State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1768/P7
PJH:jld/wlj/nwn:md

DOA:.....Wavrunek, BB0520 - Sentence Adjustment for Class C to I felonies

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

Under current law, a person who is imprisoned for a felony he or she committed prior to December 31, 1999, may petition the Parole Commission in DOC to be released to parole after the person has served 25 percent of his or her sentence. The Parole Commission determines whether, and under what conditions, the person should be released to parole. A person who committed a felony on or after December 31, 1999, is sentenced to a bifurcated sentence, with the first portion of the sentence served in confinement and the second portion served under extended supervision in the community.

A person who is serving a bifurcated sentence is not eligible for parole and, with few exceptions, must serve the entire confinement portion of his or her sentence before being released to extended supervision. A person's confinement portion may be extended if he or she violates a prison regulation. If a person's confinement portion is extended for such a violation, current law requires his or her extended supervision portion to be reduced so that the total length of the person's sentence remains unchanged.

Current law allows a person who is sentenced to a bifurcated sentence for a Class C to Class I felony to petition the sentencing court to adjust his or her sentence and release the person from prison to extended supervision if he or she has served

85 percent (for Class C to Class E felonies) or 75 percent (for Class F to Class I felonies) of the confinement portion of the sentence. If a person's confinement portion is reduced by the sentencing court, current law requires his or her extended supervision portion to be extended so that the total length of the person's sentence remains unchanged.

Under current law, a person who is released to extended supervision must serve his or her entire sentence before extended supervision terminates.

Under this bill, a person who commits a misdemeanor and is sentenced to imprisonment or who commits a nonviolent Class F to Class I felony, except for certain sex offenders and persons who committed a prior violent offense or are determined by DOC to pose a high risk of reoffending, may earn "positive adjustment time" in the amount of one day for every two days he or she is incarcerated without violating a prison rule or regulation. The bill requires DOC to release the person to extended supervision when he or she serves his entire incarceration period, minus positive adjustment time earned. Under the bill, if a person's incarceration period is reduced by positive adjustment time, his or her period of extended supervision is increased so that the length of the sentence does not change.

Under this bill, a person who commits a violent Class F to Class I felony or a nonviolent Class F to Class I felony but was determined by DOC to pose a high risk of reoffending, except for certain sex offenders, may earn positive adjustment time in the amount of one day for every three days he or she is incarcerated without violating a prison rule or regulation, and a person who commits a Class C to Class E felony, except for certain sex offenders, may earn positive adjustment time in the amount of one day for every 5.7 days he or she is incarcerated without violating a prison rule or regulation.

The bill renames the Parole Commission the Earned Release Review Commission (ERRC) and, in addition to the Parole Commission's current duties, the ERRC may consider a petition for release from a person who commits a violent Class F to Class I felony or a Class C to Class E felony after the person serves his entire incarceration period, minus positive adjustment time earned. The bill eliminates the authority of the trial court to adjust sentences. Under the bill, if the ERRC reduces the term of confinement portion of a person's sentence because the person has earned positive adjustment time, the person's term of extended supervision is increased so that the length of the sentence does not change.

Under the bill, a person who is released to extended supervision for a misdemeanor or a nonviolent Class F to Class I felony may earn "good time" toward discharge from extended supervision in the amount of one day for every day he or she serves on extended supervision without violating a condition of extended supervision. The bill requires DOC to discharge from extended supervision a person who serves his or her entire extended supervision time, minus good time earned.

Under the bill, a person who is released to extended supervision for a violent Class F to Class I felony may earn good time toward discharge from extended supervision in the amount of one day for every three days he or she serves on extended supervision without violating a condition of extended supervision. A person who is released to extended supervision for a Class C to Class E felony may

earn good time toward discharge from extended supervision in the amount of one day for every 5.7 he or she serves on extended supervision without violating a condition of extended supervision. Under the bill, the ERRC may discharge from extended supervision a person convicted of a violent Class F to Class I felony or a person convicted of a Class C to Class E felony after he or she serves his entire period of extended supervision, minus good time earned.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 15.01 (2) of the statutes is amended to read:

2 15.01 **(2)** "Commission" means a 3-member governing body in charge of a
3 department or independent agency or of a division or other subunit within a
4 department, except for the Wisconsin waterways commission which shall consist of
5 5 members and the ~~parole~~ earned release review commission which shall consist of
6 8 members. A Wisconsin group created for participation in a continuing interstate
7 body, or the interstate body itself, shall be known as a "commission", but is not a
8 commission for purposes of s. 15.06. The ~~parole~~ earned release review commission
9 created under s. 15.145 (1) shall be known as a "commission", but is not a commission
10 for purposes of s. 15.06.

11 **SECTION 2.** 15.06 (6) of the statutes is amended to read:

12 15.06 **(6)** QUORUM. A majority of the membership of a commission constitutes
13 a quorum to do business, except that vacancies shall not prevent a commission from
14 doing business. This subsection does not apply to the ~~parole~~ earned release review
15 commission.

16 **SECTION 3.** 15.145 (1) of the statutes is amended to read:

17 15.145 **(1)** ~~PAROLE~~ EARNED RELEASE REVIEW COMMISSION. There is created in the
18 department of corrections ~~a parole~~ an earned release review commission consisting

of 8 members. Members shall have knowledge of or experience in corrections or criminal justice. The members shall include a chairperson who is nominated by the governor, and with the advice and consent of the senate appointed, for a 2-year term expiring March 1 of the odd-numbered years, subject to removal under s. 17.07 (3m), and the remaining members in the classified service appointed by the chairperson.

