State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-0829/P2
PJH:wlj:md

DOA:.....Kisiolek, BB0176 – Eliminate sentencing changes made in 2009 Act 28

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

don't gen

AN ACT ***to repeal*** 302.042, 302.045 (3m) (d), 302.05 (3) (c) 3., 302.113 (2) (b), 302.113 (2) (c), 302.113 (3) (e), 302.113 (9h), 302.1135, 304.06 (1) (bg), 304.06 (1) (bk), 304.06 (1) (bn), 304.06 (1) (br), 973.01 (3d), 973.01 (4m), 973.031, 973.09 (3) (d) and 973.195 (1r) (j); ***to renumber and amend*** 302.05 (1) and 302.113 (2) (a); ***to amend*** 15.01 (2), 15.06 (6), 15.145 (1), 17.07 (3m), 20.410 (2) (title), 20.410 (2) (a), 20.923 (4) (b) 6., 230.08 (2) (pd), 301.03 (3), 301.048 (2) (am) 3., 301.21 (1m) (c), 301.21 (2m) (c), 302.045 (1), 302.045 (3), 302.05 (title), 302.05 (2), 302.05 (3) (b), 302.05 (3) (c) 1., 302.05 (3) (c) 2. (intro.), 302.05 (3) (d), 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) (am), 302.113 (9) (c), 302.114 (9) (am), 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 (1) (d) 4., 304.06 (1) (e), 304.06 (1) (eg), 304.06 (1) (em), 304.06 (1) (f), 304.06 (1)
2 (g), 304.06 (1m) (intro.), 304.06 (1q) (b), 304.06 (1q) (c), 304.06 (1x), 304.06 (2m)
3 (d), 304.06 (3), 304.06 (3e), 304.06 (3m), 304.071 (1), 801.50 (5), 809.30 (1) (c),
4 911.01 (4) (c), 950.04 (1v) (f), 950.04 (1v) (g), 950.04 (1v) (gm), 950.04 (1v) (nt),
5 973.01 (4), 973.01 (7), 973.195 (1r) (a), 974.07 (4) (b), 976.03 (23) (c) and 977.05
6 (4) (jm); ***to repeal and recreate*** 302.045 (2) (d); and ***to create*** 302.05 (1) (am)
7 1., 302.05 (1) (am) 2., 302.05 (1) (b), 302.113 (9g) and 973.198 of the statutes;
8 **relating to:** the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

2009 Wisconsin Act 28 (the Act) made several changes to the adult correctional system, most of which took effect on October 1, 2009. Prior to the effective date of the provisions relating to the adult correctional system (pre-Act), a person who was imprisoned for a felony he or she committed prior to December 31, 1999, was allowed to petition the parole commission in DOC to be released to parole after the person served 25 percent of his or her sentence, or six months, whichever was greater. The parole commission determined 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.

Pre-Act, a person who was serving a bifurcated sentence was, with few exceptions, required to serve the entire confinement portion of his or her sentence before being released to extended supervision. A person's confinement portion could have been extended if he or she violated a prison regulation. If a person's confinement portion was extended for such a violation, the law pre-Act required his or her extended supervision portion to be reduced so that the total length of the person's sentence remained unchanged.

The law pre-Act allowed 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 was reduced by the sentencing court, the law pre-Act required his or her extended supervision portion to be extended so that the total length of the person's

sentence remained unchanged. Pre-Act, a person who was released to extended supervision was required to serve his or her entire sentence before extended supervision terminated.

The Act eliminates the role of the sentencing court in adjusting sentences and renamed the parole commission the earned release review commission (ERRC). The Act allows most persons who are incarcerated for a Class C to Class I felony to earn "positive adjustment time" toward early release from confinement. Under the Act, the amount of positive adjustment time a person can earn varies depending on the classification of the felony, the person's history and likelihood of reoffending, and other factors determined by DOC.

The Act requires DOC to release the person to extended supervision when he or she serves his entire period of confinement, minus positive adjustment time earned. Under the Act, if a person's period of confinement 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. The Act requires the ERRC to perform the duties previously performed by the parole commission and to review petitions for early release from confinement.

Insert analysis

Pre-Act, persons who had committed most felonies were allowed to petition the sentencing court for release to extended supervision for the remaining term of his or her sentence if the person had a terminal condition, reached age 65 after serving at least five years of his or her term of confinement portion, or reached age 60 after serving at least ten years of his or her term of confinement portion.

