

reintegration



advocacy for

48851



ADVOCACY
FOR
REINTEGRATION

Prepared by the

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PREFACE

This is the third edition of Advocacy for Reintegration, a manual designed for use by persons who work with Wisconsin residents who have criminal records or histories of mental illness, alcoholism or drug abuse.

The Center for Public Representation is concerned that persons suffering civil disabilities due to such personal histories are underrepresented in their efforts to reintegrate into society. Many of the legal and social barriers these persons face may be eliminated, however, without the aid of legal counsel. This manual attempts to highlight those barriers and present a straightforward, step-by-step approach to overcoming them. The manual also points out those barriers which require an attorney for resolution.

This publication should not be viewed as a final document; indeed, a treatise on any area of the law must be flexible in order to be kept current. Advocacy for Reintegration is sold as a "service;" that is, updates on the areas covered will be prepared and disseminated as the laws, rules, forms and procedures in these areas change. We suggest, then, that the manual be kept in a binder or that paper fasteners be inserted, so as to accommodate the update sheets. To facilitate the dissemination of update material, please fill out and return the enclosed card.

Attorneys, persons who have taken the Center's advocacy training and others who work with reintegrating persons will refer to this manual in their work. We hope that it will be a useful reference in advocating these persons' interests in their efforts to regain full citizen status.

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PUBLIC EMPLOYMENT

Federal Employment

Note: Only the most familiar types of federal employment are discussed in this section. For information about those not discussed, see the page entitled "United States Government Establishments With Positions Outside the Competitive Civil Service" which appears at the end of this section.

Federal Civil Service

5USC§1301 authorizes the Civil Service Commission to "aid the President" in preparing rules for administration of the competitive service.

5USC§1302(a) authorizes the Civil Service Commission to regulate, control and supervise examination for the competitive service.

Under these statutory provisions, and the provisions of Chapter 5 of the Code of Federal Regulations (CFR), the Commission has developed the Federal Personnel Manual to guide its activities. FEDERAL CIVIL

Chapter 731, Subchapter 2, of the Federal Personnel Manual contains the regulations pertaining to disqualification for federal employment. Paragraphs 2-4 through 2-6 enunciate the policies and procedures of the Civil Service Commission regarding employment of persons with a history of conviction. SERVICE & EX-OFFENDERS

Paragraph 2-1 states the reasons for which the Commission may deny examination to an applicant, or may deny appointment to an eligible applicant. Among them are the following:

- (1) "criminal, infamous, dishonest, immoral or notoriously disgraceful conduct" [2-1a. (2)],
- (2) habitual use of intoxicating beverage to excess" [2-1a. (5)],
- (3) "any legal or other disqualification which makes the person unfit for the service" [2-1a. (7)].

Paragraph 2-2 states that "the privilege of holding office in the competitive service is extended to all citizens of the United States" with the exception of persons convicted of violations of a few statutes such as treason; destruction of public records, bribery of government officials and similar offenses. Therefore,

rating officials are charged to consider any mitigating factors in any of the above disqualifications and to establish the extent of rehabilitation of persons previously disqualified.

Paragraph 2-4 describes general procedures in considering applications.

2-4a. (1) requires a check into the history of conviction. While the primary concern is for the record of conviction, the record of arrests may also be used in considering an individual's case.

2-4a. (2) requires the Commission to decide each case on its merits, including consideration of:

- (1) the nature and seriousness of the offense,
- (2) the circumstances under which it occurred,
- (3) how long ago it occurred,
- (4) whether the violation was an isolated or repeated violation,
- (5) the age of the person when the offense was committed,
- (6) "social conditions which may have contributed to the offense,"
- (7) evidence of rehabilitation, and
- (8) the kind of position being applied for.

FEDERAL
CIVIL
SERVICE

&

EX-OFFENDERS

If, after evaluation of these factors, the applicant is considered a good risk, the application is rated as eligible.

2-4a. (3) defines a "good risk" offender as including any former offender who demonstrated successful rehabilitation under the Work Release Program or by good conduct while in the community.

2-4b. (1) defines a felony as any crime for which a prison term of over one year has been imposed and there has been some period of actual confinement under the sentence.

2-4b. (2) requires a report from the warden or probation/parole officer on the background, conduct, or special training of a person who has served a term for a felony conviction within three years preceding the date of application.

2-4c. defines a misdemeanor as any offense not a felony, even if not so defined under the laws of the state where the offense occurred. Reports from the warden or probation/parole officer may be requested as deemed necessary.

2-4e. allows acceptance of application from a person under indictment subject to later action.

Paragraph 2-5 provides that juvenile offenders are not required to answer affirmatively any inquiry into their history of juvenile conviction. The juvenile offender is not exempt from the requirement that all persons entering federal service be of good moral character.

Paragraph 2-6 makes similar provision to persons whose convictions have been set aside under the Federal Youth Corrections Act. Assumedly, similar treatment will be accorded persons having dispositions under the Wisconsin Youthful Offender Act. The Act, Chapter 54, Stats., provides that a "youthful offender disposition shall not disqualify the youthful offender from entering public...employment." Sec. 54.03 (1) (b), Stats.

Federal Civil Service policy concerning "Employment of the Mentally Restored" is set forth in Chapter 306, Subchapter 5 of the Federal Personnel Manual. There, in Paragraph 5-1, a "mentally restored" person is defined as

...one who has experienced some mental or emotional difficulty, has received professional treatment either in or outside an institution and has been judged by competent medical authority as ready for return to his normal activities, including employment.

FEDERAL
CIVIL
SERVICE
&
THOSE WITH
A HISTORY
OF MENTAL
ILLNESS

Direct comment on the general employability of a person having a "history of mental illness" appears in the next paragraph, number 5-2a,

As a general rule, a history of mental illness is not disqualifying for Federal employment provided that recovery has been certified by competent medical authority and the applicants are capable of performing the duties without hazard to themselves or others.

However, there are two exceptions to this rule, and both of them do disqualify the person with a history of mental illness for Federal Civil Service employment (Paragraph 5-2b). The first exception is made, when, again in the opinion of competent medical authority, the illness has been such as "may cause significant defect in the judgement or reliability of the employee;" the second, when the illness has been such as might impair the "emotional stability and maturity" of the applicant for a position demanding "unusual responsibility, overseas assignments or especially demanding requirements."

Nevertheless, the manual explicitly states that the "vast majority of mentally restored applicants are able to compete successfully in Civil Service examinations (5-3a)," and that the only special examination requirement to those so restored face is the obtaining of a suitable medical clearance:

Applications which indicate a history of mental illness are referred to a Commission medical officer who obtains (with the applicant's authorization) medical reports from the psychiatrist or the institution which treated the applicant, or both, and determines, on the basis of the complete record, medical eligibility prior to entry on the register.

To counter any "lack of understanding, fear or prejudice, or all three" that an employer might exhibit toward a mentally restored job applicant, the Commission has established a special procedure for trial (700-hour temporary) employment: "This provides the mentally restored person with an opportunity to demonstrate his job readiness...(5-3b.)."

As indicated in the eligibility guidelines discussed in the above paragraphs on the hiring of ex-offenders and mentally restored individuals, a history of alcoholism or drug abuse bars no one from Federal Civil Service Employment - so long as it is only that: a history, over and done with, in the past; for either type of record can be interpreted as reflecting, in the individual applicant's life, a period of "mental or emotional difficulty" that, once having been ended by "professional treatment in or outside an institution" ended in the form of a certifiable recovery - leaves behind it no obstacle to that individual's "return to his normal activities including employment."

FEDERAL
CIVIL
SERVICE
&
THOSE WITH
A HISTORY
OF MENTAL
ILLNESS

U. S. Postal Service Employment

U.S.
POSTAL
SERVICE
EMPLOYMENT

As a federally supervised private corporation, the U.S. Postal Service fills its job vacancies through channels which might be described as unique yet parallel to those used to fill Federal Civil Service positions. Consequently, Postal Service job applicants who are ex-offenders or who have a history of mental illness, alcoholism or drug abuse are screened and evaluated for suitability by means broadly similar to those set forth in the foregoing paragraphs on the Federal Civil Service.

In the Postal Service, as in Civil Service, less emphasis is placed on an applicant's having a criminal record or a history of mental illness, alcoholism or drug abuse than on his or her freely admitting the facts and convincing Post Office personnel agents that he or she has been rehabilitated as a "whole person." Applicants with such a record or such a history are interviewed in depth to ascertain their sincerity; and their references, particularly those referring to treatment and rehabilitation programs, are checked very closely. But once these applicants have "passed the test," so to speak, they then are employed as readily as anyone else would be.

Two questions of the job application form ("Personal Qualifications Statement") that the Post Office regularly uses to fill all vacancies are specifically intended to elicit information concerning a potential employee's history of mental illness and record of criminal conviction. Question 29 asks:

To insure that you are not placed in a position which might impair your health or which might be a hazard to you or to others, we need information about the following: Do you have, or have you had, heart disease, a nervous breakdown, epilepsy, tuberculosis, or diabetes?" (Emphasis added.)

And Question 32 asks:

Have you ever been convicted of an offense against the law or forfeited collateral, or are you now under charges for any offense against the law? (You may omit: (1) traffic violations for which you paid a fine of \$30.00 or less; and (2) any offense committed before your 21st birthday which was finally adjudicated in a juvenile court or a Youth Offender law.)"

If the answer to any part of either question is "yes," space is provided for giving "details"; and, as the cautionary note on the first page of the form explains

All requested information must be furnished. The information you give will be used to determine your qualifications for employment. It is IMPORTANT that you answer all questions on your statement fully and accurately; failure to do so may delay its consideration and could mean loss of employment opportunities.

According to the Personnel Department of the Madison Post Office, its policy is to view any omission or falsification of information given in answer to the criminal record question as being a greater offense than the actual conviction. Applicants are therefore firmly advised to list any conviction, because the post-appointment suitability check which the Post Office routinely conducts is thorough enough to uncover any past criminal conduct leading to conviction.

Recently a man who did not list his entire record when he applied for a postal job was investigated and fired from the Madison Post Office. He sued in Federal District Court but lost his case, at least in part because the Court felt that, although a citizen may decline to answer a question he or she feels the government has no right to ask, he or she cannot "knowingly and willfully answer with a falsehood." Amarol v. Whitmore, 74-C-115, USDCWDWis (1973). U.S. POSTAL SERVICE EMPLOYMENT

However, as a result of another lawsuit, in 1973, the Post Office agreed not to consider in any way any job applicant's record of arrest where the arrest did not lead to a conviction - the exception being made only when the charge is still pending. Nevertheless, the agreement does not prevent the Post Office from inquiring about convictions. Leonard v. USPS, 73-335-F, USDCDMass (1973).

In 1974 a federal district court in New York decided a case, Ocasio v. Klassen (U.S. Dist. Ct., S.D.N.Y., 73 Civ. 2496, November 25, 1974), which resulted in the issuance of new regional instructions by the U.S. Postal Service concerning the employment of persons with histories of drug abuse. These instructions provide that if a person has not abused drugs during the 12-month period prior to applying for employment, or if a person has participated in a federally approved methadone maintenance program for this 12-month period, he or she will be considered suitable for Postal Service employment provided he or she can provide evidence of rehabilitation and meet other specified criteria. If he or she

has not abused drugs for the prior 24 months or has participated in an approved methadone maintenance program for the immediately preceding 24 months, he or she shall be considered rehabilitated. Any drug abuse history prior to the 48-month period immediately preceding the employment application may not be considered.

The regional instructions also specify how information regarding drug abuse may be obtained and used by the Postal Service. Procedures for review of adverse hiring decisions are also included. Lastly, the instructions provide that rehabilitated former drug abusers employed by the Postal Service may not be discharged, or denied transfer, assignment, or promotion solely on the basis of a former drug abuse or past or present participation in a federally approved methadone maintenance program.

Any person fired, in what he or she feels to be an unfair manner, because of information discovered during his or her post-appointment suitability check has recourse to certain well-established appeal routes.

Non-Civil Service Federal Employment

Persons working in the legislative or judicial branches of the federal government; employees of the FIB, CIA or similar agencies; employees in the foreign service; and volunteers in such action programs as the Peace Corps and VISTA fall outside the administrative scope of the Civil Service or the Postal Service. Instead, each of these other agencies sets its own standards for employment. These standards may be found by contacting these prospective employers directly:

(1) Federal Bureau of Investigation

Madison
address: 3610 University Ave. 53705
phone: 238-9193

NON-CIVIL
SERVICE

Milwaukee
address: P.O.Box 90663
U.S. Customs and Court House Bldg.
517 East Wisconsin Ave.
53202
phone: (414) 276-4684

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EMPLOYMENT

(2) Central Intelligence Agency

No Madison office.

Milwaukee
address: U.S. Customs and Court House Bldg.
517 East Wisconsin Ave.
53202
phone: (414) 922-1191

(3) Foreign Service (State Department)

No Madison Office.

Washington D.C.
address: 2201 C Street N.W.
phone: (202) 631-0580

(4) ACTION, Peace Corps, VISTA

Madison
address: 106 E. Doty St. 53703
phone: (608) 252-5277

Milwaukee
address: 342 N. Water St. 53204
phone: (414) 224-1118

For the addresses of other federal employers who do not use the civil services system, see the page entitled "United States Government Establishments With Positions Outside the Competitive Civil Service" which appears near the end of this section.

Military Service

MILITARY
SERVICE

Each of the four branches of the military - Army, Navy, Marine Corps and Air Force - requests the history of arrest and conviction of every prospective recruit. Following the recruit's induction, usually while he or she is still in Basic Training, the FBI runs a routine fingerprint check and verifies the references and information supplied on the application form. Because of its communications network, the FBI can and does simultaneously contact virtually every police department in the country, asking for any information they might have about the new recruit.

According to Wisconsin statutory law, neither "peace officers" records of children" nor "juvenile court records" may be disclosed directly without a court order. See Sec. 48.26, Stats. For the most part, Wisconsin juvenile court judges cooperate with military recruiters in releasing information in juvenile record files, though rarely does the judge provide a recruiter direct access to the files themselves. In some but by no means all cases, judges require the subject of inquiry to sign a release before any information is divulged. Certain judges choose to comment on the files, giving their own opinions as to the suitability of the subject for the service. In the great majority of counties, other agencies keeping juvenile records (i.e. law enforcement and social services) refer all information requests from military recruiters to the juvenile court judge, who considers whether a court order should issue.

The only direction given judges in exercising the discretion whether to release information from juvenile records files is contained in the following statutory provision:

Nothing contained in this section shall be construed to preclude the juvenile court... from disclosing information to qualified persons if the court considers such disclosure to be in the best interest of the child or of the administration of justice. (See § 48.38 (2), Stats.)

Inasmuch as all service branches require prospective enlistees to sign "waivers" permitting the release of their records, the probabilities strongly favor judges releasing

the information requested, in "the best interest of the child."

Whatever the chances of juvenile record information being disclosed by the judge, it is highly advisable that the prospective enlistee represent accurately his or her record on the application form. If the new recruit fails the FBI checkout subsequent to enlistment -- fails through discovery of falsification or misrepresentation in his or her service application form -- he or she may be summarily discharged for false enlistment.

Policies on the effect of a freely admitted history of conviction or arrest vary slightly from branch to branch. Since the services are very similar in this respect, the Army policy will be detailed; but it should be remembered that the policies of the Navy, the Marine Corps, and the Air Force are generally more restrictive.

MILITARY

Army regulations (C 15, AR 601-210) detail eligibility requirements for recruitment. Those requirements include citizenship, mental requirements, education, medical requirements, number of dependents, and more and administrative criteria.

SERVICE

Certain of the moral and administrative criteria may be waived and enlistment allowed. All applicants who require waivers must be specifically counseled by Army personnel on the limitations which may apply to their selection of the enlistment options. For example, certain options may require no record of civil offenses; others may require security clearance which may be denied to persons convicted of certain offenses.

Investigation of the information submitted by the applicant who requires a waiver will be conducted by Army personnel. This information and necessary supporting documents will be forwarded to the recruiting district commander who appoints a board of commissioned officers to review the request for a waiver. All documents must be treated as confidential.

Supporting documents include favorable reports from probation or parole officers, juvenile correctional facilities, employers or schools as appropriate; three references from reliable citizens; recommendation of the investigating officer including evaluation of the reputation and motivation of the applicant.

Waivers are not required on the basis of an arrest or questioning which does not result in preferral of charges, or when charges are dismissed without determination of guilt. Moral and administrative criteria which must and

may* be waived include:

MILITARY
SERVICE

- (1) six or more minor traffic offenses such as careless driving, driving without a license, or speeding, during a one-year period. Applicants must provide evidence of ability to conform to military authority.
- (2) two or more non-minor traffic offenses such as drunk and disorderly, disturbing the peace, simple assault or vandalism. Applicants must provide evidence of successful rehabilitation.
- (3) one or more non-minor misdemeanors, such as drunk driving, indecent exposure, carrying concealed firearms or looting. Applicants must provide evidence of successful rehabilitation.
- (4) one or more juvenile felony offenses such as burglary, robbery or manslaughter. Applicants must provide evidence of successful rehabilitation.
- (5) one adult felony together with no more than one juvenile felony, nor more than one other non-minor misdemeanor, nor more than two minor non-traffic offenses.

Non-waivable moral and administrative disqualifications which act as a complete bar to enlistment include:

- (1) questionable moral character, history of anti-social behavior, alcoholism, drug addiction," or sexual perversion;
- (2) criminal or juvenile charges pending;
- (3) under civil restraint, such as probation or parole;
- (4) more than one adult felony;
- (5) one adult felony with more than one juvenile felony, or more than one non-minor misdemeanor, or more than two non-minor traffic offenses.

*Fewer or less serious offenses do not affect enlistment; a greater number of serious offenses or offenses of higher seriousness are a complete bar to enlistment.

It is arguable that Youthful Offender disposition should never alone constitute a non-waivable disqualification. The applicable statute provides that a "youthful offender disposition shall not disqualify the youthful offender from entering public...employment." § 54.03 (1) (b), Stats. However, similar protections for juvenile offenders have not prevented military recruiters from obtaining juvenile records. To a great extent, the military seems immune to employment regulations relating to records access.

With reference to item (1) above, the Madison area recruiters are unanimous in saying that, while "hard" drug addiction is generally a complete and permanent bar to enlistment, strictly "experimental" use of marijuana (experimental being loosely defined as "having simply tried it up to four or five times") is not. Exceptions to the addiction bar are made, but only rarely, and then only when the would-be recruit can thoroughly document his cure and rehabilitation.

MILITARY
SERVICE

A history of alcoholism or mental illness does not bar enlistment in the Army, Navy or the Air Force; but it does in the Marines. (The Marines are also stricter than the other branches with applicants having criminal records: any felony conviction at all bars enlistment permanently.) However, the Army, the Navy and the Air Force do require special waivers for histories of alcoholism or mental illness, which are obtainable only at the consent of the relevant doctors, hospitals, and institutions.

Some employment in federal agencies, branches of government or the military service may be defined as sensitive. A case in point is any job requiring the handling of classified materials.

SECURITY
CLEARANCES

The standards for obtaining a security clearance which affect employment may be obtained from the prospective employers (see previous sections, Non-Civil Service Federal Employment and Military Service).

A common misconception concerning security clearances is related not to public employment, but to private employment in businesses which contract with the Department of Defense. It is generally assumed that D.O.D. contractors cannot hire ex-offenders because of the security nature of the work. Joseph Leibling, Deputy Assistant Secretary of Defense for Security Policy, notes that only 1.2 million of the defense contractors' work force is involved in security matters out of the millions involved in work that does not require a clearance.*

*Taken from "Defense Department Policy: Ex-Offenders Not Banned," OFFENDER EMPLOYMENT REVIEW, a publication of the American Bar Association, October 1974, Number 10.

A 1966 D.O.D. directive which is still in force states in part:

...some contractors are of the erroneous opinion that a criminal record is an automatic and absolute bar to the issuance of a security clearance.

SECURITY
CLEARANCE

This, of course, is not true. The company is clearly entitled to employ persons with a past criminal record. When processing a request for a clearance, the D.O.D. evaluates the complete record on its own merits.

Due process procedures are observed in security clearance investigations including the applicant's right to appeal any adverse decision.

Military Discharges

MILITARY
DISCHARGES

There are five forms of military discharge, three granted by administrative means and two by court martial. The characteristics of and conditions adhering to each type are briefly summarized as follows:

Administrative Discharges

- (1) Honorable - Ninety per cent of all military service personnel are granted this form of discharge. With it automatically come all standard veteran's benefits; it is, of course, the most acceptable form of discharge to potential employers.
- (2) General - This form of discharge is still honorable, and brings with it full eligibility for all standard veteran's benefits; but because it is less than an Honorable Discharge, it can create problems with potential employers.
- (3) Undesirable - Most common of the less-than-Honorable forms of discharge, the Undesirable may or may not allow the recipient to be eligible for standard veteran's benefits for those are no longer automatic, but are granted only at the discretion of the Veteran's

Administration. Potential employers tend to be very wary of Undesirable Discharge.

Court Martial Discharges

- (4) Bad Conduct - A discharge of this type is punitive, i.e., is meted out as a form of punishment resulting from either a general or a special court martial at which the recipient has no privilege of legal counsel, right to a hearing, etc. A Bad Conduct Discharge resulting from a general court martial automatically cancels all veteran's benefits; but from a special court martial leaves benefits in a vague "gray area." A discharge of this type is not at all attractive to most employers and this may create employment problems.
- (5) Dishonorable - Also resulting from a court martial at which the recipient has essentially no conventional legal rights; the Dishonorable Discharge, like the Bad Conduct, automatically cancels all eligibility for veteran's benefits. Moreover, it almost assures the recipient of employment discrimination.

See section on "Military Discharge Upgrading" under Pardons and Other Remedies.

For more information on military discharges, including possible remedies to problems that less-than-Honorable discharges can create, contact a counselor at Vets House, Inc., 1102 S. Park Street, Madison, WI 53715 (608-255-8387).

Federal Employment and

Those with Alcoholism or Drug Abuse Records

A federal statute, 21 U.S.C. § 1180 (c) (1) states: "No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior drug abuse." An exception, however, is made for employment in the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, other security agencies, and in positions in other departments or agencies which are designated by the head of the department or agency to be "sensitive."

A statute with similar wording also exists to prevent discrimination in federal civilian employment against persons with histories of prior alcohol abuse or alcoholism.

Federal Employment of the Handicapped

The Federal Vocational Rehabilitation Act of 1973 requires all federal departments, agencies, and instrumentalities (including the Postal Service) to have affirmative action plans for hiring, placement and advancement of handicapped individuals. See 29 U.S.C. § 791(b). The definition of handicapped individuals includes people with mental handicaps. See 29 U.S.C. § 706(b). For further discussion of this Act, see the subsection on Employment Discrimination.

State and Local Public Employment

One of the major barriers to public employment for a person with a criminal record is the designation of a particular position as an "office of public trust." Under the Wisconsin Constitution, convicted felons who have not been pardoned are barred from holding such an office. Unfortunately, "office of public trust" has been broadly interpreted to include positions such as police officer and notary public (Atty. Genl. Op. March 27, 1974).

In determining whether a position is an office of public trust the State Supreme Court in Martin v. Smith, 239 Wis. 314 (1941) outlined the basic factors to be considered in making that distinction. The basic rule is that an office of public trust must have attached to it the authority to exercise sovereign powers (either executive, judicial or legislative). The factors to consider in determining whether the position carries that authority are:

STATE

AND

LOCAL

PUBLIC

EMPLOYMENT

- (1) the powers exercised,
- (2) the permanence or continuity of the position,
- (3) the independence of control over the power,
- (4) the nature of the oath required by the position.

In addition, the Court noted that the salary and the importance of the duties of the position are not the vital factors. Rather, it is the nature of those duties. For example, a justice of the peace or a notary public hold an office of public trust, but the president of the state university does not.

(See: "Rights of Citizenship" for Constitutional restrictions on the holding of public office by ex-offenders and those people with a history of mental illness, alcoholism or drug abuse.)

(See also Attorney General's Opinions 7-510, 7-459 and OAG 98-76 for opinions concerning convictions as a disqualification.)

State Civil Service

Employment under the state civil service system is governed by Chapter 16 of the statutes which states clearly that the purpose of the system is to provide competent personnel to state agencies through a merit based hiring and promotional system. Ex-offenders and those individuals with histories of mental illness, alcoholism or drug abuse are not automatically excluded from employment by the state, but the Director of the Bureau of Personnel and the Personnel Board are granted broad discretionary powers to develop their own rules.

STATUTORY
PROVISIONS

Wisconsin Administrative Code Pers. §6.10(5) gives the Director the power to refuse to examine or certify anyone:

- who is "physically or mentally so disabled as to be rendered unfit for the performance of the duties of the position to which he or she seeks appointment;"
- who "has been guilty of any crime or of infamous or notoriously disgraceful conduct and whose subsequent record would, in the judgement of the director, make him or her unfit to carry the responsibility of the specific position;" or
- who habitually uses alcohol or narcotics to excess."

ADMINISTRATIVE
RULES

The application for state employment does not ask for convictions or history of mental illness, but time spent in institutions is likely to show up as a gap in the applicant's employment history. The application form also asks the applicant whether the state may "conduct a background check" of the applicant "and review other records as may be required for some positions." If the applicant refuses, the form calls for an explanation.

CURRENT
POLICY

The current policy of the personnel bureau is to allow the interviewer to ask about job related convictions after the applicant has passed the qualifying examination and has been certified as eligible. This is the point at which the ex-offender can be screened out. However, the state is concerned about the problems of ex-offenders and formerly had a project, the Wisconsin Offender Program run by the State Manpower Office, which was designed to find state and other jobs for ex-offenders. Additionally, the Department of Health and Social Services is authorized by § 54.17 (1) (b), Stats., to establish programs to aid in job search and training for former youthful offenders. State concern for the employment of persons with a history of mental illness is channeled through Project SKILL, which helps such persons find State Civil Service jobs.

Appeals are available if an applicant is denied a job because he or she is an ex-offender and his or her offense is not job related, or because of any other decision "not based on just cause." The appeal procedure may be found in § 16.05 Wis. Stats. and Wis. Adm. Code. Pers. §26.

The first appeal is made to the Director of Personnel and must be filed in writing within 15 days of the effective date of the decision or notification to the applicant, whichever is later. If an adverse decision is made by the Director, a further appeal can be made to the Personnel Board. The same time limitations apply here. If the Board decides against the applicant, further appeals may be made in court under Chapter 227, Stats.

No appeal form is available from the Bureau of Personnel. A letter appealing a decision of the Bureau should clearly describe the particulars of the decision, the reasons upon which the appeal is based, and the action the Director or the Board is urged to take.

State Employment of Handicapped

Executive order #9 of 1976 established a state employment Affirmative Action Program in Wisconsin.

Under the terms of the order, the head of each state department, board, commission and educational institution must establish and maintain an Affirmative Action Program to insure equal employment opportunities for physically and mentally handicapped persons, among others.

The order creates an Affirmative Action Office and Executive Commission, which seek compliance with state and federal affirmative action regulations and the provisions

of the executive order. Each state agency must appoint an affirmative action officer, who reports to the agency head on compliance efforts. The agency head must report in turn to the executive Commission. In the event of failure by a state agency to make a good faith effort towards compliances with affirmative action requirements, "appropriate action" may be taken.

Any person who feels an employment practice or action by a state agency has discriminated against him or her because of physical or mental handicap should report the incident to the appropriate affirmative action officer or the state Affirmative Action Office.

In addition, Wisconsin statutory law requires the Director of the State Bureau of Personnel to "provide, by rule, for exceptional methods and kinds of employment...to employ the mentally handicapped, the physically handicapped and the disadvantaged." §16.08 (7), Stats.

Regulations written by the State Personnel Board pursuant to this statute allow for a special "occupationally handicapped employment" plan to serve handicapped persons "who would not otherwise be employed on the competitive labor market." The Director of the Bureau is permitted, but not required, to develop such a plan. If a plan is developed, it must include provisions relating to tasks to be performed, training, safety, supervision, definitions of disability and essential abilities, funding sources, fair selection procedures and length of employment. The regulations also provide that persons in occupationally handicapped employment "may have up to the same but no more rights than appointees to limited term employment positions," unless this limitation is specifically waived by the director.

County Civil Service

Counties are allowed under §59.07(20), Stats., to establish county civil service systems. The rules of such systems are governed by Chapter 63 of the statutes. There are no statutory bars to ex-offenders or to persons with a history of mental illness, alcoholism or drug abuse being employed in county civil service.

STATUTORY
PROVISIONS

Dane County

The application for employment for Dane County does not ask for convictions, although law enforcement and traffic officers are expected to be of "good character and reputation." There is no specific policy on the hiring of ex-offenders or persons with a history of mental illness, alcoholism or drug abuse. The application also does not ask for information about mental illness, alcoholism or drug abuse. However, gaps in the "Work Experience" sec-

tion are generally inquired about; and the "Authorization for Release of Information" sheet which every applicant signs allows county officials to seek detailed information about his or her background. Sources of this information include "any office, clinic, sanitarium or hospital where illnesses, injuries and/or deterioration (physical and/or mental in nature) are diagnosed and treated." Thus, it is advisable that all applicants do as they are urged in the application instructions, and relate their "background as closely and fully as possible." Ex-offenders and persons with mental illness, alcohol or drug abuse histories who pass the examination will be certified to the department head if they are among the top scorers. The department head has discretion to choose anyone from among those certified.

In Dane County, the only appeal from a department head's decision to deny employment is to the court. There is no appeal process on hiring decisions in the Dane County Civil Service System.

City Civil Service

STATUTORY PROVISIONS Cities are also allowed to establish civil service systems, and their rules are also governed by Chapter 63 of the Statutes. There are no statutes specifically barring city employment of ex-offenders or persons with histories of mental illness, alcoholism or drug abuse.

Madison

CURRENT POLICY The application for employment in Madison asks for convictions or violations of any law other than traffic violations. It asks for the kind of violation, when and where it occurred, and what were the extenuating circumstances. This information is not in itself grounds for refusing employment but is considered in the hiring process. Youthful offender dispositions and juvenile court adjudications of delinquency are not "convictions" and so should not be considered in the hiring process. No information about mental illness, alcoholism or drug abuse is requested.

Appeals following an adverse decision in the employment process must be made to the city personnel board through its secretary, the personnel director, within 15 days of the decision. Further appeals may be made in the courts.

LICENSING REGULATIONS: AN OVERVIEW

Federal, state, and local agencies regulate the practice of certain professions, employment in certain occupations, ownership or operation of certain businesses, and the exercise of certain privileges. This regulation often assumes the form of requiring a license, permit, or registration.

Because authority to regulate may be lodged in any one of the three levels of government, licensing laws tend to be complex. This section of the manual is designed to enable the reader to find, at a glance:

- (1) basic information about conditional licensure; denial of license; cancellations, revocations and suspensions; and licensing agencies and the Fair Employment Act; and
- (2) important specifics (in tabular form) concerning personal requirements, restrictions and remedies, and statutory authority pertinent to state and local licensing of some 60 selected occupations.

Conditional Licensure

In general, licensure of an ex-offender is facilitated when the conviction is unrelated to the work or privilege being regulated. If, on the other hand, the conviction is related to the desired activity, a conditional license may be granted by certain agencies in certain circumstances. For example, a butter and cheesemaker's license was granted to a person convicted of embezzlement on the condition that the licensee would not perform milk and cream tests which determine payment to the farmer. The conditional license enabled the person to participate in those activities not related to conviction (butter and cheesemaking) while restricting the licensee from performing those functions related to the conviction (transfer of money to the farmer).

Like ex-offenders, persons with mental illness, alcoholism or drug abuse histories may find themselves being investigated thoroughly and/or obliged to document fully the completeness of their treatment or rehabilitation in order to qualify for licensing. However, unlike ex-offenders, those persons are usually granted or denied a license outright - no conditions attached; provided that they convincingly meet the requirements (for some occupations: see the Licensing Restrictions table) of "good mental and/or physical health" and "good moral character."

Some licensing agencies argue that if the statute does not specifically permit them to issue a conditional license, they cannot do so. In this case, it may be best to consider requesting a probationary, trainee's or similar license or proposing frequent or close agency review.

Denial of License : Review

Should these alternatives prove to be unavailable, review of the refusal to license is open both to the ex-offender and to the person with a history of mental illness, alcoholism or drug abuse. The administrative law and procedure relating to the right to a review is discussed in Section Eight: Administrative Law and Procedure. However, you will note references to Chapter 227, Wisconsin Statutes (Stats.) in this section. Chapter 227 Stats. provides for both administrative adjudication (§227.07) and judicial review (§227.15) of decisions of administrative bodies affecting the rights, duties, and responsibilities of an individual unless the administrative body is a local government body, which is governed by Chap. 68, Stats.

DENIAL
OF
LICENSE

Statutory limitations on the ex-offender (or the person with a history of mental illness, alcoholism or drug abuse) may be subject to a constitutional challenge.

Cancellations, Revocations and Suspensions: Review

Just as a denial of a license may be reviewed, so may a refusal to renew, suspension, cancellation or revocation of a license. Frequently the licensing statute contains specific procedures for a hearing when there is a question about removing a license. Chapter 227 provides for a review of the administrative decision of a state administrative agency. Chapter 68 governs review of local governmental decisions.

Note that denials and cancellations differ from revocations because there may be no minimum waiting period after denial or cancellation before reapplying for the license.

Note: Some administrative agency decisions, e.g. those concerning bartender's licenses, are reviewable under specific statutory provisions (other than Chap. 227) contained in the statute which gives authority to license to the agency.

Licensing Agencies and the Fair Employment Act

The State Fair Employment Act prohibits licensing agencies from discriminating against applicants or persons with licenses because of race, color, sex, national origin or ancestry, creed, age, or handicap. Discrimination because

of a criminal record may be race or handicap discrimination (see subsection on Employment Discrimination) and discrimination because of a history of mental illness, alcoholism or drug abuse may be a handicap discrimination. Persons who believe that a licensing agency restricted their right to be licensed because of a criminal record or history of mental illness, alcoholism or drug abuse should file a complaint against the licensing agency (see subsection on Employment Discrimination).

Wisconsin State and Local Licensing Restrictions

The information presented in the table on the following pages is limited to those selected currently issued occupational licenses specifying certain personal requirements and restrictions.

As increasing familiarity with the table will reveal, the most common personal requirement for occupational licensing is "good moral character" or its equivalents such as "good reputation," "trustworthiness," etc. Statutes and regulations establishing "good moral character" requirements for various occupational licenses define the term vaguely - if at all. Sometimes it is defined according to how it is measured, which is usually a balancing of a criminal record against personal references. Occasionally, more specific definitions are given, including discussions of the relationship of "good moral character" to the ethics of the profession and detailed systems for determining "good moral character" from criminal convictions. (See, for example, Wis. Adm. Code Accy 6, which defines "good moral character" for the purpose of licensing certified public accountants.) For further information on the parameters for determining "good moral character," consult the four sources listed below.

Less common than "good moral character" requirements are the requirements that a license applicant possess good mental and/or physical health, be free of addiction to the use of controlled substances, and be a temperate user of alcohol. Other personal requirements - age, education, experience and examination, for example - are not included in the table for reasons of space; but further information about them may be obtained from any of the following sources:

- (1) the statute or ordinance itself
- (2) agency rules and regulations regarding procedures and policies. (In cases involving state agencies these rules and regulations are found in the Wisconsin Administrative Code, abbreviated as Wis. Admn. Code);
- (3) agency personnel in their capacity as public

employees; and

(4) application forms used by the agency.

Unless otherwise identified, the numbers in parentheses are Wisconsin Statute (abbreviated Stats.) references.

Personal restrictions and their remedies are detailed in those columns of the table headed "Requirements/Restrictions" and "Remedies". Here, with the statutory references, are summarized those sections of the law which specifically prohibit or restrict the licensing of individuals who have been convicted of certain crimes - usually felonies, but in some cases misdemeanors, often job related - or who possess certain other characteristics, such as histories or present conditions of mental illness, alcoholism, or drug abuse.

Some of these prohibitions are automatic; many, however, are at the discretion of the licensing authority. Also, some of these prohibitions are absolute, while others are removed by either some form of executive clemency (see: PARDONS AND OTHER REMEDIES) or by discretionary action on the part of the regulatory agency. Where the table notes that there exists no provision for administrative review in the statute sections applicable to a particular license, such review may still be available under Chapter 227, Stats. (See Section on ADMINISTRATIVE LAW AND PROCEDURE.)

RESTRICTIONS
AND
REMEDIES

Thus, the disability, the way it occurs, the means by which it is removed, and the LICENSING AUTHORITY, i.e., Law Enforcement Standards Bureau, Department of Agriculture, Secretary of State, etc., are noted as far as space permits for each license.

Note that the removal of the statutory disability by executive pardon or by discretionary action of the licensing authority does not mean that an applicant will definitely be licensed. It means only that that disability has been lifted. "Good moral character" is always discretionary.

Note, too, that the table only discusses disabilities with respect to the initial licensure. Criminal records and histories of mental illness, alcoholism or drug abuse may also be disabling with respect to license renewal, revocation or suspension. Check the statutes and administrative code sections cited for more information on restrictions on the latter licensing determinations.

Sample application forms for more than 130 licenses, permits and registrations are maintained and updated periodically at the Center for Public Representation. The appropriate licensing agency is the best source for an application form; if, however, obtaining one is difficult, you may request a copy from the Center's files.

