

For: 3420/P1

Please compile the following:

99-0590/P5

99-2889/P3

99-3265/P1

99-3266/P1

99-3361/P2

99-3370/P2



## 1999 DRAFTINGREQUEST

**Bill**Received: **08/05/1999**Received By: **olsenje**Wanted: **Soon**

Identical to LRB:

For: **Legislative Reference Bureau**

By/Representing: JEO

This file may be shown to any legislator: NO

Drafter: **olsenje**

May Contact:

Alt. Drafters: **mdsida**Subject: **Criminal Law - sentencing**  
**Criminal Law - procedure**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Modification of bifurcted sentence

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	olsenje 08/06/1999	gilfokm 08/06/1999	martykr 08/09/1999	_____	lrb-docadmin 08/09/1999		State
/P2	mdsida 08/09/1999	wjackson 08/09/1999	mclark 08/09/1999	_____	lrb-docadmin 08/09/1999		State

FE Sent For:

&lt;END&gt;

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FE Sent For: */p2 8/9 WLj mrc 8/9 mrc/ct 8/9*  
**<END>**

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	olsenje	1/1-8-99 Kmg	Km 8/9	<u>JS 8/9</u> <u>Km 8/9</u>			State

FE Sent For:

<END>

# 1. Revisive Proposal

2. Power of Ct to modify conclusion of E.S. w/ 1 year of starting ES

and no more than annually

Discretionary victim notice

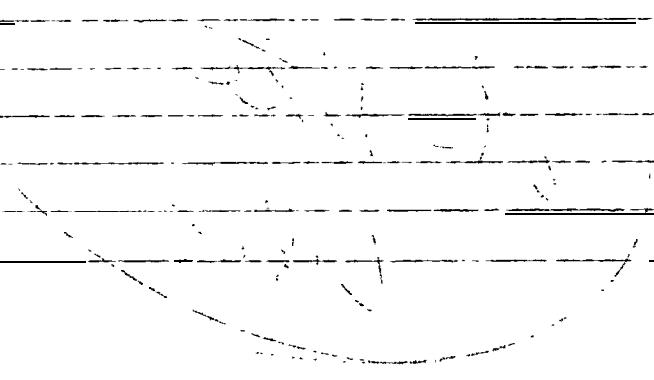
Shpaladin - 950.

rf.

DA.

A=Notes  
Clerk

Handwritten notes in the top left corner, including the word "Introduction" and some illegible scribbles.



not necessary -  
the act of conviction

at the DOC w/ permission  
of person serving

Geriatric Prisoners.---Any person serving a sentence imposed upon a conviction for a felony offense, other than a Class A felony, committed on or after December 31, 1999, (i) who has reached the age of sixty-five or older and who has served at least five years of incarceration on the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of incarceration on the sentence imposed may petition the Program Review Board of the Department of Corrections for return to the sentencing court for modification of sentence. If the Program Review Board determines that the public interest would be served by modifying the remainder of the incarcerative sentence to extended supervision, the Program Review Board shall so advise ~~the sentencing court~~. The sentencing court shall give notice to the district attorney and the sentenced person and shall conduct a hearing to determine if the public interest would be served by modifying the remainder of the person's incarcerative sentence to extended supervision. If the court determines that the public interest would be served by modifying the remainder of the incarcerative portion of the sentence to extended supervision, the court may so modify the sentence.

if ↓  
confirms  
↑  
ES.

petitioner Review Bd if denied, review  
~~appeal~~ - only by writ of cert.

std: gross abuse of discretion

BAP → by greater weight of credible evidence

Δ entitled to SPD.

if/denied Δ's motion, abuse of discretion on standard  
appeal

only accelerating placement on ES.