SECTION 4. 17.07 (3m) of the statutes is amended to read:

17.07 **(3m)** Notwithstanding sub. (3), the ~~parole~~ earned release review commission chairperson may be removed by the governor, at pleasure.

SECTION 5. 20.410 (2) (title) of the statutes is amended to read:

20.410 **(2)** (title) ~~PAROLE~~ EARNED RELEASE REVIEW COMMISSION.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 6. 20.410 (2) (a) of the statutes is amended to read:

20.410 **(2)** (a) *General program operations.* The amounts in the schedule for the general program operations of the ~~parole~~ earned release review commission.

SECTION 7. 20.923 (4) (b) 6. of the statutes is amended to read:

20.923 **(4)** (b) 6. ~~Parole~~ Earned release review commission: chairperson.

SECTION 8. 230.08 (2) (pd) of the statutes is amended to read:

230.08 **(2)** (pd) The chairperson of the ~~parole~~ earned release review commission.

SECTION 9. 301.03 (3) of the statutes is amended to read:

301.03 **(3)** Administer parole, extended supervision, and probation matters, except that the decision to grant or deny parole or to grant extended supervision under s. 304.06 (1) to inmates shall be made by the ~~parole~~ earned release review commission and the decision to revoke probation, extended supervision or parole in

cases in which there is no waiver of the right to a hearing shall be made by the division of hearings and appeals in the department of administration. The secretary may grant special action parole releases under s. 304.02. The department may discharge inmates from extended supervision under s. 973.01 (4m) and may modify a bifurcated sentence under s. 302.113 (9g) or (9h), and the earned release review commission may discharge inmates from extended supervision under s. 973.01 (4r). The department shall promulgate rules establishing a drug testing program for probationers, parolees and persons placed on extended supervision. The rules shall provide for assessment of fees upon probationers, parolees and persons placed on extended supervision to partially offset the costs of the program.

****NOTE: This is reconciled s. 301.03 (3). This SECTION has been affected by drafts with the following LRB numbers: LRB-1055/P3 and LRB-1768/P4.

SECTION 10. 301.048 (2) (am) 3. of the statutes is amended to read:

301.048 **(2)** (am) 3. The ~~parole~~ earned release review commission grants him or her parole under s. 304.06 and requires his or her participation in the program as a condition of parole under s. 304.06 (1x).

SECTION 11. 301.21 (1m) (c) of the statutes is amended to read:

301.21 **(1m)** (c) Any hearing to consider parole or whether to grant extended supervision, if the inmate is sentenced under s. 973.01 to which an inmate confined under this contract may be entitled by the laws of Wisconsin will be conducted by the Wisconsin ~~parole~~ earned release review commission under rules of the department.

SECTION 12. 301.21 (2m) (c) of the statutes is amended to read:

301.21 **(2m)** (c) Any hearing to consider parole or whether to grant extended supervision, if the prisoner is sentenced under s. 973.01 to which a prisoner confined under a contract under this subsection may be entitled by the laws of Wisconsin shall

be conducted by the Wisconsin ~~parole~~ earned release review commission under rules of the department.

SECTION 13. 302.045 (3) of the statutes is amended to read:

302.045 **(3)** PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department determines that an inmate serving a sentence other than one imposed under s. 973.01 has successfully completed the challenge incarceration program, the ~~parole~~ earned release review commission shall parole the inmate for that sentence under s. 304.06, regardless of the time the inmate has served. When the ~~parole~~ earned release review commission grants parole under this subsection, it must require the parolee to participate in an intensive supervision program ~~for drug abusers~~ appropriate to the parolee's rehabilitation needs as a condition of parole.

****NOTE: This is reconciled s. 302.045 (3). This SECTION has been affected by drafts with the following LRB numbers: LRB-1418/P4 and LRB-1768/P4.

SECTION 14. 302.05 (3) (b) of the statutes is amended to read:

302.05 **(3)** (b) Except as provided in par. (d), if the department determines that an eligible inmate serving a sentence other than one imposed under s. 973.01 has successfully completed a ~~treatment~~ rehabilitation program described in sub. (1), the ~~parole~~ earned release review commission shall parole the inmate for that sentence under s. 304.06, regardless of the time the inmate has served. If the ~~parole~~ earned release review commission grants parole under this paragraph, it shall require the parolee to participate in an intensive supervision program ~~for drug abusers~~ appropriate to the parolee's rehabilitation needs as a condition of parole.

****NOTE: This is reconciled s. 302.05 (3) (b). This SECTION has been affected by drafts with the following LRB numbers: LRB-1418/P4 and LRB-1768/P4.

SECTION 15. 302.11 (1g) (b) (intro.) of the statutes is amended to read:

302.11 **(1g)** (b) (intro.) Before an incarcerated inmate with a presumptive mandatory release date reaches the presumptive mandatory release date specified under par. (am), the ~~parole~~ earned release review commission shall proceed under s. 304.06 (1) to consider whether to deny presumptive mandatory release to the inmate. If the ~~parole~~ earned release review commission does not deny presumptive mandatory release, the inmate shall be released on parole. The ~~parole~~ earned release review commission may deny presumptive mandatory release to an inmate only on one or more of the following grounds:

SECTION 16. 302.11 (1g) (b) 2. of the statutes is amended to read:

302.11 **(1g)** (b) 2. Refusal by the inmate to participate in counseling or treatment that the social service and clinical staff of the institution determines is necessary for the inmate, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the inmate is a serious child sex offender as defined in s. 304.06 (1q) (a). The ~~parole~~ earned release review commission may not deny presumptive mandatory release to an inmate because of the inmate's refusal to participate in a rehabilitation program under s. 301.047.