Under the Act, the petition may also be filed by a person with any serious health condition and must be submitted to the ERRC instead of to the sentencing court. In addition, under the Act, DOC may release to extended supervision any person serving the confinement portion of a bifurcated sentence if the person is not confined following a violent offense, the person is believed to be able to live in the community without assaulting another, and the release will not be more than 12 months before the date that the person otherwise would be eligible for release to extended supervision. If DOC releases a person, his or her term of extended supervision must be extended by the length of time he or she was originally sentenced to confinement so that the total length of the sentence does not change.

Pre-Act, if a person sentenced to a bifurcated sentence violated any condition of his or her release to extended supervision, the person's extended supervision was revoked, he or she was returned to prison, and the division of hearings and appeals within DOA or DOC (reviewing authority) made a recommendation to the court that convicted the person as to how long the person should remain in prison. After it received the reviewing authority's recommendation, the court was allowed to order the person to remain in prison for a period that did not exceed the time remaining on his or her bifurcated sentence.

Under the Act, 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 that does not exceed the time remaining on his or her bifurcated sentence.

and risk reduction sentences

This bill eliminates positive adjustment time, restores the parole commission, eliminates the ERRC, and returns the sentencing provisions, most of the provisions relating to early release from confinement, and the provisions relating to review of revocation of release to pre-Act law. Under the bill, a person may petition the sentencing court for release to extended supervision for the remaining term of his or her sentence if the person has an extraordinary health condition, reaches age 65 after serving at least five years of his or her term of confinement portion, or reaches age 60 after serving at least ten years of his or her term of confinement portion. Under the bill, a person who was sentenced after October 1, 2009, but before the effective date of the bill, and who earned positive adjustment time during that period may petition the sentencing court for an early release to extended supervision. If the sentencing court agrees to reduce the confinement portion of the person's sentence by the number of positive adjustment time days he or she earned, the sentencing court must increase the term of extended supervision by the same number of days.

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

Insert analysis

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 ~~earned release review~~ parole 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 ~~earned release review~~ parole 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

doing business. This subsection does not apply to the ~~earned release review~~ parole commission.

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

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

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

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

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

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

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

2 301.03 **(3)** Administer parole, extended supervision, and probation matters,
3 except that the decision to grant or deny parole ~~or to grant extended supervision~~
4 ~~under s. 304.06 (1)~~ to inmates shall be made by the ~~earned release review~~ parole
5 commission and the decision to revoke probation, extended supervision, or parole in
6 cases in which there is no waiver of the right to a hearing shall be made by the
7 division of hearings and appeals in the department of administration. The secretary
8 may grant special action parole releases under s. 304.02. ~~The department may~~
9 ~~discharge inmates from extended supervision under s. 973.01 (4m) and may modify~~
10 ~~a bifurcated sentence under s. 302.113 (9h), and the earned release review~~
11 ~~commission may modify a sentence under s. 302.1135.~~ The department shall
12 promulgate rules establishing a drug testing program for probationers, parolees and
13 persons placed on extended supervision. The rules shall provide for assessment of
14 fees upon probationers, parolees and persons placed on extended supervision to
15 partially offset the costs of the program.

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

17 301.048 **(2)** (am) 3. The ~~earned release review~~ parole commission grants him
18 or her parole under s. 304.06 and requires his or her participation in the program as
19 a condition of parole under s. 304.06 (1x).

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

21 301.21 **(1m)** (c) Any hearing to consider parole ~~or whether to grant extended~~
22 ~~supervision, if the inmate is sentenced under s. 973.01~~ to which an inmate confined
23 under this contract may be entitled by the laws of Wisconsin will be conducted by the
24 Wisconsin ~~earned release review~~ parole commission under rules of the department.

25 **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 ~~earned release review~~ parole commission under rules of the department.

SECTION 13. 302.042 of the statutes is repealed.

Insert 7b

SECTION 14. 302.045 (1) of the statutes is amended to read:

302.045 **(1)** PROGRAM. The department shall provide a challenge incarceration program for inmates selected to participate under sub. (2). The program shall provide participants with manual labor, personal development counseling, substance abuse treatment and education, military drill and ceremony, counseling, and strenuous physical exercise, for participants who have not attained the age of 30 as of the date on which they begin participating in the program, or age-appropriate strenuous physical exercise, for all other participants, in preparation for release on parole or extended supervision. ~~The program shall provide, according to each participant's needs as assessed under sub. (2) (d), substance abuse treatment and education, including intensive intervention when indicated, personal development counseling, education, employment readiness training, and other treatment options that are directly related to the participant's criminal behavior.~~ The department shall design the program to include not ~~less~~ fewer than 50 participants at a time and so that a participant may complete the program in not more than 180 days. The department may restrict participant privileges as necessary to maintain discipline.