APPLICATION
FORMS

Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Advanced Paramedic	(See Emergency Medical Technician)		
Airman(14 GFR §§61.15, 63.12, 65.12) flight or non-flight personnel	conviction of drug offense within the past year	passage of one year	Great Lakes Region, Federal Aviation Administration, 2300 E. Devon Ave. Des Plaines, IL 60018 (312) 694-4500 X31
flight and air traffic control per- sonnel	established medical history of severe personality disorder with overt acts; psy- chosis; alcoholism; drug dependence all disabling	discretionary ac- tion on applica- tion for exemption from these require- ments	
Ambulance Attendant/ Service Provider [§146.50 (6) (a)]	good moral character and physically and emotionally capable of performing duties/ permitting, aiding or abetting any unlawful act [Wis. Adm Code §H20.03(4) (a) (3)]	discretionary action upon appeal by appli- cant [Wis Adm Code Ch. H-1 or Ch. 227, Stats.]	Dept. of Health & Social Services Division of Health Section of Emergency Health Svcs. P.O.Box 309 Madison, WI 53701 (608) 266-0472
Architect (§443)	good character and repute determined at the board's dis- cretion	discretionary action by board, upon appli- cant's appeal[§443.01 (4)] & under Ch.227, Stats.	Dept. of Regulation & Licensing Wis. Examining Board of Architects Professional Engineers, Design- ers and Land Surveyors 201 E. Washington Ave. Madison, WI 53702 (608) 266-1398

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Occupation (Statutes)	Requirements/ Restrictions	Remedies	Licensing Authority
Attorney (\$256.28)	good moral character determined at discretion of Board [§256.28(2)]; application requests arrest & conviction information	by discretion of Board*	Wis. Supreme Court Board State Bar Commissioners* State Capitol Madison, WI 53702 (608) 266-1887 (*note: starting 1/78, review will be by Board of Attorneys Professional Competence)
Automatic Fire Sprinkler Installer		(See Plumber)	
Automobile Occupations		(See Motor Vehicle Occupations)	
Barber (\$158)	good moral character, temperate habits(\$158.09)/restricted to those convicted of a crime, habitually drunk, or addicted to drugs[§158.14(2)] where condition could be harmful to shop customer(Board Policy)	by applicant's own testimony, full pardon or recommendation of probation and parole officer(\$158.14)	Dept.of Regulation and Licensing Barbers Examining Board 1400 E. Washington Ave. Madison, WI 53702 (608) 266-1574
Bartender [§66.054 (11)]	good moral character/ in Madison & Milwaukee, conviction of a felony (§9.10, Madison Gen'l Ord) restricts licensure	full or conditional pardon (§9.10, Madison Gen'l Ord); or through County Court review[§66.054(14)]	Local - Contact local City Clerk's Office

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Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Beautician		(See Cosmetology Professions)	
Beer Maker		(See Malted Beverages)	
Butter- Maker/ Cheese- Maker	no official policy toward ex-offenders or those with his- tories of mental ill- ness, alcoholism or drug abuse	full pardon or dis- cretionary action by Dept. upon review of denial(\$97.17 or Ch. 227)	Food Standards Division Wis. Dept. of Agriculture 801 W. Badger Rd. Madison, WI 53713 (608) 266-7242
Cab Driver		(See Taxicab Driver)	
Canvasser		(See Solicitor)	
Car Occupations		(See Motor Vehicle Occupations)	
Cemetary Plot Salesperson	competency and trustworthiness, determined at the discretion of Board(\$452.02)	full pardon or dis- cretion of Board; provision for re- viewing denial of license	Dept. of Regulation & Licensing Wis. Real Estate Board 1400 E. Washington Ave. Madison, WI 53702 (608) 266-5450

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Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Certified Public Accountant		(See Public Accountant)	
Chauffeur (\$343.125) (See also Taxicab Driver)	No restrictions other than those for opera- tor's licenses; see Dri- ver's License discussion in "Rights & Privileges of Citizenship" Section		Division of Motor Vehicles Dept. of Transportation 4802 Sheboygan Ave. Madison, WI 53702 (608) 266-1425
Chiroprac- tor(\$446)	Good moral character [446.02(2)];those re- stricted include: (1) those convicted of any law governing practice of chiropractic or any felony[446.03(3)] (2) those habitually drunk or addicted to drugs [446.03(2)]	full pardon or dis- cretionary action by Board[446.05] or Chap. 227 review.	Dept. of Regulations & Licensing Chiropractic Examining Board 201 E. Washington Ave.- Rm. 252 Madison, WI 53702 (608) 266-1626
Cigarette Manufac- turer or Distribu- tor(\$139. 34); Cigar- ette Sales- person (\$139.37)	Good moral character; those convicted of 3 misdemeanors or a felony; or prostitution, loan or 2 or more gambling of- fenses; or addicted to controlled substances are restricted[\$139.34 (b) & (c)(1-6) & \$139. 37(b) & (c)(1-6)]	full pardon[139.34 (c)(2), \$139.37(c)(2)] or by judicial review [139.34(e), \$139.37(e)] under Chap. 227.	Excise Tax Bureau Wis. Dept. of Revenue P.O.Box 75 Madison, WI 53701 (608) 266-2330

Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Collection Agency Operator (\$218.04)	good moral character & general fitness de- termined at the dis- cretion of Commission- er[\$218.04(4)]; appli- cation asks conviction history & explanation; ex-offenders may have to be bonded	full pardon, dis- cretionary action by Commissioner's decision[218.04(9) & §220.037]or re- view under Chap. 227.	Office of the Commissioner of Banking Division of Consumer Credit 30 W. Mifflin St. Madison, WI 53703 (608) 266-1621
Cosmetol- ogy Pro- fessions (\$154.08)	good moral character, good physical & mental health determined at the discretion of licensing Board;evidence taken from character references on application; no denials on these bases ever re- corded	full pardon, dis- cretion of Board	Dept. of Regulation & Licensing Cosmetology Examining Board 1400 E. Washington Ave. Madison, WI 53702 (608) 266-1630
Cream Tester		(See Milk Tester)	
Dental Hygenist (\$447.08)	no personal require- ments or restrictions based on criminal re- cord or history of men- tal illness, alcoholism or drug abuse		Dept. of Regulation & Licensing Dentistry Examining Board 201 E. Washington Ave.-Rm. 252 Madison, WI 53702 (608) 266-1396

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Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Dentist	good moral character [Wis Adm Code DE 3.011 (1)(c)]; listed as discretionary grounds for revocation but not denial; conviction of crime of moral turpitude, "immoral, dishonorable or unprofessional conduct in the course of practicing dentistry;" listed as discretionary grounds for suspension: commitment (voluntary or not) to mental hospital[447.07 (2), (3), (7)]	through due process hearing granted after denial[§447.07 (4)]	Dept. of Regulation & Licensing Dentistry Examining Board 201 E. Washington Ave.-Rm. 252 Madison, WI 53702 (608) 266-1396
Driving School Instructor (§343.61-2)	good moral character; restricted are those convicted of habitual petty offenses or a felony & those with unsatisfactory driving records [343.65(2)]	full pardon or discretion of Division [343.65(2)]	Division of Motor Vehicles Dept. of Transportation 4802 Sheboygan Ave. Madison, WI 53702 (608) 266-0614
Electrologist	(See Cosmetology Professions)		
Embalmer (§156)	good moral character & "temperate habits" determined at discretion of Dept. (§156.045)	successful appeal to Examining Council (§156.03)	Dept. of Regulation & Licensing Funeral Directing & Embalming Sec. 1400 E. Washington Ave. Madison, WI 53702 (608) 266-2837

Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Emergency Medical Technician (\$146.35)	good moral character, physical & emotional capability, determined at the discretion of the Dept. [\$146.35(5) (d)]	successful appeal upon review of denial (Wis Adm Code H-1); full pardon; Chap. 227 or [\$146.35(4)(b)] review	Dept. of Health & Social Services Section of Emergency Health Svcs. P.O.Box 309 Madison, WI 53701 (608) 266-0472
Engineer		(See Professional Engineer)	
Firearms Salesperson (18 USC §922 Etc.)	restricted are those convicted of felonies, addicted to drugs, ad- judicated "mental de- fective" or committed to any mental institu- tion [18 USC §922(g),(h)]	full pardon or suc- cessful appeal to Sec. of Treasury or non-weapons-related offenses [18 USC §925(c)]	U.S. Dept of the Treasury Office of the Secretary Washington D.C.
Funeral Director	good moral character & "temperate habits" de- termined at discretion of Dept. (\$156.045)	successful appeal to Examining Council (\$156.03)	Dept. of Regulation & Licensing Funeral Directing & Embalming Sec. 1400 E. Washington Ave. Madison, WI 53702 (608) 266-2837
Guard (sup- plied uni- form secur- ity guard) (\$440.26)	restricted are those convicted of a felony the past 5 years [\$440. 26(2)(c)]; otherwise at discretion of local authorities	full pardon	Local Chief of Police

Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Gun Dealer		(See Firearms Dealer)	
Hair Dresser		(See Cosmetology Professions)	
Hearing Aid Dealer (\$459)	good moral character determined at the dis- cretion of Examining Board, taking into ac- count criminal record (\$459.06)	full pardon or dis- cretion of Board	Dept. of Regulation & Licensing Hearing Aid Dealers & Fitters Examining Board 1400 E. Washington Ave.-Rm. 253 Madison, WI 53702 (608)266-0729
Insurance Agent (\$628.04)	competence & trust- worthiness - further regulations being developed		Office of the Commissioner of Insurance Licensing Section 201 E. Washington Ave.-Rm. 453 Madison, WI 53702 (608) 266-3585
Investment Adviser (\$551.3)	those convicted of mis- demeanor involving secur- ities or any felony within 10 years are restricted at discretion of Commissioner (\$551.34); Commissioner can deny license to anyone for any reason if "in pub- lic interest" & "protects investors"[\$551.34(2)]	pardon or other mitigating factors considered by Commis- sioner but not bind- ing; denial subject to administrative re- view(Wis Adm Code SEC 7)	Licensing & Regulation Division Office of the Commissioner of Securities P.O.Box 1768 448 W. Washington Ave. Madison, WI 53701 (608) 266-3693
Junk Dealer		(LOCAL-Contact City Clerk)	
Lawyer		(See Attorney)	

Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Licensed Practical Nurse (\$441.04)	good moral character determined at the dis- cretion of the Board; revocation if habitual- ly intemperate, addicted to drugs, mentally incom- petent or morally delin- quent(\$441.07)	Discretionary ac- tion upon review, which is provided for; full pardon (\$441.07)	Dept. of Regulation & Licensing Division of Nurses 201 E. Washington Ave. Madison, WI 53702 (608) 266-3735
Limburger Cheese- maker	good moral character & general fitness. Deter- mined at the discretion of the Dept. [97.13(3)(e)]	discretionary action upon administrative review, which is pro- vided for; or through Chap. 227 review	Food Standards Division Wis. Dept. of Agriculture 801 W. Badger Rd. Madison, WI 53713 (608) 266-7242
Liquor or Wine Manufac- turer	good moral character; restrictions against felons & habitual petty offenders[\$176.05(9)]	full pardon	Wis. Dept. of Revenue Excise Tax Bureau P.O.Box 75 Madison, WI 53701 (608) 266-2334
Liquor or Wine Salesperson (\$176.70)		(See Liquor or Wine Manufacturer)	
Lobbyist	good moral character [\$13.63 (7)]	full pardon or upon discretionary action by the Sec. of State pursuant to hearing (automatic upon denial) [\$13.63(1) & Chap. 227]	Office of the Sec. of State 117 West, State Capitol Madison, WI 53702 (608) 266-1367

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Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Malted Fermented Beverage Wholesaler [§66.654(6)]	good moral character, otherwise restrictions & requirements locally based		LOCAL
Malted Fermented Beverage Brewer or Bottler[§66.054(1)(g)]		(LOCAL LICENSING PROVISIONS)	
Manicurist		(See Cosmetology Professions)	
Milk Test, Weigher, Sampler (§98.145-.146)	good moral character, determined at discretion of Dept.; 2 responsible references required (§98.145-.146)	full pardon or at discretion of Dept. (§98.145-.146)	Food Standards Division Wis. Dept. of Agriculture 801 W. Badger Rd. Madison, WI 53713 (608) 266-7242
Mobile Home Dealer(§218. 11),Salesper- son(§218.12)	good reputation; those convicted of violations of laws relating to sales, distribution or financing restricted; history of convictions requested	full pardon or dis- cretionary action of Administrator pursuant to hearing, which is pro- vided at applicant's request[2.18.11(7)]	Division of Motor Vehicles Dept. of Transportation 4802 Sheboygan Ave. Madison, WI 53702 (608) 266-1425
Motor Vehicle Auction Dealer (§218.30)		(See Mobil Home Occupations)	
Motor Vehicle Dealer, Salesperson [§218.01(3)(a)(1-14)]		(See Mobil Home Occupations)	

Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Motor Vehicle Salvage Dealer(\$218.20-.23)		(See Mobil Home Occupations)	
Notary Public (\$137.01)	good moral character; in past, those convicted of felony restricted; new rules being promul- gated	full pardon; no pro- vision for administra- tive review	Office of the Secretary of State 117 W. State Capitol Madison, WI 53702 (608) 266-1367
Nursing Home Ad- ministra- tor(\$456)	good moral character (\$456.04); restricted are those convicted of felonies, habitually drunk or addicted to drugs[Wis Adm Code NHA §4.03(2), (7), (8)]	by discretion of Exam- ining Board at admini- strative review provided after denial	Dept. of Regulation & Licensing Nursing Home Administrator Ex- aming Board 201 E. Washington Ave.-Rm. 252 Madison, WI 53702 (608) 266-7085
Optome- trist (\$449)	good moral character (\$449.05)/those con- victed of felonies or laws relating to prac- tice of optometry,those addicted to drugs ex- cluded(\$449.07)	full pardon;review hearing provided when requested within 10 days plus circuit court review within 60 days	Dept. of Regulation & Licensing Optometry Examining Board 1400 E.Washington Ave. Madison,WI 53702 (608) 266-0729
Paramedic		(See Emergency Medical Technician)	

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Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Pharmacist [§450.02(1)]	temperate in habits; good moral character (original licensure)/ those guilty of felonies, "gross immoralities" or unprofessional conduct or addicted to alcohol or drugs excluded at discretion of Board (revocation or suspension) [§450.02(7)]	full pardon or discretion of Board pursuant to review hearing provided by statute (revocation or suspension) [§450.02(7)]	Dept. of Regulation & Licensing Pharmacy Examining Board 1400 E. Washington Ave. Madison, WI 53702 (608) 266-0141
Physical Therapist [§448.05(4)], Wis Adm Code MED 7	good professional conduct/unprofessional conduct includes conviction of practice-related crime or any crime relating to possession, distribution or use of controlled substances as defined in §161.01(4), Stats. [Wis Adm Code MED 10.02(2)(r)]	full pardon or discretionary action by Examining Board pursuant to guaranteed administrative review (Wis Adm Code MED 9.04 or Chap. 227, Stats.)	Dept. of Regulation & Licensing Medical Examining Board 1400 E. Washington Ave. Madison, WI 53702 (608) 266-2811
Physician-Surgeon [§448.05(2)]	Same as Physical Therapist, with the additional exclusion of drug addiction	See Physical Therapist	See Physical Therapist
Physician's Assistant [§448.05(2)], Wis. Adm. Code MED 8		(See Physician-Surgeon)	

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Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Plumber (\$145.06)	No restrictions or requirements relating to criminal records or histories of mental illness, alcoholism or drug abuse		Dept. of Health & Social Services Division of Health Bureau of Environmental Health Plumbing & Fire Protection Section
Podiatrist [\$448.05(3)]		(See Physical Therapist)	
Police Officer [\$165.85(3) (b)]	good moral character; those convicted of any felony restricted, no discretion allowed	full pardon[Wis Adm Code LES 2.01(f)]	Dept. of Justice Law Enforcement Standards Board 123 W. Washington Ave. Madison, WI 53702 (608) 266-7780
Private Detective (\$440)	good moral character & integrity; those convicted of a felony within 5 years[\$440.26(2)(c)] or a "misdemeanor or ordinance violation relating to misappropriation, gambling, controlled substances or sexual morality" within 3 years & those abusing drugs or alcohol excluded[Wis Adm Code RL 3.10(2)(c)]	automatic upon passage of 5 years after felony conviction[\$440.26(2)(c)] or 3 years after misdemeanor or ordinance violation conviction[Wis Adm Code RL 3.10(2)(c)]	Dept. of Regulation & Licensing 1400 E. Washington Ave.-Rm. 171A Madison, WI 53702 (608) 266-0829

Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Private Employment Agency (\$105.05)	restriction upon Dept.'s finding the applicant "unfit"(\$105.13)	full pardon or dis- cretionary action by Dept. upon mandatory review of denial of licensure	Dept. of Industry Labor & Human Relations Equal Rights Division P.O.Box 2209 201 E. Washington Ave. Madison, WI 53701 (608) 266-3145
Profes- sional Engineer (\$443.01)	good character & repute determined at the discretion of Examining Board; criminal record not considered; referen- ces required for personal integrity & character[\$443.01 (12) (h)]	by discretion of Examining Board, upon applicant's appeal [\$443.01(4)] & under Chap. 227, Stats.	Dept. of Regulation & Licensing Wis. Examining Board of Architects, Professional Engineers, Designers, & Land Surveyors 201 E. Washington Ave. Madison, WI 53702 (608) 266-0729
Psychol- ogist (\$455)	good moral character (\$455.04)/conviction of a felony, use of narcotics or alcohol to a dangerous extent excludes at discretion of Examining Board [\$455.09(1)]	full pardon or dis- cretion of Examining Board upon administra- tive review[\$455.09(3)]	Dept. of Regulation & Licensing Psychology Examining Board 1400 E. Washington Ave.-Rm. 253 Madison, WI 53702 (608) 266-0729
Public Account- ant(Cer- tified) (\$442)	good moral character as determined by Board pursuant to regulations providing that unpar- doned convictions re- lated to the work of an accountant may be con- sidered, along with miti- gating factors & evidence of rehabilitation(See Wis. Adm Code Accy Chap. 6)	full pardon, discre- tion of Board upon guaranteed administra- tive review of license denial(Wis Adm Code Accy Chap 6)	Dept. of Regulation & Licensing Accounting Examining Board 1400 E. Washington Ave. Madison, WI 53702 (608) 266-3020

Occupation (Statute)	Requirements/ Restriction	Remedies	Licensing Authority
Real Estate Broker, Sales- person (§452)	good moral character, trust worthiness & competency determined at discretion of Board (\$452.05); parolees & probationers rejected, other ex-offenders on a case-by-case basis (unwritten policy)	full pardon; upon review (\$452.11) of action of board; or through Chap. 227 review (\$452.17)	Dept. of Regulation & Licensing Wis. Real Estate Examining Board 1400 E. Washington Ave.-Rm. 252 Madison, WI 53702 (608) 266-5450
Registered Nurse (\$441.04)		(See Licensed Practical Nurse)	
Sanitary Licensee (\$146.20)	no written requirements or policy relating to restricting ex-offenders & others with civil dis- abilities [§146.20(3)]; Surety bond required [§146.20(4)]		Dept. of Natural Resources P.O. Box 450 4610 University Ave. Madison, WI 53701 (608) 266,0151
School Bus Driver (\$343.12)	good mental health; those convicted of driving while under the influence of drugs or alcohol within preceding 2 years, & those convicted of felony or "offense against public morals" within preceding 5 years restricted (\$343.12)	full pardon; no dis- cretionary interpre- tations of statute allowed; judicial re- view under Ch. 227 (\$343.40)	Division of Motor Vehicle Dept. of Transportation 4802 Sheboygan Ave. Madison, WI 53702 (608) 266-1440

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Occupation (Statute)	Requirements/ Restriction	Remedies	Licensing Authority
School Solicitor [§38.51(8)]	good moral character; convictions considered but do not constitute absolute bars; bonding also required [§38.51 (8)(b)]	by discretionary action of the Board [§38.51(8)(e)]	Educational Approval Board 4802 Sheboygan Ave.-7th flr Madison, WI 53702 (608) 266-1996
Second Hand Dealer		local licensing practices	local
Securities Agent, Securities Broker/ Dealer (§551.3)		(See Investment Advisor)	
Security Guard		(See Guard)	
Soda Water Salesperson (§66.053) (State & Local Restrictions)	good moral character (Madison Gen'l Ord 9.14); those convicted of felonies restricted [§66.053(1)(b)]	statutory restoration to civil rights [§66.053 (1)(b)]	local
Surveyor (§443.02)	good character & repute determined at discretion of Board [§443.02(2)]	full pardon	Dept. of Regulation & Licensing Wis. Examining Board of Archi- tects, Professional Engineers, Designers & Land Surveyors 201 E. Washington Ave. Madison, WI 53702 (608) 266-1397
Taxicab Driver (§349.24)	leading an "exem- plary" (Madison Gen'l Ord 11.06); other lo- cal restrictions	local	local

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Occupation (Statute)	Requirements/ Restrictions	Remedies	Licensing Authority
Veterin- arian	restrictions based on past or present use, misuse, or sale of drugs or conviction on charge of cruelty to animals [Wis Admn Code VE 3.02(8)(9); 3.03]	Board hearing upon application (Wis Admn Code VE 4)	Dept. of Regulation & Licensing Veteran's Examining Board 1400 E. Washington Ave. Madison, WI 53702 (608) 266-1626
Watch- maker (\$454)	good moral character for apprentices [\$454.07], history of criminal conviction not considered	discretionary ac- tion by Board	Dept. of Regulation & Licensing Wis. Watchmaking Examining Board 1400 E. Washington Ave. Madison, WI 53702 (608) 266-1626

APPRENTICESHIPS

An apprenticeship is an "earn while you learn" program with a formal training agreement (indenture) providing for on-the-job training and related classroom instruction. On-the-job training is received at the job site where the employer teaches the skills of the trade. The classroom instruction is theoretical knowledge pertaining to a given trade or skilled occupation and is usually taught at a local vocational school. Some apprenticeships are, and others are not, approved and regulated by the state.

The manufacturing, service, and printing industries, by and large run their own apprenticeship programs. Applying for acceptance into such programs is much like looking for an ordinary job. One may inquire at individual companies, or peruse newspaper or state Job Service listings. Terms of apprenticeship vary from two to five years, and wages being at approximately 50% of the current skilled rate and gradually increase.

Building trade industry apprenticeship programs are frequently recognized and regulated by the state under the provisions of Chapter 106, Stats. and Wis Admn Code Ind 85. The Department of Industry, Labor and Human Relations administers these regulations and oversees the Joint Apprenticeship Committees of the industries involved. The Joint Apprenticeship Committees, comprised equally of employers and employees of each industry, review applications for apprenticeships and ultimately become parties to any indenture agreements made. Any action taken by the committees is reviewable by the DILHR.

The administrative regulations governing state-approved apprenticeship programs require each such program to take affirmative action to provide equal opportunities to all regardless of race, color, religion, national origin or sex, or face "deregistration." Wis Admn Code Ind 85.11. Additionally, it appears that Chapter 275, Laws of 1975 requires affirmative action, or at least prohibits discrimination, with respect to physically handicapped and developmentally disabled persons in apprenticeship programs. §16.765(1), 227.033, Stats. "Sponsors", or individual employers, must recruit, select, employ and train on non-discriminatory bases, and those who employ more than five apprentices must adopt and make available affirmative action plans.

It is unclear to what extent the "disparate impact" theory (See Private Employment Discrimination Section) can be applied to apprenticeship programs. Nevertheless, it is clear DILHR has made a commitment to equal opportunities in apprenticeship, and may be amenable to argument that

those with civil disabilities must receive training in order successfully to reintegrate.

For further information, contact:

Division of Apprenticeship and Training
State Department of Industry, Labor and Human Relations
P.O.Box 2209
Madison, WI 53701

or

your local Job Service Office

EMPLOYMENT DISCRIMINATION

Remedies Against Private Employment Discrimination

INTRODUCTION

Until relative recently, a private employer could hire, fire, promote or discipline employees for any reason that the employer believed valid. In fact, the employer was not even required to state a reason.

This has changed in recent years as federal, state, and in some cases, local governments have enacted "Equal Employment Opportunity" laws. In general, these laws state that an employer may not fire or discipline or refuse to hire or promote an employee because of the employee's race, religion, sex or national origin. Some equal employment opportunity laws also prohibit discrimination against an applicant or employee because of the person's age or handicap. At the time of this writing, none of the equal employment opportunity laws that affect Wisconsin residents specifically prohibits discrimination because of a person's criminal record or history of mental illness, alcoholism or other drug abuse.* However, sometimes these laws have been interpreted to mean that an employer's use of criminal record or mental illness, alcohol and drug abuse histories may be race or handicap discrimination. Since federal, state and local laws are not identical, it is important to understand and to keep in mind the differences between them.

Usually, but not always, state and local laws are interpreted the same as federal law. For example, actions that are illegal race discrimination under federal law are usually illegal race discrimination under state law.

*Assembly Bill 219, which prohibits arbitrary employment discrimination against persons with arrest and/or conviction records, has been introduced in the 1977 Legislative Session.

Under the federal law, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e (commonly known as Title VII), the courts have developed a theory called "disparate impact." Briefly, this theory states that if an employer requires all employees or applicants to meet a specific standard, and if it is harder for people in one of the classes against which discrimination is forbidden to meet the standard than it is for others, then the employer must show that the standard is actually related to the job the employee is to perform. In other words, an employer cannot require an employee or prospective employee to meet a standard that has a harsher and disproportionate impact on racial groups, religious groups, one sex, etc., unless that standard is job related. For more information, read Griggs v. Duke Power Co., 401 U.S. 424 (1971).

DISPARATE
IMPACT

For example, an employer cannot require that all employees for an assembly line position have a college education if only 5% of the community's blacks have such an education and 40% of the whites have college degrees, unless the employer can show that having a college degree is related to ability to perform work on the assembly line.

Under Title VII, "job relatedness" had been strictly interpreted to mean that there must be a very clear relationship between the job and the required qualification.

The disparate impact theory is particularly important for persons with criminal records because more minorities than whites have criminal records. This is true in almost all major cities. Thus, it has been successfully argued that an employer (or other person or body subject to Title VII--see section on Title VII) cannot use an individual's criminal record as a basis for refusing to hire or promote an individual or for firing or demoting the individual because such a policy will have a disparate impact on minority employees and applicants.

Although there has not yet been a definite State Supreme Court ruling, the state courts do not appear to be interpreting the state equal opportunity law as favorably to those with criminal records as the federal courts. In at least one recent case, the Circuit Court of Dane County said that a conviction endangering safety of others by conduct regardless of life was related to ability to perform on the job as a spot welder. The Court said that this relationship existed because a welder in a large plant is in contact with many people and might stab a fellow employee if sufficiently angered. If this type of broad definition of job-relatedness is accepted, the majority of convictions will be considered related to

DISPARATE
IMPACT
STATE COURTS
& CRIMINAL
RECORDS

ability to perform on the job.

Filing a complaint under federal, state or local equal employment laws may help certain persons encountering job discrimination. Furthermore, employers should certainly be aware of the fact that discrimination because of a criminal history is forbidden in some circumstances. For example, history of youthful offender status may not in itself be used to constitute a bar to private employment opportunities, under Sec. 54.03(1)(b), Stats. The paralegal should recognize, however, that the law in this field is changing rapidly, and it may be necessary to check with an attorney on how to proceed under any of these laws. As of April, 1977, the State Equal Rights division was not accepting complaints from white persons with criminal records but would accept complaints from minority persons. As of this date it does not consider an arrest or conviction record to be a handicap covered by the State Fair Employment Act. However, the Center for Public Representation, Inc. will be filing a challenge to this practice in Dane County Circuit Court. The case will attempt to secure the right to file discrimination complaints for whites as well as minorities with criminal histories.

Bonding and Employment Discrimination

Since bonding of offenders is usually available under the federal bonding program administered by the Wisconsin Job Service (a division of the Department of Industry, Labor and Human Relations) an employer who denies or restricts an applicant's or employee's job opportunities purportedly because of bonding difficulties may be attempting to disguise discrimination based on the person's criminal or other history. If such is the case, a complaint may be filed against the employer as outlined above.

Federal Equal Employment Opportunities Law

Title VII of the

Civil Rights Act of 1964

42 U.S.C. 2000e

(commonly called "Title VII")

Title VII covers employers engaged in interstate commerce or, in general, other employers employing fifteen or more people. It also covers employment agencies, labor organizations and joint labor-management apprenticeship committees. State and local government agencies and educational institutions are also covered.

Title VII prohibits employment discrimination on the basis of race, color, religion, sex or national origin. It specifically prohibits discriminatory failure to hire as well as discriminatory discharges, classifications, referrals and other acts that discriminate.

To enforce a right under Title VII, a charge (a written complaint), must be filed with the Equal Employment Opportunities Commission (EEOC). This office will defer the complaint to a state or local agency if there is one with appropriate powers. The complaint must be filed with EEOC within 180 days of the discriminatory act. Some acts, such as inequalities in pay, are considered "continuing discrimination." When the action complained of is continuing discrimination, a complaint may be filed within 180 days of the last time the continuing discrimination occurred (e.g., last day of the pay differential). If a complaint is filed with a comparable state agency (in Wisconsin, with the Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations) the complainant has 300 days from the act of discrimination in which to file with the EEOC.

The Federal Equal Employment Opportunity Commission has a district office in Milwaukee:

342 North Water St.
Milwaukee, WI 53202

(414) 224-1111

They will provide assistance in filing a charge of discrimination.

Wisconsin Fair Employment Act:

Under Sections 111.31-111.37, Stats., it is unlawful for any employer, labor organization, licensing or employment agency or person to discriminate against any employee or applicant for employment or licensing because of age, race, color, handicap, sex, creed, national origin or ancestry, in regard to his/her hire, tenure or terms, conditions, or privileges of employment or licensing.

The Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations investigates complaints of discrimination when it receives the complaint. If the investigation results in a finding of "probable cause" to believe that illegal discrimination occurred or is occurring, (i.e., that there is evidence to suggest that there may have been illegal discrimination), conciliators from the Equal Rights Division will attempt to reach a settlement in the case. If no settlement is reached, a hearing will be scheduled at which all sides of the case are presented. The

complainant and the other side(s) present witnesses and documentary evidence of their position. Following a hearing, DILHR may order appropriate action, including the allowance of back pay or reinstatement on the job.

The Equal Rights Division has offices at:

- (1) 201 E. Washington Ave.
Room 176
Madison, WI 53702

(608) 266-3145

- (2) 819 North 6th Street
Room 120
Milwaukee, WI 53203

(414) 224-4211

Representatives are also located in Job Service offices in Eau Claire, Green Bay, Menasha, Stevens Point, and Wausau.

See complaint form which follows at the end of employment section.

The Equal Rights Division will provide assistance in filling out the complaint form. It will not provide attorneys to assist the complainant in settlement proceedings or the hearing. If the complainant desires to retain an attorney, it is recommended that a lawyer with some experience in equal employment opportunity law will be retained.

State Contractors and Employment Discrimination

Chapter 275, Laws of 1975, on civil rights for handicapped persons, mandates that all contracts between the state and private contractors contain clauses requiring the contractors "to take affirmative action to endure equal employment opportunities for persons with disabilities." (§16.765(2)(a), Stats.) It is at the present time unclear what types of conditions the term "disabilities" covers. While the rest of Chapter 275 was written to embrace only the physically and developmentally disabled, Section 14, which adds to the statutes, the language quoted above, vaguely defines its beneficiaries as those with "disabilities". Strong arguments can be made that this section includes those persons who are mentally, as well as physically and developmentally, disabled. A weaker argument can be made that persons with criminal histories have a disability. However, no court or agency ruling has as yet clarified this provision.

Madison Equal Opportunities Ordinance

The City of Madison had adopted an Equal Opportunities Ordinance (§3.23) which declares it unlawful to discriminate in housing, employment, credit, and in the use of public accommodations and City facilities because of sex, race, religion, class, color, national origin or ancestry, age, handicap, marital status, physical characteristics, sexual orientation, political beliefs or the fact that the person is a student.

The Equal Opportunities Commission investigates and attempts to resolve by mediation and persuasion complaints of alleged discrimination. Enforcement is the responsibility of the City Attorney. The ordinance provides for penalties of \$25 to \$500 for violations.

The ordinance also provides that an individual may have recourse to the courts in civil action to enforce his/her rights under the ordinance.

Complaints alleging discrimination may be made to the Equal Opportunities Commission, 351 W. Wilson St., Madison, WI 53703.

See complaint forms which follow this section.

Please note that the ordinance covers only violations which occur in Madison and/or by Madison employers, labor organizations, etc.

FEDERAL REHABILITATION ACT OF 1973 ,

29 U.S.C. §701 et. seq.

This act contains several very important provisions concerning employment of handicapped individuals. For purposes of the following discussion, the act defines handicapped individual as "any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment." [Section 706(6)] According to the regulations promulgated under Section 503 of this Act (29 U.S.C. §793), a handicapped individual is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of handicap.

I. GOVERNMENT CONTRACTORS

Of prime importance is the requirement in the act that all contracts in excess of \$2500 entered into by any federal department (or agency and subcontracts in excess of \$2500 entered into by prime contractors) for procurement of personal property or nonpersonal services shall provide that the contracting party shall take "affirmative action" to employ and advance in employment qualified handicapped individuals. "Qualified handicapped individual" means a handicapped person who is capable of performing a particular job, with reasonable accommodation for his or her handicap. Any handicapped person who feels that a federal contractor has failed or refuses to comply with this provision may file a complaint with the Office of Federal Contract Compliance of the U.S. Department of Labor, provided that any internal grievance procedures have been exhausted. (See Sections 793(a) and (b).) Complaints are to be filed with:

Director of the Office of Federal Contract
Compliance Programs
U.S. Department of Labor
230 South Dearborn St.
Chicago, IL 60604

(312) 353-8888

Regulations have been written to interpret the Act's government contracts provision. They prohibit contractors' discriminating on the basis of handicap in virtually all aspects of employment:

- hiring
- upgrading
- demotion or transfer
- recruitment
- advertising
- layoff or termination
- rates of pay or other forms of compensation
- selection for training, including apprenticeship

The regulations further provide that all covered contractors take affirmative action to hire handicapped persons and that contractors holding contracts of \$50,000 or more and employing 50 or more persons prepare and maintain affirmative action programs, detailing how the contractor expects to comply with the requirements of the Act. The programs must be updated annually and made available to all employees and applicants.

Failure of a contractor to meet the affirmative action requirements of the Rehabilitation Act may result in the Government's withholding contract progress payments, terminating the contract or even disqualifying the contractor from receiving future contracts.

For further information, see 41 CFR §§60-741 et. seq. (Federal Register, vol. 41, No. 75, pp. 16147 et. seq.) and pamphlet "Affirmative Action for Handicapped Persons in Wisconsin," available from the Center for Public Representation.

II. GOVERNMENT GRANTEEES

The Act also prohibits discrimination against qualified handicapped individuals by any program or activity which receives federal financial assistance. (Also known as §504 of the Act) (See 29 USC §794)

The Department of Health, Education and Welfare has recently adopted regulations under this statutory section.* (See 45 CFR §84.1 et. seq.) The regulations regard alcoholics and drug addicts as "handicapped" for the purpose of bringing these persons under the protections of the Act. The commentary to the proposed regulations further notes:

It is, however, important to note that the Department intends to give particular attention in its enforcement of Section 504 to eliminating discrimination on the basis of the severe handicaps that were focus of concern in the Rehabilitation Act of 1973... The fact that [alcoholics and drug addicts] are included [under 504] does not mean that their condition is not to be considered in determining whether they must be provided services or employment opportunities. With respect to the employment of addicts or mentally ill persons, if it can be shown that the addiction or mental illness prevents successful performance of the job, the person need not be provided the employment opportunity in question. If, of course, the condition is not job related, then it may not be the basis for denial of such opportunity. Accordingly, as to the inclusion of these groups of persons within the definition it is expected that mentally restored persons and rehabilitated addicts will be primary beneficiaries of the employment provisions of the regulation.

(Federal Register, Vol. 41,
No. 138, p. 29549)

(Emphasis added.)

*Quotations from the regulations herein cited refer to the July, 1976 proposed regulations. (See Federal Register, Vol. 41, No. 138, pp. 29548-29567.) As of the date of this writing, the final regulations had not yet been published, although they had been promulgated. It is our understanding that the provisions herein described are substantially similar to the final regulations.

The regulations specifically exclude ex-offenders from falling under the definition of "handicapped" under §504. However, the commentary to the proposed regulations notes that an ex-offender who

also has a physical or mental handicap... is included within the definition of handicapped persons, whether the handicap is the cause or the result of, or is unrelated to [ex-offender status].

(Federal Register, Vol. 41,
No. 138, pp. 29550-29551.)

In general, a person qualifies as "handicapped" under §504 if he or she "has a physical or mental impairment that substantially limits one or more major life activities." [45 CFR §84.3(j)] The definition includes persons who actually and presently have such an impairment or who have a record of or are regarded as having an impairment. A "qualified handicapped person" is "a handicapped person who, with reasonable accomodation, can perform the essential functions of the job in question." [45 CFR §84.3(1)]

The general protection against employment discrimination afforded by the regulations under §504 is that "[n]o qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment, or in the recruitment, consideration or selection therefor, under any programs or activity to which this part applies." [45 CFR §84.11(a) (1)]

The employment activities covered by this protection include: recruitment, advertising, and the processing of applications for employment; hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring; rates of pay or any other form of compensation; job assignments, job classifications, organizational structure, position descriptions, lines of progression, and seniority lists; leaves of absence and sick leaves; fringe benefits; training; employer-sponsored social and recreational programs; and any other term, condition or privilege of employment. [45 CFR §84.11(b)]

If it is found that any covered employer has violated the non-discrimination provisions of §504, remedial action, including affirmative action to overcome the discriminatory conditions, may be ordered. Lacking such a finding, affirmative action is not required. All covered employers are required to conduct a self-evaluation of current policies and practices, and take remedial action to correct any policies and practices that may have led to discrimination prohibited by §504. (45 CFR §84.5)

Covered employers who employ 15 or more persons are required to designate at least one person to coordinate efforts toward compliance with §504, to adopt and publish grievance procedures, and to disseminate policy indicating they are covered by §504 and they comply with its provisions. (45 CFR §§84.8,84.9)

The published regulations do not specify procedures for filing and processing complaints of non-compliance. Until procedures are written, those set forth at 45 CFR §80 et. seq. will be followed.

III. FEDERAL GOVERNMENT AGENCIES

Finally, the Act requires that all agencies, departments and instrumentalities in the executive branch of the federal government have affirmative action plans for hiring, placement and advancement of handicapped individuals. Review and enforcement is to be carried out by the federal Civil Service Commission. [See Section 791(b)]

WISCONSIN DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS
 EQUAL RIGHTS DIVISION

CHARGE OF DISCRIMINATION

For office use only:

Case # _____
 Investigator _____
 Date Assigned _____
 Filed With Federal Agency
 Yes No
 Date Filed _____
 UC-ID # _____
 Other Notes _____

M F 1 2 3 4 5

1. COMPLAINANT

SOCIAL SECURITY NUMBER _____

City, State and Zip Code _____

YOUR NAME (indicate Mr. or Ms.) _____

STREET ADDRESS _____

Telephone (Include area code) _____

Home _____ Bus _____

2. RESPONDENT

The employer, labor organization, employment agency, landlord, manager or agent against whom you are filing this complaint.

NAME _____

TELEPHONE NO. (Include Area Code) _____

STREET ADDRESS _____

CITY, STATE AND ZIP CODE _____

3. CO-RESPONDENT (ANY OTHER PERSONS) AGAINST WHOM YOU WISH TO FILE THIS COMPLAINT:

NAME _____

TELEPHONE NO. (Include area code) _____

STREET ADDRESS _____

CITY, STATE AND ZIP CODE _____

PERSON WHO DISCRIMINATED AGAINST YOU IF OTHER THAN PERSON LISTED IN 2 OR 3 ABOVE:

NAME _____

STREET ADDRESS _____

CITY, STATE AND ZIP CODE _____

POSITION OR TITLE _____

TELEPHONE NO. (Include area code) _____

PERSON WHO ALWAYS KNOWS WHERE YOU CAN BE REACHED



TELEPHONE NO. (Include area code) _____

STREET ADDRESS _____

CITY, STATE AND ZIP CODE _____

If a Federal Agency has jurisdiction over your complaint, would you like this complaint filed with the appropriate Federal Agency?

YES NO

CAUSE OF DISCRIMINATION (Check Appropriate Box)

EMPLOYMENT:

REASON

- National Origin or Ancestry
- Race
- Creed
- Color
- Age
- Handicap
- Sex

IN REFERENCE TO:

- Recruitment
- Hire
- Promotion
- Wages
- Condition of Employment
- Discharge

HOUSING:

REASON

- National Origin or Ancestry
- Race
- Creed
- Color

IN REFERENCE TO:

- Rent
- Sale
- Finance
- Contract to Construct

Please explain the details of the discrimination. (Be specific — how did discrimination take place? Why do you believe it was because of your national origin or ancestry, race, creed, color, age, handicap, or sex? How were others treated differently? Did discrimination affect other than yourself?)

Use back side and extra sheets if necessary

IF MORE SPECIFIC INFORMATION IS NEEDED REGARDING THESE LAWS, CONTACT:

WISCONSIN DEPARTMENT OF INDUSTRY,
 LABOR AND HUMAN RELATIONS

EQUAL RIGHTS DIVISION

MADISON OFFICE: 201 E. Washington Avenue
 46-3145 Room 178
 Madison 53702

MILWAUKEE OFFICE: 819 N. 6th Street
 (414) 224-4384 Room 160
 Milwaukee 53203

STATE OF WISCONSIN)
) ss.
 COUNTY OF _____)

_____, being duly sworn on oath, deposes and says that (s)he is the complainant herein; that (s)he has read the foregoing complaint and knows the contents thereof; that the same is true to his (her) own knowledge except as to matters therein stated on information and belief; and that as such matters (s)he believes the same to be true.

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

Complainant

Notary Public, State of Wisconsin

My Commission (is permanent) (expires) _____.

Federal Bonding Program*

The Manpower Administration of the Department of Labor offers fidelity bonding coverage to qualified job applicants. This coverage is available through state employment service agencies to persons who cannot obtain suitable employment, because they have police, credit, or other records, including histories of mental illness, alcoholism, or drug abuse, which may make it difficult for them to obtain coverage by commercial bonds.

The bonds are issued in units of \$500 up to \$10,000 per month. Bonding under this program may be appropriate under two circumstances.

- (1) In jobs where bonding of employees is the usual practice and the usual bonding company will not cover persons with what it considers to be questionable records. At the end of one year, the employer is asked to assimilate the individual into the regular bonding arrangements.
- (2) In jobs where bonding of employees is not the usual practice, but where employers refuse to hire persons with what they consider to be questionable records (unless those persons are bonded). At the end of one year the employer is asked to drop the bonding requirement or make other arrangements.

If ending participation in the program would jeopardize the individual's job or if the employer cannot make other arrangements, coverage may be extended beyond one year, with checks at six month intervals by State Employment Service personnel to see when the requirement can be dropped.

For further information contact the Job Service Division of the Department of Industry, Labor and Human Relations which has a central office as well as district offices in Madison,

Administrative Office: 201 E. Washington Ave.
Madison, WI 53703

phone: 266-3106

*From the brochure, "Federal Bonding Program: Questions and Answers," a publication of the Wisconsin Department of Industry, Labor and Human Relations, Wisconsin State Job Service, 10000-2AA-8950.

Madison District Office: 206 N. Broom St.
Madison, WI 53703

phone: 266-1492

and offices throughout the state.

Federal Depositor's Insurance Corporation Bonding

Whether an individual with a criminal record or a history of mental illness, alcoholism or drug abuse succeeds in obtaining employment in a Wisconsin bank is entirely up to the bank's personnel officer. But once he decides to employ a person with such a history and seeks to have that person bonded by the federal government, the Federal Depositor's Insurance Corporation (FDIC) is involved.