SECTION 17. 302.11 (1g) (c) of the statutes is amended to read:

302.11 **(1g)** (c) If the ~~parole~~ earned release review commission denies presumptive mandatory release to an inmate under par. (b), the ~~parole~~ earned release review commission shall schedule regular reviews of the inmate's case to consider whether to parole the inmate under s. 304.06 (1).

SECTION 18. 302.11 (1g) (d) of the statutes is amended to read:

302.11 **(1g)** (d) An inmate may seek review of a decision by the ~~parole~~ earned release review commission relating to the denial of presumptive mandatory release only by the common law writ of certiorari.

1 **SECTION 19.** 302.11 (1m) of the statutes is amended to read:

2 302.11 **(1m)** An inmate serving a life term is not entitled to mandatory release.
3 Except as provided in ss. 939.62 (2m) (c) and 973.014, the ~~parole~~ earned release
4 review commission may parole the inmate as specified in s. 304.06 (1).

5 **SECTION 20.** 302.11 (7) (c) of the statutes is amended to read:

6 302.11 **(7)** (c) The ~~parole~~ earned release review commission may subsequently
7 parole, under s. 304.06 (1), and the department may subsequently parole, under s.
8 304.02, a parolee who is returned to prison for violation of a condition of parole.

9 **SECTION 21.** 302.113 (1) of the statutes is amended to read:

10 302.113 **(1)** An inmate is subject to this section if he or she is serving a
11 bifurcated sentence imposed under s. 973.01. An inmate convicted of a misdemeanor
12 or of a Class F to Class I felony that is not a violent offense, as defined in s. 301.048
13 (2) (bm) 1., and who is eligible for positive adjustment time under sub. (2) (b)
14 pursuant to s. 973.01 (3d) (b) may be released to extended supervision under sub. (2)
15 (b), (9g), or (9h). An inmate convicted of a Class C to Class E felony or a Class F to
16 Class I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., or a Class
17 F to Class I felony that is not a violent offense, as defined under s. 301.048 (2) (bm)
18 1., but who is ineligible for positive adjustment time under sub. (2) (b) pursuant to
19 s. 973.01 (3d) (b) may be released to extended supervision only under sub. (2) (a), (9g),
20 or (9h) or s. 304.06.

****NOTE: This is reconciled s. 302.113 (1). This SECTION has been affected by drafts with the following LRB numbers: LRB-1055/P3 and LRB-1768/P4.

21 **SECTION 22.** 302.113 (2) of the statutes is renumbered 302.113 (2) (a) and
22 amended to read:

1 302.113 **(2)** (a) Except as provided in par. (b) and subs. (3) and (9) and s. 304.06,
2 an inmate subject to this section is entitled to release to extended supervision after
3 he or she has served the term of confinement in prison portion of the sentence
4 imposed under s. 973.01, as modified by the department under sub. (9g) or (9h) or as
5 modified by the sentencing court under ~~sub. (9g) or~~ s. 302.045 (3m) (b) 1.~~,~~ or 302.05
6 (3) (c) 2. a.~~, or 973.195 (1r)~~, if applicable.

****NOTE: This is reconciled s. 302.113 (2) (a). This SECTION has been affected by drafts with the following LRB numbers: LRB-1055/P3 and LRB-1768/P4.

7 **SECTION 23.** 302.113 (2) (b) of the statutes is created to read:

8 302.113 **(2)** (b) An inmate sentenced under s. 973.01 for a misdemeanor or for
9 a Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2)
10 (bm) 1., may earn one day of positive adjustment time for every 2 days served that
11 he or she does not violate any regulation of the prison or does not refuse or neglect
12 to perform required or assigned duties. An inmate convicted of a misdemeanor or a
13 Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2) (bm)
14 1., shall be released to extended supervision when he or she has served the term of
15 confinement in prison portion of his or her bifurcated sentence, as modified by the
16 department under sub. (9g) or by the sentencing court under s. 302.045 (3m) (b) 1.
17 or 302.05 (3) (c) 2. a., if applicable, less positive adjustment time he or she has earned.
18 This paragraph does not apply to a person who is the subject of a bulletin issued
19 under s. 301.46 (2m), a violent offender, as defined in s. 16.964 (12) (a), or a person
20 who is ineligible for positive adjustment time under this paragraph pursuant to s.
21 973.01 (3d) (b).

****NOTE: This is reconciled s. 302.113 (2) (b). This SECTION has been affected by drafts with the following LRB numbers: LRB-1055/P3 and LRB-1768/P4.

22 **SECTION 24.** 302.113 (3) (d) of the statutes is amended to read:

302.113 **(3)** (d) If the term of confinement in prison portion of a bifurcated sentence for a Class B felony is increased under this subsection, the term of extended supervision is reduced so that the total length of the bifurcated sentence does not change.

