

**2009 DRAFTING REQUEST**

**Bill**

Received: **07/06/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Hebl (608) 266-7678**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Correctional System - misc**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hebl@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Credit for time served prior to revocation

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**Instructions:**

See email forwarded on 7-6-09

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**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>
/?				_____			State
/1	phurley 07/14/2009	kfollett 08/04/2009	jfrantze 08/04/2009	_____	mbarman 08/04/2009	cduerst 09/02/2009	

FE Sent For: **"/1" @ intro, 9/11/09**

**<END>**

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/?	phurley	11/10/09 8/14	8/14	8/14 8/14			State

FE Sent For:

<END>

## Hurley, Peggy

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**From:** Hanaman, Cathlene  
**Sent:** Monday, July 06, 2009 11:10 AM  
**To:** Hurley, Peggy  
**Subject:** FW:

**Attachments:** Leg. Council TIS Memo.pdf

I don't know who is up.

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**From:** Battiato, Kate  
**Sent:** Monday, July 06, 2009 11:08 AM  
**To:** Hanaman, Cathlene  
**Subject:** RE:

Hi Cathlene,

No I have not submitted the drafting request with anyone else yet and would greatly appreciate your assistance. Attached is a Legislative Council memo detailing the proposal Rep. Hebl would like drafted relating to crediting "street time" prior to revocation of extended supervision or parole in the calculation of a person's sentence. Rep. Hebl would like the draft to reflect the fourth option listed in the discussion section; crediting time served on ES or parole prior to revocation except for any days that the person had absconded from supervision. Thank you for your assistance in this matter. Please feel free to call me or Attorney Anne Sappenfield if you have any questions.

Kate

Kate Battiato  
Office of State Representative Gary Hebl  
46th Assembly District  
Phone: 266-7678



Leg. Council TIS  
Memo.pdf (194...

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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE GARY HEBL  
FROM: Anne Sappenfield, Senior Staff Attorney  
RE: Crediting "Street Time" on Extended Supervision and Parole Against a Person's Sentence  
DATE: June 25, 2009

This memorandum describes current law under which a person serving a term of extended supervision (ES) or parole does not receive credit for time served on ES or parole (commonly referred to as "street time") if ES or parole is revoked. The memorandum also discusses options for legislation to count street time as time served upon revocation of ES or parole.

### CURRENT LAW

Under current law, if a person who is released to ES violates a condition of ES, the reviewing authority<sup>1</sup> may revoke the ES of the person. If the ES is revoked, the person must be returned to the circuit court for the county in which the person was convicted of the offense for which the person is on ES and the court must order the person to be returned to prison for any specified period of time that does not exceed the time remaining on the bifurcated sentence.

Current statutes define the time remaining on the bifurcated sentence as the total length of the bifurcated sentence (i.e., the term of confinement in prison ordered plus the term of ES ordered), less all of the following:

- The time served by the person *in confinement* under the sentence before release to ES.
- All time served *in confinement* for previous revocations of ES under the sentence.

[s. 302.113 (9) (am), Stats.]

When a person is subsequently released to ES after having served the term of confinement ordered following the revocation, he or she is subject to ES supervision and conditions until the

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<sup>1</sup> If a hearing is held on the issue of revocation, the reviewing authority is an administrative law judge with the Division of Hearings and Appeals, Department of Administration. If the person waives the hearing, the reviewing authority is the Department of Corrections (DOC).

expiration of the remaining ES portion of the bifurcated sentence. The remaining ES portion of the bifurcated sentence is the total length of the bifurcated sentence, less the time served by the person before release to ES and less all time served in confinement for previous revocations of ES under the bifurcated sentence. [s. 302.113 (9) (c), Stats.] As an example, a person: (1) is sentenced to five years of confinement and five years of ES; (2) serves his five-year term of confinement and is released to ES; (3) successfully serves two years on ES and then is revoked; and (4) serves one year of confinement because his ES is revoked. When the person is released he must serve four years on ES when he is released because, of his total 10-year sentence, he has served six years in confinement. Therefore, under this example, the person serves six years on ES -- a year longer than originally ordered.

Time remaining on parole is calculated in the same manner. If a person's parole is revoked, the person may be returned to prison for a period up to the remainder of the sentence. The remainder of the sentence is the entire sentence, less time served *in custody* prior to parole. [s. 302.11 (7) (am), Stats.]

