doc302_EmR0939.pdf **Corrections – Revises Ch. DOC 302 – EmR0939**

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Effective Dates: **December 31, 2009 through May 29, 2010**

ORDER OF THE DEPARTMENT OF CORRECTIONS
CREATING RULES

FINDING OF EMERGENCY

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Department is responsible for implementing several of those procedures. Specifically, the department is responsible for implementing the early release programs under: (1) s PAT (2) ERP/CIP (3) CER (4) Risk reduction (5) 75%/85%. In addition, the department is revising section 302.18 to facilitate the review of inmates for purposes of early release.

If the rule is not created promptly and immediately, the Department will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary for a prompt implementation of the legislative mandates concerning the release of inmates meeting established criteria while the permanent rules are being developed.

ORDER

Under the authority vested in the Department of Corrections by ss. 227.11(2), Stats., the Department of Corrections hereby promulgates an emergency rule relating to changes in various statutory provisions relating to sentence calculations and prison release under 2009 Wisconsin Act 28, specifically, §§ 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, §§ 2700 – 2712, § 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, §§ 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, §§ 2722 and 2751, § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, § 973.031, as created by 2009 Wis. Act 28, § 3387t, § 302.042, as created by 2009 Wis. Act 28, § 2699m, and § 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, and relating to an administrative review of inmate classification decisions, as follows:

STATUTORY AUTHORITY: § 227.11 (2), 301.02, 301.03 (2), and 302.07, Stats.

STATUTE INTERPRETED: §§ 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, §§ 2700 – 2712, § 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, §§ 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, §§ 2722 and 2751, § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, § 973.031, as created by 2009 Wis. Act 28, § 3387t, § 302.042, as created by 2009 Wis. Act 28, § 2699m, and § 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, and § 301.03 (2), Stats.

EXPLANATION OF AGENCY AUTHORITY:
The Department of Corrections is responsible for supervision of inmates sentenced to Wisconsin prisons, including sentence calculations. Under 2009 Wisconsin Act 28, specifically, §§ 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, §§ 2700 – 2712, § 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, §§ 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, §§ 2722 and 2751, § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, § 973.031, as created by 2009 Wis. Act 28, § 3387t, § 302.042, as

created by 2009 Wis. Act 28, § 2699m, and § 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, the legislature created several statutory provisions which affect the calculation of sentences. The Department is promulgating rules to address these changes. In addition, under § 301.03, Stats., the Department is responsible for the supervision of inmates. As part of that supervision, the Department reviews inmates for appropriate custody level, facility placement, program needs, and education needs.

PLAIN LANGUAGE ANALYSIS:

The emergency rule amends chapter DOC 302 to bring it into compliance with significant changes made in sentence calculations and releases from prison under 2009 Wis. Act 28, including:

1. Creating definitions for the following terms: administrator, agent, assaultive activity, certain early release, detainer, extended supervision, positive adjustment time, projected extended supervision date, risk eligibility date, social worker, and victim.
2. Creating DOC 302.33, DOC 302.34, and DOC 302.35, relating to positive adjustment time under 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, §§ 2722 and 2751;
3. Creating DOC 302.36 and DOC 302.37, relating to sentence calculations under § 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, for an inmate who has been convicted under § 973.01, Stats., following the inmate's having served at least 75% or 85% of the confinement time of a bifurcated sentence, depending on the classification of the crime.
4. Creating DOC 302.38 and DOC 302.39, relating to the challenge incarceration program and the earned release program under §§ 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, §§ 2700 – 2712;
5. Creating DOC 302.40, relating to the risk assessment program under § 302.042, as created by 2009 Wis. Act 28, § 2699m;
6. Creating DOC 302.41, relating to the early release of certain inmates within 12 months of their release under § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739; and
7. Repealing and recreating DOC 302.18, relating the inmate requests for review of Department decisions concerning custody, institution placement, program needs, or treatment needs.

