Original imprisonment portion of sentence less than 33% of ES available for reincarceration.

Aggravating Factors include:

1. Offender's negative institutional conduct record;
2. Prior revocations;
3. Prior assaultive behavior;
4. Special vulnerability of victim(s) (including age, disability, state of intoxication, etc.);
5. Extreme physical injury/cruelty of victim(s) - evidence of sadism;
6. Extreme property damage;
7. Victim(s) statement(s);
8. Multiple violations;
9. Previous ATR

Consecutive Sentences

A recommendation is made on each case being revoked. Multiple cases are not treated as one continuous sentence.

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.01 POLICY

The Department should proceed with revocation hearings if there are provable violations of the rules of supervision. A revocation proceeding will be conducted to conclusion regardless of the disposition of the criminal charge.

.02 NOTICE TO OFFENDER OF DECISION TO REVOKE

The agent prepares a Notice of Violation, Recommended Action, Statement of Hearing Rights and Receipt ([DOC-414](#)), Waivers and Custody Decision ([DOC-414A](#)), and an Outline of Revocation Procedures ([DOC-414B](#)). The agent shall complete "Rights of Offender - Section A" portion of the ([DOC-414](#)), indicating whether a preliminary hearing will be held. The supervisor will also complete the "Supervisor's Decision on Offender Custody" section of the ([DOC-414A](#)) to inform the offender of the custody decision. The offender shall be served within two working days of the decision to revoke. The agent shall advise the offender of the reasons for revocation, his or her rights, and an explanation of the "Outline of Revocation Procedures."

.03 PRELIMINARY HEARING NOT REQUIRED

A preliminary revocation hearing is not required when:

- the offender is not being held in custody;
- it is waived by the offender in writing;
- the offender has given and signed a written statement which admits the violation;
- 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; or
- there has been an adjudication of guilt by a court for the same conduct that is alleged to be a violation of supervision.

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**.03 PRELIMINARY HEARING NOT REQUIRED (continued)**

If a preliminary hearing is not required, the agent must forward a Request for Final Hearing (DOC-429) to the supervisor within one working day of the waiver of the preliminary hearing or service of the DOC-414. The supervisor shall forward this request to the Division of Hearings & Appeals. The supervisor shall complete the lower half of the "Waiver" portion of the DOC-414, indicating a preliminary hearing will not be held as well as the custody decision. A copy of the DOC-414 be forwarded to the defense attorney.

**.04 MAGISTRATE APPOINTMENT**

The supervisor or designee will arrange for a magistrate who has not been involved in the revocation decision to conduct the Preliminary Hearing. The Regional Chief or designee will make training available to B & C agents, who upon completion, are willing to act as Preliminary Hearing magistrates.

**.05 SETTING HEARING DATE**

The magistrate will set a time and date for the Preliminary Hearing after service of the DOC-414.

**.06 NOTICE TO OFFENDER OF PRELIMINARY HEARING**

The agent prepares and serves the Notice of Preliminary Hearing (DOC-415) for the magistrate. The hearing will be not less than one, nor more than five working days from service of the DOC-415.

**.07 INSTITUTION PROCEDURES**

In some cases, offenders are returned to institutions pending revocation. In these cases, the agent of record is responsible for completing the DOC-414 as well as the DOC-415.

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.07 INSTITUTION PROCEDURES (continued)

If a liaison agent is assigned to the institution, the agent of record shall prepare the DOC-414 and mail or e-mail it to the liaison agent, who will then serve the offender. The liaison agent will then notify the agent of record whether or not the offender has waived the hearing and will return the signed document.

At institutions where there is no liaison agent, the agent of record may call the institution social worker and request assistance in serving the DOC-414.

If a preliminary hearing is required, the agent shall immediately prepare a DOC-415 within 2 working days of the receipt of the returned DOC-414 and mail or e-mail 4 copies to the liaison agent or institution social worker, who will then serve the offender and immediately return 3 copies to the agent of record.

The agent of record is responsible for:

- obtaining a magistrate for the hearing;
- arranging a hearing room at the institution;
- notifying the institution of the date and time of the hearing;
- notifying the institution of the names of any witnesses that need to be present.

The agent may request the assistance of the institution social worker or liaison agent.

.08 ATTORNEY PACKET

The agent notifies the public defender's office, which will make determinations concerning counsel and appoint counsel if appropriate.

When counsel at the Preliminary Hearing represents an offender, the agent should prepare a packet for the attorney as follows:

Court Order or DOC-44  
Face Sheet (DOC-3)  
Applicable Violation Reports (DOC-5)  
Probation/Parole Rules (DOC-10)  
Notice of Preliminary Hearing (DOC-415)

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**.09 POSTPONEMENT**

The offender, their attorney, or the agent may request postponement of the preliminary revocation hearing as outlined in 10.02.02. Witnesses and other hearing participants shall be notified promptly of postponed and rescheduled hearings.

