pac001_EmR0940.pdf **Wisconsin Earned Release Review Commission – Revises Ch. PAC 1 – EmR0940**

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

ORDER OF THE
WISCONSIN EARNED RELEASE REVIEW COMMISSION
CREATING RULES

FINDING OF EMERGENCY

The Wisconsin Earned Release Review Commission 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 Earned Release Review Commission (formerly the Parole Commission) is responsible for implementing several of those procedures. Specifically, the commission is responsible for considering the early release of inmates under: (1) section 304.06 (1) (bg)1. and 2., Stats., after the inmate has served the term of confinement of their bifurcated sentence less positive adjustment time, (2) section 304.06 (1) (bg) 3. and 4., Stats., after the inmate has served either 75 % or 85 % of their term of confinement, depending on the offense for which the inmate was sentenced, and (3) section 302.1135 (2) (a), (b), and (c), Stats., based on age or extraordinary health.

If the rule is not created promptly and immediately, the commission 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 of corrections 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 to respond the legislatively recognized need to review inmates who meet the requirements under the statutes for potential release while the permanent rules are being developed.

ORDER

Under the authority vested in the Wisconsin Earned Release Review Commission by sections 227.11 (2), 304.06 (1) (c), and 304.06 (1) (em), Stats., the Wisconsin Earned Release Review Commission hereby promulgates an emergency rule relating to the release of inmates from state prison through parole or other procedures established under 2009 Wis. Act 28, as follows:

STATUTES INTERPRETED: s. 302.1135, Stats, as created by 2009 WI Act 28, ss. 2729j – 2738 and 2739d – 2739j, and ch. 304, Stats., and s. 304.06 (1) (bg) 1., 2., 3., and 4., as created by 2009 WI Act 28, s. 2751

STATUTORY AUTHORITY: ss. 227.11 (2), 304.06 (1) (c), and 304.06 (1) (em), Stats.

EXPLANATION OF AGENCY AUTHORITY:
The Earned Release Review Commission (formerly the Parole Commission) has the authority to promulgate rules which govern its procedures for considering inmate petitions for release. This rule updates the current rule (PAC 1) to reflect changes in procedures, practice, and the law.

Under s. 302.1135, Stats, as created by 2009 WI Act 28, ss. 2729j – 2738 and 2739d – 2739j, the Earned Release Review Commission (formerly the Parole Commission) has the authority to consider inmate petitions for release due to age or extraordinary health condition. This rule sets forth the procedure which the ERRC will follow in reviewing these petitions.

Under s. 304.06 (1) (bg) 1. and 2., as created by 2009 WI Act 28, s. 2751, the Earned Release Review Commission has the authority to consider inmate petitions requesting release to extended supervision after having served the term of confinement of his or her bifurcated sentence less positive adjustment time he or she has earned. This rule sets forth the procedure which the ERRC will follow in reviewing these petitions.

Under s. 304.06 (1) (bg) 3. and 4., as created by 2009 WI Act 28, s. 2751, the Earned Release Review Commission has the authority to consider inmate petitions requesting release to extended supervision after having served either 75% or 85% of his or her term of confinement, depending on the offense for which the inmate was sentenced. This rule sets forth the procedure which the ERRC will follow in reviewing these petitions.

PLAIN LANGUAGE ANALYSIS:

The Rule:

1. Revises s. PAC 1.02, Purpose, to more clearly state the purpose of the rule chapter is to set forth the procedures under which the Earned Release Review Commission (formerly Parole Commission) operates.
2. Updated terminology and phrasing throughout the rule to reflect the responsibility of the commission for parole and other release mechanisms under 2009 Act 28.
3. Added definitions for the following terms: denial, extended supervision, extraordinary health condition, file review, informational deferral, no action, and presumptive mandatory release.
4. Moved the definition of "direct input," which had previously been in s. PAC 1.06 (9) (c) to the definition section.
5. Modified the term "member of the family" to "family member" and included domestic partners under ch. 770, Stats., in the definition of covered persons.
6. Modified definitions to include reference to 2009 Act 29 release mechanisms. Specifically, "parole grant" became "parole grant or release order," and "parole eligible" became "parole or release eligible," and "parole consideration" became "release consideration."
7. Clarified the purpose of release consideration in s. PAC 1.04.
8. Modified s. PAC 1.05 to address the commission's authority to consider parole eligibility or release eligibility for inmates depending on the date on which the offense for which they were convicted was committed, including those eligible for early release to extended supervision.
9. Modified s. PAC 1.06 to more clearly state the process by which the commission will consider an inmate for release. Also, included are the additional criteria noted in 2009 Act 28, specifically the inmate has not refused or neglected to perform required or assigned duties. Clarified the criteria used to evaluate participation in required or recommended programming. Finally, deleted the listing of specific offenses which require giving a victim the opportunity for direct input. The commission gives victims who are registered with the Office of Victims Services an opportunity for direct input in all cases.
10. Modified s. PAC 1.07 to include the process for release recommendations for inmates sentenced for offenses committed on or after December 31, 1999. In addition, clarified the authority of a commissioner to amend a deferral or denial.
11. Added to s. PAC 1.07 the authority and the procedures of the commission to modify an inmate's bifurcated sentence in accordance with s. 304.06 (1) (bk) 1., Stats.
12. Created s. PAC 1.08 to establish procedures for the commission to review inmate petitions for release due to extraordinary health condition or age.
13. Created s. PAC 1.09 to establish procedures for the commission to review inmates who are subject to presumptive mandatory release.

TEXT OF RULE:

SECTION 1. Chapter PAC 1 is repealed and recreated to read:

Chapter PAC 1
GENERAL PROVISIONS

PAC 1.01 Authority. This chapter is promulgated under ss. 227.11 (2), 304.06 (1) (e), and 304.06 (1) (em), Stats.

PAC 1.02 Purpose. This chapter establishes the process by which the commission reviews requests for parole or release under Ch. 302 and 304, Stats.

PAC 1.03 Definitions. In this chapter:

(1) "Chairperson" means the chairperson of the commission. "Chairperson" includes a commissioner who is designated by the chairperson to perform a specific assignment or duty.

(2) “Commission” means the earned release review commission, including the chairperson and commissioners.

(3) “Commissioner” means a member of the earned release review commission, including the chairperson.

(4) “Deferral” means an action by a commissioner, which follows release consideration and which denies release for a specified period of time.

(5) “Denial” means an action by a commissioner which denies early release to extended supervision or release prior to mandatory release.

(6) “Department” means the department of corrections.

(7) “Direct input” means the opportunity for the victim to communicate with the commission regarding the offender’s release.

(8) “Extended supervision” means the portion of a bifurcated sentence imposed under s. 973.01, Stats., wherein the individual is released by the department to supervision in the community.

(9) “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.

(10) “Family member” means spouse, domestic partner under ch. 770, Stats., child, sibling, parent or legal guardian.

(11) “File review” means release consideration that takes place outside the presence of the inmate.

(12) “Informational deferral” means an action by a commissioner to hold release consideration in abeyance.

(13) “Mandatory release” or “MR” means the release of an inmate by the department to community supervision as provided under s. 302.11 (1), Stats.

(14) “No action” means release consideration that has been referred to the chairperson or the full commission.

(15) “Parole grant or release order” means the action by the chairperson, ordering the release of an inmate on or after a specified date to supervision by the department, to begin serving a sentence under 1997 Wis. Act 283, or to another case or sentence or count under s. 973.01, Stats.

(16) “Parole or release eligible” means qualified to be considered for release under ch. 302 or 304, Stats.

(17) “Presumptive mandatory release date” or “PMR” means the date that an eligible inmate may be released on parole unless the commission denies release under s. 302.11 (1g) (b), Stats.

(18) “Release consideration” means the process by which a commissioner reviews relevant information concerning an inmate who is approaching release eligibility, including parole.

(19) “Victim” means a person against whom a crime has been committed or a victim’s family member.

PAC 1.04 Purpose of release consideration. The purpose of release consideration is to evaluate all of the following factors: (1) Depreciation of the seriousness of the offense resulting from early release;

(2) Risk to the community; and

(3) Reasonable certainty of a crime-free reintegration of the inmate into society.

PAC 1.05 Eligibility for release consideration. (1) INITIAL ELIGIBILITY. The commission shall not consider for parole or release to extended supervision any person who is sentenced to the department's custody until the person has been confined at least 60 days following sentencing.

(2) PAROLE ELIGIBILITY. (a) For persons sentenced for offenses committed on or before December 31, 1999, the Chairperson may waive the 25% service of sentence requirement under s. 304.06 (1) (b), Stats., if the chairperson determines that extraordinary circumstances warrant an earlier parole consideration and the sentencing court, district attorney, and the victim, if available, have been notified and permitted to comment upon the proposed recommendation.