TEXT OF RULE:

SECTION 1. Sections DOC 302.03 (1d), (1h), (1p), (1t), (7m), (9m), (12m), (15g), (15r), (17m), and (18m) are created to read:

DOC 302.03 (1d) "Administrator" means the administrator of the division of adult institutions.

DOC 302.03 (1h) "Agent" has the meaning given in s. DOC 328.03 (4).

DOC 302.03 (1p) "Assaultive activity" means an action that results in or is intended to result in physical harm to another.

DOC 302.03 (1t) "Certain early release" means the release of an inmate from the institution to extended supervision by decision of the secretary or secretary's designee prior to the completion of the confinement portion of a bifurcated sentence.

DOC 302.03 (7m) "Detainer" means a writ or other legal instrument issued by a competent officer, directing the warden or superintendent of a correctional facility to notify the issuing authority when the named person is about to be released so that the issuing authority may obtain custody of the named person if appropriate.

DOC 302.03 (9m) "Extended supervision" means the portion of a bifurcated sentence to be served under the supervision of the department.

DOC 302.03 (12m) "Positive adjustment time" means a period of time measured in days that can be earned to reduce an inmate's period of confinement.

DOC 302.03 (15g) "Projected extended supervision date" means the date that an inmate who is serving a bifurcated sentence is eligible for early release under s. 302.113 (2) (b) and 304.06 (1) (bg) 1. and 2., Stats.

DOC 302.03 (15r) "Risk eligibility date" means the date that an inmate who is serving a risk reduction sentence under s. 973.031, Stats., has served 75% of their confinement time.

DOC 302.03 (17m) "Social worker" means the institution social worker to whom an inmate is assigned.

DOC 302.03 (18m) "Victim" has the meaning given in s. 950.02(4), Stats.

SECTION 2. DOC 302.18 is repealed and recreated to read:

DOC 302.18 Administrative Review of a Classification Decision. (1) Within 10 calendar days of an inmate's receipt of a written decision concerning custody, institution placement, program need, or treatment need, the inmate may request a review of the decision under DOC 302.13 (2) or DOC 302.17 (8) if the inmate believes that the decision was based on erroneous information.

(2) Denial of a request for a classification review under s. DOC 302.17 (11) is not subject to review under this section.

(3) The inmate shall submit a request for review under this section on a form approved by the department.

(4) The review shall be completed by one of the following:

(a) The director if the director is not the decision maker under s. DOC 303.13 (2) or s. DOC 303.17 (8); or

(b) The administrator if the director was the decision maker under s. DOC 303.13 (2) or s. DOC 303.17 (8).

(5) The director or administrator shall respond within a reasonable period of time, following receipt of the administrative review request.

(6) The decision under sub. (5) is final.

SECTION 3. Sections DOC 302.33, DOC 302.34, DOC 302.35, DOC 302.36, DOC 302.37, DOC 302.38, DOC 302.39, DOC 302.40, and DOC 302.41 are created to read:

DOC 302.33 Positive adjustment time--one for two. (1) ELIGIBILITY. Inmates who are sentenced under s. 973.01, Stats., for a misdemeanor or for a Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats., may earn one (1) day of positive adjustment time for every two (2) days served if all of the following apply:

(a) the department has determined the inmate is not at a high risk of reoffending. If an inmate is determined to be at a high risk to reoffend, they may be reviewed for eligibility under 302.34;

(b) the inmate has not received a major penalty under s. DOC 303.68 (1); and

(c) the inmate does not neglect or refuse to perform required or assigned duties.

(2) EXCLUSIONS. Notwithstanding sub. (1), this subsection does not apply to any of the following: (a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.

(b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

(c) An inmate who has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.

(d) An inmate who is required to register under s. 301.45, Stats.

(e) An inmate who has, in his or her lifetime, been committed under ch. 975, Stats.

(f) A violent offender, as defined in s. 16.964 (12) (a), Stats.

(g) An inmate who is serving, begins to serve, or who has served during his or her current period of confinement, a sentence for a Class F to Class I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats.

(h) An inmate who is serving, begins to serve, or who has served during his or her current period of confinement, a sentence for a Class C to Class E felony.