~ petition w/in 1 yr of being denied

- *Geriatric* escape clause

- Allow cts. to modify conditions  
of ES ~~off~~ @ any time

- $\Delta$  or DoC may petition
- Cf. mod. of probation

- Temp. Sentencing guidelines

- > mandatory collection of data from form?
- > distribution of guidelines/form



# FACSIMILE COVER SHEET

**STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
CRIMINAL PENALTIES STUDY COMMITTEE**

819 N. 6<sup>th</sup> St., Rm. 834

Milwaukee, WI 53203

(P) (414) 227-5102

(F) (414) 227-5104

[mike.brennan@doa.state.wi.us](mailto:mike.brennan@doa.state.wi.us)

TO: **Jefren Olsen, Esq.**

DATE: Wed. 8/3/99

FAX NUMBER: (608) 264-8522

Number of pages transmitted, including cover page: 3

**Geriatric Prisoners.** - Any person serving a sentence imposed upon a conviction for a felony offense, other than a Class A felony, committed on or after December 31, 1999. (i) who has reached the age of sixty-five or older and who has served at least five years of incarceration on the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of incarceration on the sentence imposed may petition the Program Review Board of the Department of Corrections for return to the sentencing court for modification of sentence. The person, or the department on behalf of the person, may apply to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4)(j). If the person files a petition without counsel, the court shall refer the matter to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4)(j). If the Program Review Board determines that the public interest would be served by modifying the remainder of the incarcerative sentence to extended supervision, the Program Review Board shall so advise the sentencing court. The sentencing court shall give notice to the district attorney and the sentenced person and shall conduct a hearing to determine if the public interest would be served by supervision.

The sentenced person and any victim of the crime shall be entitled to be present at the hearing. The sentenced person has the burden to prove that the modification of sentence would serve the public interest by the greater weight of the credible evidence. Such motion to modify a sentence by a geriatric person shall be heard under circumstances where the rules of evidence are inapplicable pursuant to s. 911.01 (4)(c). If the court determines that the public interest would be served by modifying the remainder of the incarcerative portion of the sentence to extended supervision, the court may so modify the sentence adding such modified portion of the sentence to whatever remains of the already imposed period of extended supervision.

motion for modification of the sentenced person is denied by the court, such person may appeal to the Court of Appeals. Any decision of the sentencing court denying modification of sentence can be reversed only upon a finding of an abuse of judicial discretion. No subsequent petition may be filed less than one year after the date of the denial of a prior petition by the Program Review Board or the sentencing court.



*kmf*

*Due* *by end of day Monday 8/9* *(D-Note)*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*Men. Cat.*

1 **AN ACT**; **relating to:** modification of a bifurcated sentence in certain cases.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

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

2 **SECTION 1.** 302.113 (2) of the statutes is amended to read:

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

History: 1997 a. 283.

8 **SECTION 2.** 302.113 (7) of the statutes is amended to read:

1           302.113 (7) Any person released to extended supervision under this section is  
2 subject to all conditions and rules of extended supervision until the expiration of the  
3 term of extended supervision portion of the bifurcated sentence. The department  
4 may set conditions of extended supervision in addition to any conditions of extended  
5 supervision set by the court under sub. (7m) or s. 973.01 (5) if the conditions set by  
6 the department do not conflict with the court's conditions.

History: 1997 a. 283.

7           **SECTION 3.** 302.113 (7m) of the statutes is created to read:

8           302.113 (7m) (a) Except as provided ~~under~~<sup>in</sup> par. (e), a person subject to this  
9 section or the department may petition the sentencing court to modify any conditions  
10 of extended supervision set by the court.

11           (b) If the department files a petition under this subsection, it shall serve a copy  
12 of the petition on the person who is the subject of the petition and, if the person is  
13 represented by an attorney, on the person's attorney. If a person ~~who~~<sup>is</sup> subject to this  
14 section or his or her attorney files a petition under this subsection, the person or his  
15 or her attorney shall serve a copy of the petition on the department. The court shall  
16 serve a copy of a petition filed under this section on the district attorney. The court  
17 may direct the clerk of the <sup>✓</sup> court to provide notice of the petition to a victim of a crime  
18 committed by the person who is the subject of the petition.

19           (c) The court may conduct a hearing to consider the petition. The court may  
20 grant the petition in full or in part if it determines that the modification would meet  
21 the needs of the department and the public and would be consistent with the  
22 objectives of the person's sentence.

23           (d) A person subject to this section or the department may appeal an order  
24 entered by the court under this subsection. The appellate court may reverse the

1 order only if it determines that the sentencing court improperly exercised its  
2 discretion in granting or denying the petition.

3 (e) An inmate may not petition the court to modify the conditions of extended  
4 supervision earlier than one year before the date of the inmate's scheduled date of  
5 release to extended supervision. If a person subject to this section files a petition  
6 authorized by this subsection before or after his or her release from confinement, the  
7 person may not file another petition until one year after the date of filing the former  
8 petition.