**.10 EXTENSION OF PRELIMINARY HEARING**

A preliminary hearing must begin within fifteen (15) working days of the date of the Division's detention order. However, with the approval of the Regional Chief or designee, the offender and the Department may agree to a new preliminary hearing date. If an offender or the offender's attorney requests an extension, a letter or FAX so stating shall be sent to the Regional Chief or designee. If the agent requests a change, the agent shall forward the request to the Regional Chief or designee. The rescheduled hearing must take place within 20 working days of the Division's detention order. If the extension is approved, the Regional Chief or designee will so advise by routing the request for extension, with approval noted, to the supervisor. Service of a new DOC-415 is required in these cases. A copy of this notice must be given to the Sheriff or other person in charge of the detention facility.

If the request for extension is denied, the original preliminary hearing date will stand.

**.11 SUBPOENA**

Witnesses and documents required at the revocation hearings may be subpoenaed. The agent is responsible for serving subpoenas, using the Subpoena (DOC-1304A), upon Division witnesses in a timely manner. If witnesses fail to appear, the court may be petitioned for enforcement of the subpoena.

The agent should help witnesses complete the Claim for Witness Fees (DOC-424) and submit it to the DCC Business Office.

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**.12 RE-ISSUANCE OF NOTICE**

If the Notice of Preliminary Hearing ([DOC-415](#)) is found to be improper and the impropriety in itself results in the dismissal of the revocation proceedings, the Department may issue a proper notice and begin the proceedings again.

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 [DOC-415](#). Such information must not have been known to the Department prior to issuance of the first notice. It may not be information that was known but not used.

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.01 GENERAL STATEMENT

The offender may waive any required hearing (preliminary, final revocation, or good time forfeiture/reincarceration/reconfinement) by signing the appropriate section of the "Waivers and Custody Decision" ([DOC-414A](#)). If the offender waives the preliminary hearing but requests a final hearing, the supervisor will make the decision on custody status. If an offender on parole or extended supervision waives the final revocation hearing, the offender is entitled to a good time forfeiture/reincarceration/reconfinement hearing which may be waived.

If there is doubt of an offender's ability to make a competent decision, a waiver will not be accepted without the approval of the offender's attorney. Once an attorney has been retained or appointed, a waiver should not be taken without giving advanced notification to the attorney.

The agent shall only accept waivers when there is an assurance that the offender is knowingly, willingly, and voluntarily making a decision to waive.

.02 FORMS AND DOCUMENTS REQUIRED OF AGENT

There may be regional differences in the contents required in a revocation packet; however, the following list indicates those documents which are often required:

- [DOC-5](#) Violation Report, or [DOC-1950](#)
- [DOC-20](#) Judgment of Conviction/Sentence Imposed and Stayed, Probation Ordered (for imposed and stayed cases only)
- [DOC-24](#) Revocation Summary, or [DOC-1950](#)
- [DOC-44](#) Recommendation for Administrative Action
- [DOC-3](#) Face Sheet for each case being revoked

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**.02 FORMS AND DOCUMENTS REQUIRED OF AGENT (continued)**

DOC-414 Notice of Violation, Recommended  
Action, Statement of Hearing  
Rights and Receipt  
DOC-414A Waivers and Custody Decision  
DOC-416 Revocation Information Request  
DOC-1950 Revocation Summary  
Other relevant reports

**.03 FORMS REQUIRED OF REGIONAL CHIEF OR DESIGNEE**

DOC-1221 Revocation Order and Warrant

**.04 WAIVER PROCEDURE**

Function

Instructions

Agent

Review the DOC-414 with the offender and afford the opportunity to waive.

Forward the revocation packet to the supervisor within 10 working days of receipt of the waiver.

Review the revocation packet for completeness and accuracy, checking the following:

- the dates of violation are the same on the DOC-44 and DOC-416 (parole cases or extended supervision cases);
- the appropriate information is completed under agent's responsibility on DOC-44;
- completion of Section C and D of the DOC-414 (parole or extended supervision cases);
- Plotkin Analysis and, in parole cases and extended supervision cases only, the Good Time Forfeiture, Reincarceration Time, or Extended Supervision Reconfinement Recommendations are justified;
- the Good Time Forfeiture/Reincarceration/Reconfinement Recommendation should be consistent with the Penalty Schedule (10.01.17).

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.04 WAIVER PROCEDURE (continued)

<u>Function</u>	<u>Instructions</u>
Supervisor	<p>Review, approve, and forward the revocation packet to the Regional Chief within 5 working days of receipt.</p> <p>If a revocation packet has already been submitted to the regional office, a signed copy of the <u>DOC-414A</u> (waiver) should be immediately forwarded to the Regional Office. The final hearing should be canceled with Hearings and Appeals.</p>
Regional Chief	<p>Review and approve or disapprove the revocation within 5 working days of receipt.</p> <p>If disapproved, return the packet to the unit supervisor for continued supervision.</p> <p>If approved, prepare the Revocation Order and Warrant (<u>DOC-1221</u>).</p> <p>Packets and revocation information is disseminated per regional policy.</p>

.05 WAIVER WITHDRAWN PROCEDURE

Approval for withdrawal of waivers is with the Regional Chief. Waivers may be withdrawn upon request before the final revocation order is issued and the matter set for a final administrative hearing. The burden is on the offender to make a showing that the waiver was not knowingly, willingly, or voluntarily made.

