

2009 DRAFTING REQUEST

Bill

Received: 12/03/2008

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Steinmetz

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: Correctional System - misc

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Steinmetz, BB0313 -

Topic:

Revocation of Extended Supervision

Instructions:

Allow Parole Commission to hear reconfinement hearings for revocations (currently circuit courts do this)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 12/18/2008	kfollett 12/19/2008		_____			
/1			rschluet 12/22/2008	_____	sbasford 12/22/2008		
/2	phurley 01/30/2009	kfollett 01/30/2009	rschluet 01/30/2009	_____	cduerst 01/30/2009		

FE Sent For:

<END>

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/?

phurley

1/15/08
1-24-09

PH
1/19/08
<END>

FE Sent For:

Handwritten initials/signature

DRAFT

SENTENCING POLICY SECTION

s. 302.113(9)(am) and s. 302.113(9)(at) (attached)

Court Involvement in Extended Supervision (ES) Revocation

I. Current law.

A. S. 302.113(9)(am) states in part ...

"If a person released to extended supervision under this section violates a condition of extended supervision, the reviewing authority may revoke the extended supervision of the person. If the extended supervision is revoked, the person shall be returned to the circuit court for the county ... and the court shall order the person to be returned to prison...."

B. S. 302.113(9)(at) states in full ...

"When a person is returned to court under par. (am) after revocation of extended supervision, the reviewing authority shall make a recommendation to the court concerning the period of time for which the person should be returned to prison. The recommended time period may not exceed the time remaining on the bifurcated sentence, as calculated under par. (am)."

II. Proposed Statutory Change.

A. S. 302.113(9)(am)

1. Please see the attached recommended change.

B. S. 302.113(9)(at)

1. Strike out this entire section (see attached).

date of the inmate's scheduled date of release to extended supervision or more than once before the inmate's release to extended supervision.

2. A person subject to this section may not petition the court to modify the conditions of extended supervision within one year after the inmate's release to extended supervision. If a person subject to this section files a petition authorized by this subsection after his or her release from confinement, the person may not file another petition until one year after the date of filing the former petition.

(8) Releases to extended supervision from prison shall be on the Tuesday or Wednesday preceding the date on which he or she completes the term of imprisonment.

(8m) (a) Every person released to extended supervision under this section remains in the legal custody of the department. If the department alleges that any condition or rule of extended supervision has been violated by the person, the department may take physical custody of the person for the investigation of the alleged violation.

(b) If a person released to extended supervision under this section signs a statement admitting a violation of a condition or rule of extended supervision, the department may, as a sanction for the violation, confine the person for up to 90 days in a regional detention facility or, with the approval of the sheriff, in a county jail. If the department confines the person in a county jail under this paragraph, the department shall reimburse the county for its actual costs in confining the person from the appropriations under s. 20.410 (1) (ab) and (b). Notwithstanding s. 302.43, the person is not eligible to earn good time credit on any period of confinement imposed under this subsection.

(9) (ag) In this subsection "reviewing authority" means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the person on extended supervision waives a hearing.

(am) If a person released to extended supervision under this section violates a condition of extended supervision, the reviewing authority may revoke the extended supervision of the person. If the extended supervision of the person is revoked, ~~the person shall be returned to the circuit court for the county in which the person was convicted of the offense for which he or she was on extended supervision, and the court shall order the person to be returned to prison for any specified period of time that does not exceed the time remaining on the bifurcated sentence. The time remaining on the bifurcated sentence is the total length of the bifurcated sentence, less time served by the person in confinement under the sentence before release to extended supervision under sub. (2) and less all time served in confinement for previous revocations of extended supervision under the sentence. The court order returning a person to prison under this paragraph shall provide the person whose extended supervision was revoked with credit in accordance with ss. 304.072 and 973.155.~~

reviewing authority

(at) ~~When a person is returned to court under par. (am) after revocation of extended supervision, the reviewing authority shall make a recommendation to the court concerning the period of time for which the person should be returned to prison. The recommended time period may not exceed the time remaining on the bifurcated sentence, as calculated under par. (am).~~

(b) A person who is returned to prison after revocation of extended supervision shall be incarcerated for the entire period of time specified by the court under par. (am). The period of time specified under par. (am) may be extended in accordance with sub. (3). If a person is returned to prison under par. (am) for a period of time that is less than the time remaining on the bifurcated sentence, the person shall be released to extended supervision after he or she has served the period of time specified by the court under par. (am) and any periods of extension imposed in accordance with sub. (3).