9 **SECTION 4.** 302.113 (9g) of the statutes is created to read:

10 302.113 (9g) (a) In this subsection, "program review committee" means the  
11 committee at a correctional institution that reviews the security classifications,  
12 institution assignments and correctional programming assignments of inmates  
13 confined in the institution.

14 (b) An inmate subject to this section may seek modification of his or her  
15 bifurcated sentence in the manner specified in par. (f) if he or she meets one of the  
16 following criteria:

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

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

21 (c) An inmate who meets one of the criteria under par. (b) may submit a petition  
22 to the program review committee at the correctional institution in which the inmate  
23 is confined requesting a modification of the inmate's bifurcated sentence in the  
24 manner specified in par. (f). If the program review committee determines that the  
25 public interest would be served by a modification of the inmate's bifurcated sentence

1 in the manner provided under par. (f), the committee shall approve the petition for  
2 referral to the sentencing court and notify the department of its approval. The  
3 department shall then refer the inmate's petition to the sentencing court and request  
4 the court to conduct a hearing on the petition. If the program review committee  
5 determines that the public interest would not be served by a modification of the  
6 inmate's bifurcated sentence in the manner specified in par. (f), the committee shall  
7 deny the inmate's petition.

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

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

1 interest, the court shall deny the inmate's petition for modification of the bifurcated  
2 sentence.

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

5 1. The court shall reduce the term of confinement in prison portion of the  
6 inmate's bifurcated sentence in a manner that provides for the release of the inmate  
7 to extended supervision within 30 days <sup>after</sup> the date on which the court issues its order  
8 modifying the bifurcated sentence.

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

11 (g) 1. In this paragraph, "victim" has the meaning given in s. 950.02 (4).<sup>✓</sup>

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

21 3. The director of state courts shall design and prepare cards for a victim to send  
22 to the clerk of the circuit court <sup>for the county</sup> in which the inmate <sup>was</sup> convicted and sentenced. The  
23 cards shall have space for a victim to provide his or her name and address, the name  
24 of the applicable inmate and any other information <sup>that</sup> the director of state courts  
25 determines is necessary. The director of state courts shall provide the cards, without



1 charge, to clerks of circuit court. Clerks of circuit court shall provide the cards,  
2 without charge, to victims. Victims may send completed cards to the clerk of the  
3 circuit court <sup>for the county</sup> in which the inmate was convicted and sentenced. All court records or  
4 portions of records that relate to mailing addresses of victims are not subject to  
5 inspection or copying under s. 19.35 (1).

6 (h) An inmate may appeal a court's decision denying the inmate's petition for  
7 modification of his or her bifurcated sentence. In an appeal under this paragraph,  
8 the appellate court may reverse a decision denying a petition for modification of a  
9 bifurcated sentence only if it determines that the sentencing court improperly  
10 exercised its discretion in denying the referral.

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

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

1           **SECTION 5.** 911.01 (4) (c) of the statutes is amended to read:

2           911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or  
3 rendition; sentencing, ~~or~~ granting or revoking probation, modification of a bifurcated  
4 sentence under s. 302.113 (9g), issuance of arrest warrants, criminal summonses and  
5 search warrants; proceedings under s. 971.14 (1) (c); proceedings with respect to  
6 pretrial release under ch. 969 except where habeas corpus is utilized with respect to  
7 release on bail or as otherwise provided in ch. 969.

8 **History:** Sup. Ct. Order, 59 W (2d) R1, R366 (1973); 1977 c. 305 s. 64, 1977 c. 345; 1979 c. 32 s. 92 (16); 1981 c. 183, 367, 390, 391; 1987 a. 208, 398; 1991 a. 40, 269.

**SECTION 6.** 950.04 (1v) (g) of the statutes is amended to read:

9           950.04 (1v) (g) To have reasonable attempts made to notify the victim of  
10 hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6),  
11 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

12 **History:** 1979 c. 219; 1983 a. 102, 364; 1985 a. 311; 1987 a. 332 s. 64; 1989 a. 31; 1997 a. 181, 237, 283.

**SECTION 7.** 950.04 (1v) (nt) of the statutes is created to read:

13           950.04 (1v) (nt) To attend a hearing on a petition for modification of a  
14 bifurcated sentence and provide a statement concerning modification of the  
15 bifurcated sentence, as provided under s. 302.113 (9g) (d).