(i) An inmate who is ineligible for positive adjustment time under this paragraph pursuant to s. 973.01 (3d) (b), Stats.

(j) An inmate who is serving a sentence for an offense against an elderly or vulnerable person, as defined in s. 939.22 (20d), Stats.

(k) An inmate who is serving a sentence for an offense related to ethical government, as defined in s. 939.22 (20m), Stats.

(l) An inmate who is serving a sentence for an offense related to school safety, as defined in s. 939.22 (20s), Stats.

(m) An inmate who is serving a sentence for a felony murder under s. 940.03, Stats.

(n) An inmate who is serving a sentence for a violation of s. 940.11 (1), Stats.

(o) An inmate who is serving a sentence for a violation of s. 940.235, Stats.

(p) An inmate who is serving a sentence for a violation of s. 940.32 (3), Stats.

(q) An inmate who is serving a sentence for a violation of s. 941.21, Stats.

(r) An inmate who is serving a sentence for a violation of s. 946.465, Stats.

(3) NOTIFICATION TO COURT. When an inmate is within 90 days of release to extended supervision under sub. (5), the department shall notify the sentencing court that it intends to modify the inmate's sentence and release the inmate to extended supervision. As part of its notification, the department shall provide the court with a copy of the objective risk instrument and conduct record.

(4) COURT ACTION. If the court does not schedule a review hearing within 30 days after notification, or the court accepts the department's recommendation following a hearing, the department may proceed under sub. (5). If the court issues an order denying the department's recommendation, the inmate will not be released under this section.

(5) RELEASE. An inmate under sub. (1) shall be released to extended supervision when he or she has served the term of confinement in the prison portion of his or her bifurcated sentence, less positive adjustment time earned unless denied by the court.

(6) MODIFICATION OF EXTENDED SUPERVISION. When an inmate who has served less than the entire confinement time of the sentence imposed under s. 973.01, Stats., is released to extended supervision under sub. (5), the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

302.34 Positive adjustment time--one for three. (1) ELIGIBILITY. Inmates who are sentenced under s. 973.01, Stats., for a Class F to Class I felony or a misdemeanor that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats., and who is ineligible for positive adjustment time under s. 302.113 (2) (b), Stats., pursuant to s. 973.01(3d) (b), Stats., or for a Class F to Class I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats., may earn one (1) day of positive adjustment time for every three (3) days served if all of the following apply:

(a) the department has determined the inmate is not at a high risk of reoffending;

(b) the inmate has not received a major penalty under s. DOC 303.68 (1); and

(c) the inmate does not neglect or refuse to perform required or assigned duties.

(2) SPECIAL CONSIDERATION. Inmates ineligible for positive adjustment time under DOC 302.33 (1) (a) may be considered for eligibility under this section.

(3) EXCLUSIONS. This section does not apply to any of the following:

(a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.

(b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

(c) An inmate who has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.

(d) An inmate who is required to register under s. 301.45, Stats.

(e) An inmate who has, in his or her lifetime, been committed under ch. 975, Stats.

(f) An inmate who is serving, begins to serve, or who has served during his or her current period of confinement, a sentence for a Class C to Class E felony.

(g) An inmate who is serving a sentence for an offense against an elderly or vulnerable person, as defined in s. 939.22(20d), Stats.

(h) An inmate who is serving a sentence for an offense related to ethical government, as defined in s. 939.22 (20m), Stats.

(i) An inmate who is serving a sentence for an offense related to school safety, as defined in s. 939.22 (20s)Stats.

(j) An inmate who is serving a sentence for a felony murder under s. 940.03, Stats.

(k) An inmate who is serving a sentence for a violation of s. 940.11 (1), Stats.

(l) An inmate who is serving a sentence for a violation of s. 940.235, Stats.

(m) An inmate who is serving a sentence for a violation of s. 940.32 (3), Stats.

(n) An inmate who is serving a sentence for a violation of s. 941.21, Stats.

(o) An inmate who is serving a sentence for a violation of s. 946.465, Stats.