(c) A person who is subsequently released to extended supervision after service of the period of time specified by the court under

par. (am) is subject to all conditions and rules under subs. (7) and, if applicable, (7m) until the expiration of the remaining extended supervision portion of the bifurcated sentence. The remaining extended supervision portion of the bifurcated sentence is the total length of the bifurcated sentence, less the time served by the person in confinement under the bifurcated sentence before release to extended supervision under sub. (2) and less all time served in confinement for previous revocations of extended supervision under the bifurcated sentence.

(d) For the purposes of pars. (am) and (c), the amount of time a person has served in confinement before release to extended supervision and the amount of time a person has served in confinement for a revocation of extended supervision includes any extensions imposed under sub. (3).

(e) If a hearing is to be held under par. (am) before the division of hearings and appeals in the department of administration, the hearing examiner may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10).

(f) A reviewing authority may consolidate proceedings before it under par. (am) with other proceedings before that reviewing authority under par. (am) or s. 302.11 (7) (am) or 302.114 (9) (am) if all of the proceedings relate to the parole or extended supervision of the same person.

(g) In any case in which there is a hearing before the division of hearings and appeals in the department of administration concerning whether to revoke a person's extended supervision, the person on extended supervision may seek review of a decision to revoke extended supervision and the department of corrections may seek review of a decision to not revoke extended supervision. Review of a decision under this paragraph may be sought only by an action for certiorari.

(9g) (a) In this subsection:

1. "Program review committee" means the committee at a correctional institution that reviews the security classifications, institution assignments, and correctional programming assignments of inmates confined in the institution.

2. "Terminal condition" means an incurable condition afflicting a person, caused by injury, disease, or illness, as a result of which the person has a medical prognosis that his or her life expectancy is 6 months or less, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

(b) An inmate who is serving a bifurcated sentence for a crime other than a Class B felony may seek modification of the bifurcated sentence in the manner specified in par. (f) if he or she meets one of the following criteria:

1. The inmate is 65 years of age or older and has served at least 5 years of the term of confinement in prison portion of the bifurcated sentence.

2. The inmate is 60 years of age or older and has served at least 10 years of the term of confinement in prison portion of the bifurcated sentence.

3. The inmate has a terminal condition.

(c) An inmate who meets the criteria under par. (b) may submit a petition to the program review committee at the correctional institution in which the inmate is confined requesting a modification of the inmate's bifurcated sentence in the manner specified in par. (f). If the inmate alleges in the petition that he or she has a terminal condition, the inmate shall attach to the petition affidavits from 2 physicians setting forth a diagnosis that the inmate has a terminal condition.

(cm) If, after receiving the petition under par. (c), the program review committee determines that the public interest would be served by a modification of the inmate's bifurcated sentence in the manner provided under par. (f), the committee shall approve the petition for referral to the sentencing court and notify the department of its approval. The department shall then refer the inmate's

petition to the sentencing court and request the court to conduct a hearing on the petition. If the program review committee determines that the public interest would not be served by a modification of the inmate's bifurcated sentence in the manner specified in par. (d), the committee shall deny the inmate's petition.

(d) When a court is notified by the department that it is referring to the court an inmate's petition for modification of the inmate's bifurcated sentence, the court shall set a hearing to determine whether the public interest would be served by a modification of the inmate's bifurcated sentence in the manner specified in par. (f). The inmate and the district attorney have the right to be present at the hearing, and any victim of the inmate's crime has the right to be present at the hearing and to provide a statement concerning the modification of the inmate's bifurcated sentence. The court shall order such notice of the hearing date as it considers adequate to be given to the department, the inmate, the attorney representing the inmate, if applicable, and the district attorney. Victim notification shall be provided as specified under par. (g).

(e) At a hearing scheduled under par. (d), the inmate has the burden of proving by the greater weight of the credible evidence that a modification of the bifurcated sentence in the manner specified in par. (f) would serve the public interest. If the inmate proves that a modification of the bifurcated sentence in the manner specified in par. (f) would serve the public interest, the court shall modify the inmate's bifurcated sentence in that manner. If the inmate does not prove that a modification of the bifurcated sentence in the manner specified in par. (f) would serve the public interest, the court shall deny the inmate's petition for modification of the bifurcated sentence.

(f) A court may modify an inmate's bifurcated sentence under this section only as follows:

1. The court shall reduce the term of confinement in prison or the term of the inmate's bifurcated sentence in a manner that provides for the release of the inmate to extended supervision within 60 days after the date on which the court issues its order modifying the bifurcated sentence.