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**.01 PURPOSE**

The Preliminary Hearing is to determine: 1) whether there is probable cause to believe that the offender violated the terms of supervision and; 2) whether or not the offender should remain in custody pending the final revocation hearing.

**.02 AGENT RESPONSIBILITY**

The agent will have the case file available at the hearing. The attorney's or offender's access to the file during the hearing is controlled by the magistrate.

The agent must be prepared to testify concerning the following:

- Offender's court history;
- Establishment of probable cause; and
- Recommendation for and justification of continued custody.

The agent must be prepared to call and question witnesses and to present documents and other appropriate evidence. The agent may cross-examine the offender and/or offender's witnesses after they have testified. The agent and Division witnesses should be prepared to be cross-examined by the offender or defense attorney.

Hearsay evidence is admissible. Witnesses need not appear at the probable cause hearing when the agent can present or testify from a trustworthy and reliable written report regarding the facts of the alleged violation (i.e., investigating police officers reports or criminal complaint), or can testify to the facts of the alleged violation as told to the agent by the witnesses during the investigation. For example, a police officer who investigated an offense and filed a written report, or a witness who personally observed an offender commit an alleged violation, need not appear if the facts are sufficient to support probable cause based on the testimony of the investigating agent.

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**.03 MAGISTRATE RESPONSIBILITY**

The magistrate is responsible for conducting the hearing and having testimony presented in an orderly manner. The magistrate will retain a brief written summary or digest as a record of what occurred at the preliminary revocation hearing. Handwritten notes are acceptable to meet this requirement. These records shall be maintained for two years.

The following is the normal sequence of events:

- Introductory comments.
- Determination that offender and offenders attorney received notice of the hearing.
- Determination that the offender received notice of the violation(s) alleged.
- Agent's presentation: court history, testimony as to probable cause.
- Documents or evidence may be presented during agent or witness testimony.
- Cross-examination of the agent.
- Testimony of agent's witnesses.
- Cross-examination of agent's witnesses.
- Defense counsel or offender's presentation.
- Documents or evidence presented by the defense counsel/offender may be concurrent with offender or witness testimony.
- Cross-examination by agent.
- Testimony of defense counsel/offender's witnesses.
- Magistrate may question any of the parties.
- Magistrate states the probable cause decision and reasons.
- Agent makes detention recommendation and justification.
- Cross-examination of agent.
- Defense counsel/offender makes detention recommendation and justification.
- Cross-examination of offender.
- Magistrate states the detention decision and reasons for the decision.

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**.03 MAGISTRATE RESPONSIBILITY (continued)**

- Magistrate advises that the offender and attorney will receive notice of the date/time/place of the final revocation hearing.

Magistrate explains the following in regard to the final hearing:

- Administrative in nature, not a court hearing.
- May present material witnesses, but not character witnesses.
- May introduce letters, documents, and other material evidence.
- Questions regarding the final hearing should be referred to the Office of the Division of Hearings and Appeals.
- Offender may waive.
- The offender will receive the Letter of Decision.
- If released from custody with conditions, violations of any conditions of release or rules of supervision may result in the offender being returned to custody by the agent.

Within a reasonable period of time after the preliminary hearing, the magistrate prepares and distributes a written decision letter addressed to the offender with a copy to the agent, the agent's supervisor, and the offender's attorney.

**.04 MAGISTRATE GUIDELINES**

1. Jurisdictional issues such as timeliness of the revocation, Division authority (commitment, reinstatements, extensions, warrants, etc.), constitutional issues, competency and technical legal questions are not to be considered, as they are outside the scope of the hearing.
2. Motions that facilitate the conduct of the hearing (e.g., sequestering of witnesses, adjournment of hearing, etc.), may be acted upon by the magistrate, but motions and objections of a technical, jurisdictional, or legal nature should be noted for the record.

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**.04 MAGISTRATE GUIDELINES (continued)**

3. Procedural errors or issues should be handled by waiver on the part of the offender or by adjournment to allow correction, rather than by dismissal.
4. Exceeding manual guidelines as to time constraints for service of Notices and conduct of the hearing does not in and of itself constitute grounds for dismissal.
5. The magistrate should decide whether to deal with multiple allegations jointly or individually. The magistrate may make a probable cause decision in each allegation or may move to the issue of detention after probable cause is found on any allegation. Probable cause need not be determined on all allegations at the preliminary hearing. However, the most serious allegations should be ruled on so that they are considered in the detention phase of the hearing. Probable cause on any one of the violations is sufficient to continue the revocation process.
6. The magistrate will maintain sufficient control of the hearing to allow testimony to proceed without undue interruption so long as the testimony is relevant to the issue at hand. The magistrate's questioning should be reserved for clarifying or developing information needed to make a decision. Questions by the magistrate should ordinarily occur after each party has ample opportunity to testify and cross-examine and should be limited to fact-finding rather than carrying the Division's case.
7. Questioning of witnesses' credibility is limited to the relevant issues at hand.
8. In no case will a magistrate unilaterally amend a statement of allegation or other information on the Notice. If amendments to the allegations are mutually agreed to by the agent and attorney, the magistrate will rule on the amended allegation.
9. More thorough explanation of procedure by the magistrate is necessary when an attorney does not represent the offender.