(4) PETITION FOR RELEASE. An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

DOC.302.35 Positive adjustment time--one for 5.7. (1) ELIGIBILITY. Inmates who are sentenced under s. 973.01, Stats., for a Class C to Class E felony may earn one (1) day of positive adjustment time for every 5.7 days served if all of the following apply:

(a) the department has determined the inmate is not at a high risk of reoffending;

(b) the inmate has not received a major penalty under s. DOC 303.68 (1); and

(c) the inmate does not neglect or refuse to perform required or assigned duties.

(2) EXCLUSIONS. This section does not apply to any of the following:

(a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.

(b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

(c) An inmate who has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.

(d) An inmate who is required to register under s. 301.45, Stats.

(e) An inmate who has, in his or her lifetime, been committed under ch. 975, Stats.

(f) An inmate who is serving a sentence for an offense against an elderly or vulnerable person, as defined in s. 939.22 (20d), Stats.

(g) An inmate who is serving a sentence for an offense related to ethical government, as defined in s. 939.22 (20m), Stats.

(h) An inmate who is serving a sentence for an offense related to school safety, as defined in s. 939.22 (20s), Stats.

(i) An inmate who is serving a sentence for a felony murder under s. 940.03, Stats.

(j) An inmate who is serving a sentence for a violation of s. 940.06, Stats.

(k) An inmate who is serving a sentence for a violation of s. 940.302, Stats.

(l) An inmate who is serving a sentence for a violation of s. 940.31 (1), Stats.

(m) An inmate who is serving a sentence for a violation of s. 948.03 (2) (a), Stats.

(n) An inmate who is serving a sentence for a violation of s. 948.40 (4) (a), Stats.

(3) PETITION FOR RELEASE. An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

DOC 302.36 Modification of bifurcated sentence after serving 75 percent of confinement time. (1) ELIGIBILITY. An inmate sentenced under s. 973.01, Stats., for a misdemeanor or for a Class F to Class I felony committed prior to October 1, 2009, and who has not petitioned a sentencing court for a sentence adjustment under s. 973.195 (1r), Stats., for any offense for which he or she is incarcerated may apply for release to extended supervision when he or she has served at least 75% of the term of confinement portion of his or her bifurcated sentence.

(2) EXCLUSION. This section does not apply to an inmate who is serving, begins to serve, or who has served during his or her current period of confinement, a sentence for a Class C to Class E felony.

(3) PETITION FOR RELEASE. An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

DOC 302.37 Modification of bifurcated sentence after serving 85 percent of confinement time. (1) ELIGIBILITY. An inmate sentenced under s. 973.01, Stats., for a Class C to Class E felony committed prior to October 1, 2009, and who has not petitioned a sentencing court for a sentence adjustment under s. 973.195 (1r), Stats., for any offense for which he or she is incarcerated may apply for release to extended supervision when he or she has served at least 85% of the term of confinement portion of his or her bifurcated sentence.

(2) PETITION FOR RELEASE. An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

DOC 302.38 Challenge Incarceration Program. **(1)** The department shall provide a challenge incarceration program which incorporates manual labor, education, military drill and ceremony, age appropriate strenuous physical

activity and rehabilitative programming that is directly related to the inmate's criminal behavior in preparation for release on parole or extended supervision.

(2) Inmate's convicted of a crime specified in ch. 940, Stats., or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, Stats., are excluded from eligibility.

(3) The department or sentencing court shall determine eligibility under one of the following:

(a) For inmates sentenced for crimes committed on or before December 30, 1999 the department determines eligibility.

(b) For inmates sentenced for crimes committed on or after December 31, 1999 the sentencing court determines eligibility.