2. The court shall lengthen the term of extended supervision imposed so that the total length of the bifurcated sentence originally imposed does not change.

(g) 1. In this paragraph, "victim" has the meaning given in s. 30.02 (4).

2. When a court sets a hearing date under par. (d), the clerk of the circuit court shall send a notice of hearing to the victim of a crime committed by the inmate, if the victim has submitted a request under subd. 3, requesting notification. The notice shall inform the victim that he or she may appear at the hearing scheduled under par. (d) and shall inform the victim of the manner in which he or she may provide a statement concerning the modification of the inmate's bifurcated sentence in the manner provided in par. (f). The clerk of the circuit court shall make a reasonable attempt to send the notice of hearing to the last-known address of the inmate's victim, postmarked at least 10 days before the date of the hearing.

3. The director of state courts shall design and prepare cards for a victim to send to the clerk of the circuit court for the county in which the inmate was convicted and sentenced. The cards shall provide space for a victim to provide his or her name and address, the name of the applicable inmate, and any other information that the director of state courts determines is necessary. The director of state courts shall provide the cards, without charge, to clerks of the circuit court. Clerks of circuit court shall provide the cards, without charge, to victims. Victims may send completed cards to the clerk of the circuit court for the county in which the inmate was convicted and sentenced. All court records or portions of records that relate to mailing addresses of victims are not subject to disclosure or copying under s. 19.35 (1).

h) An inmate may appeal a court's decision to deny the inmate's petition for modification of his or her bifurcated sentence. The state may appeal a court's decision to grant an inmate's

petition for a modification of the inmate's bifurcated sentence. In an appeal under this paragraph, the appellate court may reverse a decision granting or denying a petition for modification of a bifurcated sentence only if it determines that the sentencing court erroneously exercised its discretion in granting or denying the petition.

(i) If the program review committee denies an inmate's petition under par. (cm), the inmate may not file another petition within one year after the date of the program review committee's denial. If the program review committee approves an inmate's petition for referral to the sentencing court under par. (cm) but the sentencing court denies the petition, the inmate may not file another petition under par. (cm) within one year after the date of the court's decision.

(j) An inmate eligible to seek modification of his or her bifurcated sentence under this subsection has a right to be represented by counsel in proceedings under this subsection. An inmate, or the department on the inmate's behalf, may apply to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (jm) before or after the filing of a petition with the program review committee under par. (c). If an inmate whose petition has been referred to the court under par. (cm) is without counsel, the court shall refer the matter to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (jm).

(10) The department may promulgate rules establishing guidelines and criteria for the exercise of discretion under this section.

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33; 2005 a. 42.

Reconfinement under sub. (9) (am) is subject to review under s. 809.30. State v. Swiams, 2004 WI App 217, 277 Wis. 2d 400, 690 N.W.2d 452, 04-0299.

A hearing to determine the length of reconfinement under sub. (9) is a sentencing. All sentences imposed by a circuit court are reviewed by appellate courts to determine whether the court erroneously exercised its discretion. There is a strong public policy against interference with the sentencing discretion of the trial court, and sentences are afforded the presumption that the trial court acted reasonably. State v. Brown, 2006 WI App 44, 05-0584.

While the recommendation of the Department of Corrections may be helpful and should be considered, the trial court owes no due weight deference to the Department's sentencing recommendation submitted to the trial court after the revocation of an offender's extended supervision. State v. Brown, 2006 WI App 44, ___ Wis. 2d ___, 712 N.W.2d 899, 05-0584.

302.114 Petition for release and release to extended supervision for felony offenders serving life sentences.

(1) An inmate is subject to this section if he or she is serving a life sentence imposed under s. 973.014 (1g) (a) 1. or 2. An inmate serving a life sentence under s. 939.62 (2m) or 973.014 (1g) (a) 3. is not eligible for release to extended supervision under this section.

(2) Except as provided in subs. (3) and (9), an inmate subject to this section may petition the sentencing court for release to extended supervision after he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a) 1., or after he or she has reached the extended supervision eligibility date set by the court, if the inmate was sentenced under s. 973.014 (1g) (a) 2.

(3) (a) The warden or superintendent shall keep a record of the conduct of each inmate subject to this section, specifying each infraction of the rules. If any inmate subject to this section violates any regulation of the prison or refuses or neglects to perform required or assigned duties, the department may extend the extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, as follows:

1. Ten days for the first offense.
2. Twenty days for the 2nd offense.
3. Forty days for the 3rd or each subsequent offense.