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**.04 MAGISTRATE GUIDELINES (continued)**

10. Unless contested, the agent's testimony is sufficient for establishing probable cause (e.g. bindover, written admission). If contested, documentary evidence must be submitted. Documentary evidence, which supports the testimony as to the basis for probable cause, constitutes grounds to proceed to the detention issue.
11. When a criminal complaint is issued on criminal charges that are substantially the same as an alleged violation, the preliminary hearing magistrate can justify a probable cause finding based upon the existence of that criminal complaint. The resolution of any issues in the criminal complaint can be addressed at the final revocation hearing.
12. In the event that probable cause is not found, the magistrate will issue a written decision stating the reasons for not finding probable cause. The responsibility for releasing the offender from custody rests with the agent and supervisor.
13. Witnesses will not be required to appear if probable cause can be sufficiently established by testimony of the agent regarding the investigation of the allegation and/or by submission of other evidence. Objections on the basis of a lack of confrontation and cross-examination should be noted for the record, and the hearing should proceed.
14. In dealing with the issue of detention, the magistrate may elicit information necessary to make a finding, to include the nature and circumstances of the violation alleged, the offender's family ties, employment, financial resources, length of residence in the community, past conduct, past record of arrests and convictions, past record of appearance at court proceedings, and any past absconding from supervision or flight to avoid prosecution.
15. The magistrate will verbally provide reasons for the decision regarding probable cause and detention.

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**.04 MAGISTRATE GUIDELINES (continued)**

16. Upon request, the magistrate may sign the certificate of attendance for submission of witness fees to the DCC Business Office.
17. The magistrate's Letter of Decision is to be prepared within two working days of the hearing.
18. In the event the offender or his attorney, after receiving due notice of the hearing fail to appear, the magistrate may proceed with 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 colorable 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.
19. Extenuating and/or mitigating circumstances are not considered when determining probable cause.
20. Revocation hearings are not open to the public. Excluding Division representatives, the offender, and the offender's attorney, the magistrate controls who may or may not attend the hearing.

**.05 PROBABLE CAUSE BASIS**

Probable cause is defined as any evidence that makes it reasonable for the magistrate to believe that the person probably committed the violation.

Any of the following are sufficient to establish probable cause:

- Conviction of a new offense;
- Bindover for trial for a new felony offense;
- Stipulation to probable cause;
- Signed written admission to the alleged violation
- Submission of proof of violation by the agent at the time of the hearing if the charges are substantially the same as the alleged violation.

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**.06 CUSTODY DECISION**

When there is a Preliminary Hearing, the magistrate shall decide if the offender is to remain in detention or is to be taken into custody and detained pending the outcome of the final hearing.

Detention is advisable if one of the following is true:

- The offender is believed to be dangerous;
- There is a likelihood that the offender will flee;
- The offender is likely to engage in criminal behavior before the revocation takes place;
- The offender is likely to engage in an activity that does not comply with the rules and conditions of supervision; or
- The length of the term to be served upon revocation is great.

A detained offender is not eligible for partial release from detention (e.g., release during working hours).

**.07 RELEASE FROM CUSTODY RESTRICTED**

The magistrate in determining probable cause and custody is acting for the Secretary of the Department of Corrections. This restricts the authority of the agent and/or supervisor from releasing a person who has been ordered to be held in custody pending the final revocation hearing. The Secretary or designee may alter the custody decision at any time if the public interest warrants it.

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.01 PLACE OF DETENTION

Offenders being held for the revocation process will ordinarily be confined in county jails. However, parolees, felony probationers, and offenders on extended supervision may be confined in any DOC facility under certain circumstances. When the agent and supervisor decide that the most appropriate place of detention is a DAI facility, a recommendation is made to the Regional Chief or designee. The Regional Chief or designee will make arrangements for the transfer. Detention in a DAI facility may occur due to:

Security Concerns:

- In some cases the jail may be unable to insure the protection of other inmates or staff. The agent shall notify the Regional Chief or designee, who will contact the Director of the Bureau of Offender Classification and Movement. The Director will then secure a placement in an adult institution.
- The agent will then arrange for transportation of the offender to that facility by the Sheriff or DOC personnel.