FDIC
BONDING

FDIC bonding of a person with a history of mental illness, alcoholism or drug abuse is usually fairly automatic, provided that the FDIC Board, after studying the case, is convinced that the person is fully recovered or rehabilitated and ready to resume employment. In bonding ex-offenders, the Board is necessarily somewhat cautious. Besides seeking professional or institutional testimony as to the ex-offenders genuine rehabilitation, it may also contact references given on the bank employment application form and almost certainly it will consider the applicant's personal conviction history: What was the offense and how long ago was it committed? How old was the applicant at the time? Were the mitigating circumstances that helped explain the motivation for the offense? Has the applicant since his or her release impressed co-workers, associates, etc. as being mature, reliable and trustworthy? Thus, the Board builds its general impression of the applicant to the point where it feels confident he or she is a good insurance risk; then it acts accordingly. Banks have sometimes used the FDIC rules as a reason for denying employment to persons with criminal histories. Denying employment without seeking FDIC approval for the individual is discrimination by the bank. Persons unreasonably discriminated against because of a criminal history should consider filing an employment discrimination complaint. (See Employment Discrimination section)

Additional information about the Board's policies may be obtained from the main FDIC office in Wisconsin at:

1 S. Pinckney St.
Room 813
Madison, WI 53703

(608) 252-5226

GUBERNATORIAL PARDONS, COMMUTATIONS, AND REPRIEVES*

Three remedies are available to reduce the effects of a criminal conviction in the State of Wisconsin. First, there is the Pardon, which constitutes a legal "forgiveness" of offenses committed. Second, there is Commutation, which is the substitution of a lesser for a greater punishment. Third, there is Reprieve, which is the mere postponement of a sentence for a definite period of time, temporarily delaying rather than permanently moderating a sentence.

Pardons do not expunge the record of the ex-offender, nor do they remove all the liabilities resulting from a conviction. Individuals convicted of a crime but subsequently pardoned are generally advised to answer, if asked, that they have been convicted of a crime, but pardoned. In practice, a pardon makes it easier for an individual to find employment or to secure a better job. The stigma of a conviction is usually lessened by a pardon. A pardon is the only remedy which restores to the felon eligibility to hold an office of public trust. See Op. Atty. Gen., March 27, 1974.

Commutations are granted to those currently in a correctional institution. They reduce the length of time an individual must serve before he or she becomes eligible for parole.

Reprieves stay the execution of a sentence and are quite rare.

In 1974, of the 100 successful applications for Executive Clemency, as pardons, commutations, and reprieves are collectively called in Wisconsin, there were 80 full pardons, 5 conditional pardons, 15 commutations, and no reprieves.

In Wisconsin the Governor has great discretion in the granting any of these forms of clemency. The source of clemency power lies in Article V §6 of the state constitution which assigns the Governor "...the power to grant reprieves, commutations, and pardons after conviction, for all offenses except treason and impeachment." Chapter 57 of the Wisconsin Statutes, together with regulations promulgated by the Governor, determine the procedure for applying for clemency; once these procedures are met, it will be up to the Governor to decide whether to grant clemency.

Pardons are granted to most (75-90%) applicants who apply if these individuals have been off supervision for at least three years, have been free of further criminal convictions, and show evidence of being contributing members of a community. Most successful pardon applicants are seeking a

PARDONS

*This section borrows heavily from Bauer, Executive Clemency in Wisconsin: Procedures and Policies, 1973, WISCONSIN LAW REVIEW, 1154, and Lufler, Executive Clemency in Wisconsin: Who Seeks Access to the Process and Who Receives Pardons, Center for Public Representation, 1976.

better job or to reduce the civil disabilities resulting from conviction. Lay advocates should consider a pardon application as a remedy for these problems.

Pardons may be absolute("full") or conditional. The type of pardon granted is determined by the Governor. Conditional pardons are granted only where need for the pardon exists in the absence of long-term proof of rehabilitation. A conditional pardon can be revoked upon the Governor's personal judgment that conditions of the pardon have been violated. The reasons for granting a pardon are usually stated in the Governor's pardon decree. However, it is not necessary to state reasons for refusal of a pardon.

Commutations are granted less frequently than pardons; 10-15% of commutation applications are successful. A commutation implies a reduction in the severity of the sentence and it is usually used to give lifers earlier parole eligibility. Commutations do not remove civil disabilities. COMMUTATION

The reprieve is a remedy which is very unusual. While it can be used to temporarily stay the execution of a sentence, the abolition of capital punishment and the ability of the court to stay sentences has made this power almost obsolete. This remedy is probably one which the paralegal will never use. REPRIEVE

"Civil rights" are restored to the ex-offender after the satisfactory completion of his or her sentence. Wisconsin Statute 57.078 says:

Every person who is convicted of a crime obtains a restoration of his civil rights by serving out his term of imprisonment or otherwise satisfying his sentence. RESTORATION
OF CIVIL
RIGHTS

However, the "civil rights" restored under this statute are limited to the right to vote and the right to be called for jury duty. Other civil disabilities are not affected by the statute.

§57.09, Stats. requires that applicants for clemency: APPLYING FOR

- (1) serve notice on both the judge and district attorney who participated in the trial, stating information as to the offense for which the ex-offender was convicted, the date and term of sentence and the approximate date the application will be heard. CLEMENCY
- (2) (applicants who are incarcerated or on parole or probation) must also publish notice of their request for clemency for 2 successive weeks in a newspaper of general circulation in the county where their offense was committed. (Note: if

the applicant is poor, the state is required to pay the cost of the publication.)

- (3) include with the application the following:
 - (a) evidence that notice and publication requirements have been met;
 - (b) a certified copy of the docket(court) entries, the indictment, or information;
 - (c) a sworn notarized statement by the applicant of all facts and reasons upon which the application is based, perhaps making reference to the passage of time since the conviction, economic and social stability of the applicant, projects in which the applicant may be involved, and pertinent changes in the law since conviction(for additional factors influencing the granting of pardons, see the Supplement at the end of this section.)
 - (d) (if possible) written statements from the judge and district attorney involved; and
 - (e) (if appropriate) a conduct report from the jail or prison where the client is incarcerated.

The Governor's Office will request information concerning an applicant from the Division of Corrections and the Wisconsin Justice Department. If any information in the Justice Department's investigative files raises serious questions as to the desirability of pardoning the applicant, the Governor's Pardon Counsel will ask the applicant if the information is accurate.

In some cases, the expense of obtaining certified copies of these documents is very high. The Governor's Office does provide a financial questionnaire which must be completed by applicants who claim poverty. There are no precise standards of financial ability, but assistance is currently provided to incarcerated applicants who have less than \$50.00 in their institutional accounts. Qualified applicants receive the cost of publication and are provided with a certificate which requests the appropriate clerk of courts to issue required court papers without charge. (Note: The Clerk of Courts is not required to comply with these requests.)

ADMINISTRATIVE PROCEDURES - Within the Governor's Office, primary responsibility for the processing of applications rests with the Governor's Pardon Counsel(see Supplement at the end of this section). This person is an attorney who distributes information to

applicants, receives and assembles application papers, schedules hearings and maintains records. The Pardon Counsel personally conducts monthly hearings and prepares case summaries which aid the Governor in his or her decision. The Pardon Counsel is located in Room 115 of the Capitol Building, East Wing, and can be reached at (608) 266-7604.

The bulk of information on which the Governor makes a decision is obtained from the applicant's written statement and accompanying documents. In addition, applicants may appear at hearings conducted by the Pardon Counsel. Hearings are conducted in Madison on the second Wednesday of each month, and at correctional institutions on succeeding days. These hearings are informal, and applicants usually re-emphasize the material in their application forms. The hearing is used as an opportunity for the Pardon Counsel to get to know the applicant and perhaps to ask additional questions. It should be stressed that a lawyer is not required for these hearings nor is one necessary to draw up the application papers.

In addition to holding a hearing, the Pardon Counsel routinely requests recommendations for all applicants from the Division of Corrections. These are usually prepared by members of the parole board and can be modified by the Division Administrator. In addition, the Governor's office will contact any party it deems necessary to obtain information unless the applicant requests otherwise.

The Pardon Counsel, after reviewing the application forms and holding a hearing, receives a recommendation from the Division of Corrections and makes a recommendation to the Governor. It is currently taking three to six months to process a pardon application.

Note: For additional information on clemency, see Bauer, Executive Clemency in Wisconsin: Procedures and Policies, 1973, WIS. LAW REVIEW 1154 and Lufler, Executive Clemency in Wisconsin: Who Receives Clemency and Who Seeks Access to the Process? Center for Public Representation, 1976.

MINIMUM STANDARDS FOR EXECUTIVE CLEMENCY

Individuals applying for Executive Clemency and persons assisting them often ask how Governor Lucey decides whether clemency should be granted or denied. The purpose of this outline is to indicate, in general terms, the policies which have guided the Governor in the past in making clemency decisions.

General Criteria

In general, Executive Clemency will be considered where the applicant clearly shows that the system of criminal justice -- at the conviction, supervision, or post-supervision state -- has produced substantial injustice in his case.

Specific Criteria

for

Different Types of Applicants

Lifers, other inmates, probationers and parolees, and persons discharged from their sentences stand on somewhat different footings with respect to Executive Clemency. For each group, the possible grounds for clemency differ somewhat.

A. For lifers, Executive Clemency will most likely be considered where the applicant has served a substantial portion, e.g. 5-6 years, of the mandatory minimum 11 year, 9 month period which must be served to become eligible for parole; and has clearly maintained a good record while incarcerated; and has demonstrated either a special need to participate in prison programs while parole eligibility alone would permit, or a special need for parole eligibility itself.

B. For other inmates Executive Clemency will most likely be considered where the applicant clearly shows that his sentence structure is substantially harsher than that of other persons convicted for similar crimes; or clearly demonstrates that he has made an outstanding adjustment to incarceration but his adjustment has not been adequately recognized by the Division of Corrections (in terms of reduced security setting, selection for programs, etc.), or by the Parole Board.

C. For individuals subject to probation or parole supervision, Executive Clemency will most likely be considered where the applicant clearly shows that the remaining time he must serve on probation or parole is substantially greater than that of other persons with similar records; or clearly demonstrates that he has made an excellent adjustment while on parole or probation but his adjustment has not been adequately recognized by the Department of Health & Social Services.

D. For persons discharged from their sentences, there is a good chance for Executive Clemency where a substantial period of time has passed since discharge, and the applicant clearly demonstrates that he has lived and is living a crime-free and socially responsible life, and the applicant has demonstrated some need for Executive Clemency. If only a few years (e.g. 2-3 years) have gone by since discharge, the applicant will usually be required to show a specific career- or job-related need for Executive Clemency. However, if a longer period of time (e.g. 3-4 years) has elapsed since discharge, the applicant's desire to remove the stigma of conviction or clear his name may be found to be enough of a need for Executive Clemency to justify a favorable clemency decision.

HOW ARE THESE MINIMUM STANDARDS
USED BY THE GOVERNOR?

Individuals whose applications for Executive Clemency do not meet the minimum standards set forth above are advised to reconsider the wisdom of applying for clemency. Their applications stand an extremely slim chance of being favorably decided.

On the other hand, individuals whose applications meet the minimum standards set forth above must recognize that they are minimum standards. The Governor retains the power to decide in each case whether or not to extend clemency. Such factors as (1) the seriousness of the applicant's prior record, (2) the seriousness of the crime for which he was convicted, (3) the genuineness of his remorse, (4) the personal growth he has undergone, (5) the stability of his life at the present time, (6) his candidness when dealing with the Governor's Pardon Counsel, and (7) mercy, ultimately determine whether the Governor will extend clemency.

Effective 10/1/76

Dear Prospective Applicant:

Attached you will find a variety of materials which will assist you in preparing your application for Executive Clemency.

There are two basic forms of Executive Clemency in use today:

- A commutation reduces the length of the sentence which an inmate, parolee, or probationer must serve.
- A pardon forgives the applicant for the crime he committed and restores his full civil rights.

You should be aware from the outset that Executive Clemency is rarely granted to persons who are incarcerated or on parole or probation. Only if such a person can demonstrate by clear and convincing evidence that (a) he is innocent, or (b) he has served far more time in prison or on supervision than persons with similar backgrounds, offenses, and institutional records, or (c) his incarceration or supervision involves some other miscarriage of justice, will he be seriously considered for Executive Clemency.

Individuals who have been discharged from their sentences for several years and have lived a crime-free and socially responsible life in their communities during that time have a much better chance of securing Executive Clemency. If only a few years have gone by since discharge (e.g. 2-3 years), the applicant will usually be required to show that (a) his offense was a minor one, (b) he committed no other offenses, and (c) he has a specific career- or job-related need for Executive Clemency before favorable action will be considered. If a longer period of time has elapsed since discharge (e.g. 4 years or more), the applicant's desire to "clear his name" may be found to be a sufficient basis for extending Executive Clemency.

Individuals discharged from supervision whose applicants meet the standards set forth above should realize that these are minimum standards. The Governor retains the right to deny an application for such reasons as (i) the seriousness of the applicant's prior record, (ii) the seriousness of the crime for which Executive Clemency is sought, (iii) lack of genuine remorse, (iv) lack of honesty or consistency in making statements to the Pardon Counsel, and (v) lack of stability or responsibility in the applicant's relations with family, employers, or government.

Before you decide to submit your application, you should also be aware that it will take several months before a decision is made. After your petition and various other required documents (explained below) are received, it will take about a month until your hearing is held. Once the hearing date arrives, it will take an additional 3 to 3-1/2

months before a final decision is made by the Governor.

While close analysis of the attached rules and regulations will provide sufficient information to prepare an application, these further comments should be helpful.

1. PETITION. Every applicant must submit to the Governor a notarized petition stating the facts and reasons why the applicant should be granted Executive Clemency. This petition is, of course, most important. The statement of facts and reasons should be brief and concise, but should direct the Governor's attention to the circumstances surrounding the offense and the petitioner's conduct since the offense which the petitioner thinks are most relevant to a proper disposition of his application. A suggested form for the petition is attached. See Suggested Form #1.

2. NOTICE TO DISTRICT ATTORNEY AND JUDGE. Every applicant must give notice of his application for Executive Clemency to the District Attorney who prosecuted him and the judge who sentenced him. Proof that such notice was given must then be submitted to the Governor. Suggested Form #2, when completed, signed or stamped by the DA and Judge, and then sent to the Governor's Office, provides all the information required.

If the DA who prosecuted you and the Judge who sentenced you are no longer holding the positions they did at the time of your trial, every effort should be made to locate them and have them acknowledge receipt. If either the DA or Judge cannot be located or is deceased, notice should then be given to the incumbent official.

The applicant is responsible for making sure that notice is given and proof thereof is forwarded to the Governor's Office -- or for explaining why this is not possible.

3. PUBLICATION. All applicants except those serving sentence of less than one year and those who have completed their sentences are required to publish a notice of their application in a newspaper of general circulation in the county where their offense was committed at least once each week for two successive weeks before the pardon hearing is held. Proof of such publication, in the form of an affidavit from the newspaper, must then be submitted to the Governor.

The applicant must be careful to publish his notice in a

newspaper which fulfills the statutory requirement that the notice be published in a paper "of general circulation" in the county where the offense was committed. Applicants convicted in Milwaukee County are asked to publish in either the Milwaukee Sentinel or Journal.

4. WARDEN'S REPORT. An applicant who is serving time in a state facility should ask the Warden to submit a report to the Governor which summarizes the applicant's conduct while incarcerated.

Applicants who formerly served time in a state facility but are no longer doing so need not request such a report.

5. COURT RECORDS. Every applicant must submit to the Governor certified copies of (a) the docket entries in his case, and (b) the indictment or information. Applicants are also asked (pursuant to Section 57.10(2), Wis. Stats.) to provide the Governor's Office with the judgment of conviction.

If one of these documents cannot be obtained, the applicant should explain why this is so.

There is no requirement that a transcript be submitted unless the applicant is specifically advised thereof. However,, any additional information in the official records which the applicant feels should be brought to the Governor's attention should be submitted.

6. ADDITIONAL INFORMATION. The applicant may submit any additional information which he deems relevant to his petition. This may include letters of recommendation, official descriptions of the applicant's conduct, etc. Although material in addition to that which the law requires is not necessary, it is often helpful in evaluating the applicant's clemency request.

7. PARDON HEARING. Once all the material required by laws (Items 1-5, above) has been received by the Governor, a pardon hearing is scheduled. The hearing is usually conducted by the Pardon Counsel, lasts 20 minutes, is informal in nature, and provides an opportunity for the applicant to direct the Pardon Counsel's attention to those aspects of the record which are most relevant to his petition. The applicant may invite to this hearing relatives or close friends who wish at that time to speak knowledgeably on his behalf.

8. DO YOU NEED A LAWYER? It is usually not necessary that a lawyer be retained to assist in the preparation of an application for Executive Clemency. It is usually even less necessary for a lawyer to accompany the applicant to a pardon hearing, as

the real purpose of that hearing is generally not to analyze legal questions but to discuss other aspects of the applicant's petition and situation.

I hope this information is of help to you in preparing your petition for Executive Clemency.

I must at this point reiterate that clemency is extended only in exceptional circumstances to inmates, parolees or probationers, or individuals only recently discharged from their sentences. Petitioners who were discharged several years ago and have done well since stand a much better chance of receiving a favorable decision.

The Governor does, however, give each petition his serious consideration.

If I may be of any assistance to you in these or related matters, please do not hesitate to contact me.

Sincerely,

EDWARD N. PARSONS, JR.
Pardon Counsel

DRR:caj

THIS FORM IS MERELY TO USED AS A GUIDELINE AND WILL NOT BE
ACCEPTED AS PART OF THE APPLICATION

SUGGESTED FORM

In the Matter of Applocation for Executive Clemency
of (NAME OF APPLICANT AND DATE OF BIRTH)

In the name of Patrick J. Lucey, Governor of the State of
Wisconsin the application of (name of applicant) respectfully
states:

1. That on the () day of (), 19__, the applicant was con-
victed in the () Court of () County of the offense of (name
of offense) and was on the () day of (), 19__, sentenced to
(name of institution) for a term of () years.

2. That the facts and reasons upon which this application is
based are as follows: (set forth the reasons for making ap-
plication for clemency and the facts tending to prove the exis-
tence of such reasons)

WHEREFORE, your petitioner prays that he be granted (a par-
don, a conditional pardon or a commutation of sentence,
whichever relief is sought) or such other Executive Clemency
as in the premises seems just and proper.

applicant's signature

STATE OF WISCONSIN }
COUNTY OF } SS

_____ being first duly sworn, on
oath deposes and says that he is the petitioner above
named; that he has read the foregoing petition and knows
the contents thereof and that the same is true of his
knowledge, except as to matters stated on information and
belief, and as to such matters he believes to be true.

applicant's signature

Subscribed and sworn to
before me this ____ day of _____, 19__.

SUGGESTED FORM TO BE USED WHEN SERVING
NOTICE ON JUDGE AND DISTRICT ATTORNEY

NOTICE OF APPLICATION FOR EXECUTIVE CLEMENCY

EXECUTIVE OFFICE
STATE OF WISCONSIN

"A copy of this notice should be sent to the Judge and District Attorney, and each one of the notices should be signed by the applicant."

PLEASE TAKE NOTICE, that _____
name of applicant

convicted of _____
offense convicted of

and sentenced on the _____ day of _____, 19__ to
the _____, for a term of _____
institution

will file an application for Executive Clemency with the
Honorable Patrick J. Lucey, on or about the _____ day of
_____, 19__.

signature of applicant.

Due service of the within notice of application for
Executive Clemency is admitted this _____ day of _____,
19__.

signature of judge

signature of district attorney

STATE OF WISCONSIN

Laws and Regulations Governing Applications for Executive Clemency

CONSTITUTION OF THE STATE OF WISCONSIN, Art. V, Sec. 6

The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

STATUTES OF THE STATE OF WISCONSIN

57.08 Applications for pardon; regulations. All applications for pardon of any convict serving sentence of one year or more, except for pardons to be granted within 10 days next before the time when the convict would be otherwise entitled to discharge pursuant to law, shall be made and conducted in the manner hereinafter prescribed, and according to such additional regulations as may from time to time be prescribed by the governor.

57.09 Notice of application. Notice of such application shall state the name of the convict, the crime of which he was convicted, the date and term of his sentence and the date, if known, when the application will be heard by the governor. Such notice shall be served on the judge and the district attorney, if they can be found, who participated in the trial of the convict, at least 3 weeks before the hearing of the application. The notice shall be published at least once each week for 2 successive weeks before such hearing in a newspaper of general circulation in the county where the offense was committed. If there is no such newspaper, the notice shall be posted in a conspicuous place on the door of the courthouse of such county for 3 weeks before such hearing and published once each week for 2 consecutive weeks before the hearing in a newspaper published in an adjoining county. Publication as required in this section shall be completed by a date designated by the governor, such date to be reasonable time prior to the hearing date.

37.10 Pardon application papers. An application for pardon shall be accompanied by the following papers:

(1) Notice of application and acknowledgments or affidavits showing due service and affidavits showing due publication and posting whenever required;

(2) A certified copy of the docket entries, the indictment or information, and such additional papers on file in the court, if obtainable, as the governor requires;

(3) A full sworn statement by the applicant of all facts and reasons upon which the application is based;

(4) Written statements by the judge and the district attorney who tried the case, if obtainable, indicating their views regarding the application and stating any circumstances within their knowledge in aggravation or extenuation of the applicant's guilt;

(5) A certificate of the keeper of the prison where he has been confined showing whether the applicant has conducted himself in a peaceful and obedient manner.

REGULATIONS

Pursuant to 57.08, Wis. Stats., The following rules for the government of applications for pardon or commutations of sentence are hereby promulgated on October 15, 1973:

For petitioners who are not incarcerated pardon hearings are held on the second Wednesday of each month. The pardon calendar is prepared one month in advance of the hearings, so papers must be in the Governor's office prior to the second Wednesday of the month preceding the month of the proposed hearing. Hearings are held before the Pardon Counsel in the Reception Room of the Governor's office 115 East, State Capitol, Madison, Wisconsin or in the office of the Pardon Counsel.

For petitioners who are incarcerated, the Pardon Counsel will make every effort to hold a hearing with the petitioner present.

A copy of the pardon calendar will be sent to applicant (and attorney, if an attorney has been retained) two weeks prior to the hearing. The calendar will state the time at which applicant is to appear, and the place where the hearing will be held.

All applications for clemency by the executive of any person convicted in any court of this state of any crime or offense punishable under the laws thereof by commitment to the School for Girls or the School for Boys shall be made in like manner as applications under 57.08 Stats.

All applications for the commutation of sentence or pardon of any person sentenced for less than one year shall be made by written verified application by the person for whom pardon is sought, or by someone in his behalf, and shall set forth the name of the person and the court imposing the sentence, the date and term of his sentence, and place of imprisonment, and the facts and reasons upon which the application is based. Notice of such application need not be published, but notice should be served on the court before whom sentence was imposed, and the District Attorney of the county where the sentence was imposed, setting forth the same facts as are required for the notice of the application for a pardon, at least five days before such application is heard, unless the executive otherwise directs.

The waiting period required prior to re-application to the Governor after receipt of notification of final decision by him is one year.

57.078 Civil rights restored to convicted persons satisfying sentence. Every person who is convicted of crime obtains a restoration of his civil rights by serving out his term of imprisonment or otherwise satisfying his sentence. The certificate of the department or other responsible supervising agency that a convicted person has served his sentence or otherwise satisfied the judgment against him is evidence of that fact and that he is restored to his civil rights. Persons who served out their terms of imprisonment or otherwise satisfied their sentences prior to August 14, 1947, are likewise restored to their civil rights from and after September 25, 1959.

PRESIDENTIAL PARDONS

Federal offenses may be pardoned only by the President. Article 2, Section 2, Clause 1 of the U.S. Constitution provides that

The President...shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in the Cases of Impeachment.

The President's power in this regard is virtually unbridled. Courts interpreting the above constitutional provision have held that the President may grant or deny pardons for any reason, and courts may not review the exercise of his or her discretion. Nor may the presidential pardon power be limited in any way by legislation. Further, no regulations on processing of pardon applications can bind the exercise of presidential discretion. Courts have held that the pardon power must be exercised "in public interest" but no definition of this term is given.

According to court decisions, a presidential pardon "releases the offender from all disabilities imposed by the offense, and restores...all...civil rights." The pardon does not, however, erase the original finding of guilt, as its effect is prospective only, not retropective. Consequently, all forfeitures made under the sentence and credited to the treasury prior to the date of the pardon cannot be recovered, but any such future financial liability is removed.

Specifically, a presidential pardon has the following effects:

- 1) renews eligibility for federal jury duty [28 USC §1865(b)],
- 2) restores (where accompanied by express authorization) the right to receive, possess or transport firearms (18 USC App§1203), and
- 3) qualifies (where granted upon grounds of innocence and unjust conviction) the subject to sue the government for damages for unjust conviction and imprisonment (28 USC §2513).

Presidential pardons may be granted conditionally, and revoked if the conditions imposed are not met.

Eligibility for presidential pardon commences three years after completion of sentence for most crimes, five years after for more serious offenses.

The procedures established for seeking pardons includes initial application (see application form following) and follow-up interviews. The FBI questions the applicant, persons who have written letters of reference or executed character affidavits for the applicant, neighbors and former and present employers. While a "reasonable effort is made not to disclose

the reason for the investigation", the Office of the Pardon Attorney "cannot assure that under no circumstances will the nature of the inquiry become known to some of the persons interviewed."

The applicant is under no obligation to furnish information, and may even request that certain persons not be interviewed. However, the Office of the Pardon Attorney warns that such restrictions may result in denial of the application "because of a lack of sufficient information."

Presidential pardons are announced in public notices; denials of pardons are not publicized. Nevertheless, the Office of the Pardon Attorney will open up its files on who has applied for, been granted or denied pardons to "anyone who asks".

For further information, see the forms and notices following, call your local Federal Probation and Parole Office, or contact:

Lawrence M. Traylor
Pardon Attorney
U.S. Department of Justice
Office of the Pardon Attorney
Washington D.C. 20530

United States Department of Justice

Office of the Pardon Attorney

Washington, D.C. 20530

INFORMATION AND INSTRUCTIONS ON PARDONS

1. It is important that the completed forms, which are supplied when the applicant is eligible, be entirely legible; therefore, please print or type. They should be fully and accurately completed.
2. Before submitting a petition, the applicant should determine whether he was convicted of a felony or a misdemeanor. Since conviction of a misdemeanor does not usually result in the loss of civil rights, a petition for pardon of a misdemeanor is considered only when very exceptional circumstances are present. Necessary information concerning the conviction may be obtained from the clerk of the federal court where convicted. Only federal convictions are subject to Presidential pardon since the President has no jurisdiction over state offenses.
3. When seeking pardon of more than one federal felony conviction, the most recent conviction should be shown in paragraph 2 of the petition and the form completed as to that conviction. The same information concerning other federal offenses should be shown in the space provided for prior and subsequent arrests. Complete disclosure of the arrest record, state and federal, both prior and subsequent to the offense for which the applicant seeks pardon, is important. Failure to do so may result in denial of the petition.
4. At least three references must accompany the petition. The affidavit forms provided are preferred; however, letters of recommendation with no reference to the offenses may be substituted. The references should not be related to the petitioner. They provide a starting point for the required investigation by the Federal Bureau of Investigation.
5. If the applicant was convicted of a military offense or his veterans benefits were administratively forfeited, he may modify the forms to show the pertinent facts. The date of forfeiture in a veterans case should be shown instead of the date sentence was imposed. The applicant's veterans claim number and military service number should be included.

6. Petitions for pardon of military offenses should be forwarded for initial processing to the Secretary of the Army, Navy or Air Force in Washington, D. C., whichever had jurisdiction in the court-martial proceeding. All other petitions should be forwarded to the Pardon Attorney, Department of Justice, Washington, D. C. 20530.
7. A Presidential pardon will not erase or expunge the record of conviction and it will not indicate innocence; therefore, it still will be necessary to report the conviction where such information is required. A Presidential pardon forgives the offense and, in those states that require it, it usually helps restore any civil rights which were lost as a result of the conviction. Any questions concerning civil rights should be directed to the state authorities who have jurisdiction in such matters. A pardon of a military offense will not change the nature of a military discharge.
8. The authority to grant pardons is vested in the President alone. No hearing is held and there is no appeal from a decision in a pardon matter. Should a petition be denied, a new application may be submitted after two years from the date of denial.
9. The eligibility waiting period required by the rules begins on the date of the applicant's release from confinement. If the conviction resulted in probation or a fine and no term of imprisonment, the waiting period begins on the date of conviction. In addition, the applicant must have completed all probation or parole supervision. A principal purpose of the waiting period is to afford the applicant a reasonable time in which to demonstrate his ability to live in the community free of arrests and convictions; therefore, offenses committed subsequent to the federal offense would affect his eligibility for pardon.

For more information contact the Pardon Attorney, Department of Justice, Washington, D. C. 20530.

4/1/77

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RULES GOVERNING PETITIONS FOR EXECUTIVE CLEMENCY

Department of Justice

WASHINGTON, D.C.

§ 1.1 *Submission of petition; form to be used.*—Persons seeking Executive clemency, by pardon or by commutation of sentence, including remission of fine, shall execute formal petitions therefor which shall be addressed to the President of the United States and which, except those relating to military or naval offenses, shall be submitted to the Attorney General of the United States. Appropriate forms for such petitions will be furnished by the Department of Justice, Washington, D.C., upon application therefor. Forms for petition for commutation of sentence may also be obtained from the warden of Federal penal institutions. Forms furnished by the Department of Justice for use in pardon cases may be used by petitioners in cases relating to the forfeiture of veterans' benefits, with appropriate modifications. A petitioner applying for Executive clemency with respect to military or naval offenses should submit his petition directly to the Secretary of the military department which had original jurisdiction over the court-martial trial and conviction of the petitioner. In such instance, a form furnished by the Department of Justice may be used but should be modified to meet the needs of the particular case.

§ 1.2 *Contents of petition.*—Each petition for Executive clemency should include: the name and age of the petitioner; the court, district, and State in which he was convicted; the date of sentence; the crime of which he was convicted; the sentence imposed; the date he commenced service of sentence; and the place of confinement. In the case of a petition for pardon, the petitioner should also state his age at the time of commission of the offense; the date of release from confinement; whether he is a citizen of the United States or an alien; his marital status; his prior and subsequent criminal record, if any; his employment since conviction; and his place of residence. A petition may be accompanied by endorsements. It is desirable that all applications for pardons be accompanied by at least three character affidavits.

§ 1.3 *Eligibility for filing petition for pardon.*—No petition for pardon should be filed until the expiration of a waiting period of at least 3 years subsequent to the date of the release of the petitioner from confinement, or, in case no prison sentence was imposed, until the expiration of a period of at least 3 years subsequent to the date of the conviction of the petitioner. In some cases, such as those involving violation of narcotic laws, income tax laws, perjury, violation of public trust involving personal dishonesty, or other crimes of a serious nature a waiting period of 5 years is usually required. In cases of aliens seeking a pardon to avert deportation, the waiting period may be waived. Generally, no petition should be submitted by a person who is on probation or parole.

§ 1.4 *Eligibility for filing petition for commutation of sentence.*—A petition for commutation of sentence, including remission of fine, should be filed only if no other form of relief is available, such as from the court or the United States Board of Parole, or if unusual circumstances exist, such as critical illness, severity of sentence, ineligibility for parole, or meritorious service rendered by the petitioner.

§ 1.5 *Offenses against the laws of possessions or territories of the United States.*—Petitions for Executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction thereof should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.6 *Disclosure of files.*—Reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for Executive clemency shall be available only to officials concerned with the consideration of the petition; provided that they may be open to inspection by the petitioner or by his attorney or other representative if, in the opinion of the Attorney General or his representative, the disclosure sought is required by the ends of justice.

§ 1.7 *Consideration of petitions by the Attorney General; recommendations to the President.*—(a) Upon receipt of a petition for Executive clemency, the Attorney General shall consider that petition and cause such investigation to be made with respect thereto as he may deem appropriate and necessary, using the services of, or obtaining reports from appropriate officials and agencies of the Government, including the Federal Bureau of Investigation, to the extent deemed necessary or desirable.

(b) The Attorney General shall review each petition and all pertinent information developed by his investigation thereof and shall advise the President whether, in his judgment, the request for clemency is of sufficient merit to warrant favorable action by the President.

(c) If he determines that the request merits favorable action by the President, he shall submit the petition to the President together with a warrant prepared for the signature of the President granting the clemency recommended by the Attorney General.

(d) If he determines that the petition and information developed by his investigation do not, in his judgment, merit favorable action by the President he shall provide the President with a concise statement enumerating the essential facts concerning the petitioner, the petition, and his reasons for recommending denial of clemency.

§ 1.8 *Notification of grant of clemency.*—When a petition for pardon is granted, the petitioner or his attorney shall be notified of such action, and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action, and the warrant of commutation shall be sent to the petitioner through the officer in charge of his place of confinement, or directly to the petitioner if he is on parole.

§ 1.9 *Notification of denial of clemency.*—(a) Whenever the President notifies the Attorney General that he is denying a request for clemency, the Attorney General, or at his direction the Pardon Attorney, shall so advise the petitioner and close the case.

(b) Whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General, or at his direction the Pardon Attorney, shall so advise the petitioner and close the case.

These regulations shall become effective on the thirty-first day following the date of their publication in the FEDERAL REGISTER.

ROBERT F. KENNEDY,
Attorney General.

Date: October 18, 1962.

Approved: JOHN F. KENNEDY.

Date: October 30, 1962.

PETITION FOR PARDON AFTER COMPLETION OF SENTENCE

(Type or Print - This form may be modified for forfeiture of Veterans benefits or military cases)

THE PRESIDENT OF THE UNITED STATES:

PETITIONER, _____

Name: First Middle Last

Social Security No. _____, is a citizen of _____, born on _____, 19 _____

Country

and resides at _____

No. Street City State Zip Code

PETITIONER was convicted on a plea of _____ in the United States

guilty, not guilty or nolo contendere

District Court for the _____ District of _____ at _____

Eastern, Western, etc.

State

City

of the crime of _____

Describe specifically and accurately.

and was sentenced on _____, 19 _____, to _____ for _____

imprisonment, probation

length of service

and/or to pay a fine of \$ _____.

If conviction was appealed, complete the following paragraph:

PETITIONER appealed to the United States Court of Appeals, where the judgment was affirmed on _____,

19 _____. An appeal _____ taken to the Supreme Court. The Supreme Court _____ a
was, was not granted, denied

petition for a writ of certiorari on _____, 19 _____. If certiorari was granted, the judgment was affirmed on

_____, 19 _____.

PETITIONER began the service of his sentence on _____, 19 _____; was released on _____,

19 _____ from _____ and was finally discharged by expiration of sentence on _____,

Federal Institution

19 _____. The fine _____ been paid in full. If not paid, explain why. _____

has, has not

PETITIONER was _____ years of age when the crime was committed, and his prior and subsequent arrest record is as

follows: (List every arrest by local, state or Federal authorities, whether resulting in a conviction or not, giving date, disposition

of case and name and location of court.) _____

PETITIONER _____ married, has _____ children, aged _____ and lives with and supports his family to the best of his ability. (If divorced or not living with or supporting family, explain.) _____

PETITIONER is employed by _____

at _____ as _____

No. Street City State Position

and has been so employed since _____, 19_____ and his prior employments since conviction follows:

(List names and addresses of employers and dates of each employment.) _____

PETITIONER submits his personal oath and three character references, promises to obey the laws of, and to be loyal to, the United States, and respectfully prays that he be granted a pardon for the following reasons: _____

UNITED STATES
DEPARTMENT OF JUSTICE

PERSONAL OATH

I, _____, in petitioning the
(print or type petitioner's name)

President of the United States for pardon, do solemnly swear that I will be law abiding and will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I take this obligation freely and without any mental reservation whatsoever, So Help Me God.

(signature of petitioner)

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

Notary Public

UNITED STATES
DEPARTMENT OF JUSTICE
CHARACTER AFFIDAVIT
ON BEHALF OF

(print or type name of petitioner)

In support of the application of the above petitioner to the President
of the United States for pardon, I, _____,
(print or type name of affiant)

residing at _____,
No. Street City State Zip Code

whose occupation is _____,

certify that I have personally known the petitioner for _____ years. Except
as otherwise indicated below, he has conducted himself, since his conviction,
in a moral and law-abiding manner. My knowledge of petitioner's reputation,
conduct and activities, including whether he has been arrested or had any
other trouble with public authorities and has been steadily employed, is as
follows: _____

I do solemnly swear that the foregoing information is true and correct
to the best of my knowledge and belief.

(signature of affiant)

Subscribed and sworn to before me this _____ day of _____, 19____.

MILITARY DISCHARGE UPGRADING*

Every veteran who leaves the service with anything other than a fully honorable discharge has the right to seek recharacterization of his or her discharge. The process is initiated by filing an application (DOD Form 293) with the appropriate Discharge Review Board (DRB) - Army, Air Force, Marine, Navy or Coast Guard - or a DOD Form 149 with the appropriate Board for the Correction of Military Records (BCMR).

A DRB can only change a discharge to a higher one and issue a new discharge. It cannot revoke the discharge or reinstate the individual. A DRB does not have the authority to review a discharge resulting from a General Court-Martial. A request for a change in those discharges must be filed with the BCMR of the appropriate service.

An individual must apply to the DRB within 15 years of the date of discharge, a time limit which is not waivable. After the filing of the DOD form 293, all military records relating to the veteran filing for upgrading are sent to the appropriate DRB. The DRB's examiners digest the records and any submissions made by the veteran and present the Board with what is known as the "examiner's brief." A hearing date is then set 30 to 60 days in advance.

The veteran may be represented by counsel - lay or professional - in the discharge review process. The non-professional should seek the DRB's permission before representing the veteran at the hearing itself. Every individual applying to a DRB has an automatic right to a hearing. It is essential that the veteran take advantage of that right. The importance of the veteran's appearance cannot be overemphasized, as an appearance at the hearing substantially increases the chances for an upgrade.

Due to regulatory changes, some discharges can be upgraded without a hearing, on the basis of "tender offer" or "conditional" letter from the DRB:

- (1) undesirable discharges for homosexual acts involving consenting adults,
- (2) general discharges for "character and behavior disorders" where the service record is free of disciplinary actions, and

*This section borrows heavily from Addlestone and Hewman, ACLU Practice Manual on Military Discharge Upgrading, American Civil Liberties Union Foundation, 1975.

- (3) undesirable, bad conduct or dishonorable discharges for military or civilian conviction of personal possession and/or use of drugs.

Upgrade in any of the above circumstances is usually to a general discharge. Acceptance of a tender offer of a general discharge (which reinstates eligibility for VA benefits) does not preclude later action to the BCMR seeking an honorable discharge.

In theory, the factors considered by DRB in discharge review are formal and legalistic: prejudicial error of original proceedings, injustice of original award under the facts, new retroactive policies. In practice, particularly before the Air Force and Navy DRBs, other factors may be considered, such as subsequent "rehabilitation" and current standards not officially deemed retroactive.

If the decision of the DRB is unfavorable, an appeal can be made to the Board for Correction of Military Records (BCMR) of the appropriate service by filing a DOD 149. The BCMR is also the body to which one originally should apply for change in re-enlistment code, review and recharacterization of discharges awarded by General Courts-Martial, change in discharge grade where the 15-year DRB statute of limitations has elapsed and expungement or correction of military records. The BCMRs will not review any other type of case unless the appropriate DRB has heard it.

The granting of a hearing by the BCMRs is discretionary and rarely granted.

The American Civil Liberties Union operates a military discharge upgrading project, and is an excellent source of assistance in this area.

For local assistance, contact:

Vets House
1102 S. Park St.
Madison, WI 53715

(608) 255-8387

For discussion of types of less-than-honorable military discharges, see under "Public Employment."

CONTINUED

1 OF 3

I. PRIVATE LEGAL SERVICES

Lawyer Referral Services

A number of Wisconsin County Bar Associations have established formal lawyer referral services. These offices help persons with legal problems find competent private representation. Some of the referral services (Dane County, for example) also provide brief consultations with an attorney to help the individual define clearly his legal problem prior to his or her being referred to a private lawyer.

MADISON:

Lawyer's Referral Service
Dane County Bar Association
402 W. Wilson St.
Madison, WI 53703

(608) 257-2866

KENOSHA:

Committee on Lawyer Referral Service
Kenosha County Bar Association
Box 671
Kenosha, WI 53140

(414) 658-1467 between 1 and 3 P.M. only,
Tuesdays and Thursdays

MILWAUKEE:

Lawyer Referral Service
Milwaukee Bar Association
740 N. Plankinton
Milwaukee, WI 53203

(414) 271-3833

WAUKESHA:

Lawyer Referral Service
Waukesha County Bar Association
P.O. Box 13
Elm Grove, WI 53122

BLACK RIVER FALLS:

Lawyer Referral Service
Tri-County Bar Association
104 Main St.
Black River Falls, WI 54615

(715) 284-5381

ROCK COUNTY:

Rock County Lawyer Referral Service

(608) 365-2296

State and County Bar Associations

Where no formal referral service exists, state and county bar officials often aid in locating an appropriate attorney. The State Bar in Madison keeps a current listing of County Bar Officials:

State Bar of Wisconsin
402 W. Wilson St.
Madison, WI 53703

(608) 257-3838

II. SUBSIDIZED LEGAL SERVICES

Legal Service Centers and Legal Aid Societies

Located throughout the state, these groups provide legal representation and advice to eligible low income persons who cannot afford a private attorney. Legal Services does not handle probate, real estate, or fee-generating law suits.