(4) The department may place an inmate into the challenge incarceration program if the inmate meets all of the following criteria:

(a) The inmate is determined to be eligible for participation under sub. (3);

(b) The inmate volunteers to participate in the program and agrees to the rules and regulations of the program;

(c) The inmate has not attained the age of 40 as of the date the inmate will begin the program;

(d) The inmate meets physical, medical and psychological criteria required for program participation; and

(e) The department determines, using evidence-based assessments that one of the following applies:

1. The inmate has a substance abuse treatment need that requires an intensive level of treatment;

2. The inmate has a substance abuse treatment need that does not require an intensive level of treatment but does require education or outpatient services, and the inmates substance use is not a key factor in his or her criminal behavior; or

3. The inmate has one or more treatment needs not related to substance abuse that is directly related to his or her criminal behavior

(5) The department may restrict participant privileges as necessary to maintain discipline.

(6) The department will determine if placement is appropriate and when placement will occur.

(7) For inmates sentenced for crimes committed on or after December 31, 1999, the department shall determine successful completion of the challenge incarceration program and notify the sentencing court of the successful completion to initiate a modification of the inmate's sentence.

(8) The department shall release the inmate within 6 working days upon receipt of a court order modifying the inmate's bifurcated sentence.

(9) For inmates sentenced for crimes committed before December 31, 1999, the department will determine successful completion of the rehabilitation program and notify the earned release review commission.

DOC 302.39 Wisconsin earned release program. (1) The department shall provide a rehabilitation program for the purposes of release.

(2) Inmate's convicted of a crime specified in ch. 940, Stats., or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, Stats., are excluded from eligibility.

(3) The department or sentencing court shall determine eligibility under one of the following:

(a) For inmates sentenced for crimes committed on or before December 30, 1999 the department determines eligibility.

(b) For inmates sentenced for crimes committed on or after December 31, 1999 the sentencing court determines eligibility.

(c) For inmates who are serving a bifurcated sentence and whose sentence was imposed on or after December 31, 1999 but before July 26, 2003, the inmate may petition the sentencing court with the department's approval to determine eligibility. The inmate shall serve a copy of the petition on the district attorney who prosecuted him or her.

(4) The department may place an inmate into the Wisconsin earned release program if the inmate meets all the following criteria:

(a) The inmate is determined to be eligible for participation under sub. (3);

(b) The inmate volunteers to participate in the program and agrees to the rules and regulations of the program; and

(c) The department determines, using evidence-based assessments that one of the following applies:

1. The inmate has a substance abuse treatment need that requires an intensive level of treatment.

2. The inmate has a substance abuse treatment need that does not require an intensive level of treatment but does require education or outpatient services, and the inmates substance use is not a key factor in his or her criminal behavior.

3. The inmate has one or more treatment needs not related to substance abuse that is directly related to his or her criminal behavior.

(5) The department may restrict participant privileges as necessary to maintain discipline.

(6) The department will determine if placement is appropriate and when placement will occur

(7) For inmates sentenced for crimes committed after December 31, 1999, the department shall determine successful program completion and notify the sentencing court to initiate a modification of the inmate's sentence.

(8) The department shall release the inmate within 6 working days upon receipt of a court order modifying the inmate's bifurcated sentence.

(9) For inmates sentenced for crimes committed before December 31, 1999, the department will determine successful completion of the rehabilitation program and notify the earned release review commission.

DOC 302.40 Risk Reduction Program. (1) The department shall identify inmates who are sentenced under a risk reduction sentence under s. 973.031, Stats., for a felony under s. 973.01, Stats. For inmates sentenced under a risk reduction sentence the department shall do all of the following:

(a) Complete a validated and objective assessment to identify his or her criminogenic factors and risk to reoffend;

(b) Create a risk reduction plan that is designed to reduce the inmate's risk of reoffending; and

(c) Monitor and review the progress made towards completion of the risk reduction plan. The plan may be modified if programming is unavailable or a new program need is identified.

(2) The department shall determine if an inmate has completed the risk reduction program by review of the following:

(a) Conduct; and

(b) Participation in the program needs identified in the risk reduction plan

(3) The department may rescind or withhold a determination regarding the completion of the risk reduction plan based misconduct or failure to complete components of the risk reduction plan.

(4) If the department determines that the risk reduction plan has been completed the department will notify the sentencing court, and the office of victim services within the department.

(5) The department shall release an inmate to extended supervision on or after their risk eligibility date when they have completed the risk reduction program pursuant to sub. (2).