One major difference between ES and parole is that, under current law, DOC may discharge a parolee after two years of supervision.<sup>2</sup> [s. 302.11 (6), Stats.] DOC's administrative rules provide that a parolee may be discharged if both of the following conditions are met:

- The parolee has maintained a minimum status on supervision for a reasonable period of time.
- The parolee has satisfied all of the goals and objectives, and conditions and rules of the client's supervision.
- The parolee has reached his or her mandatory release date or has been under supervision for two years.

[s. DOC 328.17 (3) (b), Wis. Adm. Code.]

### DISCUSSION

Courts have held that parole is a statutorily created privilege that grants conditional freedom to a parolee, and that a prisoner has no constitutional right to parole. The same analysis would apply to ES. [See *Ashford v. Division of Hearings and Appeals*, 177 Wis. 2d 34, 501 NW 2d 824, 828 (1993).]

States' laws vary in how street time is treated. According to an article in *The Washington Post* last year, 10 states do not count time in the community on parole as part of the sentence, and 14 states allow discretion on whether to allow or deny credit. [Robert E. Pierre, *Making Up for Lost "Street Time,"* *The Washington Post*, July 12, 2008.]

Some states, like Wisconsin, do not count the time served on ES or parole as part of the person's sentence. The advantage to this approach is that the state has leverage to encourage compliance with conditions of supervision because a person always has the potential to serve a term in prison. In addition, when a person is re-released to the community following a revocation, he or she remains on supervision as opposed to having completed his or her entire sentence except in cases in which, upon

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<sup>2</sup> SECTION 3378r of Assembly Substitute Amendment 1 to 2009 Assembly Bill 75, the biennial budget bill, creates s. 973.01 (4m), Stats., which authorizes DOC to discharge a person from ES after he or she has served two years of ES if the person has met the conditions of ES and the reduction is in the interests of justice.

revocation, the person is ordered to be returned to prison for the entire time remaining on the sentence. The disadvantage is that some offenders serve very long terms on supervision because they are revoked several times and continue to extend their term of ES or parole.

Other states count all time served on parole or time served while in compliance with parole (e.g., not a fugitive of justice) as decreasing the total sentence. Finally, several states provide discretion to the court or parole board to forfeit time served on parole under certain conditions.

There are several options for legislation to count time served on parole as time served on a sentence:

- Persons on ES or parole could be granted credit for all time served in the community on parole or ES prior to a revocation.
- Persons could be granted credit for a portion of "good time" earned while serving ES or parole. For example, the Governor's budget proposal (2009 Assembly Bill 75) would have awarded certain persons on ES or parole a day of credit for every 1 to 5.7 days successfully served on ES or parole, depending upon the classification and type of offense for which the person was originally convicted.
- Time served on ES or parole could be generally credited but could be taken away if the person commits a criminal offense leading to revocation.
- Time served on ES or parole could be credited except for any days that the person had absconded from supervision.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:ty



Cmt

## 2009 BILL

7-14-09

Gen

1

AN ACT ...; relating to: sentencing credit for time served on parole or under  
2 extended supervision.

### *Analysis by the Legislative Reference Bureau*

X

Under current law, a person who was sentenced for a felony prior to December 31, 1999, or a misdemeanor prior to February 1, 2003, may be released from prison after serving a portion of his or her sentence and placed in the community on parole for the remainder of his or her sentence. A person sentenced for a felony on or after December 31, 1999, or a misdemeanor on or after February 1, 2003, is sentenced to a bifurcated sentence, which requires the person to serve a portion of his or her sentence in prison and the remainder of the sentence in the community under extended supervision.

A person who is on parole or under extended supervision must comply with certain conditions; a person who fails to comply with the conditions of his or her parole or extended supervision may have his or her parole or extended supervision revoked and may be returned to prison for a period of time not to exceed the time remaining on his or her original sentence.

X

Under current law, the time remaining on his or her original sentence equals the length of the original sentence minus the amount of time the person was incarcerated. If a person is returned to prison for less than the entire amount of time remaining on his or her original sentence, he or she may be released again on parole or under extended supervision for the remainder of his or her sentence, unless the department of corrections determines that he or she may be discharged earlier. Under current law, the remainder of his or her sentence equals the length of the original sentence minus the amount of time the person was incarcerated.