(b) Initial parole eligibility. For persons sentenced for offenses committed on or before December 31, 1999, the inmate's eligibility for discretionary parole will be determined under s. 304.06, Stats.

(c) Subsequent parole eligibility. 1. When incarceration follows parole revocation without the imposition of a new sentence, parole eligibility shall be established at 6 months from the date of return to the institution, less sentence credit under s. 973.155 (1), Stats.

2. When incarceration follows parole revocation and involves the imposition of a new sentence, parole eligibility shall be established at 6 months, less sentence credit under s. 973.155 (1), Stats., or in accordance with the eligibility date of the new sentence.

3. When incarceration follows parole revocation and initial release consideration occurs, imposition of a new sentence may affect the eligibility date.

(3) RELEASE ELIGIBILITY. (a) Initial release eligibility. For persons sentenced under s. 973.01, Stats., the inmate's eligibility for release consideration will be determined under s. 304.06 (1) (bg), Stats.

(b) Subsequent release eligibility. When incarceration follows revocation of extended supervision, an eligibility date will be established in accordance with s. 304.06 (1) (bg), Stats.

(4) WAIVER OF RELEASE CONSIDERATION. An inmate may waive release consideration at any time by notifying the commission in writing through institution staff. No review or decision will occur. A waiver will not effect future commission decisions

(5) WITHDRAWAL OF CONSIDERATION. If an inmate declines to appear before the commission at the time of a scheduled interview or appears but refuses to participate, the failure to appear or participate, unless excused by the commission, shall be construed as a withdrawal of parole consideration. No review or decision will occur. A withdrawal will not effect future parole decisions.

(6) RE-ESTABLISHMENT OF ELIGIBILITY FOR CONSIDERATION. To become eligible for release consideration following a waiver or withdrawal, the inmate shall apply in writing to the commission through institution staff. The eligibility date shall be established in accordance with the inmate's sentence structure. An interview will be scheduled based on the new eligibility date.

PAC 1.06 Release consideration. (1) For persons sentenced for offenses that occurred on or before December 31, 1999, the initial release consideration shall be scheduled during the month prior to the date of first statutory eligibility for parole, unless waived in writing by the inmate, the inmate is not available, in which case the commissioner will set a new interview date, or the inmate has been transferred after which an interview will be scheduled as soon as practicable.

(2) For persons sentenced under s. 973.01, Stats., the inmate will be scheduled for release consideration prior to the earliest eligibility date established under s. 304.06 (1) (bg), Stats.

(3) Release consideration for persons whom the commission has deferred shall be scheduled according to the new eligibility date.

(4) The institution responsible for scheduling release consideration shall give the inmate at least a 15-day written notice of the interview, except following an informational deferral, in which case subsequent notification is not required. When notification is not timely, the inmate may waive the 15-day requirement. If the inmate does not waive, consideration will be postponed until notice can be given. The notice of consideration for release shall address the criteria under sub. (15).

(5) The chairperson may assign one or more commissioners to conduct a release consideration interview.

(6) The inmate shall have access to the documentary information which the commissioner considered, except information determined to be confidential may not be disclosed. An inmate shall have access to records at the correctional institution where the inmate is confined.

(7) During the release consideration interview, the inmate shall be afforded the opportunity to provide information that is relevant, material, and not unduly repetitious, including the opportunity to comment on perceived errors of material fact in the record.

(8) The commissioner's decision shall be based on information available, including file material, victim's statements if applicable, and any other relevant information.

(9) A deferral greater than 12 months requires the written approval of the chairperson.

(10) The interview shall be recorded. A transcript shall be prepared only upon an order of the court which has granted a petition for judicial review of the decision.

(11) Release consideration may occur without the inmate present when one of the following circumstances occurs: (a) The inmate had an interview within the preceding 12 months; or

(b) It is not practicable to arrange for an interview within the timeframe for considering release and the interest of justice as well as that of the inmate would best be served by a file review.

(12) If release consideration occurs under sub. (11) without the inmate being present, the inmate may request an interview in writing through institution staff. The commission may grant the request.

(13) Representation by legal counsel during the interview for release consideration shall not be permitted, except for extraordinary health conditions under s. PAC 1.08.

(14) Interpretive services shall be provided for an inmate in order to facilitate effective communication.