SECTION 15. 302.045 (2) (d) of the statutes is repealed and recreated to read:

302.045 **(2)** (d) The department determines, during assessment and evaluation, that the inmate has a substance abuse problem.

SECTION 16. 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 ~~earned release review~~ parole commission shall parole the inmate for that sentence under s. 304.06, regardless of the time the inmate has served. When the ~~earned release review~~ parole commission grants parole under this subsection, it must require the parolee to participate in an intensive supervision program ~~appropriate to the parolee's rehabilitation needs~~ for drug abusers as a condition of parole.

SECTION 17. 302.045 (3m) (d) of the statutes is repealed.

SECTION 18. 302.05 (title) of the statutes is amended to read:

302.05 (title) **Wisconsin ~~earned release~~ substance abuse program.**

SECTION 19. 302.05 (1) of the statutes is renumbered 302.05 (1) (am) (intro.) and amended to read:

302.05 **(1)** (am) (intro.) The department of corrections ~~shall, at any correctional facility the department determines is appropriate, provide a rehabilitation program for inmates for the purposes of the earned release program described in sub. (3).~~ and the department of health services may designate a section of a mental health institute as a correctional treatment facility for the treatment of substance abuse of inmates transferred from Wisconsin state prisons. This section shall be administered by the department of corrections and shall be known as the Wisconsin substance abuse program. The department of corrections and the department of

1 health services shall ensure that the residents at the institution and the residents
2 in the substance abuse program:

3 **SECTION 20.** 302.05 (1) (am) 1. of the statutes is created to read:

4 302.05 **(1)** (am) 1. Have access to all facilities that are available at the
5 institution and are necessary for the treatment programs designed by the
6 departments.

7 **SECTION 21.** 302.05 (1) (am) 2. of the statutes is created to read:

8 302.05 **(1)** (am) 2. Are housed on separate wards.

9 **SECTION 22.** 302.05 (1) (b) of the statutes is created to read:

10 302.05 **(1)** (b) The department of corrections and the department of health
11 services shall, at any correctional facility the departments determine is appropriate,
12 provide a substance abuse treatment program for inmates for the purposes of the
13 earned release program described in sub. (3).

14 **SECTION 23.** 302.05 (2) of the statutes is amended to read:

15 302.05 **(2)** Transfer to a correctional treatment facility for ~~participation in a~~
16 ~~program described in sub. (1)~~ the treatment of substance abuse shall be considered
17 a transfer under s. 302.18.

18 **SECTION 24.** 302.05 (3) (b) of the statutes is amended to read:

19 302.05 **(3)** (b) Except as provided in par. (d), if the department determines that
20 an eligible inmate serving a sentence other than one imposed under s. 973.01 has
21 successfully completed a ~~rehabilitation~~ treatment program described in sub. (1), the
22 ~~earned release review~~ parole commission shall parole the inmate for that sentence
23 under s. 304.06, regardless of the time the inmate has served. If the ~~earned release~~
24 ~~review~~ parole commission grants parole under this paragraph, it shall require the

parolee to participate in an intensive supervision program ~~appropriate to the parolee's rehabilitation needs~~ for drug abusers as a condition of parole.

SECTION 25. 302.05 (3) (c) 1. of the statutes is amended to read:

302.05 **(3)** (c) 1. Except as provided in par. (d), if the department determines that an eligible inmate serving the term of confinement in prison portion of a bifurcated sentence imposed under s. 973.01 has successfully completed a ~~rehabilitation~~ treatment program described in sub. (1), the department shall inform the court that sentenced the inmate.

SECTION 26. 302.05 (3) (c) 2. (intro.) of the statutes, is amended to read:

302.05 **(3)** (c) 2. (intro.) Upon being informed by the department under subd. 1. that an inmate whom the court sentenced under s. 973.01 has successfully completed a ~~rehabilitation~~ treatment program described in sub. (1), the court shall modify the inmate's bifurcated sentence as follows:

SECTION 27. 302.05 (3) (c) 3. of the statutes is repealed.