16           **SECTION 8.** 973.01 (4) of the statutes is amended to read:

17           **973.01 (4)** No GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A  
18 person sentenced to a bifurcated sentence under sub. (1) shall serve the term of  
19 confinement in prison portion of the sentence without reduction for good behavior.  
20 The term of confinement in prison portion is subject to extension under s. 302.113 (3)  
21 and, if applicable, to reduction under s. 302.045 (3m) or 302.113 (9g).

22 **History:** 1997 a. 283.

**SECTION 9.** 977.05 (4) (jm) of the statutes is created to read:

23           977.05 (4) (jm) At the request of an inmate determined by the state public  
24 defender to be indigent or upon referral of a court under s. 302.113 (9g) (j), represent

:

1 the inmate in proceedings for modification of a bifurcated sentence under s. 302.113  
2 (9) before a program review committee and the sentencing court, if the state public  
3 defender determines the case should be pursued.

4 (END)

(9g)

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

LRB-3370/P1dn  
JEO&MGD:.....



Mike Brennan:

1. Please review the “geriatric clause” (proposed s. 302.113 (9g)) carefully. Note the following when reviewing the provision:

a) We reorganized the suggested provisions substantially and in some places substituted language used under current s. 302.113, stats. Proposed s. 302.113 (9g) (g) is based on other statutes relating to victim notification.

b) Because the statutes do not currently refer to program review committees, this draft creates a definition based on a description of their duties under the administrative code, ~~sections~~ DOC 302.18 and 302.19.

c) We weren't certain from the language that you sent whether an inmate is to have a right to counsel in the proceeding before the program review committee. This draft gives the inmate such a right. See proposed s. 302.113 (9g) (j). Is that your intent?

2. With respect to the provisions concerning modification of the conditions of extended supervision, this draft authorizes DOC or a person subject to extended supervision to petition the sentencing court to modify the conditions of extended supervision only if the person was not sentenced to a term of life imprisonment. This authorization is based on the notion that the conditions set by the sentencing court may not be appropriate when, years later, the person is to be released to extended supervision. By contrast, conditions for a person sentenced to a term of life imprisonment are established shortly before the person's extended supervision begins. Nonetheless, a person sentenced to life imprisonment may be under extended supervision for decades. Thus, the conditions imposed when such a person is released to extended supervision may ultimately require modification as well. In view of this, do you want to have the provisions relating to modification of court-imposed conditions of extended supervision apply to persons sentenced to life imprisonment?

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Phone: (608) 266-9867

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

LRB-3370/P1dn  
JEO&MGD:kmg:km

August 9, 1999

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Phone: (608) 266-9867



D-Note

EWJ ↑  
RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

END of day  
Monday.

Life  
Pen Cat

1 **AN ACT to amend 302.113 (2), 302.113 (7), 911.01 (4) (c), 950.04 (1v) (g) and**  
2 **973.01 (4); and to create 302.113 (7m), 302.113 (9g), 950.04 (1v) (nt) and 977.05**  
3 **(4) (jm) of the statutes; relating to: modification of a bifurcated sentence in**  
4 **certain cases.**

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

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

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6 302.113 (2) Except as provided in subs. (3) and (9), an inmate subject to this  
7 section is entitled to release to extended supervision after he or she has served the  
8 term of confinement in prison portion of the sentence imposed under s. 973.01, as

1 modified by the sentencing court under sub. (9g) or s. 302.045 (3m) (b) 1., if  
2 applicable.

3 **SECTION 2.** 302.113 (7) of the statutes is amended to read:

4 302.113 (7) Any person released to extended supervision under this section is  
5 subject to all conditions and rules of extended supervision until the expiration of the  
6 term of extended supervision portion of the bifurcated sentence. The department  
7 may set conditions of extended supervision in addition to any conditions of extended  
8 supervision set by the court under sub. (7m) or s. 973.01 (5) if the conditions set by  
9 the department do not conflict with the court's conditions.

10 **SECTION 3.** 302.113 (7m) of the statutes is created to read:

11 302.113 (7m) (a) Except as provided in par. (e), a person subject to this section  
12 or the department may petition the sentencing court to modify any conditions of  
13 extended supervision set by the court.