DOC 302.41 Certain early releases under s. 302.113 (9h), Stats. (1) ELIGIBILITY. The department may release to extended supervision under s. 302.113 (9h), Stats., certain persons serving the confinement portion of a bifurcated sentence and who meet all of the following conditions:

(a) The inmate is serving a confinement portion of a bifurcated sentence for misdemeanor or a Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats.;

(b) The social worker or agent has reason to believe that the inmate will be able to maintain himself or herself while on extended supervision without engaging in assaultive activity.; and

(c) The release to extended supervision date is not more than 12 months before the inmate's extended supervision eligibility date.

(2) EXCLUSIONS. An inmate is not eligible for certain early release if any of the following apply:

(a) The inmate is the subject of a bulletin issued under s. 301.46 (2m), Stats.

(b) The inmate has, in his or her lifetime, been convicted of or found guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

(c) The inmate has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.

(d) The inmate is required to register under s. 301.45, Stats.

(e) The inmate has, in his or her lifetime, been committed under ch. 975, Stats.

(3) RELEASE TO DETAINER. An inmate who has an active detainer is eligible for certain early release consideration without meeting the criteria under par. (1) (a) if the detainer concerns a sentence imposed in another jurisdiction and the remainder of that sentence is equal to or longer than the remainder of the Wisconsin sentence. In this paragraph, "active" means that the jurisdiction issuing the detainer intends to obtain custody of the inmate immediately upon release.

(4) NOTIFICATION. The department shall notify the victim before a release decision. The department shall notify the court and district attorney upon the inmate's release.

(5) RELEASE AUTHORITY. The secretary may release eligible inmates under this section consistent with public safety and reentry goals.

SECTION 4. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper, as provided in § 227.24 (1) (c), Stats.

FINAL REGULATORY FLEXIBILITY ANALYSIS. The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

FISCAL ESTIMATE. See attached.

FISCAL ESTIMATE DOA-2048 N(R06/99)	**2009 Session** ☒ ORIGINAL ☐ UPDATED ☐ CORRECTED ☐ SUPPLEMENTAL	Administrative Rule Number **DOC 302**

Subject DOC 302, Wis Adm Code - Sentencing Modifications Created in 2009 Wisconsin ACT 28

Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☒ Decrease Costs

Local: ☐ No local government costs

1. ☐ Increase Costs
   ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
   ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
   ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
   ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
   ☐ Towns ☐ Villages ☐ Cities
   ☐ Counties ☐ Others _____
   ☐ School Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

<u>Positive Adjustment Time (PAT)</u>

This rule implements 2009 Wisconsin ACT 28 language that allows a new mechanism for release of inmates sentenced under bifurcated sentences from confinement to extended supervision (ES). The statutory language created Positive Adjustment Time (PAT) which measures the period of time in days that can be earned to reduce an inmate's period of confinement. PAT has three separate release tracks depending on eligibility as follows:

1. Inmates may be eligible to earn 1 day for every 2 days of confinement towards early release under the following provisions:
   a. The inmate must have a non-violent misdemeanor conviction or a non-violent Class F-I felony conviction.
   b. The Department has determined the inmate is "not" high risk for reoffending in the community.
   c. The inmate must follow established prison rules and not refuse or neglect to perform assigned duties while confined.
   d. The inmate has not received a major penalty while confined.

   When an inmate has earned early release under this new PAT provision, DOC will notify the court within 90 days of release that the inmate qualifies for early release to ES and provide the court with a copy of the objective risk assessment and the inmates conduct report. The court has 30 days to schedule a hearing to determine release, deny release or change the release date to a date not longer then the original confinement portion on the bifurcated sentence. If the 30 days passes without the court scheduling a hearing, the inmate will be released to ES.

Long-Range Fiscal Implications		
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If the court decides to review the inmate for early release, a hearing will be scheduled and an order issued within 60 days. At the hearing the court has three options; 1) reject PAT and return the inmate to prison to serve the remaining confinement portion of the sentence before release to ES, 2) release the inmate to ES, or 3) order the inmate to begin serving the next sentence.