Medical Concerns:

- The agent shall notify the Regional Chief or designee of the medical emergency.
- The Regional Chief or designee shall contact the Director of Health Services in DAI to advise of the detailed medical status of the offender. (Information regarding whether the offender is ambulatory, if there are any communicable disease issues, and/or the need for hospitalization or pharmaceutical intervention).
- The Director will choose the site for housing the offender after consultation with the Director of Offender Classification and Movement and advise the Regional Chief or designee.
- The agent will then arrange for transportation of the offender to the designated facility by the Sheriff or DOC personnel.

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.01 PLACE OF DETENTION (continued)

In all cases, the agent must ensure that the following information accompanies the offender:

- Face Sheet ([DOC-3](#))
- Order to Detain ([DOC-212](#))
- Detailed summary of the issues causing detention in a DAI facility.

.02 SENTENCING CREDIT

The agent must document in the Revocation Summary ([DOC-24](#)) or Violation Report/Revocation Summary ([DOC-1950](#)) the exact dates the offender was detained by the agent. This information will be entered on the Revocation Order and Warrant ([DOC-1221](#)). On sentences where return to court is not necessary, the Department credits the jail time. On withheld sentences, the court credits the jail time at the time of sentencing.

Credit will be granted to sentences for:

- Time spent in detention in the county jail as a condition of probation;
- Time spent in a county jail or correctional facility as an alternative to revocation, DOC hold, or extended supervision sanction.
- Time spent on a home monitoring program as authorized by the sheriff in lieu of confinement in the jail as a condition of probation (time spent on the Department of Corrections' Electronic Monitoring Program is not creditable time);
- Pretrial credit as specified on the Judgment of Conviction;
- Time spent under commitment for the determination of competency to stand trial under s971.14(2), or commitment as not competent to stand trial under s971.14(5);
- Detention in jail or correctional facility in another state when that detention is in connection with a course of conduct for which sentence is imposed in Wisconsin;
- Any time spent on Intensive Sanctions.

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**.02 SENTENCING CREDIT (continued)**

No credit will be granted to sentences for:

- Confinement in a foreign jurisdiction's jail or correctional facility unless the confinement is caused exclusively by the Wisconsin warrant or detainer;
- Offender's confinement in any institution other than a jail or correctional facility.

**.03 ADDITIONAL ALLEGATIONS**

If additional allegations are to be added after the Preliminary Revocation Hearing, an amended Notice of Violation, Recommended Action and Statement of Hearing Rights and Receipt ([DOC-414](#)) is prepared to include the new allegations. The offender/attorney and Administrative Law Judge are provided notice of witnesses and evidence no later than ten (10) working days prior to the Final Revocation Hearing. Any additional allegations may be added up to the time of the Final Hearing, but the offender/attorney and Administrative Law Judge shall be provided notice of the new allegations as soon as possible after they are discovered.

**.04 AGENT'S RESPONSIBILITY**

When a Final Revocation Hearing is required, prepare and submit the Revocation Hearing Request ([DOC-429](#)) within one (1) working day following a preliminary hearing, a waiver of preliminary hearing, or a determination that no preliminary hearing is necessary. The [DOC-429](#) is completed by the agent and submitted to the supervisor, who sends it to the Division of Hearings & Appeals so they can prepare a Notice of Final Revocation Hearing within 10 days of their receipt of the [DOC-429](#).

The agent shall submit a revocation packet to the supervisor within 10 working days of date of service of the [DOC-414](#) and shall maintain copies of the documents in the case file.

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.04 AGENT'S RESPONSIBILITY (continued)

There may be regional differences in the contents required in a revocation packet; however, the following list indicates those documents, which are often required:

- DOC-5 Violation Report, or DOC-1950
- DOC-20 Judgment of Conviction/Sentence Imposed and Stayed, Probation Ordered (for imposed and stayed cases only)
- DOC-24 Revocation Summary, or DOC-1950
- DOC-44 Recommendation for Administrative Action
- DOC-3 Face Sheet for each case being revoked
- DOC-414 Notice of Violation, Recommended Action, Statement of Hearing Rights and Receipt
- DOC-416 Revocation Information Request

Other relevant reports

The agent must also prepare packets for the Administrative Law Judge and offender's attorney. These packets contain all of the documents indicated above except for the social or presentence investigation. All written statements or documentary evidence to be used at the final hearing should also be included.

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**.05 SUPERVISOR'S RESPONSIBILITY**

Review the revocation packet for completeness and accuracy.

Complete the "supervisor's section" of the Recommendation for Administrative Action ([DOC-44](#)) and review the good time forfeiture/reincarceration/reconfinement recommendation on parole and extended supervision cases.

Date and sign the Request for Final Administrative Hearing ([DOC-429](#)) and forward to the Division of Hearings & Appeals in sufficient time to allow the Division of Hearings & Appeals to send notice of the final hearing within 10 calendar days of their receipt of the [DOC-429](#).

Forward the revocation packet to the Regional Chief within 5 working days of receipt.