(15) Release consideration is specifically exempt from open meeting legislation under s. 19.85 (1) (d), Stats., and shall be closed to the public. However, upon request, and with the approval of the chairperson, persons with a civic, academic, or professional interest in the release consideration process may be allowed to observe individual proceedings. Observers shall not be allowed if the inmate objects.

(16) A recommendation for release or a grant or order of release may be made after consideration of all the following criteria:

(a) The inmate has become parole eligible under s. 304.06, Stats., and s. PAC 1.05

(b) The inmate has served sufficient time so that release would not depreciate the seriousness of the offense

(c) The inmate has demonstrated satisfactory adjustment to the institution.

(d) The inmate has not refused or neglected to perform required or assigned duties.

(e) The inmate has participated in and has demonstrated sufficient efforts in required or recommended programs which have been made available by demonstrating one of the following:

1. The inmate has gained maximum benefit from programs;

2. The inmate can complete programming in the community without presenting an undue risk; or

3. The inmate has not been able to gain entry into programming.

(f) The inmate has developed an adequate release plan.

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

(h) The inmate has reached a point at which the commission concludes that release would not pose an unreasonable risk to the public and would be in the interest of justice.

(17) The commission shall provide an opportunity for a victim to provide direct input and to attend the interview.

(18) The commission shall permit any office or person to submit a written statement for consideration in its decision-making process.

PAC 1.07 Commission recommendations. (1) After consideration, a commissioner may recommend release with or without special conditions, or may deny release and defer consideration for a specified period of time. The commissioner shall make the recommendation of release to the chairperson. If release is denied, the commissioner shall establish a date for reconsideration under sub. PAC 1.06 (3), unless the inmate will reach the mandatory release date or the extended supervision date prior to that reconsideration date.

(2) The inmate shall be advised in writing of the decision to defer or to recommend a grant of parole or release, the reasons for the decision and the next opportunity for consideration or the recommended parole or release date.

(3) A commissioner may refer the case to the full commission for a decision. When the chairperson makes a final decision, the inmate shall be notified of the decision in writing and may request an interview with the commissioner through institution staff.

(4) If the chairperson disagrees with a recommendation of the commissioner, the chairperson shall inform the inmate in writing the reason for amending the recommendation.

(5) For persons sentenced under s. 973.01, Stats., if the chairperson approves a recommendation for release, the commission shall notify the sentencing court in accordance with s. 304.06 (1) (bk) 1., Stats., of its intent to modify the inmate's sentence and release the inmate to extended supervision or another case, sentence or count. The commission shall provide the sentencing court with justification for its recommendation. If the court does not schedule a review hearing within 30 days after notification, the commission will proceed with the action recommended. The commission shall issue an order for sentence modification. The term of confinement in the prison portion of the inmate's sentence will be reduced by the period of release and the term of extended supervision of the inmate's sentence will be lengthened by the period of release so that the total length of the sentence as originally imposed by the court will remain unchanged.

(6) A commissioner may withdraw a recommendation for release prior to the issuance of the grant of parole or order for release.

(7) A commissioner may amend a deferral or denial.

(8) If there is a change in circumstances, requiring a denial of the grant or order, subsequent to the issuance of a parole grant or release order but prior to release, the inmate shall be provided written notice of the reasons for rescission and a summary of the evidence supporting the reasons for rescission. The inmate shall be given an opportunity to appear and be heard by an impartial hearing examiner from the division of hearings and appeals in the department of administration. At the hearing the inmate shall be given the right to present witnesses and evidence which are material, relevant, and not

unduly repetitious, the right to confront and cross-examine witnesses against the inmate, the right to receive a written statement of the evidence relied upon, and the right to be represented by counsel. After a review of the findings of fact, conclusions of law, and recommendation of the hearing examiner, the chairperson shall make a final decision.

(9) For persons sentenced for offenses committed on or before December 31, 1999, the chairperson may grant or deny parole at any time, if extraordinary circumstances affecting an inmate are documented and verified.

PAC 1.08 Extraordinary health condition release. (1) Eligibility. An inmate serving a bifurcated sentence imposed under s. 973.01, Stats., or, notwithstanding s. 973.014 (1g) (a) or (2), Stats., serving a life sentence imposed under s. 973.014, Stats., may petition the commission for modification of the inmate's sentence to be released to extended supervision if the inmate meets one of the following eligibility criteria:

(a) The inmate is 65 years of age or older and has served at least 5 years in prison;

(b) The inmate is 60 years of age or older and has served at least 10 years in prison; or

(c) The inmate has an extraordinary health condition.