SECTION 25. 302.113 (3) (e) of the statutes is created to read:

302.113 **(3)** (e) If an inmate is released to extended supervision under sub. (2) (b) after he or she has served less than his or her entire confinement in prison portion of the sentence imposed under s. 973.01, the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

SECTION 26. 302.113 (7) of the statutes is amended to read:

302.113 **(7)** Any inmate released to extended supervision under this section is subject to all conditions and rules of extended supervision until the expiration of the term of extended supervision portion of the bifurcated sentence or until the department discharges the inmate under s. 973.01 (4m), whichever is appropriate. The department may set conditions of extended supervision in addition to any conditions of extended supervision required under s. 302.116, if applicable, or set by the court under sub. (7m) or s. 973.01 (5) if the conditions set by the department do not conflict with the court's conditions.

SECTION 27. 302.113 (9) (c) of the statutes is amended to read:

302.113 **(9)** (c) A person who is subsequently released to extended supervision after service of the period of time specified by the ~~court~~ order 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 or until the department discharges the person under s. 973.01 (4m), whichever is appropriate. 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.

****NOTE: This is reconciled s. 302.113 (9) (c). This SECTION has been affected by drafts with the following LRB numbers: LRB-1008/1 and LRB-1768/P4.

SECTION 28. 302.114 (9) (c) of the statutes is amended to read:

302.114 **(9)** (c) A person who is subsequently released to extended supervision under par. (bm) is subject to all conditions and rules under sub. (8) until the expiration of the sentence <u>or until the department discharges the person under s. 973.01 (4m), whichever is appropriate</u>.

SECTION 29. 304.01 (title) of the statutes is amended to read:

304.01 (title) **~~Parole~~ <u>Earned release review</u> commission and commission chairperson; general duties.**

SECTION 30. 304.01 (1) of the statutes is amended to read:

304.01 **(1)** The chairperson of the ~~parole~~ <u>earned release review</u> commission shall administer and supervise the commission and its activities and shall be the final ~~parole granting~~ authority <u>for granting parole or release to extended supervision</u>, except as provided in s. 304.02.

SECTION 31. 304.01 (2) (intro.) of the statutes is amended to read:

304.01 **(2)** (intro.) The ~~parole~~ <u>earned release review</u> commission shall conduct regularly scheduled interviews to consider the parole <u>or release to extended supervision</u> of eligible inmates of the adult correctional institutions under the control of the department of corrections, eligible inmates transferred under ch. 51 and under the control of the department of health services and eligible inmates in

any county house of correction. The department of corrections shall provide all of the following to the ~~parole~~ earned release review commission:

SECTION 32. 304.01 (2) (b) of the statutes is amended to read:

304.01 **(2)** (b) Scheduling assistance for ~~parole~~ interviews for prisoners who have applied for parole or release to extended supervision at the correctional institutions.

SECTION 33. 304.01 (2) (c) of the statutes is amended to read:

304.01 **(2)** (c) Clerical support related to the ~~parole~~ interviews for prisoners who have applied for parole or release to extended supervision.

SECTION 34. 304.01 (2) (d) of the statutes is amended to read:

304.01 **(2)** (d) Appropriate physical space at the correctional institutions to conduct the ~~parole~~ interviews for prisoners who have applied for parole or release to extended supervision.

SECTION 35. 304.06 (title) of the statutes is amended to read:

304.06 (title) **~~Paroles~~ Release to parole or extended supervision from state prisons and house of correction.**

SECTION 36. 304.06 (1) (b) of the statutes is amended to read:

304.06 **(1)** (b) Except as provided in s. 961.49 (2), 1999 stats., sub. (1m) or s. 302.045 (3), 302.05 (3) (b), 973.01 (6), or 973.0135, the ~~parole~~ earned release review commission may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year or more in a county house of correction or a county reforestation camp organized under s. 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6 months, whichever is greater. Except as provided in s. 939.62 (2m) (c) or 973.014 (1) (b) or (c), (1g) or (2), the ~~parole~~ earned release review commission may parole an inmate serving a life term when he or she

has served 20 years, as modified by the formula under s. 302.11 (1) and subject to extension under s. 302.11 (1q) and (2), if applicable. The person serving the life term shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). The secretary may grant special action parole releases under s. 304.02. The department or the ~~parole~~ earned release review commission shall not provide any convicted offender or other person sentenced to the department's custody any ~~parole~~ eligibility or evaluation for parole or release to extended supervision until the person has been confined at least 60 days following sentencing.

SECTION 37. 304.06 (1) (bg) of the statutes is created to read:

304.06 **(1)** (bg) 1. A person sentenced under s. 973.01 for a felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., and who is ineligible for positive adjustment time under s. 302.113 (2) (b) pursuant to s. 973.01 (3d) (b) or for a Class F to Class I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., may earn one day of positive adjustment time for every 3 days served that he or she does not violate any regulation of the prison or does not refuse or neglect to perform required or assigned duties. The person may petition the earned release review commission for release to extended supervision when he or she has served the term of confinement in prison portion of his or her bifurcated sentence, as modified by the sentencing court under s. 302.045 (3m) (b) 1. or 302.05 (3) (c) 2. a. or by the department under s. 302.113 (9g), if applicable, less positive adjustment time he or she has earned. This subdivision does not apply to a person who is the subject of a bulletin issued under s. 301.46 (2m).