SECTION 28. 302.05 (3) (d) of the statutes is amended to read:

302.05 **(3)** (d) The department may place intensive sanctions program participants in a ~~rehabilitation~~ treatment program described in sub. (1), but pars. (b) and (c) do not apply to those participants.

SECTION 29. 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 ~~earned release review~~ parole commission shall proceed under s. 304.06 (1) to consider whether to deny presumptive mandatory release to the inmate. If the ~~earned release review~~ parole commission does not deny presumptive mandatory release, the inmate shall be released on parole. The ~~earned release~~

~~review~~ parole commission may deny presumptive mandatory release to an inmate only on one or more of the following grounds:

SECTION 30. 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 ~~earned release review~~ parole 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 31. 302.11 (1g) (c) of the statutes is amended to read:

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

SECTION 32. 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 ~~earned release review~~ parole commission relating to the denial of presumptive mandatory release only by the common law writ of certiorari.

SECTION 33. 302.11 (1m) of the statutes is amended to read:

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

SECTION 34. 302.11 (7) (c) of the statutes is amended to read:

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

SECTION 35. 302.113 (1) of the statutes is amended to read:

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

SECTION 36. 302.113 (2) (a) of the statutes is renumbered 302.113 (2) and amended to read:

302.113 **(2)** Except as provided in ~~par. (b) and~~ subs. (3) and (9) ~~and s. 304.06~~, an inmate subject to this section is entitled to release to extended supervision after he or she has served the term of confinement in prison portion of the sentence imposed under s. 973.01, ~~as modified by the department under sub. (9h), as modified under s. 302.1135 by the earned release review commission in the manner specified in s. 302.1135 (6) (a), or~~ as modified by the sentencing court under sub. (9g) or s. 302.045 (3m) (b) 1., 302.05 (3) (c) 2. a., ~~or~~ 973.195 (1r), or 973.198, if applicable.

SECTION 37. 302.113 (2) (b) of the statutes is repealed.

1 **SECTION 38.** 302.113 (2) (c) of the statutes is repealed.

2 **SECTION 39.** 302.113 (3) (d) of the statutes is amended to read:

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

7 **SECTION 40.** 302.113 (3) (e) of the statutes is repealed.

8 **SECTION 41.** 302.113 (7) of the statutes is amended to read:

9 302.113 **(7)** Any inmate released to extended supervision under this section is
10 subject to all conditions and rules of extended supervision until the expiration of the
11 term of extended supervision portion of the bifurcated sentence ~~or until the~~
12 ~~department discharges the inmate under s. 973.01 (4m), whichever is appropriate~~.
13 The department may set conditions of extended supervision in addition to any
14 conditions of extended supervision required under s. 302.116, if applicable, or set by
15 the court under sub. (7m) or s. 973.01 (5) if the conditions set by the department do
16 not conflict with the court's conditions.

17 **SECTION 42.** 302.113 (9) (am) of the statutes is amended to read:

18 302.113 **(9)** (am) If a person released to extended supervision under this section
19 ~~or under s. 302.1135~~ violates a condition of extended supervision, the reviewing
20 authority may revoke the extended supervision of the person. If the extended
21 supervision of the person is revoked, the reviewing authority shall order the person
22 to be returned to prison for any specified period of time that does not exceed the time
23 remaining on the bifurcated sentence. The time remaining on the bifurcated
24 sentence is the total length of the bifurcated sentence, less time served by the person
25 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 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.

SECTION 43. 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 order under par. (am) is subject to all conditions and rules under sub. (7) and, if applicable, sub. (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.

SECTION 44. 302.113 (9g) of the statutes is created to read:

302.113 **(9g)** (a) In this subsection:

1. "Extraordinary health condition" means a condition afflicting a person, such as advanced age, infirmity, or disability of the person or a need for medical treatment or services not available within a correctional institution.

2. "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.