2. Inmates may be eligible to earn 1 day for every 3 days of confinement towards early release under the following provisions:
    a. Inmates convicted of non-violent misdemeanor's or non-violent Class F-I felonies will not be eligible to earn PAT on the first track (1 day for every 2 days), if the Department has determined these inmates are at high risk of reoffending in the community. Instead these inmates will be eligible to earn PAT on the second track (1 day for every 3 days).
    b. The inmate has a violent Class F-I felony conviction.
    c. The inmate must follow established prison rules and not refuse or neglect to perform assigned duties while confined.
    d. The inmate has not received a major penalty while confined.
3. Inmates may be eligible to earn 1 day for every 5.7 days of confinement towards early release under the following provisions:
    a. The conviction must be a Class C-E felony.
    b. The inmate must follow established prison rules and not refuse or neglect to perform assigned duties while confined.
    c. The inmate has not received a major penalty while confined.

When an inmate has earned early release under the 1 day for every 3 days or the 1 day for every 5.7 days, the inmate has only one opportunity to be seen by the Earned Release Review Commission, (ERRC) formerly the Parole Commission. The inmate must request to be seen by the ERRC and if ERRC recommends release, ERRC must notify the court of the release and the court has the opportunity to schedule a hearing within 30 days. If the court holds a hearing the judge has the option to affirm, deny or change the release date to a date not longer than the original confinement portion. Release is not automatic even if the inmate has achieved his or her goals. The ERRC may or may not recommend early release, and the Court may or may not approve early release.

The Department anticipates that incarcerated inmates will be released early to extended supervision under the new legislation for a PAT. However, the Department is not able to estimate the number of inmates that may be released under PAT and therefore is unable to estimate a state fiscal impact or any savings that may result from early release.

The Department anticipates an increase in workload for Social Workers, Supervising Staff, the Records Office, Bureau of Classification and Movement (BOCM) and probation & parole agents. However, a fiscal impact cannot be estimated for the increased workload.

Bifurcated Sentence Modification for TIS1 & TIS2

Under 2009 Wisconsin ACT 28, two early release options were established for inmates currently serving the confinement portion of a bifurcated sentence under TIS1 or TIS2. Inmates may petition the Earned Release Review Commission (ERRC) under the following two options.

1) The inmate has served 75% of his or her sentence, the crime was a misdemeanor violation or a Class F to I felony, the crime was committed prior to October 1, 2009 and the inmate has not petitioned the sentencing court for early release to ES.
2) The inmate has served 85% of his or her sentence, the crime was a Class C to E felony, the crime was committed prior to October 1, 2009 and the inmate had not petitioned the sentencing court for early release to ES.

The review process begins when the records office creates a list of inmates that have served 75 or 85 percent of his or her bifurcated sentence and are eligible for review by ERRC. The records office forwards the eligibility list to institution social workers, agents and ERRC. The records office also notifies the inmate and the judge and District Attorney from the sentencing court of the upcoming review by ERRC. After ERRC interviews the inmate the results are forwarded to the records office for processing as follows; 1) inmate is denied, 2) the decision is deferred for further review, or 3) the inmate is recommended for release.

If the inmate is recommended for release, ERRC will notify the sentencing court of the inmates release to ES. The court has 30 days to schedule a hearing; if the court does not schedule a hearing within 30 days the inmate will be processed for release to ES.

Either ERRC or the sentencing court can deny release of the inmate or release the inmate to a consecutive sentence. If a consecutive sentence exists, the records office will recalculate the overall ES date. An additional a calculation may be required to determine a new Release Eligibility Date (RED) or Projected Extended Supervision Date (PESD).

At this time a fiscal impact cannot be estimated since the Department cannot predict how many inmates will be released from a TIS1 or TIS2 bifurcated sentence.