2. A person sentenced under s. 973.01 for a Class C to Class E felony may earn one day of positive adjustment time for every 5.7 days served that he or she does not

violate any regulation of the prison or does not refuse or neglect to perform required or assigned duties. An inmate convicted of a Class C to Class E felony may petition the earned release review commission for release to extended supervision when he or she has served the term of confinement in prison portion of his or her bifurcated sentence, as modified by the sentencing court under s. 302.045 (3m) (b) 1. or 302.05 (3) (c) 2. a. or by the department under s. 302.113 (9g), if applicable, less positive adjustment time he or she has earned. This subdivision does not apply to a person who is the subject of a bulletin issued under s. 301.46 (2m).

SECTION 38. 304.06 (1) (bn) of the statutes is created to read:

304.06 **(1)** (bn) The earned release review commission may consider any of the following as a ground for a petition under par. (bg) for release to extended supervision:

1. The inmate's conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment, or other correctional programs since he or she was sentenced.

2. The inmate is subject to a sentence of confinement in another state or the inmate is in the United States illegally and may be deported.

3. Sentence adjustment is otherwise in the interests of justice.

SECTION 39. 304.06 (1) (br) of the statutes is created to read:

304.06 **(1)** (br) The earned release review commission may reduce the term of confinement of a person who petitions under par. (bg) only as follows:

1. If the inmate is serving the term of confinement in prison portion of the sentence, a reduction in the term of confinement in prison by the amount of time remaining in the term of confinement in prison portion of the sentence, less up to 30 days, and a corresponding increase in the term of extended supervision.

2. If the inmate is confined in prison upon revocation of extended supervision, a reduction in the amount of time remaining in the period of confinement in prison imposed upon revocation, less up to 30 days, and a corresponding increase in the term of extended supervision.

SECTION 40. 304.06 (1) (c) (intro.) of the statutes is amended to read:

304.06 **(1)** (c) (intro.) If an inmate applies for parole or release to extended supervision under this subsection, the ~~parole~~ earned release review commission shall make a reasonable attempt to notify the following, if they can be found, in accordance with par. (d):

SECTION 41. 304.06 (1) (d) 1. of the statutes is amended to read:

304.06 **(1)** (d) 1. The notice under par. (c) shall inform the offices and persons under par. (c) 1. to 3. of the manner in which they may provide written statements under this subsection, shall inform persons under par. (c) 3. of the manner in which they may attend interviews or hearings and make statements under par. (eg) and shall inform persons under par. (c) 3. who are victims, or family members of victims, of crimes specified in s. 940.01, 940.03, 940.05, 940.225 (1) ~~or~~, (2), or (3), 948.02 (1) or (2), 948.025, 948.06 or 948.07 of the manner in which they may have direct input in the ~~parole~~ decision-making process under par. (em) for parole or release to extended supervision. The ~~parole~~ earned release review commission shall provide notice under this paragraph for an inmate's first application for parole or release to extended supervision and, upon request, for subsequent applications for parole or release to extended supervision.

SECTION 42. 304.06 (1) (d) 2. of the statutes is amended to read:

304.06 **(1)** (d) 2. The notice shall be by 1st class mail to an office's or a person's last-known address sent at least 3 weeks before the interview or hearing upon the ~~parole~~ application for parole or release to extended supervision.

SECTION 43. 304.06 (1) (d) 3m. of the statutes is amended to read:

304.06 **(1)** (d) 3m. If applicable, the notice shall state the manner in which the person may have direct input in the ~~parole~~ decision-making process for parole or release to extended supervision.

SECTION 44. 304.06 (1) (d) 4. of the statutes is amended to read:

304.06 **(1)** (d) 4. If the notice is for a first application for parole or release to extended supervision, the notice shall inform the offices and persons under par. (c) 1. to 3. that notification of subsequent applications for parole or release to extended supervision will be provided only upon request.

SECTION 45. 304.06 (1) (e) of the statutes is amended to read:

304.06 **(1)** (e) The ~~parole~~ earned release review commission shall permit any office or person under par. (c) 1. to 3. to provide written statements. The ~~parole~~ earned release review commission shall give consideration to any written statements provided by any such office or person and received on or before the date specified in the notice. This paragraph does not limit the authority of the ~~parole~~ earned release review commission to consider other statements or information that it receives in a timely fashion.

SECTION 46. 304.06 (1) (eg) of the statutes is amended to read:

304.06 **(1)** (eg) The ~~parole~~ earned release review commission shall permit any person under par. (c) 3. to attend any interview or hearing on the ~~parole~~ application for parole or release to extended supervision of an applicable inmate and to make a statement at that interview or hearing.

1 **SECTION 47.** 304.06 (1) (em) of the statutes is amended to read:

2 304.06 **(1)** (em) The ~~parole~~ earned release review commission shall promulgate
3 rules that provide a procedure to allow any person who is a victim, or a family
4 member of a victim, of a crime specified in s. 940.01, 940.03, 940.05, 940.225 (1) ~~or~~,
5 (2), or (3), 948.02 (1) or (2), 948.025, 948.06 or 948.07 to have direct input in the ~~parole~~
6 decision-making process for parole or release to extended supervision.