1 (b) An inmate who is serving a bifurcated sentence for a crime other than a
2 Class B felony may seek modification of the bifurcated sentence in the manner
3 specified in par. (f) if he or she meets one of the following criteria:
4 1. The inmate is 65 years of age or older and has served at least 5 years of the
5 term of confinement in prison portion of the bifurcated sentence.
6 2. The inmate is 60 years of age or older and has served at least 10 years of the
7 term of confinement in prison portion of the bifurcated sentence.
8 3. The inmate has an extraordinary health condition.
9 (c) An inmate who meets a criterion under par. (b) may submit a petition to the
10 program review committee at the correctional institution in which the inmate is
11 confined requesting a modification of the inmate's bifurcated sentence in the manner
12 specified in par. (f). If the inmate alleges in the petition that he or she has an
13 extraordinary health condition, the inmate shall attach to the petition affidavits
14 from 2 physicians setting forth a diagnosis that the inmate has an extraordinary
15 health condition.
16 (cm) If, after receiving the petition under par. (c), the program review
17 committee determines that the public interest would be served by a modification of
18 the inmate's bifurcated sentence in the manner provided under par. (f), the
19 committee shall approve the petition for referral to the sentencing court and notify
20 the department of its approval. The department shall then refer the inmate's
21 petition to the sentencing court and request the court to conduct a hearing on the
22 petition. If the program review committee determines that the public interest would
23 not be served by a modification of the inmate's bifurcated sentence in the manner
24 specified in par. (f), the committee shall deny the inmate's petition.

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

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

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

23 1. The court shall reduce the term of confinement in prison portion of the
24 inmate's bifurcated sentence in a manner that provides for the release of the inmate

1 to extended supervision within 30 days after the date on which the court issues its
2 order modifying the bifurcated sentence.
3 2. The court shall lengthen the term of extended supervision imposed so that
4 the total length of the bifurcated sentence originally imposed does not change.
5 (g) 1. In this paragraph, "victim" has the meaning given in s. 950.02 (4).
6 2. When a court schedules a hearing under par. (d), the clerk of the circuit court
7 shall send a notice of hearing to the victim of the crime committed by the inmate, if
8 the victim has submitted a card under subd. 3. requesting notification. The notice
9 shall inform the victim that he or she may appear at the hearing scheduled under
10 par. (d) and shall inform the victim of the manner in which he or she may provide a
11 statement concerning the modification of the inmate's bifurcated sentence in the
12 manner provided in par. (f). The clerk of the circuit court shall make a reasonable
13 attempt to send the notice of hearing to the last-known address of the inmate's
14 victim, postmarked at least 10 days before the date of the hearing.
15 3. The director of state courts shall design and prepare cards for a victim to send
16 to the clerk of the circuit court for the county in which the inmate was convicted and
17 sentenced. The cards shall have space for a victim to provide his or her name and
18 address, the name of the applicable inmate, and any other information that the
19 director of state courts determines is necessary. The director of state courts shall
20 provide the cards, without charge, to clerks of circuit court. Clerks of circuit court
21 shall provide the cards, without charge, to victims. Victims may send completed
22 cards to the clerk of the circuit court for the county in which the inmate was convicted
23 and sentenced. All court records or portions of records that relate to mailing
24 addresses of victims are not subject to inspection or copying under s. 19.35 (1).

1 (h) An inmate may appeal a court's decision to deny the inmate's petition for
2 modification of his or her bifurcated sentence. The state may appeal a court's
3 decision to grant an inmate's petition for a modification of the inmate's bifurcated
4 sentence. In an appeal under this paragraph, the appellate court may reverse a
5 decision granting or denying a petition for modification of a bifurcated sentence only
6 if it determines that the sentencing court erroneously exercised its discretion in
7 granting or denying the petition.

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

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

23 **SECTION 45.** 302.113 (9h) of the statutes is repealed.

24 **SECTION 46.** 302.1135 of the statutes is repealed.

25 **SECTION 47.** 302.114 (9) (am) of the statutes is amended to read:

302.114 **(9)** (am) If a person released to extended supervision under this section ~~or under s. 302.1135~~ 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 a specified period of time before he or she is eligible for being released again to extended supervision. The period of time specified under this paragraph may not be less than 5 years and may be extended in accordance with sub. (3).

SECTION 48. 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 ~~or until the department discharges the person under s. 973.01 (4m), whichever is appropriate~~.

SECTION 49. 304.01 (title) of the statutes is amended to read:

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

SECTION 50. 304.01 (1) of the statutes is amended to read:

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

SECTION 51. 304.01 (2) (intro.) of the statutes is amended to read:

304.01 **(2)** (intro.) The ~~earned release review~~ parole commission shall conduct regularly scheduled interviews to consider the parole ~~or release to extended~~

~~supervision~~ 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 ~~earned release review~~ parole commission:

SECTION 52. 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 53. 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 54. 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 55. 304.06 (title) of the statutes is amended to read:

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

SECTION 56. 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 ~~earned release review~~ parole 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 ~~earned release review~~ parole 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 ~~earned release review~~ parole 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 57. 304.06 (1) (bg) of the statutes is repealed.