14 (b) If the department files a petition under this subsection, it shall serve a copy  
15 of the petition on the person who is the subject of the petition and, if the person is  
16 represented by an attorney, on the person's attorney. If a person who is subject to this  
17 section or his or her attorney files a petition under this subsection, the person or his  
18 or her attorney shall serve a copy of the petition on the department. The court shall  
19 serve a copy of a petition filed under this section on the district attorney. The court  
20 may direct the clerk of the court to provide notice of the petition to a victim of a crime  
21 committed by the person who is the subject of the petition.

22 (c) The court may conduct a hearing to consider the petition. The court may  
23 grant the petition in full or in part if it determines that the modification would meet  
24 the needs of the department and the public and would be consistent with the  
25 objectives of the person's sentence.

or more than once before

~~do not delete within one year of~~  
after the inmate's release to extended supervision

1 (d) A person subject to this section or the department may appeal an order  
2 entered by the court under this subsection. The appellate court may reverse the  
3 order only if it determines that the sentencing court improperly exercised its  
4 discretion in granting or denying the petition.

INSERT  
3-7

5 (e)<sup>1.</sup> An inmate may not petition the court to modify the conditions of extended  
6 supervision earlier than one year before the date of the inmate's scheduled date of

7 release to extended supervision. (If a person subject to this section files a petition

8 authorized by this subsection ~~before or~~ after his or her release from confinement, the  
9 person may not file another petition until one year after the date of filing the former  
10 petition.

11 SECTION 4. 302.113 (9g) of the statutes is created to read:

12 302.113 (9g) (a) In this subsection, "program review committee" means the  
13 committee at a correctional institution that reviews the security classifications,  
14 institution assignments and correctional programming assignments of inmates  
15 confined in the institution.

16 (b) An inmate subject to this section may seek modification of his or her  
17 bifurcated sentence in the manner specified in par. (f) if he or she meets one of the  
18 following criteria:

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

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

23 (c) An inmate who meets one of the criteria under par. (b) may submit a petition  
24 to the program review committee at the correctional institution in which the inmate  
25 is confined requesting a modification of the inmate's bifurcated sentence in the



1 manner specified in par. (f). If the program review committee determines that the  
2 public interest would be served by a modification of the inmate's bifurcated sentence  
3 in the manner provided under par. (f), the committee shall approve the petition for  
4 referral to the sentencing court and notify the department of its approval. The  
5 department shall then refer the inmate's petition to the sentencing court and request  
6 the court to conduct a hearing on the petition. If the program review committee  
7 determines that the public interest would not be served by a modification of the  
8 inmate's bifurcated sentence in the manner specified in par. (f), the committee shall  
9 deny the inmate's petition.

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

21 (e) At a hearing scheduled under par. (d), the inmate has the burden of proving  
22 by the greater weight of the credible evidence that a modification of the bifurcated  
23 sentence in the manner specified in par. (f) would serve the public interest. If the  
24 inmate proves that a modification of the bifurcated sentence in the manner specified  
25 in par. (f) would serve the public interest, the court shall modify the inmate's

1 bifurcated sentence in that manner. If the inmate does not prove that a modification  
2 of the bifurcated sentence in the manner specified in par. (f) would serve the public  
3 interest, the court shall deny the inmate's petition for modification of the bifurcated  
4 sentence.

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

7 1. The court shall reduce the term of confinement in prison portion of the  
8 inmate's bifurcated sentence in a manner that provides for the release of the inmate  
9 to extended supervision within 30 days after the date on which the court issues its  
10 order modifying the bifurcated sentence.

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

13 (g) 1. In this paragraph, "victim" has the meaning given in s. 950.02 (4).

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

23 3. The director of state courts shall design and prepare cards for a victim to send  
24 to the clerk of the circuit court for the county in which the inmate was convicted and  
25 sentenced. The cards shall have space for a victim to provide his or her name and

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

8 (h) An inmate may appeal a court's decision denying the inmate's petition for  
9 modification of his or her bifurcated sentence. In an appeal under this paragraph,  
10 the appellate court may reverse a decision denying a petition for modification of a  
11 bifurcated sentence only if it determines that the sentencing court improperly  
12 exercised its discretion in denying the referral.

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

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

1 defender for determination of indigency and appointment of counsel under s. 977.05  
2 (4) (jm).