(2) Right to representation. An inmate who is eligible to petition for modification of the sentence under this section has a right to be represented by counsel in proceedings under this section. An inmate or the department on the inmate's behalf, may apply to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (jm), Stats., before or after the filing of the petition.

(3) Petition. An inmate who files a petition for release under this section shall include the following in support of his or her petition:

(a) Date of birth;

(b) Dates of incarceration for current sentence;

(c) Affidavits of 2 physicians, as defined under s. 448.01 (5), Stats., who practice in this state setting forth the inmate's diagnosis, medical condition, including physical or mental limitations or disabilities, treatment, and prognosis if the inmate is alleging that he or she has an extraordinary health condition. One of the affidavits shall be from the inmate's current attending physician.

(d) Other information as required by the commissioner.

(4) Hearing. (a) Upon receipt of a petition from an inmate, the commission shall review the petition to determine if the inmate is eligible for consideration under sub. (1). If the inmate meets one of the criteria for review, the commission shall schedule the petition for hearing to determine whether the public interest would be served by a modification of the inmate's sentence under s. 302.1135, Stats. The commission may seek additional information regarding the criterion which the inmate asserts as the basis of his or her eligibility for sentence modification under this section, including additional medical information.

(b) The commission shall notify in writing the inmate, the district attorney, any victims of the inmate's crime, the attorney representing the inmate, if applicable, the agent of record, the institution social worker, and the institution record office staff, of the date, time and location of the hearing. The commission will notify victims through the department's office of victim services. The notice of hearing shall be sent to the last-known address of the inmate's victim, postmarked at least 10 days before the date of the hearing.

(c) In advance of the hearing the commission may request from the agent or social worker additional information, including the inmate's release plan. If the inmate meets the criteria for review under ch. 980, Stats., the commission shall request the department to provide information concerning the inmate's status.

(d) The commissioner conducting the hearing shall review the inmate's social service and legal files prior to the hearing.

(e) The commission shall permit the inmate, the attorney representing the inmate, if applicable, the district attorney, and any victims of the inmate's crime to attend the hearing and give a written or oral statement regarding the inmate's petition for sentence modification, specifically addressing the issue of whether the public interest would be served by the modification. The commission may permit attendance at the hearing in person, by telephone, videoconferencing, or other virtual communication means. During the hearing the commission may request additional information.

(f) Information about the address of a victim will not be released or disclosed.

(g) The inmate has the burden of proving by the greater weight of the credible evidence that a modification of the sentence under this section would serve the public interest.

(h) The hearing shall be recorded.

(5) Decision. (a) Upon conclusion of the hearing, the commissioner conducting shall prepare a report for submission to the chairperson. The report shall contain a summary of the information provided at the hearing, including relevant documents, and a recommendation and the justification for the recommendation to approve or deny the petition.

(b) The commission may defer making a decision or hold a decision in abeyance in order to receive additional relevant information, including medical information. If additional information is received, the commission shall reconvene the hearing. Notice will be given to individuals who were present at the initial hearing. The hearing may be held in person, by telephone, videoconferencing or other virtual communication means at the discretion of the commission.

(c) The chairperson shall issue a decision on the petition based on the report and documents submitted by the commissioner.

1. If the petition is approved, the chairperson shall modify the sentence by establishing a new release date and give notice to the department. The department shall release shall release the inmate to extended supervision within 30 days after the date on which the commission modified the sentence. The modification shall reduce the term of confinement in the prison portion of the inmate's sentence and lengthen the term of extended supervision imposed so that the total length of the sentence originally imposed does not change.

2. If the petition is denied, the inmate may not file another petition within one year of the date of the denial.

3. The commission shall provide notice of its decision in writing to the inmate, the district attorney, any victims of the inmate's crime, the attorney representing the inmate, if applicable, the agent of record, the institution social worker, and the institution record office staff

(6) Appeal. (a) An inmate may seek review of the decision to deny the petition for modification only by common law writ of certiorari.

(b) The state may appeal the decision to grant the petition to circuit court.

PAC 1.09 Presumptive mandatory release review (1) For an inmate who is subject to PMR and who has been deferred to the mandatory release date of the PMR offense or has waived consideration but is approaching the mandatory release date, a commissioner shall conduct a review two months prior to the mandatory release date.