(b) In addition to the sanctions under par. (a), if an inmate subject to this section is placed in adjustment, program or controlled segregation status, the department may extend the extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2., whichever is applicable, by a number of days equal to 50% of the number of days spent in segregation status. In administering this paragraph, the department shall use the definition of adjustment,

Fix request sheet please

BBxxxx

DOA:.....Steinmetz - Revocation of Extended Supervision

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

12-18-07
2 note

1 AN ACT ...; relating to: the budget

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

DOA

DOA

X
X

Currently, a person who is convicted of a crime is sentenced to a bifurcated sentence, which requires the person to serve a portion of his or her sentence incarcerated and a portion of the sentence in the community under extended supervision. If a person violates any condition of his or her release to extended supervision, the person's extended supervision is revoked, he or she is returned to prison, and the division of hearings and appeals within department of administration or the department of corrections (reviewing authority) makes a recommendation to the court that convicted the person as to how long the person should remain in prison. After it receives the reviewing authority's recommendation, the court may order the person to remain in prison for a period of time that does not exceed the time remaining on his or her bifurcated sentence.

Under this bill, the reviewing authority determines how long to imprison the person whose extended supervision is revoked and enters its own order for the person to remain in prison for a period of time that does not exceed the time remaining on his or her bifurcated sentence.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 302.113 (9) (am) of the statutes is amended to read:

2 302.113 (9) (am) If a person released to extended supervision under this section
3 violates a condition of extended supervision, the reviewing authority may revoke the
4 extended supervision of the person. If the extended supervision of the person is
5 revoked, the person shall be returned to the circuit court for the county in which the
6 person was convicted of the offense for which he or she was on extended supervision,
7 and the court reviewing authority shall order the person to be returned to prison for
8 any specified period of time that does not exceed the time remaining on the bifurcated
9 sentence. The time remaining on the bifurcated sentence is the total length of the
10 bifurcated sentence, less time served by the person in confinement under the
11 sentence before release to extended supervision under sub. (2) and less all time
12 served in confinement for previous revocations of extended supervision under the
13 sentence. The court order returning a person to prison under this paragraph shall
14 provide the person whose extended supervision was revoked with credit in
15 accordance with ss. 304.072 and 973.155.

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33; 2005 a. 42

16 **SECTION 2.** 302.113 (2) (at) of the statutes is repealed.

17 **SECTION 3.** 302.113 (9) (b) of the statutes is amended to read:

18 302.113 (9) (b) A person who is returned to prison after revocation of extended
19 supervision shall be incarcerated for the entire period of time specified by the court
20 order under par. (am). The period of time specified under par. (am) may be extended
21 in accordance with sub. (3). If a person is returned to prison under par. (am) for a
22 period of time that is less than the time remaining on the bifurcated sentence, the
23 person shall be released to extended supervision after he or she has served the period

1 of time specified by the court order under par. (am) and any periods of extension
2 imposed in accordance with sub. (3).

3 **History:** 1997 a. 283; 2001 a. 16, 109; 2003 a. 33; 2005 a. 42.

3 **SECTION 4.** 302.113 (9) (c) of the statutes is amended to read:

4 302.113 (9) (c) A person who is subsequently released to extended supervision
5 after service of the period of time specified by the court order under par. (am) is
6 subject to all conditions and rules under subs. (7) and, if applicable, (7m) until the
7 expiration of the remaining extended supervision portion of the bifurcated sentence.
8 The remaining extended supervision portion of the bifurcated sentence is the total
9 length of the bifurcated sentence, less the time served by the person in confinement
10 under the bifurcated sentence before release to extended supervision under sub. (2)
11 and less all time served in confinement for previous revocations of extended
12 supervision under the bifurcated sentence.

13 **History:** 1997 a. 283; 2001 a. 16, 109; 2003 a. 33; 2005 a. 42.

(END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1008/7dn
PJH:.....

gf

Date

Jana,

X

Please review this draft carefully to ensure that it is consistent with your intent. Please note that in the Statutory Language Requests memo you submitted to me on 12/03/08, there is a request to "Allow Parole Commission to hear reconfinement hearings for revocations instead of circuit courts."