**.06 REGIONAL CHIEF'S RESPONSIBILITY**

The Regional Chief or designee will process the packet within 5 working days of receipt, and make a temporary file pending the final revocation decision.

Distribute the packet material as follows when the offender is transported to a state correctional institution:

Central Record Unit

One copy of each:

- Recommendation for Administrative Action([DOC-44](#))
- Face Sheet for all active cases ([DOC-3](#))
- Violation report ([DOC-5](#)) & Revocation Summary([DOC-24](#))

OR

- Violation/Revocation Summary ([DOC-1950](#))
- Revocation Order and Warrant - Original ([DOC-1221](#))
- Probation Social or Pre-Sentence Investigation (probation cases only) or if there is a new sentence.

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**.06 REGIONAL CHIEF'S RESPONSIBILITY (continued)**

Institution Registrar

One copy of each:

- Recommendation for Administrative Action (DOC-44)
- Court Order (Imposed and Stayed cases only)
- Revocation Order and Warrant (DOC-1221)

DCI - A&E Unit

One copy of each:

- Violation Report (DOC-5)  
AND
- Revocation Summary (DOC-24)  
OR
- Violation/Revocation Summary (DOC-1950)
- Most recent social history or Presentence Investigation
- Clinical Services Reports

**.07 EX PARTE COMMUNICATIONS**

Ex parte communication is any oral or written communication to the decision-maker by a party to the revocation process. Division staff will not communicate with the Administrative Law Judge in any way concerning the merits of the revocation prior to the time the decision is rendered. If any ex parte communications are made, the Administrative Law Judge is required to disclose them.

No division staff should call or write the Administrative Law Judge or Administrator of the Division of Hearings and Appeals to discuss the merits of the case before the Administrative Law Judge has rendered a decision. Contact with the Administrative Law Judge should be limited to routine matters such as requests for amended notices of final revocation hearing, etc.

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**.08 WITHDRAW REVOCATION**

The agent, with supervisory approval, may withdraw the recommendation for revocation at any time prior to the final revocation hearing. This would be appropriate if an acceptable alternative to revocation were developed that did not previously exist. When this is done, the agent must immediately notify the Division of Hearings & Appeals of the need to cancel any scheduled hearing. The agent must also prepare a new Recommendation for Administrative Action (DOC-44), checking "Withdraw Revocation Request," and document the justification for the recommendation in the "Recommendation submitted for the following reasons" section. The agent shall then document the decision in the Chronological Log (DOC-90). It may also be documented in the Client Log of the OATS Program.

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**.01 AUTHORITY**

Wisconsin Administrative Code DOC 331  
Wisconsin Administrative Code HA 2

**.02 NOTICE**

The Division of Hearings & Appeals will prepare a notice of the date, time, and place of the Final Revocation Hearing within 10 days of their receipt of the DOC-429.

**.03 REQUEST TO POSTPONE FINAL HEARING**

The offender, the offender's attorney, or agent may request that the hearing be rescheduled. A verbal or written request shall be made to the Division of Hearings & Appeals, stating the reasons for the request.

The Division of Hearings & Appeals may extend the 50-day deadline by ten calendar days for cause. If an extension is granted, or the hearing is rescheduled, notice of the rescheduled hearing must be given to the offender, the sheriff or other person in charge of the detention facility, and the agent. The agent shall then provide prompt notice of the rescheduled hearing to Division witnesses.

**.04 SUBPOENA**

Witnesses and documents required at the Final Revocation Hearing may be subpoenaed. The agent is responsible for serving subpoena(s) upon Division witnesses. The Claim for Witness Fees (DOC-424) may be given to the witness at the time the subpoena is served. By statute, only expenses indicated on the DOC-424 may be paid to witnesses.

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.05 AGENT RESPONSIBILITY

If the Final Revocation Hearing process is not occurring in a prompt and timely manner, the agent will immediately contact the supervisor concerning the situation.

The agent must be prepared to prove that the offender committed the alleged violation(s), and the conduct constitutes a violation of the rules or conditions of supervision, and the violation is sufficiently serious to require revocation according to Plotkin standards. If the Administrative Law Judge's decision is to revoke, see 10.08.02. If the Administrative Law Judge's decision is not to revoke, see 10.08.03.

The agent will be responsible for the presence of any witnesses who will give information upon which revocation is based. The agent will have the case file material available at the hearing. The Administrative Law Judge controls attorney or offender access to the file during the hearing.