APPLETON: Legal Aid Program, Outagamie Bar Association
Outagamie County Court House
410 South Walnut Street
Appleton, WI 54911

FOND DU LAC: Legal Aid Program, ADVOCAP
Fond du Lac Bar Association
174 W. Division St.
Fond du Lac, WI 54935

GREEN BAY: Brown County Legal Aid, Inc.
100 South Jefferson Street
Green Bay, WI 54301

LA CROSSE: Legal Aid
La Crosse County Court House
La Crosse, WI 54601

MADISON: Legal Service Center of Dane County, Inc.
16 N. Carroll St.
Madison, WI 53703 (608) 262-0626

State Public Defender
123 W. Washington Ave, Main Floor
Madison, WI 53703 (608) 266-3440

819 N. 6th St.
Room 340
Milwaukee, WI 53203 (414) 224-4805

Hispano Public Defender Project
1845 S. Park St.
Madison, WI 53713 (608) 251-4935

Community Law Office
731 State Street
Madison, WI 53703 (608) 256-9304 or 256-9594

MILWAUKEE: Legal Action of Wisconsin, Inc.
211 W. Kilbourne
Milwaukee, WI (414) 278-7722

*northside office (414) 372-2800
*southside office (414) 645-9022
*central office (414) 278-7722
(Family Law Office)

Legal Aid Society of Milwaukee (criminal)
821 West State
Milwaukee, WI 53233
*criminal (414) 278-4394
*misdemeanors (414) 278-4829

Legal Aid Society (civil matters)
1204 W. Wisconsin
Milwaukee, WI 53223 (414) 765-0600.

OSHKOSH: Legal Aid of Winnebago County
456 North Main
Oshkosh, WI 54901 (414) 233-7611

Wisconsin Judicare

Judicare is a federally funded program providing legal representation in civil matters to low-income residents of Wisconsin's 28 northern-most counties. Persons who qualify are entitled to choose their own attorney; Judicare pays the full fee. Supplemental Security Income (SSI) recipients are automatically eligible. Application for Judicare benefits can be made at any County Social Service office or Community Action Agency. Judicare also provides public education services to people in the area.

Wisconsin Judicare
811 North First Street
Wausau, WI 54401

Legal Services for Groups

MADISON: Center for Public Representation, Inc.
520 University Ave.
Madison, WI 53703 (608) 251-4008

(Wisconsin's first public law firm, the Center for Public Representation specializes in providing legal services to groups who are not being represented before Wisconsin state or local administrative agencies. The rights and legal problems of ex-offenders and those people with histories of mental illness, alcoholism and drug abuse constitute one of the Center's principal action areas.

Indian Legal Services
520 University Ave.
Madison, WI 53703 (608) 256-5416

MILWAUKEE: Milwaukee Legal Services, Inc.
211 W. Kilbourne
Milwaukee, WI 53203 (414) 278-7722
*northside office (414) 372-2800
*southside office (414) 645-9022
*central office (414) 278-7722

WAUSAU: Wisconsin Judicare
811 N. First St.
Wausau, WI 54401 (715) 842-1681

Legal Services for Ex-offenders

WAUSAU: Wisconsin Judicare (715) 842-1681
811 N. First St.
Wausau, WI 54401

MILWAUKEE: Legal Action of Wisconsin, Inc.
2535 W. Center St.
Milwaukee, WI 53206 (414) 732-2800

Corrections Legal Services
436 W. Wisconsin Ave., Room 307
Milwaukee, WI 53203 (414) 224-9074

(provides representation to offenders
in civil matters, including some re-
presentation of inmates in suits against
the state)

MADISON: Legal Assistance to Inmates
c/o John Norsetter
U.W. Law School
Madison, WI 53706 (608) 262-3646
(provides legal assistance to inmates of
state correctional facilities and central
state hospitals, including assistance in
obtaining a writ of habeus corpus)

Corrections Legal Services
330 W. Wilson St.
Madison, WI 53703 (608) 257-6555

Reintegration Project
Center for Public Representation, Inc.
520 University Ave.
Madison, WI 53703 (608) 251-4008
(provides representation before state
administrative agencies for group interests
of persons with criminal, mental illness,
alcoholism or drug-abuse records)

Hispano Public Defender Project
1845 South Park St.
Madison, WI 53713 (608) 251-4935

Madison Department of Welfare

Under Chapter 49, Stats, which governs public assistance to persons without sufficient means to obtain necessary commodities and service, the City of Madison has funded the City Welfare Department. STATUTORY PROVISIONS

§49.02(1) states that every city, town and village must furnish relief only to all eligible dependent persons residing in the municipality through the establishment or designation of an agency or office.

§49.02(6) requires such agencies to assist dependent persons to regain self-support through "every proper means."

§49.02(7) requires the relief authorities who have reason to believe that a person receiving relief is violating Chapter 944, Stats. ("Crimes Against Sexual Morality" such as rape, prostitution, obscenity) to promptly notify the appropriate law enforcement officials. Such report is to include the facts relating to the alleged violations.

The Welfare Department views general relief as a temporary measure designed to provide financial assistance until more appropriate service or self-sufficiency can be achieved. Recipients of general relief are persons with insufficient resources to meet basic needs for food, clothing, shelter and medical care. Examples include persons stranded in the city without resources, those awaiting acceptance for a categorical aids program, or those who are temporarily incapacitated because of alcoholism or mental illness, though not requiring institutionalization. ELIGIBILITY

The following is a list of persons ineligible for city relief:

- (1) persons living outside the Madison city limits;
- (2) post-high school students
- (3) persons under the jurisdiction of Child Welfare Department;
- (4) persons under direct control of the Dane County Sheriff or City Police Department;
- (5) wards or inmates of Dane County Home and Hospital or Mendota Mental Health Institute;
- (6) persons with the ability to borrow funds or with responsible relatives (such as parents or children of the applicant);
- (7) persons eligible for other forms of public assistance

The applicant is required to fill out the application form detailing need, resources, and record of residence. This is done with the assistance of the case aide or caseworker of the Welfare Department. The application is reviewed to ensure that the person is eligible. PROCEDURE

Should the applicant be declared ineligible at this point, the case may be reviewed by a supervisor. If agreement is not reached at this level, review by the Director is the next step. The City Welfare Board will then review any dispute over eligibility. Final recourse is available through the courts.

Under §49.02(7), Stats., the Department makes routine reports to the District Attorney, when there is reason to suspect violation of Chapter 944, Stats. It is not clear how the "reason to believe" provision of the statute is interpreted or whether a history of conviction constitutes a reasonable indication of present behavior. The Department stated that the policy does not attempt to exclude the eligible ex-offender.

Dane County Department of Social Services

STATUTORY
PROVISIONS

The Department of Social Services is responsible for administering the Aid to Families with Dependent Children (AFDC) and Medical Assistance(MA) and food stamp programs under Chapter 49 Wis. Stats. History of criminal conviction, mental illness, alcoholism, or drug abuse are neither requested nor considered in determining an applicant's eligibility for AFDC or food stamps. Rather, eligibility is based on financial status and other specific requirements (age, employment, etc.) of the individual aid program. Mental illness, alcoholism, and drug abuse treatment may be relevant when applying for medical assistance.

AFDC (Aid to Families with Dependent Children)

In Wisconsin, families eligible for AFDC are those in which at least one child has been "deprived of support." Such deprivation may have occurred through death, desertion, disability or unemployment of one breadwinning parent. A pregnant woman who has been similarly deprived is also eligible. An eligible family's assets may include not more than \$1500 - in liquid assets, one car, a house (if mortgage payments and upkeep are less than rent elsewhere), and necessary implements for employment.

Once basic eligibility is established, families must meet the AFDC Need Requirement. This requirement is met if the sum of the average area standard of living(Assistance Standard) plus the cost of day care needed because a family member is employed(Work-Related Child Care) exceeds the family's "Budgetable Income"(income minus taxes and work related expenses).

In order to apply for AFDC, a family must apply to the County Social Services office, which interviews the family and visits at the family home to determine eligibility. Eligibility is reviewed at least once every six months. Most adults in AFDC families except those required to care for children under

the age of 6 are required to register for the WIN (Work Incentive) Program in order to maintain eligibility.

Amount of AFDC payment is determined by subtracting part of income earned from a basic sustenance figure determined on an area-by-area basis. Payments are usually made directly to the family, although some counties issue vouchers, which are used in lieu of cash for certain specified purposes. AFDC recipients in Wisconsin are automatically eligible for food stamps, Medicaid (Medical Assistance) and certain county-provided social services.

For further information on AFDC, contact:

The State Division of Family Services
Department of Health and Social Services
1 W. Wilson St.
Madison, WI 53702

or the appropriate County Social Services Office.

Medical Assistance (Medicaid)

Medicaid is a federal and state-funded program administered through county social services offices. Low income persons whose medical expenses are large compared to their incomes are eligible as "medically needy" persons. A person may also qualify as "categorically needy" by falling into certain categories, such as those receiving AFDC or SSI payments and those residing in foster homes or certain state institutions. In Wisconsin, these institutions are Winnebago and Mendota Mental Health Institutions.

Medical Assistance Payments cover costs of hospital, skilled nursing facility, intermediate care facility, dental and eye care; doctors', chiropractic and family planning services; and prescription drugs and physical checkups. Payments are made directly to the medical service provider; the "recipient" is by-passed. Further information is available through County Social Services Offices.

Food Stamps

The Food Stamp Program is a federal program administered by Wisconsin County Social Services departments. The purpose of the program is to "raise the nutritional level of low-income households whose limited purchasing power contributes to hunger and malnutrition of household members." Participants in the program exchange an amount of cash for coupons of greater value, supposedly sufficient to purchase a nutritionally adequate diet.

Food Stamps are distributed to "households." A household is defined as a group of people that:

- a. Shares common cooking facilities, and

- b. usually buys food together, and
- c. lives together as an economic unit. An economic unit is defined as a group of people who share common living expenses from income and resources of everyone in the group, and whose basic needs are provided for without regard to who earned the income or who owns the resources.

While not living in an eligible household, a drug abuser or alcoholic participating in a private, non-profit drug or alcoholic treatment and rehabilitation program -either as a resident or non-resident-can receive food stamps.

I. Eligibility

- a. Public Assistance Households are automatically eligible. A Public Assistance household is one in which every member of the economic unit is receiving AFDC or SSI.
- b. Non-Assistance Households
 - 1) Residency. Applicants must live in the county, for any length of time.
 - 2) Citizenship. Applicants must be U.S. citizens or have legal alien status.
 - 3) Cooking facilities. Applicants must have cooking facilities in their home. Cooking facilities can mean only a cutting board and a knife, if foods are generally eaten fresh by the household.
 - 4) Resources. Resources are generally the things you own: cash, money in checking or savings accounts, bonds, inheritances, boats, snowmobiles, etc. Resources do not include your house, lot, one car, your personal belongings, and household goods. A household may own \$1,5000 worth of resources. If, however, a household is made up of 2 or more people, and one is age 60 or over, the household can own up to \$3,000 of resources.
 - 5) Income. Income includes all compensation received for services performed as an employee, earnings from self-employment, a roomer's payment to household, annuities, pensions, worker's compensation, strike benefits, public relief, etc. (Lump sum payments from Social Security are resources). Income does not include wages of children under 18 who attend school at least half time, infrequent and irregular income (less than \$30 over a 3-month period), money from loans (except educational loans that do not have to be paid back until after college), etc.

II. Food Stamp Budgets

For a non-assistance household it is necessary to prepare a food stamp budget to determine if the household is eligible for the program. For both assistance and non-assistance

households a food stamp budget is necessary to determine how much the household will pay. Households receive amounts of food stamps according to family size.

A food stamp budget is a calculation of monthly food stamp income. The monthly food stamp income is all income received by all household members minus various deductions.

Income includes unearned income and earned income. (See above, "Income".

Deductions from monthly income are taken in the following order: 10% of gross earned income (up to \$30); amounts withheld from gross income (federal and state taxes, F.I.C.A., union dues); medical bills (if more than \$10 per month); monthly cost of tuition and school fees (not books); monthly court-ordered child support or alimony; monthly child care costs necessary in order to work, attend school or participate in job training; disaster expenses that month (i.e., funeral costs).

The last deduction is the excess shelter deduction. "Excess shelter" is determined by comparing the household's actual shelter costs (rent and mortgage, water, sewer, property taxes, electricity, gas, fuel oil, basic telephone service) with a shelter standard. The shelter standard is approximately 40% of the monthly income after the deductions listed above. The excess shelter costs over the shelter standard is subtracted from income. Monthly food stamp income is the amount after all the deductions. The more food stamp income a household has, the more it will pay.

III. Work Registration Requirement

In order to receive food stamps certain members of the household have to register for employment with the Wisconsin State Job Service. All able-bodied persons between 18 and 65 must register except:

- a. mothers who must care for children under 18 or for homebound adults.
- b. persons already working at least 30 hours per week.
- c. students who attend school at least half time.
- d. persons registered in the WIN program.
- e. alcoholics or drug addicts participating in a residential or non-residential treatment center.

In order to maintain eligibility, persons registered for employment must accept the offer of any suitable job. A job is suitable if:

- a. it pays the Federal or State minimum wage, if applicable, or \$1.30 an hour, whichever is higher;
- b. it is not harmful to health and safety, and the registrant is physically and mentally able to perform the work;
- c. it is near or reasonably easy to reach;
- d. it allows remaining in a union, or allows (or even forces) joining a union;
- e. it is not at a site where is a present strike or lockout.

IV. Ineligibility Due to Tax Dependency

Some persons are not eligible for food stamps because their parents will claim them as dependents on their federal income tax return in the current tax year. If their parent's household is not eligible for food stamps, then the tax dependent is not eligible. Tax dependents living separately from their parents are similarly automatically ineligible.

V. Application and Certification

The head of the applicant household or an authorized representative must complete a written application and be interviewed by a county welfare department worker. He or she must verify eligibility factors by providing wage stubs, rent receipts, utility bills, receipts for child care payments, savings passbooks, checkbooks, etc. If found eligible, the household will be certified either for one month, three months, or six months, depending upon whether changes are anticipated in eligibility factors. At the end of the certification period, the household must re-apply.

The eligible household is issued an Authorization to Purchase (ATP) card. The card specifies the amount of food stamps which can be purchased and the purchase price of the food stamps.

VI. Applicant Rights

The food stamp application must be processed within 30 days of the date of application. If the application is denied, the denial must be in writing, must state the reason for denial, and must explain how to appeal the denial decision.

AFDC, Medical Assistance and Food Stamp Appeals

The Civil Rights Act of 1964 provides that there will be no discrimination in any federally funded financial assistance program because of race, religious creed, sex, political beliefs, or national origin. Anyone who feels discriminated against or wrongly denied or improperly allocated aid is entitled to a review hearing by the county agency. A participant can get the aid applied for in most cases until the date of the fair hearing and while the decision is pending. Hearings are conducted in accordance with the regulations contained in the Wis Admn Code PW-PA §20.18.

Supplemental Security Income (SSI) - "Disability"

Supplemental Security Income is a Federal-State program which provides cash payments to the low income elderly, blind, and disabled. For SSI, a person is disabled when he or she has a physical or mental condition which prevents him or her from doing any substantial gainful work. This condition must have lasted (or be expected to last) at least 12 months, or be expected to end in death. Mental illness which qualifies as a disability is that which re-

sults in marked constriction of activities and interests, deterioration in personal habits, and seriously impaired ability to get along with people.

The following assets are allowable for recipients of SSI: a home worth \$25,000 or less, liquid assets of \$1,500 for an individual or \$2,250 for a couple and, in most cases, an automobile. The first \$65 of income earned each month is disregarded in determining amount of SSI payment; for each dollar earned thereafter, the SSI payment is reduced by fifty cents. There are no restrictions on how a person may use his or her SSI payment.

Persons who receive SSI are automatically certified for Medicaid (Medical Assistance). While not automatically qualified, persons who receive SSI may be eligible as well for Food Stamps and certain social services programs.

Further information is available from any Social Security Administration office.

Social Security

The Social Security Administration of the U.S. Department of Health, Education and Welfare has been administering its basic national social insurance program since passage of the original Social Security Act in 1935. Subsequent amendments to the Act have altered and greatly expanded but not essentially changed its original intentions.

STATUTORY
PROVISIONS

All the exact requirements for all the various social security programs are too lengthy to summarize here, but certain provisions, qualifications, etc. of some of them may be of special interest to those with criminal records or histories of mental illness, alcoholism or drug abuse:

ELIGIBILITY

Disability Insurance-Disability, for purposes of entitlement to monthly benefits, the Social Security Administration defines as "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected...to last for a continuous period of not less than 12 months." [Emphasis added] Determination of disability is made on the basis of the medical facts in the individual case and after evaluation of the person's remaining capacity for work, considering his or her age, education and work experience. The applicant must present medical evidence establishing the existence, extent and duration of the disability. Alcoholism has generally been excluded from the definition of disabling conditions, but a recent case in Maryland has ruled that alcoholism may indeed be a proper medical disability under the Social Security Act (See Lewis v. Weinberger, no. 73 736 H (D.Md., Aug. 8, 1975).)

Hospital Insurance (Medicare) - Basic protection provides against the costs not only of in-patient hospital service, but also of related post hospital extended care for individuals eligible for any type of social security, whether retired or not.

For more detailed information about these programs, contact a local Social Security Administration Office.

Worker's Compensation

Worker's Compensation is a joint state-federal program administered in Wisconsin through the State Department of Industry, Labor and Human Relations which compensates individuals for injuries and disabilities caused by work accidents or occupational diseases. Statutory provisions, administrative regulations and court decisions have spelled out the relief available and procedures applicable under worker's compensation claims, and information appropriate to persons with criminal, mental illness, drug or alcohol abuse histories follows:

Where injuries are due to the employee's intoxication, willful misconduct or gross negligence, benefits are usually not paid. Further, where an employee's pre-existing condition (e.g. mental illness, alcoholism, drug dependency) contributes to on-the-job injury or disability, compensation is not available. A statutory provision allowing epileptics to exempt themselves from coverage under Worker's Compensation (often in exchange for hiring) has been repealed.

An employee succeeding in a worker's compensation claim and subsequently confined in a public institution after conviction of a felony or adjudication as insane or incompetent, is compensated under a special statute (§102.195, Stats.). This section provides for payments of the claim to the employee and his or her dependents during institutionalization "in such manner, for such time and in such amount as the department (of Industry, Labor and Human Relations) by order provides."

The law is unclear with respect to compensability of claims based upon mental conditions allegedly caused by work-related accidents or diseases. Statute defines "injury" as "mental or physical harm to an employee caused by accident or disease." [§102.01(c)] "Traumatic neurosis or hysteria caused by an industrial accident" was recognized early as compensable [Johnson v. Industrial Commission of Wisconsin, 5 Wis 2d 584, 93 NW2d 439 (1959).] A court more recently held that an "employer's liability for mental injury is not limited solely to those which are traumatically caused." The court drew up guidelines for determining compensability of a mental injury:

Mental injury nontraumatically caused must have resulted from a situation of greater dimensions than the day to day emotional strain and tension which all employees must experience, and only if the fortuitous event unexpected and unforeseen can be said to be so out of the ordinary from the countless emotional strains and differences that employees encounter daily without serious mental injury will liability under the worker's compensation laws be found. [School Dist. No. 1, Village of Brown Deer v. Department of Industry, Labor and Human Relations, 62 Wis. 2d 370, 215 N.W.2d 373(1974)]

The procedure by which worker's compensation claims are decided is set forth in Wis Admn Code Ind Chap. 80 and Chap. 102, Stats.

For further information, contact:

Worker's Compensation Division
Department of Industry, Labor and Human Relations
201 E. Washington Ave.
Madison, WI 53702

(608) 266-1340

Unemployment Compensation

Under Chapter 108 of the Wisconsin Statutes, many persons who have been employed but now are unemployed may qualify for state unemployment compensation (UC) benefits. To find out whether one qualifies, it is necessary to register for work and to fill out a UC claim form at the nearest Job Service office. The initial requirements for starting a new UC claim are a record of employment during the last 52 weeks and a social security card. The applicant is also expected to state when filing the claim that he or she is physically able to work and is available for work.

To qualify for UC benefits, it is necessary to have been employed for 17 of the last 52 weeks prior to the week in which the benefit claim is filed. (A few cases may qualify with 10-16 weeks in that period. Job Service counselors have details) Further, the 17 weeks of employment must have been at some form of covered employment. For work to be covered, it must be for an employer covered by the state UC Law and at a type of work not specifically excluded by that Law. (Again, Job Service counselors have details.) Generally, an employer is covered if he or she employs one or more workers for at least 20 weeks per calendar year. Employees not covered by regular UC include those working in agriculture, domestic services, nonprofit organizations, and insurance or real estate sales on a commission basis.

However, those in occupations not covered by regular UC may be eligible for Special Unemployment Assistance (SUA), a

temporary program, established by Federal law and administered through each state, to aid workers in areas of high unemployment when a high level of unemployment exists nationally. As a rule, the eligibility requirements for SUA are the same as for regular UC--the major differences between the two programs being only that SUA covers occupations UC does not.

Assuming that the applicant's employment during the past year meets the requirements for activating a UC or SUA benefits claim, he or she receives a "Determination of Benefits" statement setting the dollar amount of the weekly benefit checks and indicating the number of weeks the benefits will continue. The dollar amount is based on the applicant's average weekly wage during past employment; the number of weeks, or the number of weeks worked for each employer.

Anyone exhausting his or her UC or SUA claim may be entitled to receive extended benefits from both the state and federal governments. The state can pay extended benefits for up to 13 weeks; the Federal government, for up to 26 weeks in two 13-week installments.

Any worker receiving some pay, but less than his or her weekly benefit rate, during a calendar week in which he or she did all the work the employer had available may be eligible for partial unemployment benefits. To receive benefits for a week of partial unemployment, it is necessary to file a claim for that week within the next two weeks. If the wages are half or more of the applicant's benefit rate, a half check may be paid; if under half, a full check.

Because of the eligibility requirements for receiving UC or SUA benefits are strictly job-related, there is nothing in them that discriminates against the ex-offender or the person with a history of mental illness, alcoholism or drug abuse. What matters is that the applicant for benefits has been employed as described in the foregoing paragraphs, that he or she is not unable to work and available for work, and that the reason for unemployment is not misconduct against the former employer.

HOUSING

Wisconsin state law prohibits discrimination in housing (including mobile homes) because of race, color, religion, national origin, ancestry, sex, physical condition or developmental disability (§101.22, Stats.). There may be no discrimination in sale; lease; financing or contract to construct housing; refusal to permit inspection or charging a different price or rental; or advertising the sale, rental or financing of housing which indicates any discrimination in housing.

Housing and the Ex-offender

HOUSING

AND THE

EX-OFFENDER

However, this law has no specific provisions prohibiting discrimination against persons with criminal records. Thus, if a person appears to have been discriminated against because of criminal record, and if the housing is located within the city of Madison, the person should file a complaint with the Madison Equal Opportunities Commission (EOC). (Persons in other areas should check local ordinances to see if similar laws have been enacted locally.)

The Madison Equal Opportunities Ordinances (Section 3.23 of the Madison General Ordinances) prohibits discrimination in housing because of sex, race, religion, class, color, national origin or ancestry, age, handicap, marital status, physical characteristics, sexual orientation, political beliefs or the fact of being a student. Persons who believe they have been discriminated against because of their arrest and conviction record may file written complaints based on class or handicap discrimination with the Madison EOC. If investigation, conciliation and hearing indicate that the complaint should be pursued, the case will be prosecuted by the City Attorney. The discriminator may be fined up to \$500 for each offense. It also appears that the EOC could order a person to be given housing.

In an instance of discrimination because of some prohibited factor other than criminal record, such as race, the person may wish to file complaints under the Wisconsin Statute with the equal rights division of the Department of Industry, Labor and Human Relations or under the federal statute under the federal Department of Housing and Urban Development. For more information about the Wisconsin equal rights division and the Madison EOC, see the Employment Discrimination Section.

Dane County Housing Services

The Special Services Unit of the Dane County Department of Social Services operates a program directed toward meeting its clients' need for housing. Referrals for housing services available through the Unit should be made directly to the person responsible:

Security Deposit Program : Shirley Baxa
Rm. 253, Ext. 268

Tenant-Landlord Problems, Rental Assistance
and General Housing Concerns: Barbara Lessner
Rm. 243, Ext. 264

House Purchase Program, Home Ownership Problems,
Home Repair Programs, and General Housing Con-
cerns: Linda Guerin
Rm. 243, Ext. 272

Other activities of the Special Services Unit include helping public assistance recipients to:

- (1) locate adequate low-cost rental units (Rental Assistance Program),
- (2) resolve difficulties with landlords (Tenant-Landlord Program),
- (3) make security deposits (Security Deposit Program),
- (4) undertake needed home repairs by providing an interest-free second mortgage (Home Repair-Second Mortgage Program), and
- (5) receive improved treatment under the law (Housing Advocacy Program).

For information about any of these programs, call the Unit at 249-5351.

Federal Law

Federal statutory law prohibits discrimination in housing practices on the basis of race, color, religion or national origin (42 USC §§3604, 3605, 3606). While none of these bases are directly related to criminal records or histories of mental illness, drug or alcohol abuse, arguments may be made under the "disparate impact" theory. (See discussion on Employment section.)

Complaints may be filed with: Fair Housing Division
Department of Housing & Urban
Development
Washington D.C. 20410

(See complaint forms following.)



MADISON EQUAL OPPORTUNITIES COMMISSION
351 West Wilson Street
Madison, Wisconsin 53703
608 266-4910

FOR OFFICE USE
CASE NO. _____

Complaint of Discrimination

(Please print or type:) (Ms.)

1 PERSON MAKING COMPLAINT (Mr.) _____

Street Address _____

City _____ Zip Code _____ Phone No. _____

2 I WISH TO COMPLAIN AGAINST _____

Street Address _____

City _____ Zip Code _____ Phone No. _____

(Use a separate form for each company, union, employment agency, or place of public accommodation, if more than one is complained against.)

3 This Complaint Concerns: Housing Employment Public Accommodations
 Credit City Facilities

4 WHAT DO YOU BELIEVE WAS THE REASON FOR DISCRIMINATORY TREATMENT? (Check one or more)

Race/Color National Origin/Ancestry Sex Political Beliefs
 Religion Physical Appearance Age Marital Status
 Handicap Sexual Orientation Student Economic Status
 Class (specify) _____

5 EXPLAIN WHAT UNFAIR THING WAS DONE. Include the date or dates of all incidents wherever possible. A short statement in your own words is enough, but you may use additional sheets of paper if needed. If so, be sure to sign and date each additional sheet.

(Your Signature)

State of Wisconsin)

County of _____)

I swear or affirm that I have read the above complaint and that it is true to the best of my knowledge, information and belief.

Subscribed and sworn to before me this _____ day of _____, 197____.
THIS COMPLAINT MUST BE SWORN TO BEFORE A NOTARY PUBLIC

(Seal and Signature of Notary Public)

WISCONSIN DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS
EQUAL RIGHTS DIVISION

CHARGE OF DISCRIMINATION

For office use only:

Case # _____
Investigator _____
Date Assigned _____
Filed With Federal Agency
 Yes No
Date Filed _____
UC-ID # _____
Other Notes _____

M F 1 2 3 4 5

1. COMPLAINANT	YOUR NAME (indicate Mr. or Ms.) _____
SOCIAL SECURITY NUMBER _____	STREET ADDRESS _____
City, State and Zip Code _____	Telephone (Include area code) Home _____ Bus _____

2. RESPONDENT	The employer, labor organization, employment agency, landlord, manager or agent against whom you are filing this complaint.
NAME _____	TELEPHONE NO. (Include Area Code) _____
STREET ADDRESS _____	CITY, STATE AND ZIP CODE _____

3. CO-RESPONDENT (ANY OTHER PERSONS) AGAINST WHOM YOU WISH TO FILE THIS COMPLAINT:	
NAME _____	TELEPHONE NO. (Include area code) _____
STREET ADDRESS _____	CITY, STATE AND ZIP CODE _____
PERSON WHO DISCRIMINATED AGAINST YOU IF OTHER THAN PERSON LISTED IN 2 OR 3 ABOVE:	
NAME _____	
STREET ADDRESS _____	CITY, STATE AND ZIP CODE _____
POSITION OR TITLE _____	TELEPHONE NO. (Include area code) _____
PERSON WHO ALWAYS KNOWS WHERE YOU CAN BE REACHED	
NAME _____	TELEPHONE NO. (Include area code) _____
STREET ADDRESS _____	CITY, STATE AND ZIP CODE _____

CAUSE OF DISCRIMINATION (Check Appropriate Box)

EMPLOYMENT:	REASON	IN REFERENCE TO:
<input type="checkbox"/> National Origin or Ancestry	<input type="checkbox"/> Recruitment	<input type="checkbox"/> Hire
<input type="checkbox"/> Race	<input type="checkbox"/> Promotion	<input type="checkbox"/> Wages
<input type="checkbox"/> Creed	<input type="checkbox"/> Age	<input type="checkbox"/> Condition of Employment
<input type="checkbox"/> Color	<input type="checkbox"/> Handicap	<input type="checkbox"/> Discharge
<input type="checkbox"/> Age	<input type="checkbox"/> Sex	
<input type="checkbox"/> Handicap		
<input type="checkbox"/> Sex		
HOUSING:	REASON	IN REFERENCE TO:
<input type="checkbox"/> National Origin or Ancestry	<input type="checkbox"/> Rent	<input type="checkbox"/> Sale
<input type="checkbox"/> Race	<input type="checkbox"/> Finance	<input type="checkbox"/> Contract to Construct
<input type="checkbox"/> Creed	<input type="checkbox"/> Color	
<input type="checkbox"/> Color		

If a Federal Agency has jurisdiction over your complaint, would you like this complaint filed with the appropriate Federal Agency?
 YES NO

Please explain the details of the discrimination. (Be specific - how did discrimination take place? Why do you believe it was because of your national origin or ancestry, race, creed, color, age, handicap, or sex? How were others treated differently? Did discrimination affect other than yourself?)

Use back side and extra sheets if necessary

IF MORE SPECIFIC INFORMATION IS NEEDED REGARDING THESE LAWS, CONTACT:

WISCONSIN DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS

EQUAL RIGHTS DIVISION

MADISON OFFICE: 201 E. Washington Avenue
6-3145 Room 178
Madison 53702

MILWAUKEE OFFICE: 819 N. 6th Street
(414) 224-4384 Room 160
Milwaukee 53203

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

_____, being duly sworn on oath, deposes and says that (s)he is the complainant herein; that (s)he has read the foregoing complaint and knows the contents thereof; that the same is true to his (her) own knowledge except as to matters therein stated on information and belief; and that as such matters (s)he believes the same to be true.

Subscribed and sworn to before me _____ Complainant
this _____ day of _____, 19 _____

Notary Public, State of Wisconsin
My Commission (is permanent) (expires) _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT HOUSING DISCRIMINATION COMPLAINT		FOR HUD USE ONLY
<p>INSTRUCTIONS: Read this form and the instructions on reverse carefully before completing. All questions should be answered. However, if you do not know the answer or if a question is not applicable, leave the question unanswered and fill out as much of the form as you can. Your complaint should be signed and dated and, if possible, notarized. Where more than one individual or organization is filing the same complaint, each additional individual or organization should complete boxes 1 and 7 of a separate complaint form and attach it to the original form, but the other boxes need not be completed if the information is the same as in the original. Complaints may be (1) mailed to the Regional Office covering the State where the complaint arose (<i>see list at end of form</i>), or to an Area Office, or to Fair Housing, HUD, Washington, D.C. 20410, or (2) filed or presented in person at HUD in Washington, D.C. or at any HUD Regional or Area Office.</p>		Number _____
		Date _____
		Filing Date _____
		STATE OR LOCAL
		FEDERAL COVERAGE
PLEASE TYPE OR PRINT		PRIOR ACTION
1. Name of aggrieved person or organization (<i>Last Name - First Name - Middle Initial</i>) (<i>Mr. Mrs. Miss</i>)		PRELIMINARY DETERMINATION
Street Address, City, County, State and ZIP Code		Telephone Number
2. Whom is this complaint against?		
Name (<i>Last Name - First Name - Middle Initial</i>)	Street Address, City, County, State and ZIP Code	Telephone Number
Is the party named above a: (<i>Check applicable box or boxes</i>)		
<input type="checkbox"/> Builder <input type="checkbox"/> Owner <input type="checkbox"/> Broker <input type="checkbox"/> Salesman <input type="checkbox"/> Supt. or Manager <input type="checkbox"/> Bank or Other Lender <input type="checkbox"/> Other		
If you have named an individual above and you know that he was acting for a company in this case, check this box <input type="checkbox"/> and write the name and address (<i>Street, City, County, State and ZIP Code</i>) of the company, in this space.		
Name and identify Others (<i>if any</i>) you believe violated the law in this case		
3. What did the person you are complaining against do? (<i>Check applicable box or boxes</i>)	4. Do you believe there was discrimination because of?	5. What kind of house or property was involved?
<input type="checkbox"/> Refuse to rent, sell, or deal with you <input type="checkbox"/> Discriminate in the conditions or terms of sale, rental, occupancy, or in services or facilities <input type="checkbox"/> Advertise in a discriminatory way <input type="checkbox"/> Falsely deny housing was available <input type="checkbox"/> Engage in blockbusting <input type="checkbox"/> Discriminate in financing <input type="checkbox"/> Discriminate in broker's services <input type="checkbox"/> Other (<i>Explain in box 6 below</i>)	<input type="checkbox"/> Race or Color <input type="checkbox"/> Religion <input type="checkbox"/> National Origin	<input type="checkbox"/> Single family house <input type="checkbox"/> A house or building for 2, 3, or 4 families <input type="checkbox"/> A building for 5 families or more <input type="checkbox"/> Other, including vacant land held for residential use (<i>Explain in box 6 below</i>)
When did act or acts occur? (<i>Be sure to include most recent date, if several dates are involved</i>)		Did the owner live there? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
		Is the house or property (<i>Check applicable box</i>) <input type="checkbox"/> Being sold <input type="checkbox"/> Being rented
		What is the address of the house or property? Street _____ City _____ County _____ State _____
6. Summarize in your own words what happened. Use this space for a brief and concise statement of the facts. Additional details of what happened may be provided on an attachment.		
NOTE: HUD will furnish copy of complaint to the person or organization against whom complaint is made.		
7. I swear or affirm that I have read this complaint (<i>including any attachments</i>) and that it is true to the best of my knowledge, information, and belief.		
_____	_____	_____
(<i>Date</i>)		(<i>Sign your name</i>)
8. NOTARIZATION:		
Subscribed and sworn to before me this	day of	197__
_____	_____	_____
(<i>Name</i>)		(<i>Title</i>)

IF IT IS DIFFICULT FOR YOU TO GET A NOTARY PUBLIC TO SIGN THIS, SIGN YOUR OWN NAME AND MAIL IT WITHOUT NOTARIZATION. HUD WILL HELP YOU GET YOUR COMPLAINT SWORN TO.

HOUSING DISCRIMINATION COMPLAINT

WHAT DOES THE FEDERAL FAIR HOUSING LAW PROVIDE?

Title VIII (*Fair Housing*) of the Civil Rights Act of 1968 declares that it is national policy to provide fair housing throughout the United States and prohibits seven specific kinds of discriminatory acts regarding housing if the discrimination is based on race, color, religion, or national origin.

1. Refusal to sell or rent or otherwise deal with a person.
2. Discriminating in the conditions or terms of sale, rental, or occupancy.
3. Falsely denying housing is available.
4. Discriminatory advertising.
5. Blockbusting—causing someone to sell or rent by telling him that members of a minority group are moving into the area.
6. Discrimination in financing housing by a bank, savings and loan association, or other business.
7. Denial of membership or participation in brokerage, multiple listing, or other real estate services.

WHAT DOES THE LAW EXEMPT?

The first three acts listed above do not apply (1) to any single-family house where the owner in certain circumstances does not seek to rent or sell it through the use of a broker or through discriminatory advertising, nor (2) to units in houses for two to four families if the owner lives in one of the units.

NOTE: Coercion, threats, or other interference with an individual's rights under the law, including the right to file a complaint, are also prohibited.

WHAT CAN YOU DO ABOUT VIOLATIONS OF THE LAW?

Remember, Title VIII applies to discrimination based on race, color, religion, or national origin. If you believe you have been or are about to be, discriminated against or otherwise harmed by the kinds of discriminatory acts which are prohibited by the law, you have a right, within 180 days after the discrimination occurred to:

1. Complain to the Secretary by filing this form by mail or in person. HUD will investigate and if it finds the complaint is covered by the law and is justified, it will try to end the discrimination by conciliation. In cases where State or local laws give the same rights as Title VIII, HUD must first ask the State or local agency to try to resolve the problem.
2. Go directly to Court even if you have not filed a complaint with the Secretary. The Court may sometimes be able to give quicker, more effective, relief than conciliation can provide and may also, in certain cases, appoint an attorney for you (*without cost*).

You Should Also Report All Information about violations of Title VIII to HUD even though you don't intend to complain or go to court yourself.

ADDITIONAL DETAILS

If you wish to explain in detail in an attachment what happened, you should consider the following:

1. If you feel that others were treated differently from you, please explain the facts and circumstances.
2. If there were witnesses or others who know what happened, give their names, addresses, and telephone numbers.
3. If you have made this complaint to other government agencies or to the courts, state when and where and explain what happened.

You can obtain assistance (a) in learning about Title VIII, or (b) in filing a complaint at the HUD Regional Offices listed below:

U.S. Department of Housing and Urban Development
Assistant Secretary for Equal Opportunity
 Washington, D.C. 20410

Region I - Boston (*Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont*)

HUD—Equal Opportunity
 John F. Kennedy Federal Building
 Boston, Massachusetts 02203

Region II - New York (*New Jersey, New York, Puerto Rico, Virgin Islands*)

HUD—Equal Opportunity
 26 Federal Plaza
 New York, New York 10007

Region III - Philadelphia (*Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia*)

HUD—Equal Opportunity
 Curtis Building
 6th and Walnut Streets
 Philadelphia, Pennsylvania 19106

Region IV - Atlanta (*Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee*)

HUD—Equal Opportunity
 Peachtree-Seventh Building
 50 Seventh Street, N.E.
 Atlanta, Georgia 30323

Region V - Chicago (*Illinois, Indiana, Michigan, Ohio, Wisconsin*)

HUD—Equal Opportunity
 300 South Wacker Drive
 Chicago, Illinois 60606

Region VI - Fort Worth (*Arkansas, Louisiana, New Mexico, Oklahoma, Texas*)

HUD—Equal Opportunity
 Federal Building
 819 Taylor Street
 Fort Worth, Texas 76102

Region VII - Kansas City (*Iowa, Kansas, Missouri, Nebraska*)

HUD—Equal Opportunity
 Federal Office Building, Room 300
 911 Walnut Street
 Kansas City, Missouri 64106

Region VIII - (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

HUD—Equal Opportunity
 Federal Building
 1961 Stout Street
 Denver, Colorado 80202

Region IX - San Francisco (*Arizona, California, Hawaii, Nevada, Guam, American Samoa*)

HUD—Equal Opportunity
 450 Golden Gate Avenue
 Post Office Box 36003
 San Francisco, California 94101

Region X - Seattle (*Alaska, Idaho, Oregon, Washington*)

HUD—Equal Opportunity
 Arcade Plaza Building
 1321 Second Avenue
 Seattle, Washington 98101

HUD-903 (2-72)

INSURANCE

Insurance in General

When assisting an individual who has an insurance-related problem, keep a number of basic considerations in mind:

INITIAL
CONSIDERATIONS

1. What is the nature of the risk for which the individual needs insurance?

Does he or she want to insure against: loss of or damage to some possession, loss of income, or possible claims for damages made by others against him or her, i.e., liability insurance? For what period of time is the protection needed and will the amount of protection required change over with time?

2. What type of insurance policy(ies) will cover this risk?

The answer to this question will require some knowledge of the different types of insurance which are available. The second part of this section will give a brief outline of the different types of insurance an individual might want to purchase. Discussing an individual's needs with insurance agents can also provide suggestions as to the type of policy required.

3. What type of problem might the individual wanting insurance have in obtaining it?

Does he or she have a criminal record or a history of mental illness, alcoholism or drug abuse; a bad driving record; or live in a high risk neighborhood?

All these factors and more must be taken into consideration in order to give the person an indication of how expensive and/or difficult it may be to obtain insurance. They are also helpful in determining the amount of coverage that should be purchased. However, consultation with an insurance agent might be most helpful with respect to the amount of coverage necessary.