SECTION 58. 304.06 (1) (bk) of the statutes is repealed.

SECTION 59. 304.06 (1) (bn) of the statutes is repealed.

SECTION 60. 304.06 (1) (br) of the statutes is repealed.

SECTION 61. 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 ~~earned release review~~ parole commission shall make a reasonable attempt to notify the following, if they can be found, in accordance with par. (d):

SECTION 62. 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), (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 ~~earned release review~~ parole 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 63. 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 application for parole ~~or release to extended supervision~~.

SECTION 64. 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 decision-making process for parole ~~or release to extended supervision~~.

SECTION 65. 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 66. 304.06 (1) (e) of the statutes is amended to read:

304.06 **(1)** (e) The ~~earned release review~~ parole commission shall permit any office or person under par. (c) 1. to 3. to provide written statements. The ~~earned~~

~~release review~~ parole 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 ~~earned release review~~ parole commission to consider other statements or information that it receives in a timely fashion.

SECTION 67. 304.06 (1) (eg) of the statutes is amended to read:

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

SECTION 68. 304.06 (1) (em) of the statutes is amended to read:

304.06 **(1)** (em) The ~~earned release review~~ parole commission shall promulgate rules that provide a procedure to allow any person who is a victim, or a family member of a victim, of a crime 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 to have direct input in the decision-making process for parole ~~or release to extended supervision~~.

SECTION 69. 304.06 (1) (f) of the statutes is amended to read~~:~~

304.06 **(1)** (f) The ~~earned release review~~ parole commission shall design and prepare cards for persons specified in par. (c) 3. to send to the commission. The cards shall have space for these persons to provide their names and addresses, the name of the applicable prisoner and any other information the ~~earned release review~~ parole commission determines is necessary. The ~~earned release review~~ parole commission shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in par. (c) 3. These persons may send completed cards to the ~~earned release review~~ parole

commission. All commission records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1). Before any written statement of a person specified in par. (c) 3. is made a part of the documentary record considered in connection with a parole hearing ~~for parole, or release to extended supervision~~ under this section, the ~~earned release review~~ parole commission shall obliterate from the statement all references to the mailing addresses of the person. A person specified in par. (c) 3. who attends an interview or hearing under par. (eg) may not be required to disclose at the interview or hearing his or her mailing addresses.

SECTION 70. 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 ~~earned release review~~ parole 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 ~~earned release review~~ parole commission a written statement waiving the right to be notified. If applicable, the department shall also comply with s. 304.063.

SECTION 71. 304.06 (1m) (intro.) of the statutes is amended to read:

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

SECTION 72. 304.06 (1q) (b) of the statutes is amended to read:

304.06 **(1q)** (b) The ~~earned release review~~ parole 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 73. 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 ~~earned release review~~ parole 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 74. 304.06 (1x) of the statutes is amended to read:

304.06 **(1x)** The ~~earned release review~~ parole 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 75. 304.06 (2m) (d) of the statutes is amended to read:

304.06 **(2m)** (d) The ~~earned release review~~ parole 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 ~~earned release review~~ parole 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 ~~earned release review~~ parole 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 76. 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 required by law. Unless waived by the parolee ~~or person on extended supervision~~, the final administrative hearing shall be held before a hearing examiner from the division of hearings and appeals in the department of administration who is licensed to practice law in this state. The hearing examiner shall enter an order revoking or not revoking parole ~~or extended supervision~~. Upon request by either party, the administrator of the division of hearings and appeals shall review the order. 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). If the parolee ~~or person on extended supervision~~ waives the final administrative hearing, the secretary of corrections shall enter an order revoking or not revoking parole ~~or extended supervision~~. If the examiner, the administrator upon review, or the secretary in the case of a waiver finds that the prisoner has violated the rules or conditions of parole ~~or extended supervision~~, the examiner, the administrator upon review, or the secretary in the case of a waiver, may order the prisoner returned to prison to continue serving his or her sentence, or to continue on parole ~~or extended~~

~~supervision~~. If the prisoner claims or appears to be indigent, the department shall refer the prisoner to the authority for indigency determinations specified under s. 977.07 (1).

