



Tribal Rehabilitation Review Process

The statutory language that discusses an Indian tribe’s authority to conduct rehabilitation reviews under the caregiver background check law is listed in Wis. Stat. §§ 48.685(5d) and 48.686(5d). Any Indian tribe that chooses to conduct rehabilitation reviews shall submit a rehabilitation review plan to the Department of Children and Families (DCF) that includes 6 key pieces of information. These are listed in the below chart.

If DCF does not disapprove the plan within 90 days after receiving it, then the plan shall be considered approved. If DCF disapproves the plan within 90 days after receiving it, then DCF shall provide notice of that disapproval to the Indian tribe in writing with the reason for the disapproval.

DCF may not disapprove a plan unless DCF finds that the plan is not rationally related to the protection of clients. The Indian tribe may request that the secretary review DCF’s disapproval within 30 days after receiving notice of the disapproval. A final decision of this is not subject to further review under ch. 227.

Rehabilitation Review plan must include the following:

Requirements	DCF’s Process/Suggestions
<p>1. The criteria to be used to determine if a person has been rehabilitated.</p>	<p>Wis. Admin. Code §§ DCF 12.13(4) and 13.13(4) discusses a non-exhaustive list of factors that DCF rehabilitation review panels are required to consider:</p> <p><i>Personal references and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors, and other professionals.</i></p> <p><i>Evidence of successful adjustment to, compliance with, or proof of successful completion of parole, extended supervision, probation, incarceration, or work release privileges.</i></p> <p><i>Any investigations or enforcement actions by a regulatory agency for substantial noncompliance with applicable laws.</i></p> <p><i>Any subsequent contacts with law enforcement agencies, including arrests, charges, convictions, pending criminal or civil arrest warrants, civil judgments, or other legal enforcement actions or injunctions against the person.</i></p> <p><i>Any aggravating or mitigating circumstances surrounding the barring crime, act, or offense.</i></p> <p><i>Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts or attempts at restitution, and</i></p>

	<p><i>demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.</i></p> <p><i>The age of the person at the time of the offense and the amount of time between the crime, act, or offense and the request for rehabilitation review.</i></p> <p><i>Whether the person is on the sexual offender registry under s. 301.45, Stats., or on a similar registry in another jurisdiction.</i></p> <p><i>A victim's impact statement, if appropriate.</i></p> <p><i>The person's employment history, including evidence of acceptable performance or competency and dedication to the person's profession.</i></p> <p>http://docs.legis.wisconsin.gov/document/administrativecode/DCF12.13(4)(k)</p> <p><i>The nature and scope of the person's contact with clients in the position requested.</i></p> <p><i>The degree to which the person would be directly supervised or working independently in the position requested.</i></p> <p><i>The opportunity presented for someone in the position to commit similar offenses.</i></p> <p><i>The number, type, and pattern of offenses committed by the person.</i></p> <p><i>Successful participation in or completion of recommended rehabilitation, treatment, or programs.</i></p> <p><i>Unmet treatment needs.</i></p> <p><i>The person's veracity.</i></p>
<p>2. The title of the person or body designated by the Indian tribe to whom a request for a review must be made.</p>	<p>DCF has a Rehabilitation Review Coordinator who is the first point of contact for questions and concerns from both applicants and entities who are conducting rehabs, but this is an agency decision, and it is not mandated by rule or statute.</p>
<p>3. The title of the person or body designated by the Indian tribe to determine whether a person has been rehabilitated.</p>	<p>Wis. Admin Code DCF §§ 12.13(2) and 13.13(2) provides that the applicable agency shall appoint a review panel of at least 2 persons to review the information submitted. DCF routinely has more than 2 members depending on what type of rehabilitation approval the applicant is seeking.</p>
<p>4. The title of the person or body, designated by the Indian tribe, to whom a person may appeal an adverse decision made by the person specified under</p>	<p>The following outlines the appeal rights from all other entities' decisions, including DCF, who conduct rehabilitation reviews:</p> <p>Wis. Stat. § 48.685(5c)</p> <p><i>Any person who is permitted but fails under sub. (5) (a) to demonstrate to the department that he or she has been rehabilitated may appeal to</i></p>

subd. 3. and whether the Indian tribe provides any further rights to appeal.

the secretary or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

Wis. Stat. § 48.686(5c)

Any person who is permitted but fails under sub. (5) (a) to demonstrate to the department that he or she has been rehabilitated may appeal to the secretary or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

Wis. Admin. Code § DCF 12.14

(a) A person who is denied rehabilitation approval may submit a written request for review of the decision under s. 48.685 (5c), Stats., within 10 days after the date of the written decision by the rehabilitation panel. No new evidence may be submitted.