3 **SECTION 5.** 911.01 (4) (c) of the statutes is amended to read:

4 911.01 (4) (c) **Miscellaneous proceedings.** Proceedings for extradition or  
5 rendition; sentencing, ~~or~~ granting or revoking probation, modification of a bifurcated  
6 sentence under s. 302.113 (9g), issuance of arrest warrants, criminal summonses and  
7 search warrants; proceedings under s. 971.14 (1) (c); proceedings with respect to  
8 pretrial release under ch. 969 except where habeas corpus is utilized with respect to  
9 release on bail or as otherwise provided in ch. 969.

10 **SECTION 6.** 950.04 (1v) (g) of the statutes is amended to read:

11 950.04 (1v) (g) To have reasonable attempts made to notify the victim of  
12 hearings or court proceedings, as provided under ss. 302.113 (9g) (a) 2., 302.114 (6),  
13 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

14 **SECTION 7.** 950.04 (1v) (nt) of the statutes is created to read:

15 950.04 (1v) (nt) To attend a hearing on a petition for modification of a  
16 bifurcated sentence and provide a statement concerning modification of the  
17 bifurcated sentence, as provided under s. 302.113 (9g) (d).

18 **SECTION 8.** 973.01 (4) of the statutes is amended to read:

19 **973.01 (4) No GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT.** A  
20 person sentenced to a bifurcated sentence under sub. (1) shall serve the term of  
21 confinement in prison portion of the sentence without reduction for good behavior.  
22 The term of confinement in prison portion is subject to extension under s. 302.113 (3)  
23 and, if applicable, to reduction under s. 302.045 (3m) or 302.113 (9g).

24 **SECTION 9.** 977.05 (4) (jm) of the statutes is created to read:



**1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3370/P2ins  
MGD:.....

1           INSERT 3-7

2

3

4           ~~4~~ 2. A person subject to this section may not petition the court to modify the  
5           conditions of extended supervision within one year after the inmate's release to  
6           extended supervision.

4

5

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

LRB-3370Pldn  
JEO&MGD:kmg:km

August 9, 1999

Mike Brennan:

1. Please review the "geriatric clause" (proposed s. 302.113 (9g)) carefully. Note the following when reviewing the provision:

a) We reorganized the suggested provisions substantially and in some places substituted language used under current s. 302,113, stats.. Proposed s. 302.113 (9g) (g) is based on other statutes relating to victim notification.

b) Because the statutes do not currently refer to program review committees, this draft creates a definition based on a description of their duties under the administrative code, ss. DOC 302.18 and 302.19.

c) We weren't certain from the language that you sent whether an inmate is to have a right to counsel in the proceeding before the program review committee. This draft gives the inmate such a right. See proposed s. 302.113 (9g) (j). Is that your intent?

2. With respect to the provisions concerning modification, of the conditions of extended supervision, this draft authorizes DOC or a person subject to extended supervision to petition the sentencing court to modify the conditions of extended supervision only if the person was not sentenced to a term of life imprisonment. This authorization is based on the notion that the conditions set by the sentencing court may not be appropriate when, years later, the person is to be released to extended supervision. By contrast, conditions for a person sentenced to a term of life imprisonment are established shortly before the person's extended supervision begins. Nonetheless, a person sentenced to life imprisonment may be under extended supervision for decades. Thus, the conditions imposed when such a person is released to extended supervision may ultimately require modification as well. In view of this, do you want to have the provisions relating to modification of court-imposed conditions of extended supervision apply to persons sentenced to life imprisonment?

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

LRB-3370/P2dn  
JEO&MGD:kmg&wlj:mrc

August 9, 1999

Mike Brennan:

1. Please review the "geriatric clause" (proposed s. 302.113 (9g)) carefully. Note the following when reviewing the provision:

a> We reorganized the suggested provisions substantially and in some places substituted language used under current s. 302.113, stats. Proposed s. 302.113 (9g) (g) is based on other statutes relating to victim notification.

b) Because the statutes do not currently refer to program review committees, this draft creates a definition based on a description of their duties under the administrative code, ss. DOC 302.18 and 302.19.

c) We weren't certain from the language that you sent whether an inmate is to have a right to counsel in the proceeding before the program review committee. This draft gives the inmate such a right. See proposed s. 302.113 (9g) (j). Is that your intent?