7 **SECTION 48.** 304.06 (1) (f) of the statutes is amended to read:

8 304.06 **(1)** (f) The ~~parole~~ earned release review commission shall design and
9 prepare cards for persons specified in par. (c) 3. to send to the commission. The cards
10 shall have space for these persons to provide their names and addresses, the name
11 of the applicable prisoner and any other information the ~~parole~~ earned release
12 review commission determines is necessary. The ~~parole~~ earned release review
13 commission shall provide the cards, without charge, to district attorneys. District
14 attorneys shall provide the cards, without charge, to persons specified in par. (c) 3.
15 These persons may send completed cards to the ~~parole~~ earned release review
16 commission. All commission records or portions of records that relate to mailing
17 addresses of these persons are not subject to inspection or copying under s. 19.35 (1).
18 Before any written statement of a person specified in par. (c) 3. is made a part of the
19 documentary record considered in connection with a ~~parole~~ hearing for parole, or
20 release to extended supervision under this section, the ~~parole~~ earned release review
21 commission shall obliterate from the statement all references to the mailing
22 addresses of the person. A person specified in par. (c) 3. who attends an interview
23 or hearing under par. (eg) may not be required to disclose at the interview or hearing
24 his or her mailing addresses.

25 **SECTION 49.** 304.06 (1) (g) of the statutes is amended to read:

304.06 **(1)** (g) Before a person is released on parole or released to extended supervision under this subsection, the ~~parole~~ earned release review commission shall so notify the municipal police department and the county sheriff for the area where the person will be residing. The notification requirement under this paragraph does not apply if a municipal department or county sheriff submits to the ~~parole~~ earned release review commission a written statement waiving the right to be notified. If applicable, the department shall also comply with s. 304.063.

SECTION 50. 304.06 (1m) (intro.) of the statutes is amended to read:

304.06 **(1m)** (intro.) The ~~parole~~ earned release review commission may waive the 25% or 6-month service of sentence requirement under sub. (1) (b) under any of the following circumstances:

SECTION 51. 304.06 (1q) (b) of the statutes is amended to read:

304.06 **(1q)** (b) The ~~parole~~ earned release review commission or the department may require as a condition of parole that a serious child sex offender undergo pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. This paragraph does not prohibit the department from requiring pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen as a condition of probation.

SECTION 52. 304.06 (1q) (c) of the statutes is amended to read:

304.06 **(1q)** (c) In deciding whether to grant a serious child sex offender release on parole under this subsection, the ~~parole~~ earned release review commission may not consider, as a factor in making its decision, that the offender is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or that the offender is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

SECTION 53. 304.06 (1x) of the statutes is amended to read:

304.06 **(1x)** The ~~parole~~ earned release review commission may require as a condition of parole that the person is placed in the intensive sanctions program under s. 301.048. In that case, the person is in the legal custody of the department under that section and is subject to revocation of parole under sub. (3).

SECTION 54. 304.06 (2m) (d) of the statutes is amended to read:

304.06 **(2m)** (d) The ~~parole~~ earned release review commission or the department shall determine a prisoner's county of residence for the purposes of this subsection by doing all of the following:

1. The ~~parole~~ earned release review commission or the department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

2. The ~~parole~~ earned release review commission or the department shall apply the criteria for consideration of residence and physical presence under subd. 1. to the facts that existed on the date that the prisoner committed the serious sex offense that resulted in the sentence the prisoner is serving.

SECTION 55. 304.06 (3) of the statutes is amended to read:

304.06 **(3)** Every ~~paroled~~ prisoner paroled or released to extended supervision remains in the legal custody of the department unless otherwise provided by the department. If the department alleges that any condition or rule of parole or extended supervision has been violated by the prisoner, the department may take physical custody of the prisoner for the investigation of the alleged violation. If the department is satisfied that any condition or rule of parole or extended supervision has been violated it shall afford the prisoner such administrative hearings as are

1 required by law. Unless waived by the parolee or person on extended supervision,
2 the final administrative hearing shall be held before a hearing examiner from the
3 division of hearings and appeals in the department of administration who is licensed
4 to practice law in this state. The hearing examiner shall enter an order revoking or
5 not revoking parole or extended supervision. Upon request by either party, the
6 administrator of the division of hearings and appeals shall review the order. The
7 hearing examiner may order that a deposition be taken by audiovisual means and
8 allow the use of a recorded deposition under s. 967.04 (7) to (10). If the parolee or
9 person on extended supervision waives the final administrative hearing, the
10 secretary of corrections shall enter an order revoking or not revoking parole or
11 extended supervision. If the examiner, the administrator upon review, or the
12 secretary in the case of a waiver finds that the prisoner has violated the rules or
13 conditions of parole or extended supervision, the examiner, the administrator upon
14 review, or the secretary in the case of a waiver, may order the prisoner returned to
15 prison to continue serving his or her sentence, or to continue on parole or extended
16 supervision. If the prisoner claims or appears to be indigent, the department shall
17 refer the prisoner to the authority for indigency determinations specified under s.
18 977.07 (1).

19 **SECTION 56.** 304.06 (3e) of the statutes is amended to read:

20 304.06 **(3e)** The division of hearings and appeals in the department of
21 administration shall make either an electronic or stenographic record of all
22 testimony at each parole or extended supervision revocation hearing. The division
23 shall prepare a written transcript of the testimony only at the request of a judge who
24 has granted a petition for judicial review of the revocation decision. Each hearing
25 notice shall include notice of the provisions of this subsection and a statement that

any person who wants a written transcript may record the hearing at his or her own expense.

SECTION 57. 304.06 (3m) of the statutes is amended to read:

304.06 **(3m)** If the convicting court is informed by the department that a prisoner on parole or extended supervision has absconded and that the prisoner's whereabouts are unknown, the court may issue a capias for execution by the sheriff.