(b) A person who appeals under this subsection shall bear the burden of proving, by a preponderance of the evidence, that the rehabilitation review panel for the agency erroneously exercised its discretion in deciding that the person did not show sufficient evidence to demonstrate that he or she is rehabilitated.

To appeal a denial by a rehabilitation review panel for the department or a child-placing agency, send the request to the Department of Children and Families, Office of Legal Counsel, P.O. Box 8916, Madison, WI 53708-8916.

To appeal a denial by a rehabilitation review panel for a county department, send the request to the director of the appropriate county department or the director's designee.

A person who receives an adverse decision from the secretary of the department or his or her designee under sub. (1) may request a contested case hearing under ch. 227, Stats., and ch. HA 1 within 10 days after the date of the written decision by the department.

A person who receives an adverse decision from a county department director or his or her designee has the right to appeal the decision under ch. 68, Stats.

Wis. Admin. Code DCF 13.14

(a) A person who is denied rehabilitation approval under s. DCF 13.13 may submit a written request for review of the decision by the secretary or the secretary's designee under s. 48.686 (5c), Stats. A request for review shall be submitted within 10 days after the date of the

	<p><i>written decision by the rehabilitation panel. No new evidence may be submitted.</i></p> <p><i>(b) A person who appeals under this subsection shall bear the burden of proving, by a preponderance of the evidence, that the rehabilitation review panel for the agency erroneously exercised its discretion in deciding that the person did not show sufficient evidence to demonstrate that he or she is rehabilitated.</i></p> <p><i>To appeal a denial by a rehabilitation review panel for the department or a certification agency, send the request to the Department of Children and Families, Office of Legal Counsel, P.O. Box 8916, Madison, WI 53708-8916.</i></p> <p><i>To appeal a denial by a rehabilitation review panel for the school board, send the request to the State Superintendent of Public Instruction, 125 South Webster Street, Madison, WI 53703; or call (608) 266-3390.</i></p> <p><i>To appeal a denial by a rehabilitation review panel for a tribe, send the request to the director of the appropriate tribe or the director's designee.</i></p> <p><i>A person who receives an adverse decision from the secretary of the department or the secretary's designee under sub. (1) may request a contested case hearing under ch. 227, Stats., and ch. HA 1 within 10 days after the date of the written decision by the department.</i></p>
<p>5. The manner in which the Indian tribe will submit information relating to a rehabilitation review to the department so that the department may include that information in its report to the legislature required under sub. (5g).</p>	<p>All other entities who conduct rehabilitation reviews under Wis. Stat. §§ 48.685 and 48.686 and Wis. Admin. Code §§ DCF 12 and 13 utilize DCF prescribed forms: Form DCF-F-419, Rehabilitation Review Application; Form DCF-F-418, Rehabilitation Review Panel Decision Report; and Form DCF-F-2857, Rehabilitation Review Appeals Report.</p> <p>DCF uses this information to prepare the required report to the Legislature under Wis. Stat. §§ 48.685(5g) and 48.686(5g). DCF also enters information from these forms into a database which is then pulled when a caregiver background check is run. The information then appears on the IBIS portion of the Caregiver Background Check. This requirement is specified as follows:</p> <p>Wis. Admin. Code §§ DCF 12.13(6) and 13.13(6)</p> <p><i>The review panel shall send its decision to the person who is the subject of the rehabilitation review and, if requested, a copy to entities specified by that person.</i></p> <p><i>Within 10 days after sending a rehabilitation review decision to the person who is the subject of the rehabilitation review, the review panel for an agency shall send all of the following to the department:</i></p> <p><i>A copy of the review panel's decision.</i></p> <p><i>A copy of the person's application under s. DCF 12.12 (1)/ DCF 13.12</i></p>

	<i>A completed rehabilitation review panel decision report on a form prescribed by the department.</i>
6. A copy of the form to be used to request a review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.	All other entities who conduct rehabilitation reviews under Wis. Stat. §§ 48.685 and 48.686 and Wis. Admin. Code §§ DCF 12 and 13 utilize DCF prescribed forms: Form DCF-F-419, Rehabilitation Review Application; Form DCF-F-418, Rehabilitation Review Panel Decision Report; and Form DCF-F-2857, Rehabilitation Review Appeals Report.
Miscellaneous Information	<p>Wis. Admin. Code §§ DCF 12.11(3) and 13.11 (2) create a one-year bar after a rehabilitation review request has been denied. All applicants seeking a rehabilitation review under Wisconsin law are subject to the bar.</p> <p>Wis. Admin. Code §§ DCF 12.15 and 13.15 discuss the circumstances under which a rehabilitation approval may be withdrawn.</p> <p>Wis. Admin. Code §§ DCF 12.16 and 13.16 discusses transferability. Approval granted by one entity may be accepted by another.</p>