SECTION 77. 304.06 (3e) of the statutes is amended to read:

304.06 **(3e)** The division of hearings and appeals in the department of administration shall make either an electronic or stenographic record of all testimony at each parole ~~or extended supervision~~ revocation hearing. The division shall prepare a written transcript of the testimony only at the request of a judge who has granted a petition for judicial review of the revocation decision. Each hearing 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 78. 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 79. 304.071 (1) of the statutes is amended to read:

304.071 **(1)** The ~~earned release review~~ parole 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 person on parole ~~or extended supervision~~ shall report upon discharge from the armed forces.

SECTION 80. 801.50 (5) of the statutes is amended to read:

801.50 **(5)** Venue of an action for certiorari to review a probation, extended supervision, or parole revocation, a denial by ~~the earned release review commission~~ a program review committee under s. ~~302.1135 (5)~~ 302.113 (9g) of a petition for modification of a bifurcated sentence, or a refusal of parole shall be the county in which the relator was last convicted of an offense for which the relator was on probation, extended supervision, or parole or for which the relator is currently incarcerated.

SECTION 81. 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)~~, 302.1135~~ or (9g), 973.19, 973.195, 973.198, 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 82. 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 a bifurcated sentence under s. ~~302.1135~~ 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 973.198; issuance of subpoenas or warrants under s. 968.375, arrest warrants, criminal summonses, and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1r) (c); or 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; and proceedings under s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid analysis.

SECTION 83. 950.04 (1v) (f) of the statutes is amended to read:

950.04 **(1v)** (f) To have the ~~earned release review~~ parole 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 84. 950.04 (1v) (g) of the statutes is amended to read:

950.04 **(1v)** (g) To have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6), 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

SECTION 85. 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 ~~an offender who submits a petition~~ petitions for sentence adjustment as provided under s. 973.195 (1r) (d)~~, an offender who applies for release to extended supervision under s. 302.113 (2) (b), 302.1135, or 304.06 (1), or an offender who applies for a reduction under s. 973.01 (4m)~~ or 973.198.

1 **SECTION 86.** 950.04 (1v) (nt) of the statutes is amended to read:

2 950.04 **(1v)** (nt) To attend a hearing on a petition for modification of a
3 bifurcated sentence and provide a statement concerning modification of the
4 bifurcated sentence, as provided under s. ~~302.1135 (4)~~ 302.113 (9g) (d).

5 **SECTION 87.** 973.01 (3d) of the statutes is repealed.

6 **SECTION 88.** 973.01 (4) of the statutes is amended to read:

7 973.01 **(4)** ~~EXTENSION~~ NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF
8 IMPRISONMENT. A person sentenced to a bifurcated sentence under sub. (1) shall serve
9 the term of confinement in prison portion of the sentence without reduction for good
10 behavior. The term of confinement in prison portion is subject to extension under s.
11 302.113 (3) and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a.,
12 302.113 (9g), ~~or~~ 973.195 (1r), ~~or adjustment under s. 302.113 (2) (b), 302.1135 (6) (a),~~
13 ~~or 304.06 (1)~~ or 973.198.

14 **SECTION 89.** 973.01 (4m) of the statutes is repealed.

15 **SECTION 90.** 973.01 (7) of the statutes is amended to read:

16 973.01 **(7)** ~~DISCHARGE~~ NO DISCHARGE. The department of corrections ~~shall~~ may
17 not discharge a person who is serving a bifurcated sentence from custody, control and
18 supervision ~~when~~ until the person has served the entire bifurcated sentence~~, as~~
19 ~~modified under sub. (4m) or s. 302.113 (2) (b) or (9h), 302.1135, or 304.06 (1), if~~
20 ~~applicable~~.

21 **SECTION 91.** 973.031 of the statutes is repealed.

22 **SECTION 92.** 973.09 (3) (d) of the statutes is repealed.

23 **SECTION 93.** 973.195 (1r) (a) of the statutes is amended to read:

24 973.195 **(1r)** (a) ~~An~~ Except as provided in s. 973.198, an inmate who is serving
25 a sentence imposed under s. 973.01 ~~before October 1, 2009,~~ for a crime other than a

Class B felony may petition the sentencing court to adjust the sentence if the inmate has served at least the applicable percentage of the term of confinement in prison portion of the sentence. If an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually for purposes of sentence adjustment under this subsection.

SECTION 94. 973.195 (1r) (j) of the statutes is repealed.

SECTION 95. 973.198 of the statutes is created to read:

973.198 Sentence modification positive adjustment time. (1) An inmate who is serving a sentence imposed under s. 973.01 on or after October 1, 2009, but before the effective date of this subsection .... [LRB inserts date], and who has earned positive adjustment time under s. 302.113, 2009 stats., may petition the sentencing court to adjust the sentence under this section.