SECTION 58. 304.071 (1) of the statutes is amended to read:

304.071 **(1)** The ~~parole~~ earned release review commission may at any time grant a parole or release to extended supervision to any prisoner in any penal institution of this state, or the department may at any time suspend the supervision of any person who is on probation ~~or~~, parole, or extended supervision to the department, if the prisoner or person on probation ~~or~~, parole, or extended supervision is eligible for induction into the U.S. armed forces. The suspension of parole, extended supervision, or probation shall be for the duration of his or her service in the armed forces; and the parole, extended supervision, or probation shall again become effective upon his or her discharge from the armed forces in accordance with regulations prescribed by the department. If he or she receives an honorable discharge from the armed forces, the governor may discharge him or her and the discharge has the effect of a pardon. Upon the suspension of parole, extended supervision, or probation by the department, the department shall issue an order setting forth the conditions under which the parole, extended supervision, or probation is suspended, including instructions as to where and when and to whom the ~~paroled~~ person on parole or extended supervision shall report upon discharge from the armed forces.

SECTION 59. 809.30 (1) (c) of the statutes is amended to read:

809.30 **(1)** (c) "Postconviction relief" means an appeal or a motion for postconviction relief in a criminal case, other than an appeal, motion, or petition under ss. 302.113 (7m), 302.113 (9g), 973.19, ~~973.195,~~ 974.06, or 974.07 (2). In a ch. 980 case, the term means an appeal or a motion for postcommitment relief under s. 980.038 (4).

SECTION 60. 911.01 (4) (c) of the statutes is amended to read:

911.01 **(4)** (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, ~~modification of~~ an appeal under s. 302.113 (9g) (h) of the department's decision under s. 302.113 (9g) (e) whether to modify a bifurcated sentence ~~under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195 (1r)~~, release to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s. 973.01 (4m) or (4r), issuance of arrest warrants, criminal summonses and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

****NOTE: This is reconciled s. 911.01 (4) (c). This SECTION has been affected by drafts with the following LRB numbers: LRB-1055/P3 and LRB-1768/P4.

SECTION 61. 950.04 (1v) (f) of the statutes is amended to read:

950.04 **(1v)** (f) To have the ~~parole~~ earned release review commission make a reasonable attempt to notify the victim of applications for parole or release to extended supervision, as provided under s. 304.06 (1).

SECTION 62. 950.04 (1v) (gm) of the statutes is amended to read:

950.04 **(1v)** (gm) To have reasonable attempts made to notify the victim of petitions for ~~sentence adjustment as provided~~ release to extended supervision under

s. ~~973.195 (1r) (d)~~ 302.113 (2) (b) or 304.06 (1) or discharge under s. 973.01 (4m) or (4r).

SECTION 63. 973.01 (3d) of the statutes is created to read:

973.01 **(3d)** POSITIVE ADJUSTMENT TIME ELIGIBILITY. (a) When a person is sentenced under sub. (1) to a term of confinement in prison, the department of corrections shall, applying an objective risk assessment instrument supported by research, determine how likely it is that the person will commit another offense.

(b) If the department of corrections determines under par. (a) that the person poses a high risk of reoffending, the person shall be ineligible to earn positive adjustment time under s. 302.113 (2) (b).

SECTION 64. 973.01 (4) of the statutes is amended to read:

973.01 **(4)** ~~NO GOOD TIME; EXTENSION~~ EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A person sentenced to a bifurcated sentence under sub. (1) shall serve the term of confinement in prison portion of the sentence without reduction for good behavior. The term of confinement in prison portion is subject to extension under s. 302.113 (3) and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a., or 302.113 (9g), or ~~973.195 (1r)~~ adjustment under s. 302.113 (2) (b) or 304.06 (1).

SECTION 65. 973.01 (4m) of the statutes is created to read:

973.01 **(4m)** GOOD TIME CREDIT TOWARD DISCHARGE FROM EXTENDED SUPERVISION. Notwithstanding sub. (2) (d), a person sentenced to a bifurcated sentence under sub. (1) for a misdemeanor or a Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., is eligible to earn good time credit in the amount of one day for every day served without violating a rule or condition of extended supervision leading to a sanction or revocation. The department shall discharge the person from extended supervision when he or she has served the extended

supervision portion of his or her bifurcated sentence, less good time he or she has earned. This subsection does not apply to a person who is the subject of a bulletin issued under s. 301.46 (2m) or who is a violent offender, as defined in s. 16.964 (12) (a).

SECTION 66. 973.01 (4r) of the statutes is created to read:

973.01 **(4r)** PETITION FOR REDUCTION OF EXTENDED SUPERVISION. (a) 1. Notwithstanding sub. (2) (d), a person sentenced to a bifurcated sentence under sub. (1) for a felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., and who is ineligible for positive adjustment time under s. 302.113 (2) (b) pursuant to 973.01 (3d) (b) or for a Class F to Class I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., may earn good time toward the reduction of extended supervision in the amount of one day for every 3 days that he or she serves without violating a condition of extended supervision leading to a sanction or revocation. The person may petition to the earned release review commission to have his or her period of extended supervision reduced when he or she has served the extended supervision portion of his or her sentence, less good time he or she has earned. This subdivision does not apply to a person who is the subject of a bulletin issued under s. 301.46 (2m).