The agent will have copies of all of the documents listed in 10.05.04 available to present at the hearing:

The agent must be prepared to testify regarding:

- court history
- rules of supervision
- violation(s) alleged
- Plotkin Analysis
- offender's behavior and adjustment
- good time forfeiture  
recommendation/reincarceration/reconfinement  
recommendation
- alternatives to revocation
- custody credit

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**.06 FINAL HEARING FORMAT**

The exact format varies with each Administrative Law Judge and case situation. Generally, the agent should be prepared for the following:

- agent's testimony
- testimony of witnesses
- cross-examination of witnesses
- redirect examination of witnesses
- defense testimony
- cross-examination by agent
- redirect examination by defense
- questioning by Administrative Law Judge
- good time forfeiture/reincarceration/reconfinement recommendation
- closing statement by agent
- closing statement by defense
- decision by Administrative Law Judge

**.07 ADMINISTRATIVE LAW JUDGE'S DECISION**

Following conclusion of the hearing, the Administrative Law Judge will prepare a written Findings of Fact, Conclusion of Law, which will be furnished to the Division of Community Corrections, the offender, and the offender's attorney within 10 working days.

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.07 ADMINISTRATIVE LAW JUDGE'S DECISION (continued)

The Administrative Law Judge's decision will be the final decision and order within 10 working days, unless a petition for review by the Administrator of the Division of Hearings & Appeals of such order is submitted by the offender or the Division.

In reaching this decision, the Administrative Law Judge will consider only the evidence presented and decide:

- whether the offender committed the conduct underlying the alleged violation;
- if the offender committed the conduct, whether the conduct constitutes a violation of the rules or conditions of supervision;
- if the offender violated the rules or conditions of supervision, whether revocation should result; and
- make specific findings as to dangerousness, whether a decision not to revoke would unduly depreciate the seriousness of the violation, whether there is a need for further correctional treatment, and whether this is best provided in an institutional setting.

The Administrative Law Judge will make a reconfinement determination for extended supervision cases that are revoked on and after 10/01/09.

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**.01 ADMINISTRATIVE LAW JUDGE'S DECISION**

When the Administrative Law Judge enters an order for continued supervision (not revoke), this order will not cause the release of the offender from custody until 10 working days from the date it is entered. If during these 10 working days the Division of Community Corrections requests a review of the Administrative Law Judge's proposed order, the order is stayed, and the offender will remain in custody pending the final order.

The petition is addressed to:

Administrator  
Division of Hearings & Appeals  
5005 University Avenue, Suite 201  
Madison, WI 54705

Prior to mailing, the petition must be approved by the Field Supervisor. It must be submitted within 10 working days from the date the Administrative Law Judge's order was entered. Copies of the petition will be sent to the Office of the Division of Hearings and Appeals, the offender, the offender's attorney, and the Regional Chief.

Only relevant material, including petitions, letters, reports, and other evidence, which was accepted into evidence in the hearing, will accompany the petition.

**.02 ADMINISTRATOR'S DECISION (DIVISION OF HEARINGS & APPEALS)**

The Administrator of Hearings and Appeals will review the synopsis, the Administrative Law Judge's decision, and all materials submitted for review. The Administrator will decide to modify, sustain, reverse, or remand the Administrative Law Judge's decision based on evidence presented at the hearing and materials submitted for review.

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.02 ADMINISTRATOR'S DECISION (DIV. OF HEARINGS & APPEALS) (continued)

The Administrator's decision will be forwarded to the offender, the offender's attorney, if any, the agent's supervisor, the Regional Chief, and the Department of Corrections, within seven (7) working days after receipt of the required materials for review unless time is extended.

.03 APPEAL OF ADMINISTRATOR'S DECISION

The Department or any offender contesting the decision of the Administrator or designee, unless the matter is returned to the Office of Hearings and Appeals for further action, may seek judicial review of the decision by petition for Writ of Certiorari to the sentencing court.

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**.01 GENERAL STATEMENT**

At the conclusion of the revocation process, the Department's order may be to revoke or to return the offender to supervision (reinstate). An order to reinstate may include tolled time if the offender is found by the Administrative Law Judge to be in violation of the rules or conditions of supervision.

**.02 REVOCATION ORDER AND WARRANT**

The Regional Chief prepares the revocation order and related materials when an offender waives the revocation hearing. If there is a final revocation hearing, the Administrative Law Judge prepares the revocation order and related materials.

Upon receipt of revocation order and warrant, if the offender is not in custody, the agent shall immediately apprehend and place in custody. If the offender cannot be located, a copy of the revocation order goes to the sentencing court for warrant. If an exception to this requirement is appropriate, the agent will contact the Regional Chief to secure that exception.

On imposed and stayed, ES, or parole cases, send a memo to the Sheriff and issue an apprehension request.

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**.02 REVOCATION ORDER AND WARRANT (continued)**

The agent will provide the offender and sheriff/detention facility with a copy of the revocation order and warrant.

For imposed and stayed cases, the agent will provide a copy of the Judgement of conviction to the sheriff/detention facility.

On sentence withheld probation cases, the revocation order and warrant, revocation summary, Notice of Violation, Recommended Action, Statement of Hearing Rights and Receipt ([DOC-414](#)), signed waiver (or copy of the Administrative Law Judge's findings and recommendation), Financial Obligation Screens (OATS screens including Financial Obligations, Payee Detail and Disbursement Detail OR CACU screens including 74 Victim Payment Inquiry and 77 Client Account Inquiry), and a memo shall be submitted to the sentencing court within 10 calendar days from the effective date of revocation (date Order and Warrant signed by Regional Chief or designee or final order from Hearings and Appeals). Each region should use their standing policy on the return of offenders to court.