2. With respect to the provisions concerning modification of the conditions of extended supervision, this draft authorizes DOC or a person subject to extended supervision to petition the sentencing court to modify the conditions of extended supervision only if the person was not sentenced to a term of life imprisonment. This authorization is based on the notion that the conditions set by the sentencing court may not be appropriate when, years later, the person is to be released to extended supervision. By contrast, conditions for a person sentenced to a term of life imprisonment are established shortly before the person's extended supervision begins. Nonetheless, a person sentenced to life imprisonment may be under extended supervision for decades. Thus, the conditions imposed when such a person is released to extended supervision may ultimately require modification as well. In view of this, do you want to have the provisions relating to modification of court-imposed conditions of extended supervision apply to persons sentenced to life imprisonment?

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**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT** to *amend* 302.113 (2), 302.113 (7), 911.01 (4) (c), 950.04 (1v) (g) and  
2 973.01 (4); and *to create* 302.113 (7m), 302.113 (9g), 950.04 (1v) (nt) and 977.05  
3 (4) (jm) of the statutes; **relating to:** modification of a bifurcated sentence in  
4 certain cases.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

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

5 **SECTION 1.** 302.113 (2) of the statutes is amended to read:  
6 302.113 (2) Except as provided in subs. (3) and (9), an inmate subject to this  
7 section is entitled to release to extended supervision after he or she has served the  
8 term of confinement in prison portion of the sentence imposed under's. 973.01, as

1 modified by the sentencing court under sub. (9g) or s. 302.045 (3m) (b) 1., if  
2 applicable.

3 **SECTION 2.** 302.113 (7) of the statutes is amended to read:

4 302.113 (7) Any person released to extended supervision under this section is  
5 subject to all conditions and rules of extended supervision until the expiration of the  
6 term of extended supervision portion of the bifurcated sentence. The department  
7 may set conditions of extended supervision in addition to any conditions of extended  
8 supervision set by the court under sub. (7m) or s. 973.01 (5) if the conditions set by  
9 the department do not conflict with the court's conditions.

10 **SECTION 3.** 302.113 (7m) of the statutes is created to read:

11 302.113 (7m) (a) Except as provided in par. (e), a person subject to this section  
12 or the department may petition the sentencing court to modify any conditions of  
13 extended supervision set by the court.

14 (b) If the department files a petition under this subsection, it shall serve a copy  
15 of the petition on the person who is the subject of the petition and, if the person is  
16 represented by an attorney, on the person's attorney. If a person who is subject to this  
17 section or his or her attorney files a petition under this subsection, the person or his  
18 or her attorney shall serve a copy of the petition on the department. The court shall  
19 serve a copy of a petition filed under this section on the district attorney. The court  
20 may direct the clerk of the court to provide notice of the petition to a victim of a crime  
21 committed by the person who is the subject of the petition.

22 (c) The court may conduct a hearing to consider the petition. The court may  
23 grant the petition in full or in part if it determines that the modification would meet  
24 the needs of the department and the public and would be consistent with the  
25 objectives of the person's sentence.

1 (d) A person subject to this section or the department may appeal an order  
2 entered by the court under this subsection. The appellate court may reverse the  
3 order only if it determines that the sentencing court improperly exercised its  
4 discretion in granting or denying the petition.

5 (e) 1. An inmate may not petition the court to modify the conditions of extended  
6 supervision earlier than one year before the date of the inmate's scheduled date of  
7 release to extended supervision or more than once before the inmate's release to  
8 extended supervision.

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

14 **SECTION 4.** 302.113 (9g) of the statutes is created to read:

15 302.113 (9g) (a) In this subsection, "program review committee" means the  
16 committee at a correctional institution that reviews the security classifications,  
17 institution assignments and correctional programming assignments of inmates  
18 confined in the institution.

19 (b) An inmate subject to this section may seek modification of his or her  
20 bifurcated sentence in the manner specified in par. (f) if he or she meets one of the  
21 following criteria:

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

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

1 (c) An inmate who meets one of the criteria under par. (b) may submit a petition  
2 to the program review committee at the correctional institution in which the inmate  
3 is confined requesting a modification of the inmate's bifurcated sentence in the  
4 manner specified in par. (f). If the program review committee determines that the  
5 public interest would be served by a modification of the inmate's bifurcated sentence  
6 in the manner provided under par. (f), the committee shall approve the petition for  
7 referral to the sentencing court and notify the department of its approval. The  
8 department shall then refer the inmate's petition to the sentencing court and request  
9 the court to conduct a hearing on the petition. If the program review committee  
10 determines that the public interest would not be served by a modification of the  
11 inmate's bifurcated sentence in the manner specified in par. (f), the committee shall  
12 deny the inmate's petition.