2. Notwithstanding sub. (2) (d), a person sentenced to a bifurcated sentence under sub. (1) for a Class C to Class E felony may earn good time toward the reduction of extended supervision in the amount of one day for every 5.7 days that he or she serves without violating a condition of extended supervision leading to a sanction or revocation. The person may petition to the earned release review commission to have his or her period of extended supervision reduced when he or she has served the extended supervision portion of his or her sentence, less good time he or she has

earned. This subdivision does not apply to a person who is the subject of a bulletin issued under s. 301.46 (2m).

(b) The earned release review commission may consider as grounds for a petition under par. (a) to reduce the length of a person's period of extended supervision whether the person has met the conditions of extended supervision and a reduction is in the interests of justice.

SECTION 67. 973.01 (7) of the statutes is amended to read:

973.01 **(7)** ~~NO DISCHARGE~~ DISCHARGE. The department of corrections ~~may not~~ shall discharge a person who is serving a bifurcated sentence from custody, control and supervision ~~until~~ when the person has served the entire bifurcated sentence, as modified under sub. (4m) or (4r) or s. 302.113 (2) (b), (9g), or (9h) or 304.06 (1), if applicable.

SECTION 68. 973.01 (8) (a) 2. of the statutes is amended to read:

973.01 **(8)** (a) 2. The amount of time the person will serve in prison under the term of confinement in prison portion of the sentence, and the date upon which the person is eligible to be released to extended supervision under s. 302.113 (2) (b) or the date upon which the person may apply for release to extended supervision under s. 304.06.

SECTION 69. 973.01 (8) (a) 3. of the statutes is amended to read:

973.01 **(8)** (a) 3. The amount of time the person will spend on extended supervision, assuming that the person does not commit any act that results in the extension of the term of confinement in prison under s. 302.113 (3), and the date upon which the person may be eligible for discharge under sub. (4m) or apply for a reduction of his or her period of extended supervision under sub. (4r).

SECTION 70. 973.195 of the statutes is repealed.

1 **SECTION 71.** 974.07 (4) (b) of the statutes is amended to read:

2 974.07 **(4)** (b) Notwithstanding the limitation on the disclosure of mailing
3 addresses from completed information cards submitted by victims under ss. 51.37
4 (10) (dx), 301.046 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f),
5 304.063 (4), 938.51 (2), 971.17 (6m) (d), and 980.11 (4), the department of corrections,
6 the ~~parole~~ earned release review commission, and the department of health services
7 shall, upon request, assist clerks of court in obtaining information regarding the
8 mailing address of victims for the purpose of sending copies of motions and notices
9 of hearings under par. (a).

10 **SECTION 72.** 976.03 (23) (c) of the statutes is amended to read:

11 976.03 **(23)** (c) The application shall be verified by affidavit, shall be executed
12 in duplicate and shall be accompanied by 2 certified copies of the indictment
13 returned, or information and affidavit filed, or of the complaint made to a judge,
14 stating the offense with which the accused is charged, or of the judgment of
15 conviction or of the sentence. The prosecuting officer, ~~parole~~ earned release review
16 commission, warden or sheriff may also attach such further affidavits and other
17 documents in duplicate as he, she or it deems proper to be submitted with the
18 application. One copy of the application, with the action of the governor indicated
19 by endorsement thereon, and one of the certified copies of the indictment, complaint,
20 information and affidavits, or of the judgment of conviction or of the sentence shall
21 be filed in the office of the governor to remain of record in that office. The other copies
22 of all papers shall be forwarded with the governor's requisition.

23 **SECTION 9311. Initial applicability; Corrections.**

24 (1) SENTENCING ADJUSTMENT. The renumbering and amendment of section
25 302.113 (2) of the statutes, the amendment of sections 301.03 (3), 301.048 (2) (am)

3., 301.21 (1m) (c), 301.21 (2m) (c), 302.045 (3), 302.05 (3) (b), 302.11 (1g) (b) (intro.), 302.11 (1g) (b) 2., 302.11 (1g) (c), 302.11 (1g) (d), 302.11 (1m), 302.11 (7) (c), 302.113 (1), 302.113 (3) (d), 302.113 (7), 302.113 (9) (c), 302.114 (9) (c), 304.01 (title), 304.01 (1), 304.01 (2) (intro.), 304.01 (2) (b), 304.01 (2) (c), 304.01 (2) (d), 304.06 (title), 304.06 (1) (b), 304.06 (1) (c) (intro.), 304.06 (1) (d) 1., 304.06 (1) (d) 2., 304.06 (1) (d) 3m., 304.06 (1) (d) 4., 304.06 (1) (e), 304.06 (1) (eg), 304.06 (1) (em), 304.06 (1) (f), 304.06 (1) (g), 304.06 (1m) (intro.), 304.06 (1q) (b), 304.06 (1q) (c), 304.06 (1x), 304.06 (2m) (d), 304.06 (3), 304.06 (3e), 304.06 (3m), 304.071 (1), 809.30 (1) (c), 911.01 (4) (c), 950.04 (1v) (f), 950.04 (1v) (gm), 973.01 (4), 973.01 (7), 973.01 (8) (a) 2., 973.01 (8) (a) 3., 974.07 (4) (b) and 976.03 (23) (c) of the statutes, and the creation of sections 302.113 (2) (b), 302.113 (3) (e), 304.06 (1) (bg), 304.06 (1) (bn), 304.06 (1) (br), 973.01 (3d), 973.01 (4m) and 973.01 (4r) of the statutes first apply to a person sentenced on December 31, 1999.

(END)