The court should be advised of the location of the offender, other revocation actions and reincarceration recommendations, and any outstanding financial obligations.

**.03 REINSTATEMENT ORDER**

If the Administrative Law Judge's order is to reinstate, the order is prepared by the Division of Hearings & Appeals. If time is tolled, the order will indicate the new discharge date.

Upon receipt of the Order to Reinstate Probation or Parole, the agent shall forward a copy to CRU and the ledgerkeeper so the official record can be amended. A notation must be made in the [DOC-90](#). It may also be documented in the Client Log of the OATS Program.

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**.01 AUTHORITY**

Wisconsin Administrative Code DOC 328.03  
DOC 331.03(10)

**.02 GENERAL STATEMENT**

All offenders, except those supervised under the statutes noted below, are subject to revocation under Chapter 331 of the Administrative Code. Refer to Chapter 6 for special procedures for offenders supervised under those statutes.

**.03 IDENTIFIED STATUTES**

- 971.17 - Not guilty by reason of mental disease or defect
- 51.37(9) - Conditional transfer or discharge by the Director of Mental Health institutes to field supervision
- 161.47 - Conditional discharge for possession of a controlled substance under 161.41(3) (Probation without Conviction)
- 975 - Sex crimes commitments
- 980 - Sexually violent persons commitments
- 939 - Lifetime supervision

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**.01 HEARSAY**

Hearsay evidence is defined as a statement, which is offered as proof of the truth of the matter asserted, but the statement-maker is not available for questioning or cross-examination.

Although rules of evidence may be relaxed somewhat at a revocation hearing, they cannot be relaxed to the point where a violation may be proven entirely by unsubstantiated hearsay testimony.

**.02 WITNESSES**

Agents may request that witnesses provide testimony at the Final Revocation Hearing. The revoking agent will arrange for any witness' attendance at the hearing. If an agent deems it inadvisable by reason of "good cause" to have a witness present at the hearing, an affidavit relating such reasons is prepared to accommodate the witness' absence from the hearing. The agent is required to provide advance notice in writing to the offender, attorney, and the Administrative Law Judge if the agent intends to use testimony by affidavit. The Administrative Law Judge may, however, reject such a request.

"Good cause" includes, but is not limited to, the following:

- substantial risk of harm;
- absence from the jurisdiction;
- age of the witness (very young or very old)
- illness or infirmity.

The agent will contact Legal Counsel for assistance in preparing an affidavit.

Agents will select witnesses that can best support their case.

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**.02 WITNESSES (continued)**

Agents should request written statements from witnesses at the time of the violation investigation. Witnesses should be interviewed immediately prior to the hearing to allow them to refresh their memory regarding their written statement.

Defense questioning must be within the scope of the hearing. Other questions can be objected to as irrelevant, immaterial, leading, etc. Any objection must be made immediately and the basis for objection identified. If the same questions are repeated, the agent can object on the basis that the witness has already answered the question, even if it is in a different form.

When the defense objects to an agent's question because it is leading, the agent should rephrase the question in the form "state whether or not, etc."

A subpoenaed state witness may claim witness fees and mileage by preparing a Claim for Witness Fees ([DOC-424](#)) and having attendance certified by the agent, Administrative Law Judge, or magistrate.

**.03 EVIDENCE**

While physical evidence is not required at hearings, use of it can be effective. Photographs of physical evidence are accepted and often preferred by Administrative Law Judges.

An Administrative Law Judge may use as supportive evidence an admission by silence if the offender refuses to answer a question to which a reasonable person, who did not commit the violation, would answer "no." Physical evidence held by the agent that is the property of a victim or witness shall be returned to the owner as soon as possible following the hearing.

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**.04 "OFFER OF PROOF"**

If the agent has information or evidence to be entered during the hearing, but the Administrative Law Judge sustains defense counsel's objection, the agent should state, "I wish to make an offer of proof to preserve the record." Though the evidence may not be accepted by the Administrative Law Judge, this "offer of proof" allows the agent to show the Administrative Law Judge what would be shown if allowed to enter the evidence.

The benefit of "offer of proof" is that the evidence is on the record and useful for future appeals if necessary.

**.05 PUBLIC ACCESS TO HEARINGS**

Revocation hearings are exempt from public view. The "public" is any person not a participant at the hearing.

An Administrative Law Judge or magistrate can regulate the course of the hearing, and the public can be barred from such hearing. Only those participants necessary to present testimony or evidence for consideration must be permitted to attend. Witnesses may be sequestered and allowed into a hearing only to give testimony.

The Administrative Law Judge or magistrate may permit anyone to attend a revocation hearing but is not bound to do so. The Administrative Law Judge or magistrate is the final determiner of who may or may not attend a hearing.