(2) When an inmate has served at least 66 percent of his or her term of confinement in prison he or she may petition the sentencing court to modify his or her sentence based on the number of days of positive adjustment time the inmate claims that he or she has earned.

(3) Within 60 days of receipt of a petition filed under sub. (2), the sentencing court shall hold a hearing and issue an order relating to the inmate's sentence modification and release to extended supervision.

(4) At the hearing under sub. (3), the court may consider the inmate's conduct in prison, his or her level of risk of reoffending, based on a verified, objective instrument, and the nature of the offense committed by the inmate.

(5) If the court determines that the inmate has earned positive adjustment time, the court may reduce 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. shall lengthen insert 32.2

(6) An inmate who submits a petition under this section may not apply for adjustment of the same sentence under s. 973.195.

SECTION 96. 974.07 (4) (b) of the statutes is amended to read:

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

SECTION 97. 976.03 (23) (c) of the statutes is amended to read:

976.03 **(23)** (c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by 2 certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to a judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, ~~earned release review~~ parole commission, warden or sheriff may also attach such further affidavits and other documents in duplicate as he, she or it deems proper to be submitted with the application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall

be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

SECTION 98. 977.05 (4) (jm) of the statutes is amended to read:

977.05 **(4)** (jm) At the request of an inmate determined by the state public defender to be indigent or upon referral of ~~the department of corrections~~ a court under s. ~~302.1135 (10)~~ 302.113 (9g) (j), represent the inmate in proceedings for modification of a bifurcated sentence under s. ~~302.1135 before the earned release review commission~~ 302.113 (9g) before a program review committee and the sentencing court, if the state public defender determines the case should be pursued.

SECTION 9311. Initial applicability; Corrections.

(1) SENTENCE ADJUSTMENT. The treatment of sections 15.01 (2), 15.06 (6), 15.145 (1), 17.07 (3m), 20.410 (2) (title) and (a), 20.923 (4) (b) 6., 230.08 (2) (pd), 301.03 (3), 301.048 (2) (am) 3., 301.21 (1m) (c) and (2m) (c), 302.042, 302.045 (1), (2) (d), (3), and (3m) (d), 302.05 (title), (2), (3) (b), (c) 1., 2. (intro.), and 3., and (d), 302.11 (1g) (b) (intro.) and 2., (c), and (d), (1m), and (7) (c), 302.113 (1), (2) (a), (b), and (c), (3) (d) and (e), (7), (9) (am) and (c), (9g), and (9h), 302.1135, 302.114 (9) (am) and (c), 304.01 (title), (1), and (2) (intro.), (b), (c), and (d), 304.06 (title), (1) (b), (bg), (bk), (bn), (br), (c) (intro.), (d) 1., 2., 3m., and 4., (e), (eg), (em), (f), and (g), (1m) (intro.), (1q) (b) and (c), (1x), (2m) (d), (3), (3e), and (3m), 304.071 (1), 801.50 (5), 809.30 (1) (c), 911.01 (4) (c), 950.04 (1v) (f), (g), (gm), and (nt), 973.01 (3d), (4), (4m), and (7), 973.031, 973.09 (3) (d), 973.195 (1r) (a) and (j), 973.198, 974.07 (4) (b), 976.03 (23) (c), and 977.05 (4) (jm) of the statutes, the renumbering and amendment of section 302.05 of the statutes, and the creation of section 302.05 (1) (am) 1. and 2. and (b) of the statutes first apply to a person sentenced on December 31, 1999, except that the treatment

1 of ss. 302.113 (1) and (2) (a) and (b) does not apply to positive adjustment time earned
2 on or after October 1, 2009, but before the effective date of this subsection.

3 **(END)**

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0829/P3dn
PJH:nwn:md

February 10, 2011

Please review this draft to ensure that it complies with your intent. This draft adds s. 302.043, which allows inmates sentenced under 2009 Act 28's risk reduction sentencing provisions to earn early release to extended supervision if they comply with the treatment plan developed by the department of corrections.

The draft also changes s. 973.198 to specify that the department of corrections may determine when an inmate may petition the sentencing court for early release to extended supervision and clarifies that the court must lengthen the term of extended supervision for a person who is released from confinement early to ensure that the overall length of the sentence does not change.

Please let me know if you have any questions or would like more changes to the draft. I look forward to hearing from you!

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