Life Insurance

There are three basic types of life insurance: term insurance, LIFE whole life insurance and endowment insurance. Term insurance is the least expensive, but provides death protection for INSURANCE a limited time period only. Protection can be renewed on a term basis until around age 65. The cost of term insurance increases as one gets older because the probability of death is greater. There is not always a requirement that a company provide renewal when one's policy expires.

Whole life insurance provides death protection with a savings element. A single contract can be purchased to cover the lifetime of the individual. Therefore, whole life insurance is a good way of providing long-term coverage. The premiums can be kept at a level amount over the life of the contract or they can be graded so as to be lower in the early years of the contract and larger in the later years (perhaps as the individual's income increases).

There is a cash value built up under whole life insurance which may be borrowed at a specified interest rate by the insured at any time. However, the amount of the cash value plus interest is deducted from the face amount if it has not been paid back when the insured dies.

Whole life insurance has limited-payment contracts or straight life contracts. Under limited-payment contracts death protection is for the lifetime of the insured, but premium payments are made for a specified number of years or until the insured reaches a specified age. Straight life contracts require premium payments until the death of the policy owner. Limited payment policies can be coordinated with the retirement so that the premium payments stop at the same time that the individual's income is reduced.

The third type of insurance is an endowment policy. A pure endowment policy would pay the face amount only if the insured is living at a specified age or at the end of a specified period. However, most endowment insurance policies promise to pay the face amount at the end of a specified age and if the insured dies before that time. There is a considerable savings element in endowment insurance. It is more expensive than whole life and term insurance, since payment is not solely dependent upon the death of the insured. As a fixed savings plan providing premature death protection, endowment insurance is an alternative.

ANNUITIES

Annuities are usually classified with life insurance, but do not provide any benefits at the time of death. The premiums paid under an annuity contract purchase a series of benefit payments to begin at a specified age and end in the event of death. Some annuities guarantee a minimum number of payments and, when the original purchaser dies, allow him to designate a beneficiary to receive the additional payments up to a minimum. However, this is more expensive than a pure annuity which only makes its periodic payments until the death of the annuitant. Annuities may be recommended to a person who is looking for a fixed savings plan which provides income after his retirement. However, they are relatively inexpensive and a person who

is considering the purchase of an annuity should be made fully aware of the fact that it does not provide any additional payments in the event of death.

Persons with a history of mental illness, alcoholism, drug abuse or with a criminal record may encounter difficulties in obtaining life insurance. Some companies will not insure these individuals, other companies will insure them only at substandard rates; and both types of companies may insure them only after a specified number of years.

When purchasing life insurance, check with several companies and agents. The underwriting practices of one company may differ substantially from those of another. If insurance is still unobtainable at reasonable rates, file a complaint with the Office of the Commissioner of Insurance. (For that address, see Complaint Procedure at the end of this subsection.)

Health Insurance

There are two basic types of health insurance policies. The first type is Hospital/Medical/Surgical coverage. This is basic health insurance coverage which pays for the hospital room, pays doctors and surgeons for their services during the hospitalization and may pay for other health care services depending upon the specific policy. The coverage may pay the entire cost or only part of it, depending on the policy.

HEALTH
INSURANCE

The second type of health insurance is major medical coverage. It is designed to cover the insured against serious illnesses and/or injuries - usually without regard to their cause. This type of insurance usually has a deductible and then pays a specific percentage (75-80%) of expenses occurred in excess of the deductible. In A Shopper's Guide to Health Insurance by Herbert S. Denenberg are listed the following 15 questions to ask about a health insurance policy:

1. Is the company's loss ratio over 50%? (The higher the better.)
2. Does the policy cover both illnesses and accidents? (It should.)
3. Does it cover all or most accidents and illnesses that may put you in the hospital? (The more it covers, the better.)
4. Does the policy offer service benefits (full coverage) or does it offer benefits on an indemnity basis (up to specified dollar amounts only)? (Service benefits are the most advantageous.)

5. If it provides indemnity benefits, do the benefits cover at least a major portion of the daily hospital costs and surgeon's fees in your area? (The higher the better.)
6. Is there a waiting period, for instance 30 days, during which new illnesses will not be covered? Is there a longer waiting period, for instance 6 months, during which coverage for specified illnesses or diseases is likewise excluded? (The shorter the waiting period and the less it excludes, the better.)
7. Is there an exclusion against coverage for pre-existing conditions? Is it longer than one year? (More than one year is too long.)
8. Are there exclusionary riders limiting your coverage in important respects? (There shouldn't be, except in unusual cases.)
9. Does the company receive one of the 2 highest ratings for financial stability from Best's Insurance Reports? (It should.)
10. Does the company offer fair, efficient, and courteous claim service? (It should.)
11. If you are applying for family coverage, does the policy provide automatic coverage for infants from the date of birth? (It should.)
12. If you are applying for family coverage, is there a waiting period for maternity coverage? Is it longer than 8 or 9 months? Are the benefits adequate to cover the costs of pregnancy and delivery in your area? (If you need maternity coverage, make sure you have it.)
13. Can the company cancel your policy? If so, when and under what circumstances?
14. Can the company raise your premiums? If so, when and under what circumstances?
15. Are you buying a mail-order policy? (Beware of deceptive advertising.)

There are definite advantages to group health insurance coverage. It is usually low-cost and more comprehensive. It is advisable to purchase group health insurance through an employer or organization when it is available. However, not all group health insurance policies are bargains, and they should be evaluated through the use of the 15 questions.

When shopping for individual policies, start with Blue Cross and Blue Shield. This coverage is usually the best available, but it may be prohibitively expensive. If this is the case, shop around among commercial insurers to find the policy which best meets your needs at the lowest cost. It is advisable to be cautious of mail-order health insurers. The type of coverage offered through the mail is often times less than desirable.

Health Maintenance Organizations (HMO's) are the latest development in health insurance. HMO's are groups of doctors who have joined together to provide health care. They operate on a prepaid basis and provide for almost all your health care needs. They are also a good preventative measure, since the doctors are paid in advance and have an incentive to keep participants healthy. At the present time there are not too many HMO's in existence and coverage can be relatively expensive.

Information of the advisability of various insurance plans may be found in the Wisconsin Insurance Commissioner's Consumer Guides, which may be obtained by contacting:

Office of the Commissioner of Insurance
201 E. Washington Ave. - 4th Floor
Madison, WI 53702

(608) 266-3385

HEALTH
INSURANCE
FOR THOSE
WITH A
HISTORY
OF MENTAL
ILLNESS

Individuals with a history of mental illness, especially if they received treatment in a psychiatric hospital, may face discrimination in obtaining health insurance. Many companies will refuse to offer health insurance to such individuals even if benefits for future psychiatric treatment are excluded. They will also refuse insurance coverage until 5 to 10 years after the individual's last psychiatric hospitalization, or in some cases, treatment of any kind. The decision to offer insurance seems to depend heavily on what is contained in reports submitted by the individual's doctors to the insurance company.

If an agent discourages an individual from applying for any kind of insurance because of a history of psychiatric treatment, call one of the underwriters of the company to get a better idea of the company's policy toward such coverage. Often the underwriters are more receptive to the submission of an application than agents are. If one is denied coverage or made to pay higher than usual rates, and if one feels discriminated against because of a psychiatric history, file a complaint with the Office of the Commissioner of Insurance.

If an individual is granted coverage under a group accident and sickness policy by a commercial insurance company or by Blue Cross, Blue Shield, W.P.S., that policy by law must include benefits for the treatment of mental illness, alcoholism or drug abuse. [See §§ 204.32(2)(d) and 200.26(6), Stats. This provision does not hold for individual policies.]

AUTOMOBILE
INSURANCE

In shopping for automobile insurance first determine what type(s) of insurance coverage and what amount the individual should purchase. It is highly recommended that any individual driving an automobile purchase liability coverage. The minimum amount of automobile liability insurance sold in Wisconsin is \$30,000 bodily injury coverage per occurrence, \$15,000 bodily injury coverage per individual, and \$5,000 property damage per occurrence. Uninsured motorist coverage is a mandatory part of automobile liability insurance policies in Wisconsin. The amount of uninsured motorist coverage is \$15,000 bodily injury coverage per individual and \$30,000 bodily injury coverage per occurrence. Medical payment coverage of \$1,000 is also included in Wisconsin's automobile liability insurance policies; however, this coverage is not mandatory and may be refused by the insured.

Other types of automobile insurance are collision and comprehensive coverage. Collision insurance covers the insured's automobile for damages sustained in an accident. The amount of coverage is dependent upon the automobile being insured. Comprehensive insurance covers the insured's automobile for damages sustained by a number of perils named in the policy. It is up to the insured to determine whether or not to purchase collision and comprehensive coverage.

If the car being insured is old and of little value, it is probably best not to purchase collision and comprehensive coverage since the premiums are high for the amount of coverage being offered.

Recently, the State Commissioner of Insurance adopted regulation Ins 6.54, which prohibits certain types of discrimination against civilly disabled persons seeking auto insurance. The regulation prohibits refusal, cancellation or denial of auto insurance coverage or placement in a risk classification on the basis of past criminal record, history of mental disability or "moral character", or any combination of these histories. Insurance companies may, however, assign such persons to risk classifications if their histories reflect actual differences in past or expected losses to the insurer, and if the insurer has filed information justifying such classification with the Insurance Commission. The regulation also specifically permits refusal to insure persons convicted of offenses which are "directly related to the risk to be insured."

Insurers or agents who violate these provisions are liable to be ordered to comply, and, failing such compliance, are liable to forfeiture, revocation, suspension or limitation of licenses to conduct insurance businesses in Wisconsin.

If automobile insurance cannot be obtained within the private market, persons with criminal conviction records or histories of mental illness, alcoholism or drug abuse are eligible for automobile insurance under the Wisconsin State Auto Insurance Plan.

PROPERTY
INSURANCE

The Standard Fire Policy has been in existence since 1943. It provides basic coverage for physical damage to property. Persons advising others on the purchase of property insurance should familiarize themselves with the Standard Fire Policy. Property excluded, the definition of "fire", perils excluded, co-insurance requirements and procedures to be followed by the insured in case of loss are some of the policy provisions which should be relayed to persons planning to purchase property insurance.

A more comprehensive type of property insurance is afforded by the Homeowner's Policy. Homeowner's insurance combines both property and personal liability coverage. There are four types of Homeowner's coverage available. These are:

1. Homeowner's Standard Form - Named peril coverage on buildings and personal property.
2. Homeowner's Broad Form - Broader named peril coverage on buildings and personal property.
3. Homeowner's Broad Form with Special Building Endorsement - "All risk" coverage on buildings, broad named perils coverage on personal property.
4. Homeowner's Comprehensive Form - "All Risk" coverage on buildings and personal property.

The eligibility requirements for Homeowner's contracts are:

1. The individual must own the described dwelling.
2. The individual must occupy it as a permanent (not seasonal) residence.
3. The dwelling must be used exclusively for residential purposes (but professional office use is permitted).
4. Not more than one additional family nor more than two roomers may have residence in the dwelling.
5. The insured must not engage in farming as a principle occupation.

The new regulations prohibiting discrimination in auto insurance are also applicable to property insurance. (See above.)

There are also tenant's forms of Homeowner's insurance coverage. The two forms available are Tenants Broad Form (a broad named peril coverage on personal property) and Tenants C (an "all risk" coverage on personal property).

It is advisable that any person shopping for property insurance contact several agents and companies for rate quotations. Rates vary considerably among companies.

Complaint Procedure

If an individual feels that he or she has been treated unfairly by an insurance company and/or agent, he or she should either write to or call the Office of the Commissioner of Insurance of Wisconsin. The address is:

201 E. Washington Ave.
Madison, WI 53702

and the phone number is (608) 266-3585.

The essential information which should accompany any complaint is the name of the insurance company, the policy number, the name of the insurance agent, and the specific nature of the complaint. If the problem has to do with a liability claim, the name of the other party involved, the other party's insurance company's name and insurance policy number, and the date of loss should all be stated.



State of Wisconsin \ OFFICE OF THE COMMISSIONER OF INSURANCE

S. C. DUROSE
COMMISSIONER

Patrick J. Lucey
Governor

201 EAST WASHINGTON AVENUE
MADISON, WISCONSIN 53702

Thank you for your recent communication relative to your insurance problem. In order for us to be of maximum assistance to you, please complete and sign this form. Attach copies of any correspondence or other documents you feel pertain to this matter. Do not send any policy of insurance unless requested to do so.

- 1. Insurance company involved: _____

- 2. Insured of that company: _____

- 3. Who incurred the loss: _____

- 4. Date of Loss: _____ 5. Policy # _____ 6. Claim # _____
- 7. Name of agent: _____

State the specific nature of your problem. Continue on reverse side if necessary. Place your signature in the space below:

 (Date) (County) (Phone) (Signature)

 (Address) (City) (State) (Zip)

CREDIT

Obtaining Credit. According to persons who counsel consumers of credit, five major factors enter into a creditor's decision whether or not to extend credit to a particular individual: length of employment, length of residence, income, debt structure and credit rating. The creditor may, however, wish to explore less straightforward, more amorphous indices, such as whether the prospective borrower is a "reliable person, not only able but willing to meet...responsibilities and promises." ("Establishing Good Credit," National Foundation for Consumer Credit, Inc.) In this connection, questions touching upon an individual's background may be asked, and a history of criminal conviction, mental illness, drug or alcohol abuse may be uncovered.

Information not forthcoming from the prospective borrower can be obtained through a consumer reporting agency. Such agencies are prohibited only from releasing criminal record information which is more than seven years old. [15 USC §1681c(a)(5)] They may release other information on personal histories they have access to.

No law prevents creditors from refusing credit based upon any such personal history. In fact, until recently the only bases which were deemed discriminatory were sex and marital status. Chapter 275, Laws of 1975, extended protection against credit discrimination to physically handicapped and developmentally disabled persons. The new law provides, however, that it is not discriminatory to refuse to extend credit to any person whom the creditor has evidence to believe lacks the legal capacity to contract therefor. [§138.20(1), Stats.]

The Wisconsin Consumer Act calls for administrative regulations and court interpretations defining "unconscionable" consumer credit transactions. Such transactions may be declared void, limited so as not to be unconscionable or remedied through recovery of damages by the credit customer.

Among the factors considered by courts in determining whether a consumer credit transaction is unconscionable is whether the creditor takes

advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors." [§425.107(3)(d), Stats.]

Administrative regulations written under the statutory authorization to protect against unconscionable conduct [426.108, Stats.] require creditors to notify denied customers of the reasons for their denial and to keep records on denials and

reasons therefor. [Wis Admn Code Bkg §80.85(4)]

Prohibited and Required Credit Practices. The Wisconsin Consumer Act controls the creditor-customer relationship through prohibiting and requiring certain practices. The creditor must disclose the credit terms of the transaction at the time of contracting. All blank spaces in the contract must be filled in.

Finance charges are limited to 18% per year on the first \$500.00 and 12% per year on any amount in excess. Licensed loan companies may charge slightly higher rates in some circumstances.

The customer has a right to cancel within three days any transaction "initiated and consummated" away from the merchant's regular place of business. It is also the customer's right to prepay the amount owed at any time without penalty, except on certain real estate mortgage loans.

The creditor may not accelerate loan maturity or take any other action without customer default. Before any action is taken pursuant to default, the customer must be given 15 days notice of his or her right to cure. If repossession is unavoidable, the customer's necessary property cannot be taken. In no event may property be repossessed prior to court proceedings. (See Chaps. 421-427, Stats.)

Credit Crises. If timely payment of an installment becomes impossible, credit counselors agree that in no event should the borrower try to duck collection calls. Rather, they suggest a call to the credit manager, merchant or lender to explain the reasons for the impending default and explore temporary revisions of the credit contract. Apparently, under such circumstances, complete frankness is the best way to protect future good credit.

Should no alternative payment arrangement be acceptable to both parties, or in case of continuing inability to meet payments regularly, the customer should consult with a financial counseling service:

Madison Consumer Credit Counseling Service
315 W. Gorham St.
Madison, WI 53703

(608) 251-2070

Consumer Budget Counseling Service
1206 W. Mitchell
Milwaukee, WI

(414) 643-4477

Financial and Debt Counseling Service
2218 North 3rd St.
Milwaukee, WI 53202

(414) 372-5180

Financial Counseling Services of County Departments
of Social Services

If the customer believes that the creditor has in any way
violated the Wisconsin Consumer Act, or for further informa-
tion on the Act, contact:

Division of Consumer Credit
Office of the Commissioner of Banking
30 W. Mifflin St.
Madison, WI 53702

(608) 266-1621

Office of Consumer Protection
Department of Justice
State Capitol
Madison, WI 53702

(608) 266-1852

CITIZENSHIP AND ALIENAGE

Loss of Citizenship and Civil Rights

Very often, loss of civil or political rights and loss of citizenship are mistakenly regarded as synonymous. Loss of citizenship is a drastic federal remedy, which may result from a conviction of a charge of treason or of attempting by force to overthrow or bear arms against the United States.

Loss of civil rights ordinarily refers to the deprivation of rights that accompany citizenship, primarily the right to participate in government. These rights may be lost as the consequence of a felony conviction. State laws (not federal) determine how such rights are lost and how they may be restored.

Whether a position is a "public office" is determined by

(1) the powers exercised,	HOLDING A
(2) the permanence or continuity of the position,	STATE
(3) the independence of control over the power,	PUBLIC
(4) the nature of the oath required by the position.	OFFICE

(See discussion in Employment section under "State and Local Public Employment")

Examples of a public office range from legislator and governor to notary public and police officer. (Note: civil service employment is not considered a public office. See Public Employment.)

According to the Wisconsin Constitution, an ex-felon cannot hold public office:

...no person convicted of any infamous crime* in any court in the United States...shall be eligible to any office of trust, profit, or honor in this state. [Article 13 S3]

The only remedy which restores an ex-felon's eligibility to hold public office is a pardon by the Governor. See section on Pardons.

Unlike an adult felony conviction, a "youthful offender disposition shall not disqualify a person from...holding public office after discharge from probation or discharge from commitment to the department." [§54.03(1)(b), Stats.] Adjudications of juvenile delinquency are not "convictions" and so likewise should not disqualify persons from holding public office.

*An infamous crime is one which is punishable by imprisonment in a state prison, and crimes punishable in state prisons are felonies.

VOTING & EX-
OFFENDERS

Article 3 of the Wisconsin Constitution indicates that an individual convicted of treason or a felony cannot vote in any election unless that person is "restored to civil rights." In Wisconsin, Statute 57.078 (See PARDONS) automatically restores civil rights to the ex-offender upon completion of his or her term of imprisonment or otherwise satisfying his or her sentence. Therefore, ex-offenders who have completed their term can vote in state and local elections. (This statute, however, cannot restore the right to hold office due to the constitutional ban discussed above.) Persons who have received youthful offender dispositions regain their eligibility to vote upon discharge from commitment or probation.

Because these state provisions are respected by the federal government, ex-offenders are able to vote in federal (i.e., congressional and presidential) elections as well.

PERSONS
WITH A
HISTORY
OF MENTAL
ILLNESS

Article 3, section 2 of the Wisconsin Constitution and Wis. Stat. 6.03 provide that no person who is under guardianship, non compos mentis or insane shall be allowed to vote in any election. (Disqualifications of persons under limited guardianship requires a specific finding under Ch. 880.) The Wisconsin Supreme Court interpreted these voter disqualification provisions. The Court held:

The phrase 'non compos mentis' as used in the electors' statute and the constitution, should be construed as a generic term that includes mental deficiency as well as insanity...We believe the constitution and the statute intend that persons who are mentally incapable of knowing or understanding the nature and objective of the elective should not be eligible to vote.

70 Wis 2d 610, 621, 235 NW2d
435(1975). [Emphasis added]

The court further found that hospitalization - whether voluntary or involuntary - under Chap. 51 raises a presumption of incompetency. However, the statute which the court used as the basis for its opinion [§51.005(2)] has now been repealed and recreated without such a presumption. Thus, the current meaning of this case and the voting laws are presently unclear.

There is no statutory enforcement mechanism for these limitations on the right to vote, except that inspectors at the polling places can challenge and reject any voter as unqualified, based on answers the voter must supply under oath (§6.92, Stats.). The challenged voter must be allowed to vote if he or she is registered and if he or she takes an oath that he or she is a qualified elector (§6.94, Stats.).

Passports for travel abroad are denied only to those persons with felony records who are under a court order or condition of probation or parole which specifically forbids travel outside the United States. Other ex-offenders can obtain passports for foreign travel.

FOREIGN

TRAVEL

There are two basic eligibility provisions for jurors in state court: the individual must be an "elector" and have "good moral character."

JURY DUTY

An "elector" is defined in the state constitution and statutes [Article 3§2 and §6.03(1)(6)] as excluding an individual convicted of a felony unless that individual has been restored to civil rights. §57.078, Stats. (see section on PARDONS & OTHER REMEDIES) restores the individual's civil rights upon completion of the sentence.

The "good moral character" requirement is not always a bar for an ex-offender. In Dane County, for example, ex-offenders will be included in lists of prospective jurors as long as they have completed their sentence and have been discharged from supervision.

Individuals with past or present conditions of mental illness may be disqualified for jury duty by §255.01, Stats., on the following grounds:

- (1) that they are not "electors of the state" (See "Voting");
- (2) that they are not "possessed of their natural faculties";
- (3) that they are "infirm";
- (4) that they are not "esteemed in their communities as of good character and sound judgement."

Federal Court

Persons disqualified as potential jurors in federal court procedures include:

- those "incapable, by reason of mental or physical infirmity, to render satisfactory jury service", and
- those currently charged with or previously convicted of a crime punishable by imprisonment for more than a year [i.e., a felony] unless those civil rights were restored by pardon or amnesty. (28 USC§1865)

ALIENAGE

Immigration: Excludable Aliens

Federal law provides that the following categories of persons are among those ineligible to receive visas and are to be excluded from admission to the United States: IMMIGRATION

1. aliens who are mentally retarded;
2. aliens who are insane;
3. aliens who have had one or more attacks of insanity;

4. aliens afflicted with psychopathic personality, or sexual deviation, or a mental defect.
5. aliens who are narcotic drug addicts or chronic alcoholics;
6. aliens who have been convicted of a crime involving moral turpitude (other than purely political offenses). There are certain exceptions if the crime was committed while an individual was under 18.
7. aliens who have been convicted of two or more offenses (other than purely political offenses) of any type for which the aggregate sentences to confinement were 5 years or more.

(Sec. 8 U.S.C. §1182)

There are additional exceptions, which might relate to ex-offenders, for prostitutes, drug dealers, and people who have previously violated immigration laws, among others.

Deportable Aliens

According to federal statute, the following categories of aliens legally residing in the U.S. shall be deported at the discretion of the U.S. Attorney General:

DEPORTATION
AND THE EX-
OFFENDER

1. any alien who "is convicted of a crime committed within 5 years after entry" and sentenced to a year or more "or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct" (see table following);
2. any alien who at any time after entry is convicted of possessing or carrying in violation of any law any automatic or semi-automatic weapon or sawed-off shotgun;
3. any alien who, "within 5 years after entry, becomes institutionalized at public expense because of mental disease, defect, or deficiency, unless the alien can show that such disease did not exist prior to... admission to the United States";
4. any alien who, "in the opinion of the Attorney General, has within 5 years after entry become a public charge" from causes existing prior to entry;
5. any alien who "is or at any time after entry has been, a narcotic addict, or who at any time has been convicted of a violation of a drug law.

DEPORTATION
& THOSE WITH
HISTORIES OF
MENTAL ILLNESS

DEPORTATION
& DRUG ABUSE

[See 8 USC §1251(3,4,8,11,14)]

Deportation for any of the reasons outlined above depends upon the issuance of a deportation order, which is wholly within the discretion of the Attorney General. Consequently, an alien falling within a deportation category may not, in fact, be deported, but has no binding recourse to escape deportation.

LIMITATIONS
ON DEPORT-
ATION

Another federal statute provides for application by certain deported aliens to have their deportation orders suspended and to be declared aliens lawfully admitted for permanent residence. With respect to the alien deported for history of mental illness (see #'s 3 and 4, above), the law allows for consideration of suspension where the alien has been continuously present in the U.S. for at least 7 years prior to application; those deported for any other reason discussed above must have been continuously present for at least 10 years following the act or event constituting the grounds for deportation. In any event, the deported alien must also establish good moral character and hardship to self or spouse, parent or child in the event of deportation. Even where all of the above are established, nothing binds the Attorney General to suspend the orders; suspension, like deportation itself, is discretionary. See 8 USC §1254.

Finally, in most cases an alien otherwise subject to deportation for conviction of a crime of "moral turpitude" (see #1, above) is not deportable who subsequent to conviction has been granted a full and unconditional pardon or who has been recommended for leniency by the sentencing court. Either remedy is binding on the Attorney General. See 8 USC §1251(b).

It is worthy of note that, while drug offenses are considered crimes of "moral turpitude", the alien subject to deportation for a drug offense is not saved by the pardon or leniency recommendation under the statutory provision discussed immediately above. This is true because the saving clause refers only to 8 USC §1251(a)(4), which deals with crimes of moral turpitude, not 8 USC §1251(a)(11), which deals with drug offenses. See Kolios v. Immigration and Naturalization Service, 45 LW 3036, 19 CrL 2111 (U.S. Supreme Court, 1976). Consequently, aliens dealt with under first-time drug offender statutes (e.g. §161.47, Stats.) providing for discharge and dismissal upon successful completion of probation are subject to deportation whether or not probation is successfully completed. Similarly, the saving provisions assumedly are inapplicable to aliens subject to deportation for automatic weapons offenses, which are covered under 8 USC §1251(a)(14).

Crimes Involving Moral Turpitude*
for Purposes of Deportation Under 8 USC §125 (a) (4)

Crime	moral turpitude	no moral turpitude	unclear	Comments
assault and battery simple		x		varies from case to case
aggravated w/intent to kill	x		x	
w/deadly weapon w/intent to rob	x			
2nd degree		x		one case says depends on nature of violation
anti-racketerring violations	x			
bigamy	x			
bribery (amateur sport)	x			
burglary	x			preponderance of cases find moral turpitude
child-beating	x			
conspiracy	x			
counterfeiting	x			unless only pennies & nickels made
disorderly conduct			x	cases split on moral turpitude here
drug offenses	-	-	-	see DEPORTATION & THOSE W/A HISTORY OF DRUG ABUSE, above
embezzlement	x			
escape from prison		x		
forgery	x			
false statements		x		
fraud	x			except in some cases involving immigration fraud
homicide	x			
larceny	x			except in some petit larceny cases
lottery offenses		x		
manslaughter	x			except some cases of vehicular manslaughter
1st degree	x			
2nd degree		x		
perjury	x			
political offenses	x			
robbery	x			
sex offenses	x			exceptions: adultery, some cases of indecent conduct, where offender committed to treatment
smuggling	x			
receiving stol.gds.	x			
tax offenses	x			with rare exceptions
unlawful entry	x			
weapons possession		x		but see #2 under DEPORTATION & THE EX-OFFENDER, above

*defined as an act of baseness, vileness, or depravity in private & social duties owing to fellow persons, or society in general, contrary to accepted and customary rules; determined according to the nature of the offense itself, rather than the circumstances surrounding the particular violation.

LEGAL RIGHTS AND PRIVILEGES OF CITIZENSHIP

Driver's License

Unless certain conditions are fulfilled by the applicant, the Division of Motor Vehicles is prohibited by statute(343.06) from issuing an operator's license to any applicant with a present condition of mental illness, drug addiction, alcoholism, or mental incompetency, when that condition interferes with the ability to drive a motor vehicle. In some cases, a recent history of any of these conditions may be prohibitive as well, if the Division is unsatisfied that the applicant has "recovered". The statute also prohibits issuance to persons who have been convicted of certain crimes.

NEGATIVE LICENSING DETERMINATIONS

1. LICENSE DENIAL

If a person is licensed and later develops one of these conditions, or is convicted of one of the specified crimes, the license will be cancelled by the Division as soon as it is informed that the licensed driver now falls into one of the classes of people not to be licensed. [343.25(4), Stats.] The license may be cancelled as a matter of law, without any administrative hearing. The individual with a cancelled license may re-apply at any time after the cancellation.

2. LICENSE CANCELLATION

Suspension or revocation of a license differs from cancellation or denial in that a minimum period of time will be set before the person whose license was suspended or revoked may reapply. Suspension and revocation may be imposed by the courts or the DMV, for specified (mostly driving-related) offenses.

3. LICENSE SUSPENSION OR REVOCATION

There are no administrative rules clarifying the vague terms used in many of the relevant statutes. Generally, the decision making process within the division reflects this statutory vagueness, and is characterized by a high degree of discretion.

See next page and following for a discussion of denial and cancellation of license for reasons of drug addiction, alcoholism, mental condition, and criminal conviction.

Under §343.06(4), Stats., the Division shall not issue a license: to any person who is a habitual drunkard or who is addicted to the use of controlled substances as defined in §161.01(a), unless one of the following conditions is fulfilled and then only at the discretion of the administrator:

GROUNDS FOR NEGATIVE LICENSING DETERMINATIONS

1. DRUG ADDICTION OR ALCOHOLISM

- (a) the applicant at the time of application has been legally declared to have recovered; or
- (b) the applicant, in case he or she has been institutionalized, exhibits the certificate of the superintendent of the institution to the effect that the applicant has recovered or

has been released from the institution and, in the superintendent's opinion, is competent to drive a motor vehicle; or

- (3) the applicant, in lieu of the certification specified in par. (b) submits to such medical or other examination as the Division directs for the purpose of determining his or her recovery or competency to drive a motor vehicle.

(Additionally, under §346.63, Stats., it is unlawful for the following people to drive a motor vehicle, without reference to whether or not they are licensed: a person who is under the influence of an intoxicant or under the influence of a dangerous or narcotic drug [§343.63(1)(2)]; a person who is a habitual user of dangerous or narcotic drugs[§343.63(1)(b)].)

2. MENTAL CONDITION

Under §343.06(5), Stats., a similar prohibition applies to persons who have been adjudged mentally ill or incompetent (under Chapter 51 or 880). Before the Division may issue an operator's license to such an applicant, he or she must fulfill conditions (b) or (c) above, or be judicially declared restored to competency[§343.06(5)(a), Stats.].

Persons with histories of psychiatric or other medical treatment, even if voluntary and on an out-patient basis, may fall within §343.06(7), Stats., under which the Division shall not issue a license "to any person who is afflicted with or suffering from any mental or physical disability or disease such as to prevent him or her from exercising reasonable control over a motor vehicle."

3. CONVICTION OF SEX CRIME

The Division may deny or cancel a driver's license when the applicant or licensee has been convicted under certain subsections of the sex crimes statute[940.225, 944.12 or 944.17] and the sentencing court determines that "issuance of a license will be inimical to the public safety and welfare." [§343.06(11)] Alternatively, the sentencing court, upon the same finding, may suspend or revoke the license. [§343.30(2d)] In either event, the disability ends after one year, or discharge upon completion of sentence, whichever is later.

4. FURTHER
GROUNDS

In addition, §343.06(10), Stats. contains an extremely broad delegation of power to the Division, and its terms may overlap with the specific prohibitions discussed above. This section disallows issuing a license "to any person when the administrator has good cause to believe that the operation of a motor vehicle on the highways by such person will be inimical to the public safety or welfare." "Good cause" has not been defined by administrative rules or by published law case.

LICENSE
RESTRICTION

Instead of denying or revoking a license, the Division may issue a restricted license, "whenever good cause appears." §343.13, Stats. These restrictions may, among other things, limit the applicant's driving privileges to a certain geographical area or to certain hours of the day (as to allow the person to commute to and from work).

PROCEDURE:
1. APPLICATION AND RE-APPLICATION

The applicant is required by §343.14 to disclose all material information requested on the application for a license. The application currently asks if the applicant has experienced or been treated in the last 3 years for alcoholism, brain or mental disorders, habitual use of harmful drugs or any other disability. Under §343.14(3), an applicant who knowingly makes a false statement, conceals a material fact, or otherwise commits fraud in applying, may be fined not more than \$100 or imprisoned for not more than 6 months or both. If a license is granted, it will be cancelled whenever the Division determines that it was issued upon an application containing a false statement as to any material matter. [§343.25(1), Stats.]

If the license is denied under 343.06, or if the license is cancelled because of a false application or because the driver's condition now brings him or her within one of the prohibited groups (§343.25), the applicant or driver may re-apply for a new license at any time. The Division is to consider the application as an original attempt to secure a license. (§343.26, Stats.)

The Division has authority under §343.16(2) and 3(a), Stats., to require an applicant or already licensed driver to submit to physical or mental exams over and above the normal tests of driving ability:

2. EXAMINATION

The administrator may in his or her discretion require any applicant for a license or any licensed operator to submit to a special examination by such persons or agencies as the administrator may direct to determine incompetency, physical or mental disability, disease, or any other condition which might prevent such applicant or licensed person from exercising reasonable and ordinary control over a motor vehicle. When the division requires the applicant to submit to a physical examination, the applicant

shall pay the cost thereof.

- (a) Whenever the administrator has good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, he or she may, upon written notice of at least 5 days to the licensee, require him or her to submit to an examination including all or part of the tests specified in sub. (1). Upon the conclusion of such examination, the administrator shall take such action as is appropriate under this chapter, including cancellation of the license or permitting the licensee to retain the license subject to such restrictions as he or she may order or without restrictions. (Emphasis added.)

3. CONSIDER-
ATION OF
DENIAL OR
CANCELLA-
TION

Once the Division is alerted* to the fact that the applicant or driver may fall within one of the groups listed in §343.06, a preliminary request for information is mailed to the individual involved. If the response indicates a present problem, or a recent history of a problem, the Division usually requires the applicant or driver to consult a physician (a psychiatrist is not required, even when the issue is mental illness; a psychologist's report is sufficient) or an alcoholism counselor, if the problem is alcoholism. The competent medical authority completes a form containing standardized questions (which may be altered to suit an individual's case more accurately), and the opinion of the consultant is considered by the Division in making its decision. The opinion of the medical authority as to whether or not the individual is competent to drive a motor vehicle is not binding on the Division.

If Division personnel cannot decide an unclear case (as where the authority's opinion conflicts with the individual's driving record), a second examination may be required, or the applicant's file may be forwarded to a medical consultant hired by the Division. The present medical consultant is a semi-retired general practitioner. Very difficult cases are referred to the Safe Transportation Committee of the State Medical Society for a recommendation.

*The individual's application is the main source of information used by the Division in deciding whether or not to issue a license. However, information about the current or past condition of an applicant or already licensed driver may reach the Division in a number of different ways. According to a spokesperson for the Division, there is no central registration with or automatic notice to the Division of court proceedings (commitment or incompetency) or of voluntary admission to private or public mental health, drug abuse, or alcoholism facilities. However, knowledge of any of these events, as well as police reports of traffic accidents or general reports by the Division's field agents, could be used in making the decision to cancel a person's license.

No administrative hearing is currently available for a person whose license has been denied or cancelled because of the conditions listed above. In other words, the Division makes the decision on the basis of information which it decides is relevant and true. The individual has no right to be heard or to present evidence, unless requested by the Division.*

4. ADMINISTRATIVE
HEARING

The Division of Motor Vehicles presently does not allow an individual or his or her attorney access to the records and reports which are used in making licensing decisions when mental or physical disability is involved. Access is granted only after one has filed a petition in court for review of the case. However, by law such records are public records under Wisconsin public records law (§19.21, Stats.) and thus one should be able to gain access to most of the record. When requesting access, demand that the Division give specific reasons for denial. Then one can challenge the denial in court by way of mandamus. See the section on Public Records.

5. ACCESS TO
RECORDS

Judicial review of a Division's decision affecting license should be available under §343.40, Stats.:

6. COURT
REVIEW OF
DECISION

Unless mandatory under this chapter, the denial or cancellation of a license or the revocation or suspension of an operating privilege is subject to judicial review in the manner provided in Ch. 227** for the review of administrative decisions, except that if the petitioner resides in Wisconsin, the place of review shall be the circuit court of the county in which he or she resides.

Where denial or cancellation of a license is required of the Division (mandatory), review may be obtained through an action for declaratory judgment, which may be combined with a preliminary injunction against denial or cancellation. For example, see Weise v. Rice, et. al., awaiting decision by the Wisconsin Supreme Court. The case involves denial of a school bus operator's license [§343.12(2)(e), Stats.] because the applicant had been convicted of a felony within the 5 years prior to the application.

*Presently pending before the State Legislature is A.B. 221 which would establish a medical review board to review denials or cancellation of licenses based on mental or physical disability. If this bill is passed it would create a right to a hearing and more adequate review procedures. Also, the Center for Public Representation has petitioned the Division of Motor Vehicles to create rules which would establish standards and procedures, including a hearing, to govern denial of licenses because of a history of mental illness.

**For a general discussion of the court review under §227, Stats., see section on Administrative Law and Procedure.

Right to Make Contracts

CONTRACTS

The legal effect of a contract made by a mentally ill person depends on several variables: what type of contract was made (securities, real estate, consumer goods); whether the person has actually been found incompetent and had a guardian appointed under Chap. 880, Stats., whether the person is or has been committed under Chap. 51, raising a presumption of incompetency; whether the other part to the contract was aware of the individual's history. The contract may be void at the time it is made. More probably, the contract will be fully enforced until the incompetent party chooses to void it, or will be legally binding on both parties. Specific remedies may be allowed by law (§296.02, Stats.). The exact facts of the situation should be noted in referring a contract case to a lawyer.

Wills

WILLS

§853.01, Stats., says that any person of sound mind who is at least 18 years old may make and revoke a will. "Sound mind", although not a clinical term, has been defined by case law in great detail: a person may be mentally ill but still able to write a valid will. A person's capacity to make a will is essentially a factual question which is settled in court if a will is contested. Generally, a person is of sound mind if he or she knows what property is owned, the identities of the individuals to whom the property is to be given, and the meaning of making a will, and can remember and understand these facts.

Right to Sue and to be Sued

LAWSUITS

Any person has the right to begin a lawsuit or be a defendant in a lawsuit. "[I]f the court has reason to believe that party [to an action] is mentally incompetent to have charge of the party's affairs, the party [appears] by an attorney, by the general guardian of the party's property who may appear by attorney or by a guardian ad litem who is an attorney. A guardian ad litem [is] appointed in all cases where the...incompetent has no general guardian of property, or where the general guardian fails to appear and act on behalf of the ... incompetent, or where the interest of the...incompetent is adverse to that of the general guardian." [§803.01(3)(a), Stats.] If at any time before judgement the court realizes that an incompetent party is not represented in any of these ways, proceedings are halted, and a guardian ad litem is appointed and given an opportunity to move to vacate orders made while the incompetent was unrepresented. If the court realizes after judgement that a party was incompetent and unrepresented, the judgment is vacated upon motion of the incompetent or his or her personal representative. [§803.01(3)(c), Stats.]

OWNERSHIP OF
FIREARMS BY
EX-OFFENDERS

As of this writing, Wisconsin has no statutory prohibition of firearms possession or ownership by ex-offenders. (AB 619, 1977 legislative session, would make illegal the possession or ownership of firearms by ex-felons and persons with histories or present conditions of mental illness or drug use.)

A federal statute, 18 Appendix USC§1202(a) (found at the end of volume 18, USC), provides that

...any person...who has been convicted by a court of the United States or of a state or any political subdivision thereof of a felony... and who receives, possesses, or transports in interstate commerce or affecting commerce...any firearm shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both."

In 1971 the United States Supreme Court interpreted this section as meaning that possession of a firearm by a person previously convicted of a felony is illegal under that statute only when the possession has some connection with interstate commerce. United States v. Bass, 404 U.S. 336(1971). The Court concluded that Section 1202 is ambiguous and, if it were read to make mere possession of a firearm within a state a federal offense, it would mark a major inroad into a domain traditionally left to state control. Consequently, it refused to accept the broad reading for which the Government contended.

The practical meaning of the Supreme Court decision is that a felon is in violation of 18 App USC§1202(a) if he or she purchased a firearm subsequent to conviction and possessed it "in interstate commerce", in an interstate facility, or in a manner "affecting commerce." Caution is advised, however, since the Court's ruling was based on an unusually narrow interpretation of the U.S. Constitution's "Commerce Clause", which gives the federal government the right to regulate practices in any way connected with interstate commerce.

For the purposes of §1202, felonies are defined as crimes punishable by more than one year in prison, except anti-trust, unfair trade or related violations, and state offenses not involving firearms or explosives classified as misdemeanors but punishable by up to two years.

18 USC App. §1203(2) removes disabilities imposed by §1202 from any felon who is pardoned and expressly authorized to receive, possess or transport firearms by either the President or the Governor. (See PARDONS)

In addition, §925(c) allows those convicted of crimes not related to firearms or explosives, but punishable by more than one year, to apply to the Secretary of the Treasury for relief from the disabilities imposed by federal laws. The Secretary may grant the license if the circumstances of conviction, record, or reputation indicate that the applicant is not dangerous to public safety or damaging to the public interest.

No firearm restriction can result from a juvenile record or a youthful offender disposition, since they are not considered convictions.