December 3, 2008

December 17, 2008,

X

The suggested language you sent to me on 12/17/08 entitled "SENTENCING POLICY SECTION s. 302.113(9)(am) and s. 302.113 (9) (at) transfers the authority to determine how long a person should be imprisoned after having his or her extended supervision revoked from the court to the "reviewing authority." The "reviewing authority" is, under current law and not changed in the suggested language, either the division of hearings and appeals in the department of administration or the department of corrections (see s. 301.03 (3) and s. 302.113 (9) (ag)). I drafted the bill according to these instructions; please let me know if this does not accomplish your intent.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1008/1dn
PJH:kjf:rs

December 19, 2008

Jana,

Please review this draft carefully to ensure that it is consistent with your intent. Please note that in the Statutory Language Requests memo you submitted to me on December 3, 2008, there is a request to "Allow Parole Commission to hear reconfinement hearings for revocations instead of circuit courts."

The suggested language you sent to me on December 17, 2008, entitled "SENTENCING POLICY SECTION s. 302.113 (9) (am) and s. 302.113 (9) (at)" transfers the authority to determine how long a person should be imprisoned after having his or her extended supervision revoked from the court to the "reviewing authority." The "reviewing authority" is, under current law and not changed in the suggested language, either the Division of Hearings and Appeals in the Department of Administration or the Department of Corrections (see s. 301.03 (3) and s. 302.113 (9) (ag)). I drafted the bill according to these instructions; please let me know if this does not accomplish your intent.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

Er

DOA:.....Steinmetz, BB0313 - Revocation of Extended Supervision
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

d-note

Don't Gen

1 AN ACT ...; relating to: the budget.

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Under this bill, the reviewing authority determines how long to imprison the person whose extended supervision is revoked and enters its own order for the person to remain in prison for a period of time that does not exceed the time remaining on his or her bifurcated sentence.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 302.113 (9) (am) of the statutes is amended to read:

2 302.113 (9) (am) If a person released to extended supervision under this section
3 violates a condition of extended supervision, the reviewing authority may revoke the
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5 revoked, the person shall be returned to the circuit court for the county in which the
6 person was convicted of the offense for which he or she was on extended supervision,
7 and the court reviewing authority shall order the person to be returned to prison for
8 any specified period of time that does not exceed the time remaining on the bifurcated
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17 **SECTION 3.** 302.113 (9) (b) of the statutes is amended to read:

18 302.113 (9) (b) A person who is returned to prison after revocation of extended
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20 order under par. (am). The period of time specified under par. (am) may be extended
21 in accordance with sub. (3). If a person is returned to prison under par. (am) for a
22 period of time that is less than the time remaining on the bifurcated sentence, the
23 person shall be released to extended supervision after he or she has served the period
24 of time specified by the court order under par. (am) and any periods of extension
25 imposed in accordance with sub. (3).

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1008/2dn
PJH:kjfrs

January 30, 2009

Jana:

This draft reconciles LRB-1008 and LRB-1768. Both of these drafts should continue to appear in the compiled bill.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1008/2

PJH:kjf:rs

DOA:.....Steinmetz, BB0313 - Revocation of Extended Supervision
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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5 revoked, the ~~person shall be returned to the circuit court for the county in which the~~
6 ~~person was convicted of the offense for which he or she was on extended supervision,~~
7 ~~and the court~~ reviewing authority shall order the person to be returned to prison for
8 any specified period of time that does not exceed the time remaining on the bifurcated
9 sentence. The time remaining on the bifurcated sentence is the total length of the
10 bifurcated sentence, less time served by the person in confinement under the
11 sentence before release to extended supervision under sub. (2) and less all time
12 served in confinement for previous revocations of extended supervision under the
13 sentence. The ~~court~~ order returning a person to prison under this paragraph shall
14 provide the person whose extended supervision was revoked with credit in
15 accordance with ss. 304.072 and 973.155.

16 **SECTION 2.** 302.113 (9) (at) of the statutes is repealed.

17 **SECTION 3.** 302.113 (9) (b) of the statutes is amended to read:

18 302.113 (9) (b) A person who is returned to prison after revocation of extended
19 supervision shall be incarcerated for the entire period of time specified by the ~~court~~
20 order under par. (am). The period of time specified under par. (am) may be extended
21 in accordance with sub. (3). If a person is returned to prison under par. (am) for a
22 period of time that is less than the time remaining on the bifurcated sentence, the
23 person shall be released to extended supervision after he or she has served the period

1 of time specified by the ~~court~~ order under par. (am) and any periods of extension
2 imposed in accordance with sub. (3).

3 (END)