**BILL**

Under this bill, if a person is returned to prison after his or her parole or extended supervision is revoked, the remainder of his or her sentence equals the length of the original sentence minus amount of time he or she served in prison and minus the amount of time he or she served on parole or under extended supervision prior to the revocation.

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:*

1           **SECTION 1.** 302.11 (7) (am) of the statutes is amended to read:

2           302.11 (7) (am) The reviewing authority may return a parolee released under  
3 sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) to prison for a period up to the remainder  
4 of the sentence for a violation of the conditions of parole. The remainder of the  
5 sentence is the entire sentence, less time served in custody ~~prior to parole~~ and time  
6 served on parole prior to revocation. The revocation order shall provide the parolee  
7 with credit in accordance with ss. 304.072 and 973.155.

History: 1977 c. 266, 353; 1979 c. 221; 1981 c. 266; 1983 a. 66, 528; 1985 a. 27; 1985 a. 332 s. 251 (1); 1987 a. 27, 412; 1989 a. 31 ss. 1629, 1630; Stats. s. 302.11; 1989 a. 107; 1991 a. 39; 1993 a. 79, 97, 194, 289, 483; 1995 a. 77, 448; 1997 a. 133, 275, 283, 284, 295, 326; 1999 a. 188; 2001 a. 16, 109; 2005 a. 344.

8           **SECTION 2.** 302.113 (9) (am) of the statutes, as affected by 2009 Wisconsin Act

9 Act 28, is amended to read:

10           302.113 (9) (am) If a person released to extended supervision under this section  
11 or under s. 302.1135 violates a condition of extended supervision, the reviewing  
12 authority may revoke the extended supervision of the person. If the extended  
13 supervision of the person is revoked, the reviewing authority shall order the person  
14 to be returned to prison for ~~any specified period of time that does not exceed~~ <sup>keep stays in</sup> the time  
15 remaining on the bifurcated sentence. The time remaining on the bifurcated  
16 sentence is the total length of the bifurcated sentence, less time served by the person  
17 in confinement under the sentence ~~before release to extended supervision under sub.~~  
18 (2) and less all time served ~~in confinement for previous revocations of extended~~

**BILL**

1 ~~supervision under the sentence~~ by the person on extended supervision under the  
 2 sentence prior to revocation of extended supervision. The order returning a person  
 3 to prison under this paragraph shall provide the person whose extended supervision  
 4 was revoked with credit in accordance with ss. 304.072 and 973.155.

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33; 2005 a. 42.

5 **SECTION 3.** 302.113 (9) (c) of the statutes, as affected by 2009 Wisconsin Act (Act)  
 6 28, is amended to read:

7 302.113 (9) (c) A person who is subsequently released to extended supervision  
 8 after service of the period of time specified by the order under par. (am) is subject to  
 9 all conditions and rules under ~~sub. (7)~~ <sup>sub.</sup> (7) and, if applicable, ~~sub. (7) and, if~~ <sup>sub.</sup> (7m)  
 10 ~~applicable, sub. (7m)~~ until the expiration of the remaining extended supervision  
 11 portion of the bifurcated sentence or until the department discharges the person  
 12 under s. 973.01 (4m), whichever is appropriate. The remaining extended supervision  
 13 portion of the bifurcated sentence is the total length of the bifurcated sentence, less  
 14 the time served by the person in confinement ~~under the bifurcated sentence before~~  
 15 ~~release to extended supervision under sub. (2)~~ and less all time served ~~in confinement~~  
 16 ~~for previous revocations of extended supervision under the bifurcated sentence by~~  
 17 the person on extended supervision under the sentence prior to revocation of  
 18 extended supervision.

NOTE: NOTE: The correct citation form is shown in brackets. Corrective legislation is pending. NOTE:

History: 1997 a. 283; 2001 a. 16, 109; 2003 a. 33; 2005 a. 42.

19 **SECTION 4. Initial applicability.**

20 (1) This act first applies to a person who is released to parole or to extended  
 21 supervision on the effective date of this subsection.

22 **SECTION 5. Effective date.**

23 (1) This act takes effect on October 1, 2009.

24 (END)

**Duerst, Christina**

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**From:** Battiato, Kate

**Sent:** Wednesday, September 02, 2009 4:26 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 09-3083/1 Topic: Credit for time served prior to revocation

Please Jacket LRB 09-3083/1 for the ASSEMBLY.