(2) The institution responsible for scheduling release consideration shall give the inmate at least a 15-day written notice of the interview. When notification is not timely, the 15 day requirement may be waived by the inmate. If the inmate does not waive, consideration will be postponed until notice can be given.

(a) An inmate may waive appearance at the interview, which will result in the commissioner issuing a decision based on available information.

(b) If an inmate is unavailable for the interview, a commissioner may issue a decision based on available information or may re-schedule an interview if time allows.

(3) The inmate shall have access to the documentary information considered by the commissioner, except information determined to be confidential may not be disclosed. An inmate shall have access to records at the correctional institution where the inmate is confined.

(4) During the PMR interview, the inmate shall be afforded the opportunity to provide relevant information for the commissioner's consideration including the opportunity to comment on perceived errors of material fact in the record.

(5) The commissioner's decision shall be based on information available, including file material and any other relevant information.

(a) Presumptive mandatory release may be denied due to refusal by the inmate to participate in counseling or treatment deemed necessary or for protection of the public.

(b) If a commissioner denies PMR release, the commission shall schedule a subsequent review to consider whether circumstances have changed and the inmate meets the criteria for release.

(c) An inmate may be held until his or her maximum discharge date.

(d) If the commissioner does not deny presumptive mandatory release, the inmate shall be released to parole supervision.

(6) The interview shall be recorded. A transcript shall be prepared only upon an order of the Court which has granted a petition for judicial review of the decision.

SECTION 2: Effective date: This emergency rule shall take effect upon publication in the official state newspaper, as provided in s. 227.114, Stats.

FINAL REGULATORY FLEXIBILITY ANALYSIS:

The Earned Release Review Commission 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 § 227.114, Stats.

FISCAL ESTIMATE: See attached.

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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.

Wisconsin Earned Release Review Commission

By: _____

Alfonso Graham

Chairperson

FISCAL ESTIMATE DOA-2048 N(R06/99)	2009 Session ☒ ORIGINAL ☐ UPDATED ☐ CORRECTED ☐ SUPPLEMENTAL	Administrative Rule Number PAC 1

Subject
Wisconsin Earned Release Review Commission Administrative Rules

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

20.410 (2)

Assumptions Used in Arriving at Fiscal Estimate

This rule repeals PAC 1 relating to procedures for the release of inmates from Wisconsin prison and recreates the chapter to incorporate current practice and changes required by 2009 Wisconsin Act 28.

The Earned Release Review Commission [ERRC—formerly the Parole Commission] has authority to promulgate rules governing its procedures for considering inmate petitions for release. This rule incorporates current procedures, changes in practice and law changes [2009 Wisconsin Act 28] including consideration of inmate petitions for release due to age or to extraordinary health considerations, early release of certain truth-in-sentencing offenders [TIS] and inmates who have served 75% or 85% of the term of confinement. This rule sets forth the procedures by which ERRC will operate.

Extraordinary Health or Aged

Prior to the passage of 2009 Act 28, inmates sentenced under truth-in-sentencing [TIS], and who had a Class C through Class I felony, could petition the sentencing court for early release if the inmate had a terminal health condition. Instead of petitioning the sentencing court, inmates will now petition ERRC for early release consideration if the inmate claims to have an extraordinary health condition as certified by two physicians. This procedure also applies to inmates who are 60 years old or older and have served 10 years of the sentence or 65 years old or older and served 5 years of the sentence.

The Department can not estimate the number of inmates who will petition ERRC for early release pertaining to extraordinary health circumstances or age, since many more inmates than those who are eligible may apply.

Positive Adjustment Time

Long-Range Fiscal Implications		
Prepared by: Cathy Halpin	Telephone No. 240-5538	Agency Corrections
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2009 Wis. Act 28 allows private attorneys, public defenders, victims and District Attorneys to attend ERRC hearings. Hearings are thus expected to take more time and be rescheduled more often to accommodate the additional attendees' schedules. Additional security precautions may be necessary if these individuals attend in person or additional telephonic equipment may be necessary if these individuals attend by telephone/videoconference. ERRC support staff workload will also increase to include scheduling, file preparation, data entry, and preparation and mailing of hearing notification letters, for all TIS offenders currently reviewed by courts.

Although the Department can not project the full impact of the changes at this time, it is assumed that in the short term the currently authorized positions in the ERRC will be able to absorb the increased workload.