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

24 (e) At a hearing scheduled under par. (d), the inmate has the burden of proving  
25 by the greater weight of the credible evidence that a modification of the bifurcated

1 sentence in the manner specified in par. (f) would serve the public interest. If the  
2 inmate proves that a modification of the bifurcated sentence in the manner specified  
3 in par. (f) would serve the public interest, the court shall modify the inmate's  
4 bifurcated sentence in that manner. If the inmate does not prove that a modification  
5 of the bifurcated sentence in the manner specified in par. (f) would serve the public  
6 interest, the court shall deny the inmate's petition for modification of the bifurcated  
7 sentence.

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

10 1. The court shall reduce the term of confinement in prison portion of the  
11 inmate's bifurcated sentence in a manner that provides for the release of the inmate  
12 to extended supervision within 30 days after the date on which the court issues its  
13 order modifying the bifurcated sentence.

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

16 (g) 1. In this paragraph, "victim" has the meaning given in s. 950.02 (4).

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

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

11           (h) An inmate may appeal a court's decision denying the inmate's petition for  
12 modification of his or her bifurcated sentence. In an appeal under this paragraph,  
13 the appellate court may reverse a decision denying a petition for modification of a  
14 bifurcated sentence only if it determines that the sentencing court improperly  
15 exercised its discretion in denying the referral.

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

22           (j) An inmate eligible to seek modification of his or her bifurcated sentence  
23 under this subsection has a right to be represented by counsel in proceedings under  
24 this subsection. An inmate, or the department on the inmate's behalf, may apply to  
25 the state public defender for determination of indigency and appointment of counsel

1 under s. 977.05 (4) (jm) before or after the filing of a petition with the program review  
2 committee under par. (c). If an inmate whose petition has been referred to the court  
3 under par. (c) is without counsel, the court shall refer the matter to the state public  
4 defender for determination of indigency and appointment of counsel under s. 977.05  
5 (4) (jm).

6 **SECTION 5.** 911.01 (4) (c) of the statutes is amended to read:

7 **911.01 (4) (c) *Miscellaneous proceedings.*** Proceedings for extradition or  
8 rendition; sentencing, ~~or~~ granting or revoking probation, modification of a bifurcated  
9 sentence under s. 302.113 (9g), issuance of arrest warrants, criminal summonses and  
10 search warrants; proceedings under s. 971.14 (1) (c); proceedings with respect to  
11 pretrial release under ch. 969 except where habeas corpus is utilized with respect to  
12 release on bail or as otherwise provided in ch. 969.

13 **SECTION 6.** 950.04 (1v) (g) of the statutes is amended to read:

14 950.04 (1v) (g) To have reasonable attempts made to notify the victim of  
15 hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6),  
16 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

17 **SECTION 7.** 950.04 (1v) (nt) of the statutes is created to read:

18 950.04 (1v) (nt) To attend a hearing on a petition for modification of a  
19 bifurcated sentence and provide a statement concerning modification of the  
20 bifurcated sentence, as provided under s. 302.113 (9g) (d).

21 **SECTION 8.** 973.01 (4) of the statutes is amended to read:

22 **973.01 (4) No** GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. **A**  
23 person sentenced to a bifurcated sentence under sub. (1) shall serve the term of  
24 confinement in prison portion of the sentence without reduction for good behavior.



1 The term of confinement in prison portion is subject to extension under s. 302.113 (3)  
2 and, if applicable, to reduction under s. 302.045 (3m) or 302.113 (9g).

3 **SECTION 9.** 977.05 (4) (jm) of the statutes is created to read:

4 977.05 (4) (jm) At the request of an inmate determined by the state public  
5 defender to be indigent or upon referral of a court under s. 302.113 (9g) (j), represent  
6 the inmate in proceedings for modification of a bifurcated sentence under s. 302.113  
7 (9g) before a program review committee and the sentencing court, if the state public  
8 defender determines the case should be pursued.

9 **(END)**