BY THOSE
WITH UN-
FAVORABLE
MILITARY
DISCHARGES

18 USC App. §1202(2) makes it a crime for anyone "who has been discharged from the Armed Forces under dishonorable conditions" to receive, possess or transport in commerce any firearm. It is not clear whether §1203's provision for removal of these disabilities (see above, under "Ex-offenders") applies to those with undesirable discharges.

By Those With a History of Mental Illness

BY THOSE
WITH A
HISTORY
OF MEN-
TAL ILL-
NESS

Wisconsin does not prohibit ownership of firearms on grounds of mental illness or incompetency. (But see discussion of state legislation pending at the time of this writing, above.) However, federal law (18 USC 922) makes it unlawful for any dealer, collector, manufacturer, etc. of firearms to sell or give any firearm or ammunition "to any person knowing or having reasonable cause to believe that such person has been adjudicated as a mental defective or has been committed to an institution" [§922(d)(4)].

Federal law also prohibits the shipping, transporting [§922(g)(4)] or receiving [§922(h)(4)] of any firearm or ammunition through interstate commerce by any person who has been adjudicated as a mental defective or committed to a mental institution. "Mental defective" is not defined in the statute and should be strictly construed.

All of the above prohibitions also apply to any person who is "an unlawful user of or addicted to marijuana or any depressant or stimulant drug (as defined in Section 201(v) of the Federal Food, Drug and Cosmetic Act) or narcotic drug (as defined in Section 4731 (a) of the Internal Revenue Code of 1954)" [§§922(d)(3), 922(g)(3), 922(h)(3)].

Layperson's Guide to Dane County Small Claims Procedures

by Judge Archie E. Simonsön, Branch No. 3, Dane County Court

Foreword

Many persons choose to try their cases in Small Claims Court without an attorney. For most of them, it is their first appearance in a courtroom. This article is designed to familiarize you with some of the procedures, to expedite the trial, and to prevent certain costly mistakes.

Either party may be represented by a lawyer. Neither party is legally required to be so represented.

Order of Procedure

In Small Claims Court trials, as in all court trials, the plaintiff presents his or her evidence first by testimony, by himself or herself and witnesses. After each witness testifies, the defendant can cross examine. After the plaintiff has presented his or her case, the defendant presents his or her witnesses, and they are cross examined by the plaintiff. After the defendant has finished presenting his or her case, the plaintiff can, if he or she wishes, present additional testimony to rebut any evidence the defendant has presented. The defendant can, thereupon, present evidence in rebuttal to the plaintiff's rebuttal, etc., until all admissible evidence has been presented.

Conduct of Witnesses

All witnesses and their parties shall take the oath from the judge and be seated in the witness box for testimony. If necessary, the witness may leave the witness box to go to the blackboard or a chart to illustrate or demonstrate a point. The judge may also excuse a witness who is physically handicapped from climbing into the witness box. Those who are called upon to testify should speak clearly and loudly for all to hear. To expedite the hearing, the testimony may be in the narrative; however, not rambling. The testimony should be concise and to the point. The testimony will be recorded by the court reporter. He or she cannot make an accurate record if more than one person talks at once; therefore, do not interrupt when another person is speaking.

A trial is a solemn and dignified occasion even if it involves a small claim; therefore, the Court will insist upon a fitting decorum. The Court will not permit outbursts of anger, laughter, or gestures, nor will the Court permit intimidating practices by either the parties, the witnesses or the counsel.

Cross Examination

When a party or his or her witness has completed his or her testimony, the opposing party may cross examine him or her. Cross examination is not limited to questions

asked originally by the party. The only limitation on cross examination is that the questions asked be relevant. The cross examiner must not attempt to put words in the mouth of the witness nor testify himself or herself at this point, but can only ask questions. Nor can cross examination be used as an opportunity for debate. The four basic purposes of cross examination are:

(1) to clear up the testimony; (2) to determine the witness's sincerity; (3) to attack the witness's memory or recall of events, and (4) to determine the accuracy of the witness's perception, that is, seeing, hearing, smelling, and so forth.

Exhibits

If any physical evidence (maps, invoices, letters, cancelled checks, etc.) is to be presented, it should be handed to the court reporter to be marked and given a number. Do not speak while the reporter is marking an exhibit because the reporter cannot mark the exhibit and record the spoken words at the same time. Before resting your case, be sure to request the Court to receive the exhibits into evidence.

Hearsay, Repetition, Relevancy

Testimony presented at the trial is limited to evidence designed to provide the judge with information so he or she can reach a just decision. Therefore, certain testimony is excluded. While there are many types, only a few require mention here.

- (a) Hearsay: The testimony of a witness is limited to what he or she perceived: that is, by sight, feeling, or hearing. Generally, he or she cannot testify as to what another person told him or her unless that person is one of the parties or a representative of a party. Hearsay evidence is defined as being either an oral or written statement or conduct of a person made outside the court, but offered in a court by the witness's testimony to prove the truth of the matter asserted. It would not be fair to receive this evidence because the person who made the statement or engaged in the conduct is not subject to the court room conditions where the statement or conduct would be under oath, and more importantly, subject to cross examination which would expose faulty memory, exaggeration, or even outright falsification. On the other hand, the Court will receive hearsay testimony under certain conditions and circumstances. There have thus been developed by law a large number of exceptions to this hearsay rule. These exceptions must meet the tests of reliability and trustworthiness. The exceptions are too numerous and complicated to be set out in full in this document; however, you should feel

free to ask the Court why certain hearsay evidence has been received over your objection.

- (b) Repetition: Testimony, once given, should not be repeated.
- (c) Relevancy: The testimony must have some material relationship to the issues being tried.

Subpoena

If you need a witness for your trial and he or she will not appear voluntarily, you can obtain a subpoena from the clerk and have him or her served. There will be some expense to this, and it should be done in ample time before the trial so that the witness can be served and make arrangements to appear.

Examining Party Adversely

If the opposing party has information you want to put before the Court, you can call him or her adversely and question him or her. If he or she or any other witness has physical evidence you want introduced, you can require its production at the trial by use of a subpoena duces tecum (obtainable from the clerk).

Objections

You can object to testimony which is hearsay, repetitious, or immaterial. Such objections should be addressed to the judge who will rule upon their validity according to established rules of evidence.

Burden of Proof

The plaintiff has the burden of proving his or her claim. Similarly, the defendant has a similar burden as to any counterclaim or cross complaint. The defendant also has the burden of proving any affirmative defense he or she may have (for example, that a bill was paid).

Elements of Proof

The claiming party is required to prove his or her case in a trial. In order to be entitled to recover damages, he or she must show that he or she suffered financial loss or other injury and the value of such loss, as well as proving that the defendant was responsible.

For example, if the plaintiff's automobile was damaged by defendant negligence, it is necessary to prove that the defendant was negligent, that the negligence caused damage to the plaintiff's automobile and the amount of plaintiff's loss. The last is determined by proving the value of the plaintiff's automobile just before the collision and

deducting its value immediately after the collision. This sum may not be the same as the cost of repair, if for example, an automobile having a before-accident value of \$150 is damaged to the extent which requires \$500 for repairs. There mere fact that you are inconvenienced from loss of use of your car is not an element of recovery because the dollar and cents value is not determinable.

When compensation for services given to the other party is sought, it is necessary to prove the value of such services. It is helpful to establish what such services would have cost when performed by another with the same skills. You cannot recover for personal services performed for yourself.

Preparation for Trial

The responsibility for preparing for the trial rests on the parties. It is not the function of the judge to supply evidence. The trial will not be halted to permit a party to go home to get additional documents, nor will the judge telephone anyone who is not present but who could supply evidence.

As stated before, witnesses can be subpoenaed and required to supply physical evidence, but such subpoenas must be obtained a sufficient time before trial to allow service. This is also the responsibility of the party involved.

Role of the Judge

When you litigate without an attorney, you are "on your own". The judge's role is to preside, see that the rules are followed, and to render a decision. He or she is not permitted to help you, nor the opposing party, even though he may (and usually does) spot palpable errors and omissions in presenting a case of a defense. However, if the judge feels he or she needs some facts, he or she may ask a few questions for his or her own benefit.

Costs

The prevailing party is entitled to recover costs in addition to damages. Costs include witness fees, sheriff fees, and clerk fees. In addition, the prevailing party is entitled to recover attorney's fees, if he or she has appeared by attorney.

Enforcing the Judgement

When a party has obtained a judgement, it is his or her obligation to enforce it or collect it. This may be a problem if the losing party has only a few assets, and those which he has are exempt from execution.

Appeal

If a party is dissatisfied with the result of the lawsuit, he or she can appeal within a specified number of days after entry of the judgement to the Circuit Court. This requires him or her to obtain a copy of the testimony from the court reporter, which can prove rather expensive. The appeal is decided on the record as it was made at the trial and no new evidence is admissible.

Incompetency

A judicial finding of incompetency under §880, Stats., is not the same as a commitment because of mental illness to a state mental health institute. However, the two are closely connected under some statutes.

COURT DE- TERMINATION OF INCOM- PETENCY

When a court finds an individual to be "incompetent", it means that he or she is substantially incapable of managing his or her property or caring for himself or herself, by reason of infirmities of aging (organic brain damage or other physical degeneration), developmental disabilities (disability due to mental retardation or another closely related neurological condition), or other like incapacities (conditions incurred at any age, which substantially impair a person from providing for his or her own care).

"Spendthrifts" are also subject to incompetency proceedings, and that term is defined in §880.01(9) as

a person who, because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct is unable to attend to business or thereby is likely to affect the health, life or property of himself or herself or others so as to endanger the support of himself or herself and his or her dependents or expose the public to such support.

PROTECTIVE PLACEMENT

If found to be incompetent, the individual is not institutionalized; involuntary protective placement may be made only in accordance with §55.06, and commitment proceedings are governed by §51.

Before anyone can be protectively placed under §55.06, he or she must be found to present substantial risk of doing harm to himself or others, to have a primary need for care and custody rather than treatment, and to have a disability which is likely to be permanent. Placement is to be in the protective living environment which least restricts the person's ordinary civil rights.

Hearing in County Court

COURT HEARING

Before an individual may be found to be incompetent, a court hearing must be held, at the request of any relative, public official, or concerned person (including the person whose competence is in question (§880.07, Stats.)). If someone other than the alleged incompetent requests the hearing, the individual involved must receive personal notice at least 10 days before the hearing (§880.08, Stats.).

Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, furnishes a written statement concerning the mental condition of the proposed ward, based upon examination. A copy of the statement is provided to

the proposed ward, his or her guardian ad litem and attorney. [§880.33(1)] The alleged incompetent may present alternative medical or psychological exams, at county expense if the individual is indigent.

The individual has the right to legal counsel, whether or not he or she is present at the hearing; and if the person is indigent, the court shall appoint a lawyer at no charge to the individual. The individual has the right to a trial by jury and may appeal the decision of the county court. Incompetency must be proved by clear and convincing evidence.

Guardianship

If incompetency is proved, a guardian may be appointed to have care, custody and control of the ward and/or the estate of the ward. (Chap. 880, Stats.) The guardian's behavior is governed by law and he or she is responsible to the court of appointment. Parents are preferred as guardians (§880.09, Stats.); lawyers are often appointed if the ward has no living parents. GUARDIANSHIP

Findings of Limited Incompetency

Wisconsin laws allow the court to make a finding of limited incompetency, with the rights and duties of the guardian limited accordingly. Under §880.33(3), Stats.:

LIMITED IN-
COMPETENCY

The Court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license, to testify in any judicial or administrative proceeding, to hold or convey property and the right to contract."

Under this section, the court determines whether additional medical or psychological testimony is necessary for an informed decision as to which legal rights should be granted. A petition may be filed by the ward, guardian or other interested person at any time requesting restoration of any right withheld.

These provisions represent changes in the law made during the 1975 legislative session (Chapter 393, Laws of 1975). Prior to that time, a person adjudicated a limited incompetent was automatically granted all rights listed above. Assumedly, the discretion now given the judge in deciding which rights to grant and not to grant will encourage findings of limited incompetence. Previously, the judge had to choose between a full refusal of such rights (incompetence) and a full grant (limited incompetence).

It is important, then, that judges are made aware of the changes in the law, or the new law may have the opposite effect of that intended: to maintain the current distribution of findings of incompetence and limited incompetence, and reduce the rights granted those adjudicated limited incompetent.

INVOLUNTARY CIVIL COMMITMENT

The Wisconsin law regarding involuntary civil commitment is codified in Chapter 51, Stats., which was substantially amended by Chapter 430, Laws of 1975.

§51.20, Stats., now provides that a person may be involuntarily committed for treatment who is mentally ill, developmentally disabled, or drug dependent, and either:

- (1) is dangerous because of a substantial risk of physical harm to self or others as manifested by recent acts, attempts, or threats of suicide or serious physical harm to self or others, or
- (2) evidences a very substantial risk of physical impairment or injury to self because of judgment so affected that the person is unable to protect himself or herself in the community.

"Drug dependent" means use of one or more drugs to the extent that health is substantially impaired or social or economic functioning is substantially disrupted. "Mental illness" means a substantial disorder of thought, mood, perception, orientation or memory which grossly impairs judgement, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life[§51.01

(1) and (12)(b), Stats.].

After emergency detention or a petition is filed alleging that a person is committable under the above provisions, the court makes an initial determination whether the person is to be detained. If detained, the person is informed of the right to a hearing. The hearing, to be held within 48 hours, is to determine whether there is probable cause to believe the allegations set forth in the petition. If not detained, this hearing must take place "within a reasonable time." In either case, the person has the right to retained or appointed counsel and due process procedures at the hearing.

If probable cause is found at the hearing, the court schedules another hearing, this one to determine beyond a reasonable doubt whether the allegations set forth in the petition are true. The person is entitled to a jury trial, but must demand one in order to receive one. The hearing will be held within 14 days of detention, or within 14 days of demand for jury trial, if such demand is made more than 5 days after detention. Prior to the final hearing, the person will have been examined

by 2 licensed physicians or a physician and a psychologist, one of whom may be selected by the person to be examined. The results of the examination are made available to both sides before the hearing.

If at the hearing the original allegations are found true, the person is committed for a period not to exceed 6 months, and the community board arranges for treatment "in the least restrictive manner" consistent with the needs of the person and the order of the court, which designates the maximum level facility appropriate. If in a hearing subsequent to the original commitment period it is found that the person meets the original commitment standard or would if treatment were withdrawn, commitment may be extended for another year.

An appeal to circuit court may be taken within 10 days of original or renewed orders of commitment, and the circuit court decision may be appealed to the Wisconsin Supreme Court[see §51.20, Stats.].

The Wisconsin Statutes also provide for involuntary civil commitment of alcoholics, but under a different statutory section and pursuant to slightly different procedures. The most substantive differences regard the allegations which must be proven and the length of commitment.

A petition seeking involuntary commitment due to alcoholism must allege:

- (1) that the condition of the person is such that he or she habitually lacks self-control as to the use of alcoholic beverages, and uses such beverages to the extent that health is substantially impaired or endangered and social or economic functioning is substantially disrupted; and
- (2) that such condition of the person is evidenced by a pattern of conduct which is dangerous to the person or to others.

Commitment for alcoholism is for a period of 30 days, or 90 days for second or subsequent consecutive commitments. [See §51.45(13), Stats.]

Under the former state law, persons committed or voluntarily admitted to a mental hospital were presumed to be incompetent. However, this provision has now been removed and commitment or admission are entirely separate from findings of incompetency.

FAMILY RIGHTS

Marriage

Under §245.03(1), Stats., "A marriage shall not be contracted if either party has such want of understanding as renders him incapable of assenting to marriage, whether by reason of insanity, idiocy, or other causes." The license application (§245.09, Stats.) requires the applicant to state under oath that the marriage is lawful, and marriages contracted in violation of §245.03 are null and void (§245.21, Stats.).

Unfortunately, the terms of §245.03 have not been further defined by statute or by case law. No enforcement mechanism (other than annulment) is provided by law.

Annulment

Under §247.02(5), Stats., a marriage may be annulled if the following situation existed at the time of the marriage:

Such want of understanding as renders either party incapable of assenting to marriage, whether by reason of insanity, idiocy or other causes, at the suit of the other, or at the suit of a guardian of the insane or incompetent person, after regaining reason, has confirmed [under §274.04, Stats.] the marriage; provided that where the party... [who is not insane or incompetent] is the applicant, such party was ignorant of the other's insanity or incompetency at the time of marriage, and has not confirmed it subsequent to such person's having gained or regained reason.

Divorce

Under §247.07(5), Stats., a divorce or legal separation may be granted when the husband or wife "shall have been a habitual drunkard for the space of one year immediately preceding the commencement" of divorce action. This basis is in addition to the usual grounds of separation for one year, cruel and inhuman treatment, etc. There is no statutory ground for divorce based specifically on drug addiction or use.

In 1971, a ninth ground was added to the existing grounds for divorce or legal separation under §247.07, Stats.: "When either party, subsequent to the marriage, has been involuntarily committed under Ch. 51 to any mental institution and has remained there for at least one year, at the suit of the party ...not been committed."

Termination of Parental Rights

Under §48.40(2)(d), Stats., the juvenile court can, upon petition, terminate all rights of parents to their children if the parents are unfit by reason of habitual use of intoxicating liquor or narcotic drugs, and that conduct is found by the court to be likely to be detrimental to the health, morals, or best interests of the children.

Under §48.40(3), Stats., parental rights may be terminated if the parents have been found mentally deficient or mentally ill by an appropriate court (i.e., not merely upon finding of mental illness by the juvenile court in the proceeding at hand), and the juvenile court finds that: (1) because of the previously defined mental deficiency of illness, the parents are and will continue to be incapable of giving the minor proper parental care for a prolonged indeterminate period; or (2) one parent has been previously found to be mentally deficient or ill, and the other parent has substantially or repeatedly refused or neglected to give the minor the parental care and protection necessary for his health, morals, or well-being.

Adoption

Chapter 48, Stats. governs adoptions.

§48.88(2)(a), Stats., requires an investigation of the environment and antecedents of the person to be adopted to ascertain the suitability of adoption and investigation of the home of the prospective adoptive parent to determine whether it is a suitable home. The investigation is to be conducted by a licensed child welfare agency, the responsible county agency, or, if it consents, the State Department of Health and Social Services.

§48.88(3), Stats., states that if the investigation is unfavorable or if it raises serious question as to the suitability of the proposed adoption, the court may appoint a guardian ad litem for the minor whose adoption is proposed.

§48.84(1), Stats. requires written consent of the following to a child's adoption:

- (a) Both parents, if living, or the surviving parent, of a legitimate minor, unless parental rights have been terminated.
- (b) The mother alone, if the minor is illegitimate, unless her parental rights have been terminated [the consent of the acknowledged father of an illegitimate child may be required in some circumstances].

- (c) The guardian of the minor (the guardian may be the Department of Health and Social Services, a licensed child welfare agency, an authorized county agency or an individual).
- (d) The minor himself or herself, if he or she is 14 or older.

§48.89, Stats., requires the recommendation of the Department of Health and Social Services in the following instances:

- (a) An illegitimate minor,
- (b) A minor who has no living parents or whose parents have had their rights legally terminated,
- (c) A nonresident minor,
- (d) A minor whose nonresident parent has consented to the adoption.

Madison

Madison are private adoption agencies which were contacted stated that a felony conviction is not an automatic bar to adoption of a child. However, evidence of the development of a pattern of criminal activity would tend to disqualify an applicant.

The Department of Health and Social Services will hesitate to consent to or recommend an adoption if the prospective adoptive parent has a history of conviction and arrest, including evidence of criminal involvement within the past two years.

Sterilization

A Wisconsin Statute, Section 46.12, provides that inmates and patients of institutions for criminal, mentally ill and mentally deficient persons may be involuntarily sterilized upon the concurrence of the superintendent of the institution and a surgeon and a psychiatrist appointed as experts by the Department of Health and Social Services. Before the operation, the experts and the superintendent must meet and take evidence of and examine the individual's mental and physical condition. Also, the individual's husband or wife, parent, or guardian, or person with whom the individual last resided (if spouse or parent or guardian are unknown) must be given 30 days written notice before the operation. No notice must be given the individual and no procedure for challenging the superintendent's and experts' decision are spelled out in the statute. While the Department claims that this law is no longer being used (the record shows that the last sterilization performed under the statute took place in 1953), it remains in the statutes and is available for use if such an occasion should arise.

RECORDS

I. Specific Kinds of Records

Mental Health, Alcoholism and Drug Abuse Records

This section on mental health, alcoholism and drug abuse records contains information on where these three types of records are kept, what provisions for confidentiality apply to them and what rights exist to gain access to them.

MENTAL
HEALTH,
ALCOHOL-
ISM &
DRUG
ABUSE
RECORDS

In locating these records, one should realize how many different forms they can take and in how many different places they can be stored. Courts keep records of the commitment process. Copies of a commitment order and of other commitment papers may also be kept in the facility where one has received treatment following a commitment and/or with the mental health board (51.42 or 52.437 board) to which the commitment was made.

Treatment records are generally held at the facility where treatment was provided. State and local institutions and clinics for the mentally ill and the developmentally disabled keep their own manual files on their own premises. These files may include court records, social histories, and physical and psychiatric reports.

The Division of Mental Hygiene (DMH) has developed a computerized information system, the Interim Information (II), to establish standards for cost accounting and for service evaluation of treatment programs. This system collects extensive data on individual clients, including demographic characteristics; legal status; and update reports on personal and financial status, etc. However, most data in the system are identifiable only by an ID number assigned to a client, not by his or her name. As a result, it produces summary statistics without any personal identification.

Wisconsin state law creates 51.42 and 51.437 boards to coordinate all mental health, developmental disability, alcohol and drug abuse services within their jurisdictions. By law these boards must provide for continuity of care for individuals who receive such assistance. The Division of Mental Hygiene also requires the boards to submit certain information for evaluation and planning purposes. Therefore, the boards maintain a list of all persons receiving services, along with other client information that they receive through the DMH Interim Information System. This list is matched to ID numbers which the boards use when submitting evaluation-planning information to the Division. The Division suggests that only professionally trained staff personnel, not board members, gain access to names and other information pertaining to service recipients.

State legislation and federal regulations protect the confidentiality of alcoholism, drug abuse, and mental health records in Wisconsin. However, federal policies apply only to alcoholism and drug abuse treatment facilities licensed by, receiving grants from, or given a special tax status by the federal government.

§51.30, Stats., as amended by Chapter 430, Laws of 1975, governs access to mental health records held by Wisconsin courts and treatment facilities. The gaining of access to court-held mental health records is limited to the individual against whom a commitment petition is filed and to his or her attorney. Without a court order, such records are otherwise closed. This statute also provides the first comprehensive protection of the confidentiality of mental health treatment records in the State. Such records are privileged to the patient and may generally not be disclosed except with his or her consent or upon a court order. The Department of Health and Social Services, the 51.42 and 51.437 Boards, and the legislative audit bureau may gain access to such records for billing, collection and auditing purposes, but they must keep the information confidential. Also, the program director of a 51.42 or 51.437 board having custody of any person may gain access to his or her records to determine the program, adequacy of treatment, and the need for transfer to a less restrictive facility.

§51.45(14), Stats., amended by Chapter 428, Laws of 1975, provides that the records of alcoholism treatment facilities are confidential and privileged to the patient. Information may be disclosed during a medical emergency involving the patient, provided that steps are taken to ensure his or her privacy. Such information may also be released for purposes of program evaluation, audits and scientific research. Violations of this section are punishable by fines of not more than \$5,000.

Federal Department of Health, Education and Welfare regulations covering alcoholism and drug abuse treatment records are set forth in 42 CFR, Part 2. Drug and alcohol abuse records are confidential and generally may not be disclosed without the written consent of the patient, except upon court order or during a medical emergency. Patient records also may be released without consent for the purposes of conducting scientific research, for audits or for program evaluation, but only if patient identities are protected from disclosure. The rules contain many other very specific provisions about when records may and may not be released. First violations of these federal rules are punishable by fines up to \$500; for subsequent offenses, fines of not more than \$5,000 may be assessed.

§51.30, Stats., as amended by Chapter 430, Laws of 1975, provides for client access to mental health treatment records held by courts and treatment facilities. (It seems that this legislation should apply to records of alcohol and drug abuse treatment, as well.) The individual and his or her attorney may gain access at any time to commitment records retained by the court. During treatment an individual may be denied access to treatment records. However, after discharge, the individual has a right to a record of all his or her medications and somatic treatments and to a copy of his or her discharge summary. He or she may also see and copy the rest of the record, subject to modifications to protect the confidentiality of other patients or of persons who gave information on the condition that their identities be kept confidential. Notice of inspection must be provided at least 24 hours in advance to the facility. The facility director or the treating physician may be present at the time of inspection.

The Wisconsin statutes do not generally give the individual the right to correct inaccurate information in mental health, alcoholism or drug abuse records. However, under Administrative Order 1.35, II.C of the Department of Health and Social Services, one has the right "to correct any factual information which is incorrect" in any file on him or her that the Department maintains; this order would include any records that the Division of Mental Hygiene might maintain.

Under present statutes and administrative rules one also does not have the right to have his or her old treatment records destroyed. Destruction of state records, including Division of Mental Hygiene records, is controlled by the State Public Records Board.

Private facilities generally have their own policies for retention of records. These are often kept in conformity with policies that the American Hospital Association or the Joint Commission on Accreditation of Hospitals have recommended. Thus, one must ascertain from the administrator of a given facility its policy on the retention and the destruction of records, and whether it has a procedure allowing one to have his or her old records destroyed.

There are still some problem areas. The law does not provide for enforcement of its provisions. The law makes no provisions either for the destruction of records or for the correction of erroneous factual information in records.

For further information, see "Mental Health, Alcoholism and Drug Abuse Records in Wisconsin: New Legislation and Issues for Further Consideration", a research paper published by the Center for Public Representation.

VOCATIONAL REHABILITATION RECORDS

Both the federal government and the state government provide funds for services to aid the vocational rehabilitation of disabled persons (§47.40, Stats.). These funds are administered by the Wisconsin Division of Vocational Rehabilitation (DVR), which provides the services through its district and local offices throughout the state. It is in these local offices that clients' vocational rehabilitation records are filed. Confidentiality of and client access to the records are governed by §47.40(13), Stats., DVR 1 in the Wisconsin Administrative Code, and 45 CFR §1361.47 (federal regulations).

VOCATIONAL
REHABILITA-
TION RECORDS

In general, no information from a client's case record may be disclosed directly or indirectly to any person, agency, or organization (DVR §1.04). However, there are several exceptions to this rule:

1. The client's record may be released with the client's consent. DVR §1.05 specifies what informed consent is.
2. There is a free flow of information between the State Division of Vocational Rehabilitation services for the client and between DVR divisions within the Department of Health and Social Services. However, information released must be for the purpose of coordinating the client's rehabilitation program. A notation of all such releases must be made in the client's record (DVR §1.06).
3. Records may be released for approved research related to vocational rehabilitation programs. However, the final product of the research must not reveal the identity of the client without his or her written consent.
4. Information from the vocational rehabilitation record may be released to potential employers without identifying the client (DVR §1.13). If client identifying information is to be released to an employer, the client's consent must be obtained.

If information is released, a notation of all releases must be placed in the case record (DVR §1.06). This notice must identify the information released and give the date and the purpose of the release.

If one has a case record with the Division of Vocational Rehabilitation, access to it may be gained upon written request (DVR §1.14). A person may copy his or her record, but he or she must pay the cost of doing so (DVR §1.16). Make your request for access to the local office of the Division.

If a DVR client's counselor determines that direct disclosure of medical or psychological information may be very detrimental to the client's physical or mental health, the disclosure must be made to a representative designated by the client, to a physician or to a licensed psychologist who may then give it to the client. The state regulations provide the client a means of appealing this decision to disclose indirectly[DVR §1.14(3)], stating that the client must submit a written request for the appeal to the Division. The counselor must then submit in writing to the client and to the agency his or her reasons for denying direct access to the record. The reasons must include a summary of the information in the files and explain why gaining access to them would be very detrimental to the client's mental or physical health. The client may rebut these reasons either in writing or in person. Because the presumption is in favor of direct access for the client, the counselor must present strong evidence against such access. A decision concerning direct access must be rendered within 20 days of the start of the appeal.

If DVR records contain information obtained from another agency, that agency's rules control client access. If that agency has no rules, then the DVR rules apply(DVR §1.15).

The regulations dictate that the Division of Vocational Rehabilitation make its employees aware of these rules. Agencies receiving accessed information must assure the Division that they will not re-release the records, and that they will use the records only for the purposes for which they obtained them. All DVR records releases must be accompanied by a notice that the records may not be re-released without the written consent of the client (DVR §1.11).

A person who violates these rules is subject to a fine of not more than \$500 or imprisonment not exceeding 6 months or both.

Juvenile Records

JUVENILE RECORDS

Juvenile records may be divided into three groups: (1) police and court records, (2) social services records and (3) adoption records.

1. POLICE & COURT RECORDS

§48.26(1), Stats., provide for the separation of adult and juvenile (persons under age 18) police and court records. Under this statute, juvenile court records are to remain confidential except by order of the court [§48.26(2), Stats.]. Police records concerning juveniles also are to be kept closed except upon court order. However, exceptions are made for the confidential exchange

of information between police and the school the child attends and between the police and law enforcement and social services agencies. Also, news reporters may examine juvenile records for the purpose of reporting the news so long as they do not reveal the identity of the child.

A court may order access to juvenile records if it is in the "best interests" of the child or of the administration of justice to do so (§48.38, Stats.). Courts in Wisconsin have held that juvenile police and court records may be used at adult or juvenile sentencing hearings but not at trial to impeach a witness.

If a juvenile is taken into custody for an alleged felony or for certain misdemeanors, the police can fingerprint and photograph him or her (see section on Criminal Records). This information may be forwarded to the Crime Information Bureau, which keeps it and will give it to any police department, authorized government agency, etc. that requests it. If a case is dismissed or a juvenile is acquitted, he or she may request the elimination of and have eliminated from his or her record those fingerprints and photographs. The Crime Information Bureau then notifies other government agencies which have received the records that have been expunged [§165.84(1), Stats.]. Receiving this news, the other agencies may or may not also expunge the record.

Presently, there are not statutory provisions in Wisconsin for an individual to gain access to his or her own juvenile record. The decision to permit him or her to do so is at the discretion of the judge or of the official who maintains the files. A recent study conducted by the Center for Public Representation found that 4 out of 5 judges interviewed allowed the subjects of juvenile records to gain access to them. The juveniles' defense attorneys were also granted access to certain portions of records. It should be noted that persons can refuse to allow access to these files to prospective employers, schools, etc. Nevertheless, the ultimate decision to open a juvenile file to anyone is up to the judge.

The second group of juvenile records deals with social services. Today various government agencies may handle the problems of a juvenile, resulting in a resolution of the case before formal charges or trial, or they may deal with the juvenile after court disposition of the case. §48.78, Stats., provides for the confidentiality of these records, though it makes an exception for the transfer of information between social service and law enforcement agencies. Information may be released to others by court order or, in many instances, with the consent of the juvenile or his or her parents. At least one court has held that §48.78, Stats., may not be used to deny an individual access to his or her own juvenile record once he or she has become an adult. (See Thompson v. Treffert, No. 151-424,

2. SOCIAL
SERVICES
RECORDS

Dane County Circuit Court, May 25, 1976.)

3. ADOPTION
RECORDS

The third category of juvenile records consists of adoption records. §48.93, Stats., requires all adoption records be kept in a separate locked file. These records are thus inaccessible except by court order for good cause shown. Disclosure of the names of the natural or adoptive parents by the person in charge of the records is prohibited unless court-ordered.

Again, consult the State Open Records Law section for appeal procedures and discussion of the inadequacies of these laws.

Criminal Records

CRIMINAL
RECORDS

There are many ways in which a criminal record may affect one's life. In attempting to get a job, license or credit, an ex-offender discovers his or her criminal record can have a very constraining effect on his or her opportunities. At present both the federal and the state governments disseminate criminal records as a matter of general policy. The Wisconsin statutes also permit interagency dissemination of records[§165.84(2)(1), Stats.]. This policy and others like it necessitate one's being aware of his or her record, knowing whether it is accurate, what he or she can do to see and challenge it, and who may obtain it.

Briefly discussed below are several levels of government that maintain or regulate criminal records. Among them are the Federal Bureau of Investigation, the Federal Department of Justice, the Federal Law Enforcement Assistance Administration, the State of Wisconsin Crime Information Bureau, the State of Wisconsin Division of Corrections, the Wisconsin Courts, the Dane County Sheriff's Department and the Madison Police Department.

Before describing these records, we would do well to consider one important point. The federal government has some statutory provisions and regulations to guide its handling of records, but the State of Wisconsin has very few such statutes to deal specifically with criminal records. The most general statutory coverage is the state Open Records Law, which includes criminal records maintained by state, county and local governments. Wisconsin also has very few administrative rules guiding the handling of criminal records. As a result, then, most of the information in this section is based not on statutory law or on administrative rules, but on departmental policy.

1. Federal Bureau of Investigation and Department of Justice

The Federal Bureau of Investigation (FBI), a division of the United States Department of Justice, has developed three criminal records systems: the manual identification system, the National Crime Information Center (NCIC), and the Computerized Criminal History System (CCH). These systems were developed pursuant to the U.S. Attorney General's statutorily granted powers to "acquire, collect, classify and preserve identification, criminal identification and other records..." [28 USC §534 (a) (1)]

1. FBI
RECORDS

The first system, the manual identification one, maintains fingerprint records on most persons arrested in the United States. State, local and federal law enforcement agencies forward to the FBI the fingerprints of arrested persons. When a person is arrested more than once, his or her record ("rap sheet") becomes a type of criminal history record. The rap sheet includes a listing of fingerprints submitted to and retained by the FBI in connection with arrests, the name of the agency or the institution submitting the records to the FBI and, if the fingerprints concern a criminal charge, the date of arrest and the disposition of the case.

The FBI's manual identification records are available to all law enforcement personnel and in certain circumstances to other government agencies on the federal, state and local levels. How the information is used and disseminated the FBI considers to be the responsibility of the recipients.

To obtain a copy of a client's rap sheet, write to the

Federal Bureau of Investigation
Identification Division
Second and D Streets, SW
Washington D.C.

With the request, the client must include satisfactory proof of identity. Such proof includes name, date and place of birth and fingerprint impressions. The fee, which must be submitted in the form of a certified check or of a money order made payable to the Treasurer of the United States, is \$5.00 (28 CFR §16.30 - §16.34).

To obtain a change in this identification record, appeal must be taken directly to the original contributor of the questioned information, generally a local law enforcement agency. When the FBI receives a verified notice of change from that contributor, it will change the record

in question. (Note the difference here between the normal Privacy Act provisions and the policies of the FBI.) The burden is on the person requesting the change to make sure that the agency making the mistake changes it. The FBI will not change the record unless the contributing agency says a mistake was made.

The second FBI criminal records system is the National Crime Information Center (NCIC), a computerized system which includes records of warrants for arrest, of missing persons, of stolen guns, of stolen securities and of stolen cars. Wisconsin participates in the system, as most states do, by sending to the NCIC the above types of information. Wisconsin law enforcement agencies participating in the state's own computerized system--TIME (See section on the Crime Information Bureau)--also have direct access to the NCIC. Thus, any law enforcement agency in the state which has direct link-up with the TIME system may get the above records regarding any given individual no matter where the person may be or may have been in the United States. Remember, these are not criminal history records.

The third FBI records system, the Computerized Criminal History (CCH) system which attempts to maintain criminal history records of all offenders throughout the country. A criminal history record is much more detailed than an arrest or a warrant record. It may include such things as facts surrounding the crime and the disposition of the alleged criminal incident. At present, only 6 or 7 states participate fully in this system; however, all other states at least cooperate with it. A state--Wisconsin is not one of them--participates fully by maintaining a computerized criminal history system which interlocks with the CCH. With the CCH system state or federal law enforcement personnel may obtain information regarding an alleged crime committed anywhere in the country.

Wisconsin is among many states participating manually in the CCH system. That is, it manually furnishes information regarding criminal histories to the CCH and in return receives information manually from the CCH. This information forwarded to Wisconsin and other manual records states includes dispositions, facts surrounding the case, etc. Thus, Wisconsin has access to the CCH system but, because it does not maintain its own computerized system and interlock with the CCH, it obtains nation-wide information with some delay.

The FBI, which maintains and uses the NCIC and the CCH systems, has broad powers to disseminate the records they contain. Under 28 USC §534(a) 92, the Bureau may

exchange these records with, and for the official use of, authorized officials of the Federal Government, the States, cities and penal and other institutions.

This provision allows the FBI to disseminate these records to other government agencies for purposes such as running employment security checks or enforcing regulations. Additionally, the Code of Federal Regulations in its definition of "institutions to receive records" includes railroad police, member banks of the Federal Reserve and Federal Savings and Loan Insurance Company members [28 CFR §85(h)]. In other words, the number of state and federal agencies which may receive these records is considerable. However, a recent FBI rule change prohibits the dissemination of information to non-law enforcement agencies when the information is over one year old and when it does not contain the disposition.

All of the above is important because these FBI records systems are exempt from many provisions in the Privacy Act and the Freedom of Information Act. So, even though the Justice Department has implemented both Acts, their effects have been minimal. The implementations cover record systems within the Justice Department which have little value to most people, except for records concerning FBI or Department of Justice investigations. However, the Privacy Act does require that the records be kept timely and accurate. Unfortunately, your rights to access and challenge under the Privacy Act cannot be used here.

There may be some records systems the Department of Justice maintains that are not exempt from the Privacy Act. One may have these systems identified by writing either to the National Archives for its "Notices of Records Systems" or to

Information Systems and Staff
Office of Management and Finance
Department of Justice
10th and Constitution Ave., N.W.
Washington D.C. 20530

To gain access, change or challenge these records, check the cited provisions and the Privacy Act in this booklet.

The Department of Justice has implemented the Freedom of Information Act (FOIA) in 28 CFR § 161. et. seq. The provisions are similar to those of the FOIA itself. A special note should be made regarding what investigatory records

you may obtain under the FOIA. Investigatory records are those which the FBI or other federal agencies collect by investigating a U.S. resident. (FBI investigations of this type have come under criticism recently and many people want to gain access to the records of these investigations.) Basically, these investigative records are exempt from the FOIA if they are compiled for law enforcement purposes and your gaining access to them would interfere with law enforcement, deprive a person of a fair trial, constitute an unwarranted invasion of privacy, disclose the identity of a confidential source, disclose investigative techniques or endanger the life or safety of law enforcement personnel. If one feels that gaining access to investigatory records will do none of the above, or that access should be available because the information wanted can be "segregated" (removed from the records), one should request access pursuant to the FOIA. Remember to ask why the agency is either denying access or eliminating some of what was requested. To ask the Department of Justice for information under the FOIA, write

Freedom of Information Request
Deputy Attorney General
Department of Justice
Washington, D.C. 20530

If the request is denied, send your appeal to

Freedom of Information Appeal
Freedom of Information Appeals Unit
Department of Justice
Washington, D.C. 20530

The fees charged are listed 28 CFR §16.19 and include 10 cents per copy and a \$4.00 per hour charge for clerical searches. If the fee will be less than \$3.00, the charge is waived; if more than \$25.00, the Department of Justice will notify. If the fees will exceed \$25.00, a 25% advance or \$25.00 advance deposit, whichever is greater, must be made.

2. Crime Information Bureau

2. CRIME INFORMA- TION RECORDS

The State of Wisconsin, pursuant to §165.83, Stats., has developed the Crime Information Bureau (CIB), which keeps to name-oriented kinds of records, the computerized Transaction Information for Management Enforcement (TIME) System and the basically manual Identification Information System (II). Both are centralized systems located in Madison at the Justice Department, 123 West Washington Ave., 53702.

Pursuant to §165.83 the TIME system maintains all arrest and wanted/warrant records, probation and parole apprehension requests and missing person's files. Linked with the FBI's National Crime Information Center (NCIC), the

TIME system allows police to keep constant track of wanted and missing persons around the state and the country. In all, 227 law enforcement agencies in the state have terminals giving them access to the TIME system. The terminals give access to TIME records only. They may be used to request information from the manual system, but that information does not come back through them.

The Identification Information system is a manual procedure for identifying and processing fingerprints for the state. The system receives information pursuant to § 65.83, Stats., which dictates that for certain offenses fingerprints of the accused must be made. Among the crimes included are all felonies; certain misdemeanors concerned with gambling, burglary tools, dangerous weapons and sex offenses against children; and other offenses the Attorney General designates [§165.83(2)(A), Stats.] This manual system has no relationship to the TIME system.

Generally speaking, only CIB personnel may see manual records. Criminal justice agencies, including police departments, sheriff's offices, district attorney's offices, probation and parole offices and Division of Corrections offices may get a copy of the records, but they may use them for criminal justice purposes only. Government agencies--federal, other states' and Wisconsin--may receive records when, by statute or by administrative code regulation, they will be using them for regulation and licensing purposes. For example, when a person wishing to become an accountant discovers he or she is required to have "good moral character", the Accounting Examining Board may ask for his or her criminal record, if there is one. When no such license is required, or when there is no statutory regulatory purpose behind an agency's actions, then the agency may not gain access to the CIB records.