Earned Release Program (ERP) & Challenge Incarceration Program (CIP)

Under 2009 WI ACT 28, statutory language was enacted that expanded the early release sentencing option for the courts on bifurcated sentences. The language for the Earned Release Program (ERP) and the Challenge Incarceration Program (CIP) now includes offenders that do not have alcohol or drug treatment needs. The prior language required an AODA component to be eligible for either program. The new language refers to an early release rehabilitation program.

The sentencing court would continue to determine statutory eligibility for the offender to participate in ERP or CIP. However, the change in the language allows the Department to determine if an offender has treatment needs not related to AODA that are directly related to his or her criminal behavior and to develop the criterion for entry into non-AODA ERP or CIP.

The Department shall continue to notify the court when the offender has successfully completed ERP or CIP. The court has 30 days to modify the sentence by adding the remaining confinement portion onto the extended supervision (ES) portion. The length of the sentence does not change. The Department has six working days to release the offender after receiving the modified court order.

The Department anticipates incarcerated offenders will be released early to extended supervision under the new non-AODA ERP and CIP programs. However, the Department is not able to estimate the future number of offenders that may be released, but anticipates a reduction in incarceration costs and increased supervision costs since the remainder of the confinement time is added to the extended supervision time.

The Department anticipates increased work duties for Social Workers, the Bureau of Classification & Movement, Probation & Parole Agents and Supervisory Staff. At this time a fiscal impact cannot be estimated for the increased work duties or the number of staff needed to accomplish the additional duties related to the new non-AODA ERP/CIP programs as a result of this legislation.

Risk Reduction Sentence (RRS)

Under 2009 Wisconsin ACT 28, courts may impose another sentencing option called the Risk Reduction Sentence (RRS). The RRS gives the court the ability to sentence a convicted felon to serve 75% of confinement time of a bifurcated sentence if the offender agrees to the RRS rules at sentencing. Under the rules of RRS the inmate must agree to a risk assessment analysis, participate in recommended program/treatment needs and maintain good conduct while confined.

When the Department determines an inmate has maintained good conduct during confinement and has completed the recommended programs/treatment and has served 75% of his or her confinement time on a bifurcated sentence, the Department will send notice to the sentencing court and the Office of Victim Services (OVS) that the inmate is ready to be released to extended supervision (ES). However, if the offender has not satisfied the program plan at the completion of 75% of his or her confinement term, the offender may remain confined for a period of time not to exceed the original confinement term on the bifurcated sentence.

The Department anticipates incarcerated offenders will be released early to extended supervision under the new legislation for a RRS. However, the Department is not able to estimate the number of offenders that may be released under the new RRS rules. We anticipate a reduction in incarceration costs and a reduction in extended supervision costs

since the remaining 25% on the confinement portion of the sentence dissolves and is not added to the extended supervision term on the bifurcated sentence.

It's possible the Department may see a reduction in workload for probation & parole agents over time, depending on how many inmates are released under a RRS sentence and an increased workload for prison staff to track incarcerated inmates. At this time a fiscal impact cannot be estimated since the Department cannot predict how many offenders will receive an RRS sentence and the affect on length of confinement.

Certain Early Releases (CER)

This rule implements 2009 WI ACT 28 language that allows the Department of Corrections to release certain offenders serving the confinement portion of a bifurcated sentence to extended supervision (ES), if the offender meets the following criteria:

1. The person is serving the confinement portion of a bifurcated sentence for a misdemeanor or a class F to I felony that is not a violent offense as defined in s. 301.048(2)(bm)1.
2. The prison social worker or ES agent of record has reason to believe that the person will be able to maintain himself/herself while not confined without engaging in assaultive activity.
3. The release to extended supervision date is not more than 12 months before the person's extended supervision eligibility date.

The Department is unable to estimate the number of offenders who may be released early to ES or the fiscal impact resulting from these releases. It is assumed that there will be a reduction in incarceration costs and an increase in extended supervision costs under the new statutory language.

The Department also anticipates an increase in workload to the department for Social Workers, the Records Office, Probation & Parole Agents and Supervisory Staff. At this time a fiscal impact cannot be estimated for the increased workload or the number of staff needed to accomplish the additional duties required for Certain Early Release offenders.