An individual may gain access to either system by filing a request form with the CIB (see form following). As a matter of policy the Bureau funnels all subject access requests through its Madison offices (123 W. Washington Ave., 53702), to which one can write for the proper request form. Also as a matter of policy the CIB records all releases of records. This record of releases-granted-to-date is something else one may request.

CIB policy grants the right to challenge the records. If something seems erroneous, the Bureau can supply a form to challenge it. If there is a discrepancy, the Bureau will have the challenger check with the appropriate agency where the information originated, i.e., police department, probation and parole office, court, etc. to have it corrected. If the agency admits discrepancy, the CIB will change the record and inform.

others who have received it of the change. If the agency does not admit the discrepancy, the CIB will not change the record.

One may be able to obtain administrative or judicial review of a no-change decision through the Wisconsin Administrative Procedure Act, however. At present there are neither further statutes nor administrative regulations to govern appeal, access, accuracy, challenge and/or remedies.

Juvenile records are handled somewhat differently. A juvenile may not get a copy of his or her record; he or she may only view it. In order to gain access, he or she must fill out a form. He or she must also fill out a form to gain access for his or her parents.

Finally, one who has been arrested but not convicted may request that the CIB expunge the arrest record[§165.84 (1), Stats.] by writing the CIB for the appropriate form (see form following) and filling it out. Remember, though, that there is no guarantee that local law enforcement officials will expunge the record.

WISCONSIN CRIME INFORMATION BUREAU
P.O. BOX 2718, MADISON, WISCONSIN 53701

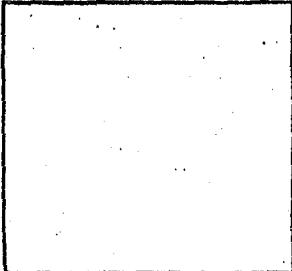
IDENTIFICATION FILE REQUEST

I hereby authorize the Crime Information Bureau, Division of Law Enforcement Services, of the Wisconsin Department of Justice to disclose the information, if any, within my identification file, to:

(NAME)

(TITLE)

(ADDRESS)



Right Index Fingerprint
Impression

(PRINT COMPLETE NAME)

(DATE OF BIRTH)

Signed:

(COMPLETE NAME)

The use of this form is intended to safeguard the rights of the signatory and to ensure the confidentiality of the requested information against non-authorized disclosure. The fingerprint placed hereon will be used to verify identity.

Subscribed and sworn to before me this _____ day of _____
_____ 19 _____

Notary Public _____ County, Wisconsin

My commission expires _____

SEAL

DJ-LE-250

4/1/77

FINGERPRINT RECORD RETURN REQUEST

I hereby request the Crime Information Bureau, Division of Law Enforcement Services, of the Wisconsin Department of Justice to expunge a fingerprint record, if it exists, pursuant to Wisconsin Statute 165.84(1).

Please Destroy
 Return to:

(NAME) _____

(ADDRESS) _____

(CITY) _____

(STATE & ZIP) _____

(PRINT YOUR COMPLETE NAME)

(PRESENT ADDRESS)

(CITY) (STATE) (ZIP)

(SEX) (RACE)

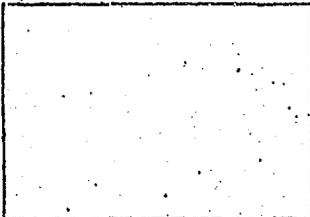
(DATE OF BIRTH) (DATE OF ARREST)

(ARRESTING AGENCY)

(ARREST CHARGE)

(DISPOSITION)

(COMPLETE NAME)



Right Index Fingerprint
Impression

Signed:

The use of this form is intended to safeguard the rights of the signatory and to ensure proper record expungement. The fingerprint placed hereon will be used only to verify identity with the record.

Subscribed and sworn to before me this _____ day of _____
_____ 19 ____.

Notary Public _____ County, Wisconsin
My commission expires _____

(SEAL)

3. Division of Corrections

3. DIVISION OF COR- RECTIONS RECORDS

The State of Wisconsin Division of Corrections has both manual and computer systems for keeping offenders' records. The computer systems house information on offenders currently under Division of Corrections "supervision", a term including people in institutions as well as people on probation or parole. The data on these computer records are primarily identifying factors, historical information and court conviction information. These records are stored on magnetic tapes; monthly print-outs of these tapes update offenders' whereabouts and movements.

The Division of Corrections keeps in at least two places manual case files on all active offenders, i.e., on all people who are either in state correctional institutions or on probation or parole. First, the Central Records Office has a complete file of all documents accumulated on offenders during their corrections supervision. This file includes all social and diagnostic records, parole board and disciplinary reports and relevant correspondence. Second, a similar file is kept in the institutions. Also, probation and parole field offices have copies of all field supervision records and of significant parts of the institution records pertaining to persons on parole.

About a year after an offender's discharge (satisfactory completion of sentence) the Central Records Office microfilms most of his or her main file and destroys the original records. The Office then puts the microfilm into permanent storage. Ten years after discharge the institution destroys all records; however, it does retain a permanent index card with commitment information. Field records are destroyed 7 years after discharge, though field offices also keep a permanent index card.

All corrections personnel and other authorized criminal justice officials may gain access to the full file in the Central Records Office. FBI personnel, the Attorney General's Office, law school correctional interns, the Office of Vocational Rehabilitation and other social service agencies may for a good reason see the files. Other persons--employers and insurance company agents included--may not see the records, although the clerks who supervise them will indicate to anyone by telephone or in person whether a person has ever been under Division of Corrections supervision, since this is public information. Juvenile and mental health records are confidential (See the sections on Juvenile Records and Mental Health Records.)

Probation and parole officers will give varying amounts of information on a client to employers or other interested parties, depending on the nature of the information requested. Legal data, being public, are freely dispersed; but medical and psychiatric reports are confidential and can be released only with the client's permission. Probation and parole officers may employ discretion in the

dissemination of other information in the files--information pertaining to social histories, past employment records, educational training, etc. The officer usually will make a decision based on the requestor's need to know and sensitivity of the material. It is the policy of the Division to inform prospective employers when a client's offense is very closely related to the type of job he or she is seeking.

An offender or his or her attorney can usually only see the legal documents in the offender's record. However, in line with a recent Wisconsin Supreme Court ruling (State v. Goulette, 65 Wis. 2d 207, 222 NW 2d 622, 1974) an offender up for parole will automatically receive his or her "Goulette packet" 15 days prior to the parole hearing. This packet, named after the above-cited case, may contain the potential parolee's face sheet, diagnostic records, court history, pre-sentence report, case history review, FBI or other conviction records, program reviews, parole planning sheet, pre-parole investigations, institutional pre-board summary, conduct reports, violation reports and the sentencing portion of the court transcript.

In situations other than parole hearings, an offender may request the Central Records Office to supply him or her information from the legal documents. The offender and his or her attorney can only get a paraphrased version of diagnostic or subjective records in the file either in the Wisconsin Central Records Office or elsewhere. According to the Division of Corrections, this is because the person may misconstrue judgmental material. These records, however, are technically public records and thus one may be able to make a request under the Public Records Law to gain access to his or her own records. However, an access procedure has not yet been established through the courts.

No formal procedure exists for changing a corrections record. An offender has no way to see or question the reports in the institution, unless it is a mental health institution (see section on Mental Health Records). He or she may, however, supplement the record with any private reports or data he or she sends to the institution or the Central Records file. Any such communication becomes part of the permanent file. An exception is made for parole proceedings. There a potential parolee may object to the data included for the hearing.

4. Courts

4. COURT RECORDS

In Dane County, records of all criminal proceedings, except for juvenile cases, are kept with the Clerk of Courts (Circuit Court cases) or in the Criminal and Traffic Division Office (county court cases). These records are open to public inspection except when they are specifically impounded by the court.

Index dockets to all criminal cases are kept in both offices. Cases are listed alphabetically by first letter and first vowel (Ba, Che, Mo, etc.), cumulative through time. Clerks render aid in finding the desired listing. In the docket itself is a listing of the case number and the court date, a description of the crime committed, the number of the statute or the ordinance violated, the disposition of the case and the volume and page number where a further report of the case is listed. Once the case number is known, one may also see the judgment and the complete transcript of the hearing, if one exists.

Anyone may use the court docket and request to see other documents. All that is necessary is the defendant's name and a general idea of when the court hearing took place. It is possible to search through 30 years of the docket in a few minutes. Only arrests actually resulting in charges appear in the docket, which also, as indicated above, gives dispositions. An offender and his or her attorney, as well as the general public, may see all court records. Because court records are the official documents for a case, they can almost never be changed.

In at least one instance, however, a judge of Dane County Court has ordered the expungement of court records of an arrest for which charges had been dismissed. Any judicial order for expungement in such a case--a case not leading to conviction--should require also the expungement of police, sheriff and district attorney records of the case. It should also request return of FBI records.

5. Dane County Sheriff's Office

The Sheriff's Office keeps records of all arrests and of all bookings into the jail. A master name file indexes full reports. Each offender record contains fingerprints, photographs, identification information, arrest data, criminal history, and, eventually, the disposition of the case. (Dispositions have been regularly included since the state Crime Information Bureau began operation in 1971.) Any intelligence information about an offender would be kept by a detective. The Sheriff's Office fingerprints all people jailed, but not people who are arrested for minor offenses without being jailed.

5. DANE COUNTY
SHERIFF'S
OFFICE

Records of bookings into jail (the jail register) are kept for 30 years according to § 59.23(8), Stats., after which time the originals are microfilmed and destroyed. Other records, including those of arrests and of dispositions, are kept for shorter periods--2 to 3 years--before being microfilmed and destroyed.

Criminal justice personnel, military recruiters and government security checkers have direct access to sheriff's records. Other agencies may also see the records if they

other agencies may also see the records if they are required by statute or executive order. However, military recruiters and government security personnel may not see juvenile records without a court order. Other persons may not see the records. No information is given out over the telephone. Insurance companies and employers may not gain access to information in the sheriff's files.

An offender may see his or her entire file by giving his or her fingerprints. He or she may then take notes on the file but may not make a copy of it. According to policy, an attorney cannot gain access to a file without a court order, though in a case where the attorney is known to be the offender's representative, the sheriff's clerk will often let the attorney see the records. Generally, no changes are made in Sheriff's Office records without a court order. This requirement covers both the expungement of non-conviction arrest records and the completion of case disposition records.

6. Madison Police Department

6. MADISON POLICE DEPARTMENT

The key to the Madison Police Department record-keeping system is a master name-cross-index file of cards listing the persons involved in a police report. These persons include witnesses, complainants, suspects, arrestees, etc. By referencing a known name, you can locate a full report of the incident. Madison Police also keep an alphabetical file of all arrest records and fingerprint every person they arrest for a crime. They send these arrest records and fingerprints to the Crime Information Bureau and to the FBI, which returns the criminal histories to the police if the arrestee has a prior record. These criminal histories and arrest records make up the main record of an offender. Final disposition of arrests have been regularly recorded since 1971. Further information on persons may exist in intelligence files kept by detectives. This information, often unverified, may take any form.

All Madison police records, including those of arrests not leading to conviction, are kept permanently. First offender program records are kept, too, though the arrest card is designated "no record". (A first offender is a person, charged with a minor theft, who at the prosecutor's discretion is ordered to attend a remedial school instead of being prosecuted. Upon his or her successful completion of school, charges are dropped and the disposition written as "no record".)

Any agent in the criminal justice system may see police arrest records and incident reports, including juvenile and first offender files. The press may also see all police reports. Military recruiters and government security officials may see all except juvenile and "no record" reports. Other people must display a high "need

to know" to gain access to police files. No inquisitive exploration is allowed, including exploration by landlords, employers and private investigators. Although the Madison police do not routinely give information out over the telephone, they sometimes will check to see whether a record exists.

An offender may see his or her arrest and criminal history file and other reports by identifying himself or herself with his or her fingerprints. Sometimes personal recognition by a police officer will be enough. An attorney may sometimes see an offender's record if he or she is properly identified as the offender's attorney. The policy for permitting an attorney to gain access is highly discretionary. The attorney may not see the record while the case is pending, as the police files are considered to be the work-product of the district attorney.

No change is made in any Madison police record, including a record of a case not leading to conviction, without a court order. If the Crime Information Bureau informs local police authorities that it has expunged a record in accordance with §165.84, Stats., the local authorities may or may not expunge their own records of the case.

The Madison Police Department has established a procedure for processing complaints. That is, any complaint one might have about police policy or procedure should be sent to the Chief's office. This procedure covers any complaint about obtaining access to one's own records. If a legal question is involved, the Chief may forward the record to the City Attorney's office. If one wishes to file a complaint against a specific officer, it should be sent to the Chief, who will forward it to the commander of the officer against whom the complaint is being filed. An investigation will then be conducted and the Department will try to respond to the complainant and to the officer within 30 days.

Youthful Offenders Act

YOUTHFUL
OFFENDERS
ACT

Wisconsin recently adopted its own version of the Youthful Offenders Act (§54.01, Stats., et. seq., Chapter 39, Laws of 1975), which closely parallels a similar federal law. This act intends to provide a "specialized correctional program for youthful offender persons between the ages of 18 and 21 who are found guilty in criminal courts." Because it is widely felt that the incidence of crime and of recidivism is high for youth, and that these problems may be solved if dealt with as early as possible, this program attempts to provide specialized corrections for such persons.

There is a provision in the Act that many people believe will be interpreted as an expungement provision [§54.03 (4) (b), Stats.]:

(b) A youthful offender disposition shall not disqualify the youthful offender from entering public or private employment, or securing occupational or professional licenses. A youthful offender disposition shall not disqualify a person from voting or holding public office after his[or her] discharge from probation or his[or her] discharge from commitment to the department.

At this time, however, it is impossible to say what effect this provision will have on youthful offender records in the state. Of more certain importance is the fact that Wisconsin now has an expungement statute specifically for youthful offender misdemeanors. §973.015, Stats., Chapter 39, Laws of 1975, states that a person under 21 years of age at the time of the offense for which he or she has been found guilty and for which the sentence is imprisonment for one year or less may have his or her record expunged by court order upon successful completion of the sentence. The court bases its determination on the possible harm to society vs. the benefit to the person.

The successful completion of such a sentence may lead to a certificate of discharge by the probationary authority; this certificate must be forwarded to the convicting court, where it will have the effect of expunging the record.

Law Enforcement Assistance Administration Regulations

LAW EN-
FORCEMENT
ASSISTANCE
ADMINISTRATIVE
REGULATIONS

The Federal Law Enforcement Assistance Administration (LEEA) is exempt from the Privacy Act but has developed its own regulations in accordance with the Omnibus Crime Control and Safe Street Act of 1968. These regulations are intended to follow the general guidelines of the Privacy Act; they must be implemented by all

state and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual storage or automated operations where such collection, storage or dissemination has been funded in whole or part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973....

In Wisconsin, then, the LEEA regulations pertaining to criminal records since July 1, 1973, apply to the Villages of Germantown and Grafton Police Departments

Milwaukee County Childrens' Court Center
(Intake Screening Unit)
Milwaukee County Project Turn-Around
New Berlin Police Department
Ozaukee County Sheriff's Office
Winnebago County Sheriff's Office
Wisconsin Correctional Service

The importance of this section describing these criminal records lies in the fact that any unit of government may at any time start receiving LEAA aid for a record keeping system and therefore, be subject to the LEAA records regulations. At present these regulations are more stringent than Wisconsin law; so they may be necessary to get disclosure of a criminal record.

Wisconsin State implementation of the LEAA regulations has come through the guidelines drawn up and issued by the Wisconsin Council on Criminal Justice(WCCJ). The affected local agencies (see above) have the choice of either following these WCCJ guidelines or of enacting some of their own that meet the federal standards. This information is from the Wisconsin Council on Criminal Justice publication, "Wisconsin Criminal History Information Privacy Plan."

The scope of records included under these state guidelines is defined a "criminal history record information," which means

...information collected by criminal justice agencies on individuals, consisting of identifiable description and notation of arrests, detention, indictments, information, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

These WCCJ/LEAA guidelines require that the records be complete, which means that they must include arrest and disposition information within 90 days of its occurrence. The guidelines also require that all records be kept in a central depository and so the state has: the Crime Information Bureau--CIB.) Further, the guidelines provide that criminal justice agencies may question the CIB to see if the records are complete. If the records turn out to be inaccurate, the CIB must notify all agencies who have received the misinformation.

The dissemination provisions allow records to be given to other criminal justice agencies for purposes of administering criminal justice and criminal justice agency employment programs. Still other agencies are given access if, by statute or by executive order, they require the information to carry out their functions. These functions may include investigation for employment purposes.

Nonconviction records may not be disseminated, however. The nondissemination policy also covers records which have been inactive for one year or more and in which no active charge is pending. So, if a person is arrested

and his or her case is dropped, or he or she is acquitted, or the district attorney institutes no action against him or her within a year, the record may not be disseminated.

The WCCJ/LEAA regulations permit an individual to review his or her record upon proper identification. Any of the information included within the scope of these rules is reviewable. If a person desires to review his or her record, it is necessary to:

(1) go to the proper agency and verify identity

OR

(2) write to the agency and include proper verification in the letter (notarization is suggested)

to request access pursuant to these regulations. The regulations also give a person the right to challenge the accuracy of information in his or her records, again by going or writing to the agency maintaining them. WCCJ suggests a model form for this purpose in its "Wisconsin Criminal History Information Privacy Plan" referred to above.

If the attempt to gain access or to challenge is denied, agency or judicial review may be obtainable through the Wisconsin Administrative Procedure Act (Chap. 227, Stats.). To determine one's chances, one should consult an attorney.

II. ABOUT RECORDS IN GENERAL--

MAJOR FEDERAL AND STATE LAWS

1. Freedom of Information Act

FREEDOM
OF INFOR-
MATION ACT

The Freedom of Information Act, a federal law (5 USC §552, hereinafter the FOIA) was enacted to implement the people's right to know. Passed in 1966 and amended in late 1974, the FOIA allows one to gain access to the various types of information that the many federal agencies maintain. Furthermore, it allows one to gain access to information concerning oneself. This brief description of the FOIA covers its scope, describes what records may be accessed to under it (and which records are exempted), describes how and where to write to gain access, and explains what to do if a request is rejected.

The FOIA covers three classes of information that the federal government agencies must make available to the public. The federal government agencies included under the FOIA are the executive and the military departments, government-controlled corporations (such as the Tennessee Valley Authority) and independent regulatory bodies. Court records do not come within the provisions of the FOIA.

I. The first class of federal information the public has a right to know includes 5 categories of information that agencies must publish in the Federal Register:

- (1) Locations of the agency's central and field offices and the identification of specific employees from whom the public "may obtain information submittals or requests, or obtain decisions."
- (2) Statements describing how the agency functions. These include statements on aspects of the internal management of the agency that may affect the public, as well as information on the manner in which the agency handles the particular business for which it is responsible.
- (3) Rules of procedure and descriptions of forms available or the places at which forms may be obtained.
- (4) Substantive rules, statements of general policy and interpretations of policy adopted by the agency which are of general applicability.
- (5) Any amendment or revision of items 1-4.

If the information sought fits into the above classification, it should be found in the Federal Register. Much

of the information in the Federal Register is compiled in the Code of Federal Regulations. (These two references are usually available at local libraries and law libraries.) The FOIA states that no person may be bound by any rule, policy, statement or information that is required to be published in the Federal Register and is not, unless the person is given "actual and timely notice thereof."

II. The second class of information encompasses information that an agency must either publish, offer for sale, or make available for public inspection.

- (1) The results of agency cases, including final options and orders. A case is an administrative adjudication proceeding, not general policies or opinions.
- (2) Statements of policy and interpretation that do not appear in the Federal Register.
- (3) "Administrative staff manuals and instructions to staff that affect a member of the Public," including instructions to staff on the procedures for handling requests for information.

An agency is permitted to delete names, addresses, etc. where "unwarranted invasion of personal privacy" may occur. If something is deleted, the justification must be fully explained in writing. Each agency must publish, at least quarterly, and distribute, for sale or otherwise, current indexes of any material within paragraphs 1-3 (above) issued or adopted after July 1, 1967.

III. The third class of information consists of other agency records, including "all books, papers, maps, photographs, or other documentary material, regardless of physical form or characteristics, made or received by any agency if the U.S. Government." These records are available to anyone who reasonably describes them. The records must be made promptly available. If a request is denied, the decision may be appealed. (Note: The appeal process is discussed further on in this section.)

The FOIA exempts from public disclosure nine categories of information:

- (1) Records specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy, i.e., records that are, in fact, properly classified. This refers to "classified information".
- (2) Matters concerning "internal personnel rules and practices that do not affect a member of the public. This exemption has been applied to disclosures which would prevent an agency from efficiently carrying out its duties.

- (3) Matters specifically exempted by statute.
- (4) Trade secrets and commercial or financial information that a person has given to an agency, and that are privileged and confidential. For example, some financial statutes about a business.
- (5) Inter-agency or intra-agency communications such as memos showing how decision-makers came to their conclusions.
- (6) Personnel and medical files which could not be disclosed without unwarrantedly invading a person's privacy.
- (7) Investigatory records compiled for law enforcement purposes, but only if the production of such records would (a) interfere with law enforcement; (b) deprive a person of a fair trial; (c) constitute an unwarranted invasion of personal privacy; (d) disclose the identity of a confidential source and, in criminal and lawful national security intelligence investigations, confidential information furnished only by such a confidential source; or (e) disclose investigative techniques, which may endanger the life or the safety of law enforcement personnel.
- (8) Reports prepared by or for an agency responsible for the regulation or the supervision of financial institutions.
- (9) Geological and geophysical information and data, including maps concerning wells, etc.

The following is a step-by step look at the procedure one should follow to request information under the FOIA:

I. General Concepts

The various agencies included under the FOIA must publish in the Federal Register the procedures one must follow to obtain information those agencies hold. These procedures are published later in the Code of Federal Regulations.

II. Locating the Records

First, one must determine which agency might have the information desired. One can check the United States Organizational Manual or the Congressional Directory, both of which can be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402. Then one must determine in what form is the data or information desired. Check the types of information that must be published in the Federal Register (Classifi-

cation # I), the types of information that must be published or sold (class II), or other information (class III). A person can gain access to class II and class III information by requesting it from the agency.

III. Making a Request

First, check again the specific agency's regulations; each agency must spell out its procedures. Second, specifically state what you want and indicate that this is a request under the FOIA. Third, state that if certain portions of this information may not be released, "segregable" portions may be, and that you want the remainder of the file if certain portions are exempt. Fourth, state that if the agency determines all or certain portions of the information desired are exempt, then the agency should give its reasons for declaring the exemption(s). Fifth, state that appeal will be taken if necessary. Sixth, state that you are prepared to pay the costs of duplication and reproduction of the files, but that if the information is in the public interest, the fees should be waived. Seventh, state that you will expect the result in 10 working days, as the FOIA specifies.

IV. Appeal

The FOIA provides for one level of administrative appeal. The agency is obliged to state the reasons for denial and name the person to whom appeal may be taken. Send the letter of appeal to that person, stating a firm reason for the right to know. It will be even stronger if you rebut the agency's reasoning. Also state that a ruling is expected within 20 business days, as specified in the FOIA.

If the appeal is denied or if you receive no reply within 20 working days, the matter may be taken to the federal district court.

Several roadblocks to gathering information should be mentioned. First, be very specific in your request. An agency may use almost any reason to delay in answering. Second, frame the request so as to avoid its being classified as an exemption. That is, reduce the agency's discretion to deny the request by framing it so that it is not exempt.

For further information see the American Civil Liberties Union's pamphlet "Your Right to Government Information" and also the Project on National Security and Civil Liberties "How to Get Your Personal File." Both are available from the ACLU, 22 East 40th St., New York, NY 10016. "A Guide to Record Retention Requirements," explaining what records are to be kept, who must keep them and how long they must be kept, can be obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402.

2. The Privacy Act of 1974

PRIVACY ACT
OF 1974

The Privacy Act of 1974, a counterpart to the FOIA, attempts to protect individual privacy interests by restricting the information practices of federal government agencies. The agencies covered by the Act are the same as those covered by the FOIA (see the beginning of the FOIA section, above.)

The Privacy Act (5USC §552a, hereinafter the Act), deals with all stages of the information process, i.e., information gathering, maintenance, dissemination, etc; however, it deals primarily with a person's gaining access to agency records and with the dissemination of agency records. This section breaks the Act down according to 5 stages of the information process.

ONE: The first stage is the acquisition of information. The Act authorizes federal agencies to collect only "such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President" [5 USC §552a (e)(1)]. This provision has been criticized as being unduly broad, setting few limitations on government agencies. However, one specific criterion does exist: Government agencies may not collect information about a person's actions with regard to First Amendment rights unless the information is related to an authorized law enforcement activity [§ (e)(7)].

The Act requires the agencies to tell the subject why the information is being collected and under what authority, whether disclosure of the information is voluntary or mandatory, what routine uses will be made of the information and what will be the effects on the subjects if they do not respond to an agency's inquiries [§ (e)(3)]. This subsection applies only if the individual is asked for information directly, so the agency may avoid it entirely by asking third persons.

TWO: The second stage concerns the method employed in information acquisition. Subsection (e)(2) of the Act requires that information be collected to the greatest possible extent directly from the subject. This requirement is restricted to information which may have an adverse effect on the subject's rights, benefits, or privileges under a federal program.

THREE: The retention stage in the process is next. By giving one the rights of notice, access and challenge, the Act allows one to determine what information government agencies gave retained. The Act provides for notice

in two ways. First, subsection (e)(4) requires each agency to publish in the Federal Register at least annually a notice of the existence and character of the systems of records it maintains. This notice must be sufficiently explicit to enable you to decide accurately which agencies maintain records about you. Second, subsection (f)(1) requires agencies to respond to a subject's inquiries as to whether the information systems named contain records pertaining to him or her.

Subsection (d)(1) establishes a general right of subjects to gain access to their records. It requires that each agency permit a subject upon request to review his or her personal file and to obtain a copy of it. Each agency must spell out in the Federal Register those of its procedures which implement this Act. Each agency must also specify how and where the subject can gain access. Thus, for each record a subject desires to see, he or she can check the Federal Register (or the Code of Federal Regulations) for each agency and for each set of procedures you must follow. Typically, the agencies will specify several locations around the country where one may gain access by going to the offices there and identifying oneself and the records desired to be seen.

The subject may also designate someone to accompany him or her when going to see a record, though the agency maintaining the record may require one to furnish a written statement authorizing its discussion in the presence of the accompanying person. The cost of access is limited to the cost of reproducing the records.

This subsection is modified by several exceptions. It does not apply to the Central Intelligence Agency, to the Secret Service or to criminal law enforcement agencies if they promulgate rules exempting themselves. Moreover, the following information may be exempted from the individual access if the head of any government agency so wishes to promulgate the appropriate rules[5 USC §552a(k)]:

- (1) classified information;
- (2) information maintained and used solely for statistical records;
- (3) certain testing and examination information used solely for appointment or promotional purposes in federal jobs;
- (4) certain investigatory information used for law enforcement purposes;
- (5) investigatory material compiled solely for use in determining eligibility for federal employment, military service, federal contracts or access to classified information

if disclosure of the information would reveal certain confidential sources;

- (6) evaluation material used to determine whether one should be promoted in the armed services if it would reveal certain confidential sources.

Complementing the right to gain access is the right to challenge. Subsection (d)(2) fully incorporates the right to challenge the records one has, the right to see if one believes that they are not accurate, relevant, timely or complete. As with the right to gain access, each agency must publish in the Federal Register the procedures one must follow to amend one's record. Generally, one can amend at the same office where one gains access. Moreover, one can usually amend by making a written request to make certain changes.

Under this subsection, the agency must either amend the record within 10 days or explain why it has not done so. If your request for amendment is denied, you have the right of review by the agency. The review must be conducted within 30 days. If the request is denied again, the agency must notify one of the right to file with it a concise statement setting forth the specific disagreement with it. The agency must also inform one of one's right to judicial review of the denial. Subsection (g)(1)(A) grants the right of judicial review for the failure of the government agency to amend the record. And subsection (g)(1)(B) grants the same right for a government agency's failure to allow access to the record. (These points will be discussed further under the remedies section following.) Additionally, if the challenge is granted, the agency that has been challenged must inform other agencies who have received the information in the record that such change has been made.

FOUR: Next in the process is dissemination. The Privacy Act allows dissemination for "routine" uses. Subsection (a)(7) defines a routine use as one that is "for a purpose which is compatible with the purpose for which the information was collected." Each agency must specify in the Federal Register what its routine uses are. The Act requires that one give written consent when information will be used for non-routine purposes. However, there are several exceptions to this requirement [Subsection(b)], such as when the information is to be used by the Census Bureau, the National Archives or the Comptroller General, by law enforcement agencies, for statistical reports, or pursuant to court order.

FIVE: The last stage of the process concerns remedies and sanctions. Subsection (g)(1) of the Act provides that a person may bring a civil action in federal dis-

strict court against any agency refusing to amend his or her record or refusing to allow access to the record. One can also bring an action on the grounds that the record is not accurate, relevant, timely and complete, or that the agency has failed in any other way to comply with the statutes or regulations, including improper release of information, and thereby adversely affected the subject's interest. However, the term "adverse effect" is ambiguous. With respect to gaining access and to amendment, the Act states that injunctive relief is the remedy. For all other violations, damages are the remedy. The Act assures of at least \$1,000 in damages if the agency's actions are found to have been intentional or willful. In all actions one may recover litigation costs and attorney's fees if the subject prevails.

The Act further provides for certain criminal penalties. If an officer or an employee of an agency willfully discloses confidential information to persons or agencies not entitled to have it, if any person makes false pretenses to get information, or if an officer or an employee of a government agency willfully maintains a system of records without meeting the Act's notice requirement, he or she may be fined up to \$5,000.

3. Wisconsin's Open Records Law

WISCONSIN
OPEN
RECORDS
LAW

The Wisconsin Open Records Law (§16.80 and §19.21, Stats.) is designed to ensure the safekeeping of all public records and property and to establish the right of any person to examine and/or copy them. Under this law "public records" include books, papers, maps, photographs, recordings and any other forms of communication or representation that are required to be filed, deposited or kept by a government officer, that are in the lawful possession or control of a government officer, and that a government officer is legally entitled to. Exceptions are the personal papers of public officials and the records and the correspondence of members of the state legislature. Also excepted are the records maintained by state, county and local governments, including school districts.

The courts have rule under the open records law that the state may withhold records if the public interest in non-disclosure outweighs the benefits of full access. A judge will presume that a record is open to the public, however, unless an agency presents a very strong case for secrecy.

Records usually closed to the public include those falling under the exemptions in the Wisconsin Open Meetings Law[see §19.85(1), Stats.], and those expressly exempted by another statute, e.g., juvenile records. Some of the exceptions under the Open meetings Law concern employment, promotion or dismissal of public employees; financial, medical, or social data which would have a substantial adverse effect upon a person's reputation; probation and

CONTINUED

2 OF 3

parole applications; and certain exchanges of information between legal counsel and a governmental body. Records obtained under a clear pledge of confidentiality may be closed if the pledge was necessary to obtain the information in the records.

A person may obtain access to these records by going to the appropriate office of the state government and requesting the information. To determine which state agency may have the record one is interested in, consult the Wisconsin Blue Book, which lists the various state agencies. From that one may be able to deduce with whom one should talk and where one should go or write. The agencies may establish reasonable rules for inspection and copying of their records [§19.21(2), Stats.]. They may also charge a reasonable fee for the copy.

If one is denied access, the avenue of appeal is a writ of mandamus in county or circuit court ordering the agency to disclose the record.

Finally, individuals who violate the state Open Records Law may be fined.

Special note should be made regarding what is missing in this law. There are no provisions for amendment and challenge or records, for insuring accuracy and completeness of the records, or for administrative appeal of denials to access and challenge.

State Government and Administrative Procedure

INTRODUCTION

State agencies obtain all their powers from statutes. The basic organization of the agencies is governed by Chapter 15, Stats. Other statutes give agencies their specific powers. Chapters 440-459, for instance, contain the provisions governing the operations of the state licensing boards. Another important source of information concerning the actions and procedures of the agencies may be administrative rules made by them. These rules are published in the State Administrative Code, which is available at the county law library in each county.

All state agencies must comply with the Wisconsin Administrative Procedure Act (Chapter 227, Stats.). This Act governs the procedures that must be followed by the agencies in making rules and in deciding individual cases.

Statutes often give just the general outline of a law' and leave it to the administrative agencies to fill in the details. An agency can do so by formulating rules that serve as interpretations of the statutes administered by it and set out the policies that the agency will use in dealing with situations in the future. Rules can help clear up ambiguous parts of the law and serve as notice to persons affected by agency actions as to what the policy of the agency will be in the future.

RULE- MAKING

The procedure for creating a rule can be initiated by either the agency or by a group of citizens.

1. AGENCY- INITIATED

Whenever an agency wants to pass a rule it must publish a copy of the rule in the notice section of the state administrative register. If twenty-five persons who will be affected by the rule then petition for a hearing, a public hearing must be held before the rule is made. In some situations, other statutory sections require that a hearing be held before certain kinds of rules are made. (Check the statute section governing the particular agency involved to see if there is a special hearing requirement.) Additionally, agencies can, and often do, hold hearings on proposed rules even when not required by law to do so.

Whenever a hearing is required, the agency must give notice to the public in the administrative register that it is going to be held and allow all interested persons to present facts, views and arguments at the hearing. When time demands make it impossible to hear the oral comments of everyone who desires to make them, such persons must be provided with an opportunity to present their views in writing for the consideration of the agency.

Chapter 227, Stats., also provides a procedure by which citizens can initiate rule-making proceedings. Any municipality, corporation, or five or more persons with an interest in a rule can petition an agency requesting the adoption, amendment, or repeal of a rule. The agency must respond in writing to the petition, either denying it or agreeing to proceed with the requested rule-making. If the request is denied the agency must give a reason for denial.

2. CITIZEN
INITIATED

Agencies also make decisions in which individual rights are involved. In many of these situations (called "contested cases"), the statutes require that the individual be given a hearing before the agency makes a decision denying a benefit or enforcing a law. To find out if a hearing is required, the specific statute giving the agency authority to act must be consulted. Licensing statutes often do not specifically require a hearing when an initial license application is denied. Hearings are more commonly required when an existing license is revoked or suspended. Ch. 227 and Ch. 68, Stats., should also be consulted, as they provide for hearings in certain circumstances where there is no hearing provided by the licensing or other specific statute. (Eg. §227.075, Stats.)

CONTESTED
CASES

If a hearing is required, the Administrative Procedure Act (Ch. 227, Stats.) requires that the person be given an "opportunity for hearing after reasonable notice." The Act also provides for judicial review of the decision of the agency. Chapter 227, Stats., also requires that certain procedures be followed before, during and after certain hearings: the client must be given "short and plain statement of the matters asserted" [§227.07(2)(c), Stats.], certain rules of evidence must be followed [§227.08, Stats.], each side should have a chance to rebut evidence [§227.07(3), Stats.], a record must be kept, the decision must be in writing with "findings of fact and conclusions of law" (§227.10, Stats.) the decision shall be served on the client or his or her attorney (§227.11, Stats.).

Even when a hearing is not specifically provided for by statute, the due process clause of the U.S. Constitution (14th Amendment) may require some form of hearing before a license or benefit can be denied or a law enforced. Due process rights most frequently apply if the denial is based on a factual judgment, such as one concerning an applicant's fitness to engage in a certain occupation. (For instance, the denial of a license on the grounds that an applicant does not meet a "good moral character" requirement.) If the due process clause requires a hearing, then the case should be considered a "contested case" under Ch. 227, Stats. (see above).

Despite the fact that formal requirements for certain kinds of decisions exist, most decisions are made as the result of an informal information-gathering process. Although there is no "right" to an informal meeting, it is

INFORMAL

good governmental policy for the agency to hear all views. Therefore, when it appears as if an adverse decision is going to be made, the advocate should request a meeting with the appropriate person from the agency. It may be desirable to have an informal hearing even if the client is entitled to a formal hearing, since settlements made informally are often quicker and less acrimonious. If an individual is entitled to a formal hearing, the advocate should be sure to preserve the client's right to a formal hearing. This can be done by sending the agency a letter prior to the informal meeting stating that the meeting is not a substitute for any formal hearing to which the client may be entitled.

The informal meeting may be conducted differently depending on the circumstances on whether the client is entitled to a formal hearing. An advocate should always try, however, to ensure that both the advocate and the client know of the meeting and the subject matter to be discussed far enough in advance to prepare for it, that there is an opportunity to present the client's side of the issue, that they are told what evidence exists against the client's position and given a chance to contradict such evidence, and that they are given a clear statement of the reasons for the agency's decision (preferably in writing). It is urged that any conclusions reached in an informal meeting that the advocate or client wishes to be binding be documented in a letter to the agency summarizing the outcome of the meeting. This procedure provides two means of creating a written record of the proceeding and should also serve to eliminate or reduce misunderstandings.

Local Government and Administrative Procedure

Many occupational licenses, such as liquor licenses, bartender licenses and taxi cab driver licenses, must be obtained from local governmental units. Most often, municipalities, towns, counties, etc., obtain their power to license or regulate an activity from the "police powers" delegated to them in Chapters 60, 61, and 62, Stats. For example, §62.11(5), Stats., gives the cities the power "to act for the government and good order of the city...and for the health, safety and welfare of the public...." Sometimes, a local government unit obtains its licensing or regulating power from a specific statutory provision. Therefore the state statutes should be checked to see how they affect a municipality's authority in certain areas. (See also the licensing section.)

The administrative framework for the handling of licensing matters and the rules governing issuance of licenses should be contained in local ordinances. Copies of such ordinances are usually kept at the local county law library.

The Administrative Procedure Act (Ch. 227, Stats.) applies only to state agencies and therefore does not affect licensing decisions by local governmental bodies. However,

municipalities now have their own Administrative Procedure Act, Ch. 68, Stats. Also, the due process provisions of the U.S. Constitution do not apply to local governments and may require a hearing in certain situations. (See discussion of due process in state administrative procedure section.) In some situations, judicial review of a local governmental agency's action may be possible either under the applicable statute or Ch. 68. Consult an attorney if you want to know if there is any right to judicial review.

As with state agencies, most local government agencies act as the result of informal decision-making and information-gathering. The advocate should be sure that the client's position is represented in this process. A meeting with the administrative agency may be helpful. (See state administrative law section for details on informal action.)

In any event, Ch. 68 provides that the municipality give written reasons for its actions which are governed by Ch. 68, if requested to do so.

Controls on Administrative Actions

The authority of an administrative agency to establish procedures, make rules, and decide individual cases is not unlimited or unchallengeable. The legislature, the executive branch, the public, and the courts may all exercise certain restraints and checks on administrative action. While these controls differ in character and significance, each merits special attention. INTRODUCTION

When the legislature creates an agency by statute, it not only defines its function, but, in a general way, it sets limits on the agency's power, directs the manner of its operation, and determines the general focus of its attention. Although the courts are ultimately responsible for making sure that the agency stays within its statutory authority, the legislature retains an interest in seeing that the agency carries out the function for which it was created. In Wisconsin, this continuing legislative concern over administrative action has led to the creation of the Joint Committee for the Review of Administrative Rules. LEGISLATIVE CONTROLS

Under Chapter 13.56, Stats., the Joint Committee is empowered to investigate complaints concerning agency actions, to hold hearings, to compel agencies to translate "guidelines", "policy interpretations", into "rules", and where warranted, to suspend an administrative rule until the whole legislature can pass on its merits. A section of the Administrative Procedure and Review Act (Section 227.018, Stats.) entitles appropriate standing committees of the legislature to review administrative agencies proposed rules prior to their formal promulgation.

The legislature may also influence administrative action through less institutionalized means. Additional legislation is an obvious example. If the legislature is displeased with an agency's general conduct or specific action, it

Chapter 227, Stats., also provides a procedure by which citizens can initiate rule-making proceedings. Any municipality, corporation, or five or more persons with an interest in a rule can petition an agency requesting the adoption, amendment, or repeal of a rule. The agency must respond in writing to the petition, either denying it or agreeing to proceed with the requested rule-making. If the request is denied the agency must give a reason for denial.

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INITIATED

Agencies also make decisions in which individual rights are involved. In many of these situations (called "contested cases"), the statutes require that the individual be given a hearing before the agency makes a decision denying a benefit or enforcing a law. To find out if a hearing is required, the specific statute giving the agency authority to act must be consulted. Licensing statutes often do not specifically require a hearing when an initial license application is denied. Hearings are more commonly required when an existing license is revoked or suspended. Ch. 227 and Ch. 68, Stats., should also be consulted, as they provide for hearings in certain circumstances where there is no hearing provided by the licensing or other specific statute. (Eg. §227.075, Stats.)

CONTESTED
CASES

If a hearing is required, the Administrative Procedure Act (Ch. 227, Stats.) requires that the person be given an "opportunity for hearing after reasonable notice." The Act also provides for judicial review of the decision of the agency. Chapter 227, Stats., also requires that certain procedures be followed before, during and after certain hearings: the client must be given "short and plain statement of the matters asserted" [§227.07(2)(c), Stats.], certain rules of evidence must be followed [§227.08, Stats.], each side should have a chance to rebut evidence [§227.07(3), Stats.], a record must be kept, the decision must be in writing with "findings of fact and conclusions of law" (§227.10, Stats.) the decision shall be served on the client or his or her attorney (§227.11, Stats.).

Even when a hearing is not specifically provided for by statute, the due process clause of the U.S. Constitution (14th Amendment) may require some form of hearing before a license or benefit can be denied or a law enforced. Due process rights most frequently apply if the denial is based on a factual judgment, such as one concerning an applicant's fitness to engage in a certain occupation. (For instance, the denial of a license on the grounds that an applicant does not meet a "good moral character" requirement.) If the due process clause requires a hearing, then the case should be considered a "contested case" under Ch. 227, Stats. (see above).

Despite the fact that formal requirements for certain kinds of decisions exist, most decisions are made as the result of an informal information-gathering process. Although there is no "right" to an informal meeting, it is

INFORMAL

can amend the agency's statutory mandate or simply adopt a law superseding an objectionable administrative rule. In 1964, for example, Congress concluded that the Federal Trade Commission's proposed cigarette warning was too harsh and passed its own more moderate rule.

Various "political" mechanisms offer the legislature additional opportunities for influencing administrative performance. These include 1) the legislature's control over agency appropriations; 2) its authority to conduct special investigations (to gain information or to expose misconduct); 3) its formal and informal powers over agency appointment (senatorial courtesy and approval of the Governor's nominations).

Finally, the legislature or individual members frequently play an ombudsperson role by informally interceding with an agency -- even in particular cases -- on behalf of affected clients or interested groups.

EXECUTIVE
CONTROLS

The Governor has a variety of ways to restrain or influence the performance and policy of administrative agencies. In the case of agencies that are within the executive department, the Governor, of course, holds immediate power of appointment and removal as well as direct policy influence. (Even over independent agencies, the Governor retains the authority to make new appointments.) More important, all agency budgets are subject to review by the Department of Administration and this "purse power" carries with it considerable potential for influencing agency conduct.

INDIRECT
PUBLICITY
CONTROLS

Although administrative agencies are not directly accountable to the voters, they are never completely indifferent to public opinion and pressure. Consequently, public scrutiny and public exposure (to disclose errors or to goad positive action) often operates as effective controls on agency action.

Control through publicity can take a variety of forms: studies by special legislative or executive commissions; articles and exposes by the media (investigative journalism); fact-finding studies and position papers by interested citizen groups; etc. In some instances, such extra-legal publicity controls may become institutionalized in the form of an ombudsperson -- a public office with authority to investigate complaints of administrative misconduct, to report on them, and to make public recommendations. The Wisconsin Nursing Home Ombudsperson is a good example.

The effectiveness and value of publicity controls depend heavily on the tradition of open government and therefore relates closely to the "open meetings" and "open records" statutes discussed at the end of this section.

JUDICIAL
REVIEW

The controls outlined in the preceding paragraphs are general. They aim at guiding overall agency policy and performance, rather than at specific rules. When a particular

action or ruling is the issue, the most appropriate form of control or remedy is judicial review. Judicial review entitles a person or party to challenge (or confirm) a particular administrative action (a procedure, finding, judgment, rule or prospective action) by submitting it to formal review by the courts. Judicial review is generally regarded as the most significant safeguard yet developed to check specific excesses or abuses of administrative authority.

It should be emphasized that the primary purpose of judicial review is not to insure the wisdom of correctness of every administrative action or rule. The law presumes that where matters of technical judgment or factual evaluation are concerned, the agency, with its assumed expertise, is in a better position to judge than the courts. The primary function of judicial review is rather to determine if an agency's conduct or action is legal, constitutional, fair and reasonable. Put more concretely, the courts may be asked to decide any of the following:

- (1) whether the agency action or proposed action is within its proper statutory or constitutional authority;
- (2) whether an agency has correctly interpreted and applied relevant statutes in coming to a judgment or ruling;
- (3) whether an agency has conducted its proceedings in accordance with the law and without violating the constitutional or legal rights of affected persons; and
- (4) whether the agency has acted with "reason" and on the basis of "substantial evidence" (this does not necessarily mean the agency acted wisely).

Judicial review of an agency action may be obtained by any person or by any group whose members are affected or aggrieved by that action. For example, an individual who is denied a legally prescribed hearing may petition the court for a review of the board's procedure.

The specific process for initiating a review proceeding is detailed in Chapter 227 and Chapter 68, Stats.

SOURCES OF INFORMATION -- A SELECTED GENERAL LIST

Libraries

Criminal Justice Reference and Information Center
L140 Law Building (262-1499)
Hours: 7:45 to 4:30

Legislative Reference Bureau
2nd Floor North Wing
State Capitol (262-0341)
Hours: 7:45 to 4:30
Here you may find the legislative history of
a bill or statute, clipping files on a variety
of subjects, and free publications on topics of
current interest.

Madison Public Library
201 W. Mifflin St. (257-9211)
Hours: 8:30 - 9:00 (8:30 - 5:00 on Saturdays)
The Literature and Social Sciences section con-
tains information on state and local government
and the Business and Science section contains
statistical information.

State Law Library - State Capitol
3rd Floor East Wing (266-1600)
Hours: 7:45 - 4:30
Contains the basic law books for Wisconsin as
well as for all other states.

University Law Library - Madison Campus
Law Building (262-1151)
Hours: 7:45 - 12:00 midnight (Hours vary on weekends
and periods when school is not in session.)
Contains same sort of materials as State Law Library.

State Agencies

Department of Health and Social Services

1 W. Wilson St. (266-1683)
Hours: 7:45 - 4:30

Corrections Division, Central Records and Identification
Room 830 (266-2097)

Clinical Services, Drug and Alcohol Abuse
Room 930 (266-8268)

Family Services
Room 300 (266-3416)

Legal Services
Room 300 (266-2447)

Manpower Bureau
Room 325 (266-2525)

Mental Health Bureau
Room 540 (266-2719)

Occupational Alcoholism Program
Room 714 (266-0120)

Parole Board
Room 316 (266-2957)

Probation and Parole Administration
Room 930 (266-2475)

Probation and Parole Agents
818 West Badger Road (266-2085)

Vocational Rehabilitation Information (266-1281)

Department of Industry, Labor and Human Relations

201 E. Washington Ave. (266-3131)
Hours: 8:45 - 4:30

Apprenticeship & Training Division
Room 176 (266-3331)

Equal Rights and Labor Standards Division
Room 178 (266-6860)

Manpower Programs
Room 200 (266-6996)

Unemployment Compensation Information
Room 304 (266-3110)

Vetrans' Employment Service
Room 201 (266-3110)

Insurance, Office of the Commissioner of

123 W. Washington Ave. (266-3585)
Hours: 7:45 - 4:30

State Fire and Life Insurance Funds (266-0107)

Department of Justice

123 W. Washington (266-1221)
Hours: 7:45 - 4:30

Crime Information Bureau (266-7314)

Criminal Investigation Division (266-1671)

Legal Services Division (266-0320)

Department of Regulation and Licensing

1400 E. Washington Ave. (266-2112)
Hours: 7:45 - 4:30

Licensing of:

Private Detectives	(266-0829)
Peddlers	(266-2112)
Public Showpersons	(" ")
Transient Merchants	(" ")
Accounting Examining Board	(266-3020)
Architects, Professional Engineers, Designers & Land Surveyors, Examining Board of	(266-1397)
Athletic Examining Board	(266-0648)
Chiropractic Examining Board	(266-1626)
Dentistry Examining Board	(266-1396)
Hearing Aid Dealers and Fitters Examining Board	(266-0729)
Medical Examining Board	(266-2811)
Physical Therapist Examining Council	(266-2811)
Podiatrists Examining Council	(" ")
Nurses, Division of	(266-3735)
Nursing Home Administrator Examining Board	(266-7085)
Optometry Examining Board	(266-0729)
Pharmacy Examining Board	(266-0141)
Pharmacy Internship Board	(266-2852)
Psychology Examining Board	(266-0729)
Real Estate Examining Board	(266-5450)
Veterinary Examining Board	(266-1626)
Watchmaking Examining Board	(266-1626)
Information	(266-2112)
<u>Department of Revenue</u>	(266-1611)
4838 University Ave. Hours: 7:45 - 4:30	
Excise Tax Bureau (conducts Beverage and Cigarette Licensing) 505 N. Segoe Rd.	(266-6701)
<u>Securities, Office of the Commissioner of</u>	
111 W. Wilson St.	(266-3431)
Hours: 7:45 - 4:30	
Licensing & Regulation	(266-3693)
<u>Department of Transportation, Motor Vehicle Div.</u>	
4802 Sheboygan Ave. - Room 255 Hours: 7:45 - 4:30	(266-1113)

Dealer & Salesperson Licenses
Room 817 (266-1425)

Driver License Correspondence & Checking
Room 301 (266-2325)

Driver's License Revocations & Suspensions
Room 333 (266-2261)

Driver Record File
Room 301 (266-2353)

Department of Veterans' Affairs

1 W. Wilson St.
Hours: 7:45 - 4:30 (266-1311)

Veterans Benefits Division
Room 700 (266-1311)

Veterans Homes Division (266-3111)
King, WI (715 258-5586)

City of Madison Services

Mayor's Office
210 Monona Ave. (266-4611)
Call for a copy of "Guide to Your City Services,"
a brochure listing all the city agencies and a
copy of a brochure listing many city employees,
alderpersons and Dane County supervisors serving
Madison.

Municipal Reference Service
City County Building (266-6316)
Does not serve the public directly but acts as
a research service for city and county officials.
Also acts a a collector of local government docu-
ments.

(Many U.S. Government Agencies like the Agricultural Depart-
ment, F.B.I., and Veterans Administrations have offices in
Madison. For a complete listing of U.S. government offices
in Madison, see the Yellow Pages under United States Govern-
ment.)

Miscellaneous

Bureau of Audio-Visual Instruction (262-1644)
1327 University Avenue
Hours: 8:00 - 4:30
The Bureau has an educational film library which
anyone in the state can use. If there's a film
you want to see, or a subject you'd like to re-
search in film, you can go to the bureau and
check the title or subject listings, just as

Mental Health Bureau
Room 540 (266-2719)

Occupational Alcoholism Program
Room 714 (266-0120)

Parole Board
Room 316 (266-2957)

Probation and Parole Administration
Room 930 (266-2475)

Probation and Parole Agents
818 West Badger Road (266-2085)

Vocational Rehabilitation Information (266-1281)

Department of Industry, Labor and Human Relations

201 E. Washington Ave. (266-3131)
Hours: 8:45 - 4:30

Apprenticeship & Training Division
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Equal Rights and Labor Standards Division
Room 178 (266-6860)

Manpower Programs
Room 200 (266-6996)

Unemployment Compensation Information
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Veterans' Employment Service
Room 201 (266-3110)

Insurance, Office of the Commissioner of

123 W. Washington Ave. (266-3585)
Hours: 7:45 - 4:30

State Fire and Life Insurance Funds (266-0107)

Department of Justice

123 W. Washington (266-1221)
Hours: 7:45 - 4:30

Crime Information Bureau (266-7314)

Criminal Investigation Division (266-1671)

Legal Services Division (266-0320)

Department of Regulation and Licensing

1400 E. Washington Ave. (266-2112)
Hours: 7:45 - 4:30

you would check for a book in the library.
Individuals can view the films free, and in
most cases can check films out for a fee.

Dane County Mental Health Center

31 S. Henry St. (251-2341)

Provides counseling for any type of emotional
or marital difficulty, as well as drug and
drinking problems. The 24-hr. emergency phone
is 251-2345.

Dane County Social Services

1202 Northport Drive (249-5351)

Provides counseling for adoption, family
problems, sexuality and financial and emotional
difficulties related to unwanted pregnancy.

Dane County 51.42 Board

1202 Northport Drive (249-5351)

Coordinates and funds mental health services
for the county.

Documents Room

32 South Wing State Capitol (266-2400)

Hours: 8:00 - 5:00

Distributes copies of current bills, amendments
substitute amendments along with recently enacted
laws. Copies are also available from the Legisla-
tive Reference Bureau.

Governor's Office

115 East Capitol (266-1212)

Hours: 7:45 - 4:30

Information on pardons and application forms
available from the Governor's Pardon Board.

Lawyer's Referral Service (257-2866)

Will refer you to a private attorney who will
offer you one-half hour of consultation for \$5.

League of Women Voters (255-5636)

330 E. Wilson St.

Call for copy of publication "After Conviction--
The Adult Offender in Wisconsin." Another useful
publication of the League is "Madison at Your
Service," a guide to Madison government and
services.

Legal Action of Wisconsin, Inc.

315 S. Mills St.

Newly organized office providing non-criminal
legal services to indigent persons in the area.

Legal Services Center

122 S. Pinckney (262-0626)

Provides legal assistance to Dane County residents
with incomes below established low-income guide-
lines.

Legislative Council
147 North Capitol (266-1304)
Hours: 7:45 - 4:30
Helpful publications on legislation currently
before the legislature.

People's Law Office
31 S. Mills St. (251-6444)
Helps coordinate the People's Law School, a
group which holds classes on juvenile, con-
sumer, tenant and divorce law. Classes are
free and taught by lawyers with the aid of
law students. Classes are usually held each
semester.

Ex-Offenders

Ark House
202 N. Patterson St.
Madison, WI 53703 (257-3628)

Bureau of Probation and Parole
1 W. Wilson St.
Madison, WI 53701 (266-2475)

819 N. 6th St. (414-224-4544)
Milwaukee, WI 53204

Century Rehabilitation House
P.O. 765
Neenah, WI 54956

Chapman House
2742 W. Highland Blvd.
Milwaukee, WI 53208

Complex Offenders Program
1245 E. Washington Ave.
Madison, WI 53703 (266-7650)

Corrections Legal Services Program
330 E. Wilson St.
Madison, WI 53703 (257-6555)

Dane County Department of Social Services
1202 Northport Drive
Madison, WI 53704 (249-5351)

Dane County Legal Services
122 S. Pinckney St.
Madison, WI 53703 (262-0626)

Department of Licensing and Regulation
201 E. Washington Ave.
Madison, WI 53702 (266-2112)

Division of Corrections

1 W. Wilson St.

Madison, WI 53701

Central Records & Identification

Room 830 (266-2097)

Parole Board - Room 316 (266-2957)

Probation and Parole Administration

Room 930 (266-2475)

Equal Opportunities Commission of Madison

351 W. Wilson St.

Madison, WI 53709 (266-4910)

Equal Rights Division

201 E. Washington Ave.

Madison, WI 53702 (266-3145)

819 N. 6th St.

Milwaukee, WI

and local Job Service offices

Federal Manpower Program

1 W. Wilson St.

Madison, WI 53702 (252-5249)

Federal Probation and Parole Office

215 Monona Ave.

P.O.Box 1622

Madison, WI 53701 (252-5165)

Federal Probation and Parole

624 Federal Building

Milwaukee, WI 53702 (414 224-4544)

Gateway House

2016 Washington Ave.

Racine, WI 53400 (414 634-0167)

Horizon House

1869 N. 25th St.

Milwaukee, WI 53205 (414 342-3237)

Mr. Bronson LaFollette

Attorney General

114 E. Wing - state Capitol

Madison, WI 53702 (266-1221)

Gov. Patrick S. Lucey

115 E. Wing - State Capitol

Madison, WI 53702 (266-1212)

Madison Justice Center

312 E. Wilson St.

Madison, WI 53703 (257-5799)

Madison Welfare Dept.
 351 W. Wilson St.
 Madison, WI 53709 (266-4781)

Maple Manor (715 387-5244)
 205 S. Maple St.
 Marshfield, WI 54449

Milwaukee Inner-City Halfway House - East
 102 E. Wright St.
 Milwaukee, WI 53212 (414 562-7160)

Milwaukee Inner-City Halfway House - West
 2407 W. Fond du Lac Ave.
 Milwaukee, WI 53206 (414 264-6310)

Milwaukee Legal Services
 211 W. Kilbourn Ave.
 Milwaukee, WI 53202 (414 278-7722)

Public Defender's Office
 123 W. Washington Ave.
 Madison, WI 53702 (266-3440)

Rock Valley Community Corrections
 303 W. Grand Ave. (608 362-3244)
 Beloit, WI 53511

Siena Hall
 608 S. 11th St.
 La Crosse, WI 54601 (608 784-6010)

Spanish American Organization, Inc.
 1845 S. Park St.
 Madison, WI 53713 (251-4935)

State Job Service
 206 N. Broom St.
 Madison, WI 53703 (266-1492)

and 26 other locations around the state.

State Manpower Council
 30 W. Mifflin St.
 Madison, WI 53702 (266-0365)

State Personnel Bureau
 1 W. Wilson St.
 Madison, WI 53702 (266-1731)

Veterans Administration Hospital
 Social Work Service
 2500 Overlook Terrace
 Madison, WI 53705 (256-1901, Ext. 351)

Vets House
 1102 S. Park St.
 Madison, WI 53715 (255-8387)

Volunteers on Probation
315 W. Gorham St.
Madison, WI 53703 (257-0011)

Wisconsin AFL-CIO
633 W. Bluemound Rd.
Milwaukee, WI 53212 (414 771-0700)

Wisconsin Council on Criminal Justice
122 W. Washington Ave.
Madison, WI 53703 (266-3323)

Wisconsin Dept. of Veteran's Affairs
1 W. Wilson St. - Rm. 800
Madison, WI 53702 (266-1311)

Wisconsin Indian Legal Services
520 University Ave.
Madison, WI 53703 (256-4516)

and other offices in the rest of the state.

Mental Illness

Bidge Manor
503 E. Walnut St.
Green Bay, WI 54301 (414 437-3791)

Chapman House
2742 W. Highland Blvd.
Milwaukee, WI 53208 (414 344-9475)

Century Rehabilitation House
P.O. 765
Neenah, WI 54956 (266-7650)

Complex Offender Project
1245 E. Washington Ave.
Madison, WI 53703 (266-7650)

Dane County Dept. of Social Services
1202 Northport Drive
Madison, WI 53704 (249-5351)

Dane County Mental Health Center
31 S. Henry St.
Madison, WI 53703 (251-2341)

Dane County Mental Health Service Board
1202 Northport Drive
Madison, WI 53703 (249-5351)

Department of Psychiatry
University of Wisconsin
427 Lorch St.
Madison, WI 53706 (262-3637)

Division of Mental Hygiene
1 W. Wilson St.
Madison, WI 53703 (266-2701)

Division of Vocational Rehabilitation
District Office
122 W. Washington Ave.
Madison, WI 53701 (266-1281)

Family Service
304 W. Washington Ave.
Madison, WI 53703 (257-5677)

Fulton Hall
1108 2nd Ave.
Eau Claire, WI 54701 (715 834-4001)

Gateway House
2016 Washington Ave.
Racine, WI 53400 (414 634-0167)

Goodwill Industries
2422 Pennsylvania Ave.
Madison, WI 53704 (241-3831)

Janal House of Wausau
6th and McClellan Streets
Wausau, WI 54401 (715 845-5000)

Leigh Roberts Rehabilitation House
2842 Moland St.
Madison, WI 53704 (244-2046)

Madison Opportunity Center
601 E. Main St.
Madison, WI 53703 (257-4540)

Maple Manor
510 N. St. Joseph Ave.
Marshfield, WI 54449 (715 387-5244)

Mendota Mental Health Institute
201 Troy Drive
Madison, WI 53704 (244-2411)

Mental Health Association in Dane County
1245 E. Washington Ave.
Madison, WI 53703 (257-3539)

P.A.C.T.
515 E. Washington Ave.
Madison, WI 53703

Project SKILL
101 W. Wilson St. - Rm. 270
Madison, WI 53703

Rehabilitation House, Inc.
Box 765
Neenah, WI 54956 (414 725-2271)

Siena Hall
608 S. 11th St.
La Crosse, WI 54701 (608 784-6010)

Wisconsin Association for Mental Health
119 E. Mifflin St.
Madison, WI 53703 (256-9041)

Alcoholism

Alcoholics Anonymous
511 N. Carroll St.
Madison, WI 53703 (256-9682)

Alcoholism Information & Referral Center
1050 Regent St.
Madison, WI (251-4558)

Alcoholism Project
55 N. Dickenson St.
Madison, WI 53703 (251-5470)

Community Resource, Inc.
525 N. 17th St.
Milwaukee, WI 53233 (414 933-5444)

Dane County Mental Health Center
31 S. Henry St.
Madison, WI 53703 (251-2341)

Dane County Mental Health Services Board
119 Monona Ave.
Madison, WI 53703 (266-4506)

Division of Mental Hygiene
1 W. Wilson St.
Madison, WI 53703 (266-2701)

Gateway House
2016 Washington Ave.
Racine, WI 53400 (414 634-0167)

Jefferson County Unified Services Center-Hillside
Box 375
Jefferson, WI 53549 (414 674-3105)

Hope Haven, Inc. (Men's Alcoholism Center)
342 W. Main St.
Madison, WI 53703 (251-8881)

Ivanhoe Treatment, Inc.
2203 Ivanhoe Place
Milwaukee, WI (414 271-4030)

Madison General Hospital Alcoholism Program & Education Center
202 S. Park St.
Madison, WI 53713 (267-6291)

Maple Manor
510 N. St. Joseph Ave.
Marshfield, WI 54441 (414 342-5474)

Mendota Mental Health Institute
301 Troy Drive
Madison, WI 53704 (244-2411)

Meta House
2571 N. Farwell Ave.
Milwaukee, WI 53211 (414 962-4024)

Rebos House & Detoxification Center
1903 University Ave. (231-3316)
2846 Moland St. (255-5922)
Madison, WI

Siena Hall
608 S. 11th St.
La Crosse, WI 54601 (608 784-6010)

Wisconsin Association on Alcoholism and other Drug Abuse
30 W. Mifflin St.
Madison, WI 53703 (257-7970)

Drug Abuse

Clybourn Arms
525 N. 17th St.
Milwaukee, WI 53233 (414 933-1420)

Dane County Mental Health Center
31 S. Henry St.
Madison, WI (251-2341)

Division of Mental Hygiene
1 W. Wilson St.
Madison, WI 53702 (266-2701)

Drug Abuse Treatment Center
31 S. Henry St.
Madison, WI 53703 (251-2341)

Drug Information Center
420 North Lake St.
Madison, WI 53703 (263-1737)

Gateway House
2016 Washington Ave.
Racine, WI 53400 (414 634-0167)

Maple Manor
510 N. St. Joseph Ave.
Marshfield, WI (414 342-5474)

Siena Hall
608 S. 11th St.
La Crosse, WI 54601

(608 784-6010)

Wisconsin Association on Alcoholism and Other Drug Abuse
30 W. Mifflin St.
Madison, WI 53703

(257-7970)

LEGAL RESEARCH AND RESOURCES FOR THE LAY ADVOCATE

There follows a brief discussion of the research techniques and legal resources geared to the needs of the lay advocate. This section is not intended as comprehensive treatment of the area. The Center for Public Representation periodically conducts lay advocacy training sessions, which provide a more complete introduction.

1. Introduction to the Legal System - Sources of Law

- I. Constitutions--Broad grants of power and statements of individual rights LEGAL
SYSTEM
 - A. Federal
 - B. State
- II. Statutes--must be within limits of constitutional authority - enacted by legislative bodies:
 - A. Federal--Congress
 - B. State--Legislature
 - C. County--Board of Supervisors (called "ordinances")
 - D. City--City Council
- III. Cases--Court decisions expand and refine common law (court-made law) and interpret constitutional and statutory provisions
 - A. Federal--United States Supreme Court
United States Court of Appeals
United States District Courts
 - B. State--Wisconsin Supreme Court
Circuit Courts
County Courts
 - C. Local--Municipal Courts
- IV. Regulations--promulgated by government ("administrative" or "executive") agencies to interpret statutes; must be within bounds of statutory authority
 - A. Federal agencies
 - B. State agencies
- V. Administrative Decisions--results of contested cases brought before administrative agencies
 - A. Federal agencies
 - B. State agencies
 - C. Local governmental bodies
- VI. Executive orders--issued by President, Governor
- VII. Attorney General's Opinions--advisory only

2. Collections of Law - Law Books

Primary Sources of Law
(for further discussion, see below - "Law Books - the Basics")

	<u>Federal</u>	<u>State</u>	<u>Local</u>
<u>Constitution</u>	U.S. Constitution (U.S.Const.)	Wisconsin Constitution (Wis. Const.)	
<u>Statutes</u>	United States Code (U.S.C.) United States Code Annotated(U.S.C.A.)	Wisconsin Statutes (Stats.) Wis. Statutes Annotated (W.S.A.)	Ordinances
<u>Administrative Regulations</u>	Code of Federal Regulations(C.F.R.) Federal Register (Fed. Reg.)	Wisconsin Administrative Code(Wis.Adm. Code) Wisconsin Ad- ministrative Register	
<u>Cases</u>	United States Supreme Court- United States Reports(U.S.) Supreme Court Reporter(S.Ct.) Lawyer's Edition (L.Ed.) United States Circuit Courts of Appeal-Federal Reporter(F.) United States Dis- trict Courts-Feder- al Supplement (F. Supp.)	Wisconsin Supreme Court- Wisconsin Reports- (Wis.) Northwestern Reporter(N.W.) Circuit Courts County Courts (opinions not published)	
<u>Decisions</u>	U.S.Agencies (Some agencies have published opinions--check library)	State Agencies (a few have pub- lished opinions-- check with agency)	

COLLECTIONS
OF LAW

Administrative
Regulations

Cases

Decisions

Secondary Sources of Law

Case Digests--West's Wisconsin Key Number Digest
Modern Federal Practice Digest
Decennial Digest

Reporters--Examples: Poverty Law Reporter
Mental Disability Law Reporter
Criminal Law Reporter
Employment Law Reporter

Legal Encyclopedias--American Jurisprudence, Second (Am.
Jur. 2d.)
Corpus Juris Secundum (C.J.S.)

Hornbooks or Treatises--Example; Davis, Administrative Law

Casebooks--Example; Brooks, Law, Psychiatry, and the Mental
Health System

Law Reviews--Index to Legal Periodicals

Shepard's Citations

3. Law Books - The Basics

The following is a description of the major sources of statutes and administrative policy.

All the following works are available at the University Law Library and the State Law Library. Most of the state and local volumes are also available at the Legislative Reference Bureau in the State Capitol and the Madison Public Library. Many County Law Libraries also contain these works.

Federal - United States Code-This work contains a consolidation of all the general and permanent laws of the United States (Federal laws). It is arranged by title, e.g., Agriculture, Food and Drugs, Labor, Public Health and Welfare. There is an index of acts cited by popular names, as well as a general subject index. The present edition includes laws in force January 20, 1973. Cumulative supplements cover the interim between editions. LAW BOOKS-
THE BASICS

Federal - United States Code Annotated- Like the United States Code, this work contains all the general and permanent laws of the United States. In addition, the annotated edition adds the construction and interpretation which the courts have given, showing the antecedents of the particular acts or sections, with comments on the sources and the character of the changes. Like the U.S. Code, the United States Code Annotated is arranged by title. There is a general subject index and a popular name (of statute) index. Updates of statutory language and recent annotations are contained in "pocket parts" located at the back of each volume.

Federal - Code of Federal Regulations - The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles (like the United States Code and the United States Code Annotated) which represent the broad areas subject to federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas. Each volume of the Code is revised at least once each calendar year.

The CFR is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule. To determine whether there have been any amendments since the revision date of the CFR volume, the following two lists must be consulted; (1) cumulative "List of CFR Sections Affected," issued monthly, and (2) "Cumulative List of Parts Affected", appearing daily in the Federal Register. These two lists will refer the user to the Federal Register page where he or she may find the latest amendment of any given rule.

The subject index to the Code, which is revised annually and supplemented periodically, is contained in a separate volume entitled "General Index."

State- Wisconsin Statutes - This work contains all general statutes in force in Wisconsin. A new edition is prepared after the end of each general session of the legislature. The 1975 edition is the latest available--the 1977 edition will be published sometime in early 1977. You can generally find what you are looking for by using the table of contents in the front of the book or the index in the back. The best way of finding a specific provision is by using the index.

State-Wisconsin Statutes Annotated -This work is the state counterpart of the United States Code Annotated. Wisconsin Statutes Annotated (W.S.A.) contains the general and permanent laws of Wisconsin along with the judicial constructions and interpretations thereof ("annotations"). The Titles, Chapters, and Sections conform to the official text, numbering and arrangement of the Wisconsin Statutes. In addition to the Notes of Decisions covering judicial and Attorney General construction and interpretation, W.S.A. incorporates other annotative material such as source notes and explanations of legislative amendments, library references, and citations to the Wisconsin Administrative Code. A general subject index to the text of the Constitution and Statutes is published in separate volumes. Like the USCA, updating is handled through "pocket parts" located in the back of each volume.

State - Wisconsin Administrative Code - The Wisconsin Administrative Code contains all rules issued by state administrative agencies. The code is published in loose-leaf volumes and kept current by means of new and replacement pages. The pages are issued monthly, together with notices of hearings on proposed rules, emergency rules and new rules. This monthly service is called the Wisconsin Administrative Register, and is issued shortly after the 25th of each month. There is a general index in the last volume of the code.

Sale and distribution of the Code and of its parts is handled by the Department of Administration,
Document Sales and Distribution
202 S. Thornton Ave.
Madison, WI 53702

Federal - Case Reporters - Decisions by the United States Supreme Court are collected in three reporter sets which accumulate chronologically. The official reporter is the United States Reports(U.S.). Also available are the Supreme Court Reporter(S.Ct) and the Lawyer's Edition(L.Ed.). Each reporter carries the full text of the majority opinion plus concurring and dissenting opinions. In slightly different forms, each reporter also contains short summaries of the decisions reached on legal issues ("holdings") by the Court. These summaries appear before the opinion(s) in each case, and are commonly called "head notes."

Decisions by the U.S.Circuit Courts of Appeal are collected in the Federal Reporter(F.). Decisions by the United States District Courts are collected in the Federal Supplement (F.Supp.). These reporter sets are organized in the same manner as the Supreme Court Reporter. All three sets are distributed by the same publisher--West's.

State - Case Reporters - Decisions by the Wisconsin Supreme Court are collected in two reporter sets - Wisconsin Reports (Wis.) and the Northwestern Reporter (N.W.). Wisconsin Reports is the official reporter and Northwestern is West's version. Here again, the full opinion is given along with head notes.

Secondary Sources - Case Digests

The West (Publishing Company) system is the best known and most widely-used of secondary source material. Their "Case Digests" comprise numerous volumes which are arranged alphabetically according to general subject area(e.g., Constitutional Law, Criminal Law, etc.). Each general area is broken down into a number of more specific issues, each of which is assigned a "key number". Under each key number, all cases within the Case Digest's jurisdiction which address the issue are digested. A citation to the case itself is given, so the appropriate reporter can be checked for the entire text of the opinion. One of the head notes preceding the opinion will bear the key number.

Since the reporters and case digests thus refer to one another, a researcher may "enter the system" through either source: through the index and then key numbers in the case digest, or through a particular case in a reporter. Case digests are linked to statutes annotated collections in the same manner.

West's publishes the Wisconsin Key Number Digest, the Northwestern Reporter, and Wisconsin Statutes Annotated, which are linked in the manner discussed above. West's Modern Federal Practice Digest is coupled in this manner with the Supreme Court Reporter, Federal Reporter, Federal Supplement, and United States Code Annotated.

Secondary Sources - Reporters

There are a number of commercially published reporter sets which are collections of case decisions, statutes and other legal authority, regarding particular subject matter areas. Examples are the Poverty Law Reporter, the Mental Disability Law Reporter, the Criminal Law Reporter, and the Employment Law Reporter. These reporters have their own systems of citations, and are best entered through their own indexes. (Remember not to confuse these reporters with the regular case reporters, which select cases according to jurisdiction or type of court rather than subject matter.)

Secondary Sources - Encyclopedias

Legal encyclopedias are multi-volume treatises or commentaries on the law. There are two major encyclopedias, American Jurisprudence Second (Am.Jur.2d) and Corpus Juris Secundum (C.J.S.). They attempt to cover every area of the law.

Secondary Sources - Hornbooks

A Hornbook is a treatise or commentary on the law of a given subject, usually contained in single volumes, e.g., Prosser on Torts, McCormick on Evidence.

Secondary Sources - Casebooks

A Case book is a law school textbook with is basically a collection of court opinions relating to a particular area of the law. Casebooks are primarily a collection of appellate opinions. For the researcher, their primary value usually lies in the introductions written by the authors to each topic in the text.

Secondary Sources - Law Reviews and Index to Legal Periodicals

Law Reviews are treatises printed in periodical form as pamphlets and bound volumes, usually by law schools. The term Legal Periodical is usually used to refer to treatises by other publishers, e.g., the various bar associations. The Index to Legal Periodicals lists alphabetically most writings in law reviews and legal periodicals according to the author and subject.

Secondary Sources - Shepard's Citations

Shepard's Citations is the most widely used legal citator. A citator is a set of volumes which gives the history of the law set forth in cases and statutes since their dates of enactment or decision.

Shepard's is arranged by case and statute citations--see discussion below for discussion of citation form. When the case or statute citation is located in Shepard's, the researcher peruses the list of citations below the citation to the case or statute he or she is researching. These citations represent all cases which have specifically cited the case or statute being researched since it was decided or enacted. Letters appear to the left of these citations which indicate the treatment given the case or statute being researched by the later decisions. Check the front of any Shepard's bound volume for the meaning of these letters. When using Shepard's, the researcher must be sure to refer to all the volumes containing the citation to the case or statute being researched.

Wisconsin Supreme Court decisions and Wisconsin Statutes are covered in the Wisconsin Shepard's Citations. U.S. Supreme Court Decisions, U.S. Circuit Courts of Appeal Decisions, U.S. District Courts decisions and federal statutes are covered in other Shepard's sets. Shepard's is important to use to find out the latest legal doctrine on any issue. If the use of Shepard's is unclear, a good "how to" discussion is presented in front of each bound volume.

4. Citations

State - Cases (Wisconsin Supreme Court):

Volume No.	Page No.	Date of Decision
272 Wis.	397,	75 N.W.2d 421 (1956)
<u>Olson v. Salzman</u>		
Name of case	Wisconsin Reports	Northwest Reporter, 2d Series

State - Statutes

Edition of Statutes	
Wis. Stat. §279.09(1) (1965)	
Wisconsin Statutes	Section Number

or §279.09(1), Stats .

State - Administrative Code

Section Number

Wis. Adm. Code §Ind. 8.14

Wisconsin Administrative Code

Federal - Cases - U.S. Supreme Court

Vol. No.

Page No.

Date of Decision

Federal Trade Comm. v. Klesner, 278 U.S.591, 49 S.Ct.30,73L.Ed.138(1928)

Name of Case

United States Reports

Lawyer's Edition

This is the official
report of the case

Supreme Court
Reporter

Federal - Cases - U.S.Circuit Courts of Appeals

Vol. No.

Page No.

Heryford v. Parker, 396 F.2d 393 (10th Cir: 1968)

Federal Reporter
Second Series

Case decided by 10th
Circuit Court of Appeals in 1968

Federal - Cases - U.S. District Courts

Vol. No.

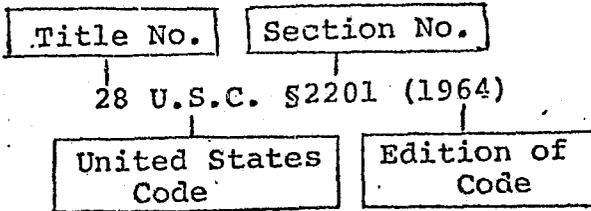
Page No.

Nelson v. Heyne, 355 F.Supp. 451 (N.D. Ind. 1972)

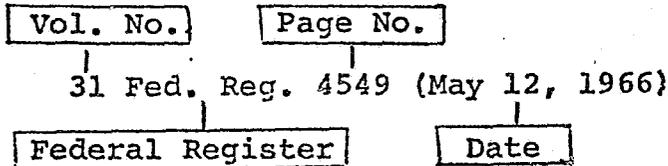
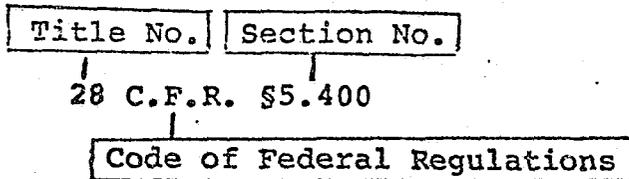
Federal
Supplement

Case decided by Federal
District Court for Northern
district of Indiana in 1972

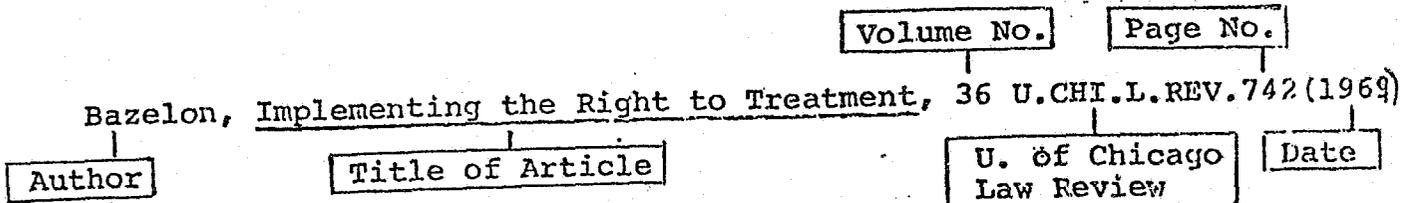
Federal - Statutes



Federal - Administrative Regulations



General - Law Reviews



5. How to Find:

Statutory Law

Federal Laws

1. Use index to United States Code or United States Code Annotated
2. Use table of contents
3. Popular Name Table
4. For recently enacted laws which have not yet been incorporated into bound volumes use United States Code Congressional and Administrative News (U.S. Cong. and Adm. News) and see pocket parts to USCA volumes.

Wisconsin Laws

1. Use index to Wisconsin Statutes or Wisconsin Statutes Annotated
2. Use table of contents
3. For recently enacted laws which have not yet been incorporated into bound volumes, use Wisconsin Legislative Service and see pocket parts to WSA volumes.

If all else fails one can try to find statutes through researching cases or through secondary sources such as law review articles.

DO NOT FORGET POCKET-PARTS!

After you have found a statute you must:

1. Check to see if it is current
 - Use pocket-parts
 - Check U.S.Cong and Admin. News if federal law; Wisconsin Legislative Service if Wisconsin law.
2. Check interpretations
 - Use annotations to find cases
 - Shepardize to find cases
 - Look for any administrative regulations

How to find:

Cases (Federal and State Courts)

1. Use statutory Annotations to find cases which interpret statutes --

Ex.--U.S.Code Annotated; Wisconsin Statutes Annotated--Look up the particular section of the statute and read annotations.

DO NOT FORGET POCKET PARTS!

2. Shepard's

- A. Statutes--Shepardize a statute to find cases which interpret it.
- B. Cases--Shepardize cases to find other cases on the same point.

3. Case Digest and Key Number System

Ex.--Wisconsin Key Number Digest
Modern Federal Practice Digest

- A. Use Descriptive Word Index
- B. Use Key Number Topics
- C. Use table of cases if you know the case name but need the citation and the key numbers.
- D. If you have a few important cases, get key numbers from head notes.
- E. Once you have the appropriate key number you can go to any West Digest and find other cases on the topic.

DO NOT FORGET POCKET PARTS!

How to Find:

Regulations

Federal Regulations

- 1. Use index Code of Federal Regulations
- 2. Check titles (they are parallel to U.S.C. titles)
- 3. Check statute which is authority for the regulations in the U.S.C.A.
- 4. Use index to Federal Register for recently adopted regulations.
- 5. To find if regulation in C.F.R. has been amended, use "List of CFR Sections Affected" which is issued monthly in the Federal Register.

Wisconsin Regulations

1. Use index to Wisconsin Administrative Code
2. Check contents (it is organized by agency)
3. Check statute which is authority for the regulations in W.S.A.
4. For very recent regulations, check Wisconsin Administrative Register or call agency or revisor of statutes.

After you have found a regulation, you must:

1. Check to see if it is current (see above)
2. Check interpretations--for this you will have to check annotations to statute which provides authority for the regulation.

How to Find:

Secondary Source Material

Law Review articles--find through Index to Legal Periodicals

Reporters

Hornbooks or Treatises

Casebooks

A.L.R.

library card catalogue system, then enter source through index

END