

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

D-note 2-21-10 by 2-23-10

1 AN ACT *to repeal* 20.410 (1) (ds), 301.068, 302.042, 302.045 (3m) (d), 302.05 (3)

2 (c) 3., 302.113 (2) (b), 302.113 (2) (c), 302.113 (3) (e), 302.113 (9h), 302.1135,

3 304.06 (1) (bg), 304.06 (1) (bk), 304.06 (1) (bn), 304.06 (1) (br), 973.01 (3d),

4 973.01 (4m), 973.031, 973.09 (3) (d) and 973.195 (1r) (j); *to renumber and*

5 *amend* 302.05 (1) and 302.113 (2) (a); *to amend* 15.01 (2), 15.06 (6), 15.145 (1),

6 17.07 (3m), 20.410 (2) (title), 20.410 (2) (a), 20.923 (4) (b) 6., 230.08 (2) (pd),

7 301.03 (3), 301.048 (2) (am) 3., 301.21 (1m) (c), 301.21 (2m) (c), 302.045 (1),

8 302.045 (3), 302.05 (title), 302.05 (2), 302.05 (3) (b), 302.05 (3) (c) 1., 302.05 (3)

9 (c) 2. (intro.), 302.05 (3) (d), 302.11 (1g) (b) (intro.), 302.11 (1g) (b) 2., 302.11 (1g)

10 (c), 302.11 (1g) (d), 302.11 (1m), 302.11 (7) (c), 302.113 (1), 302.113 (3) (d),

11 302.113 (7), 302.113 (9) (am), 302.113 (9) (b), 302.113 (9) (c), 302.114 (9) (am),

12 302.114 (9) (c), 304.01 (title), 304.01 (1), 304.01 (2) (intro.), 304.01 (2) (b), 304.01

13 (2) (c), 304.01 (2) (d), 304.06 (title), 304.06 (1) (b), 304.06 (1) (c) (intro.), 304.06

14 (1) (d) 1., 304.06 (1) (d) 2., 304.06 (1) (d) 3m., 304.06 (1) (d) 4., 304.06 (1) (e),

15 304.06 (1) (eg), 304.06 (1) (em), 304.06 (1) (f), 304.06 (1) (g), 304.06 (1m) (intro.),

1 304.06 (1q) (b), 304.06 (1q) (c), 304.06 (1x), 304.06 (2m) (d), 304.06 (3), 304.06
 2 (3e), 304.06 (3m), 304.071 (1), 801.50 (5), 809.30 (1) (c), 911.01 (4) (c), 950.04 (1v)
 3 (f), 950.04 (1v) (g), 950.04 (1v) (gm), 950.04 (1v) (nt), 973.01 (4), 973.01 (7),
 4 973.195 (1r) (a), 974.07 (4) (b), 976.03 (23) (c) and 977.05 (4) (jm); **to repeal and**
 5 **recreate** 302.045 (2) (d); and **to create** 301.03 (3v), 302.05 (1) (am) 1., 302.05
 6 (1) (am) 2., 302.05 (1) (b), 302.113 (9) (at) and 302.113 (9g) of the statutes;
 7 **relating to:** sentencing, revocation of parole or extended supervision, and
 8 requiring the exercise of rule-making authority.

Inset analysis

Analysis by the Legislative Reference Bureau

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

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

9 SECTION 1. 15.01 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is
 10 amended to read:

11 15.01 (2) "Commission" means a 3-member governing body in charge of a
 12 department or independent agency or of a division or other subunit within a
 13 department, except for the Wisconsin waterways commission which shall consist of
 14 5 members and the ~~earned release review parole~~ parole commission which shall consist of
 15 8 members. A Wisconsin group created for participation in a continuing interstate
 16 body, or the interstate body itself, shall be known as a "commission", but is not a
 17 commission for purposes of s. 15.06. The ~~earned release review parole~~ parole commission
 18 created under s. 15.145 (1) shall be known as a "commission", but is not a commission
 19 for purposes of s. 15.06.

1 **SECTION 2.** 15.06 (6) of the statutes, as affected by 2009 Wisconsin Act 28, is
2 amended to read:

3 **15.06 (6) QUORUM.** A majority of the membership of a commission constitutes
4 a quorum to do business, except that vacancies shall not prevent a commission from
5 doing business. This subsection does not apply to the ~~earned release review parole~~
6 commission.

7 **SECTION 3.** 15.145 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
8 amended to read:

9 **15.145 (1) ~~EARNED RELEASE REVIEW~~ PAROLE COMMISSION.** There is created in the
10 department of corrections ~~an earned release review a parole~~ commission consisting
11 of 8 members. Members shall have knowledge of or experience in corrections or
12 criminal justice. The members shall include a chairperson who is nominated by the
13 governor, and with the advice and consent of the senate appointed, for a 2-year term
14 expiring March 1 of the odd-numbered years, subject to removal under s. 17.07 (3m),
15 and the remaining members in the classified service appointed by the chairperson.

16 **SECTION 4.** 17.07 (3m) of the statutes, as affected by 2009 Wisconsin Act 28, is
17 amended to read:

18 **17.07 (3m)** Notwithstanding sub. (3), the ~~earned release review parole~~
19 commission chairperson may be removed by the governor, at pleasure.

20 **SECTION 5.** 20.410 (1) (ds) of the statutes, as affected by 2009 Wisconsin Act 28,
21 is repealed.

22 **SECTION 6.** 20.410 (2) (title) of the statutes, as affected by 2009 Wisconsin Act
23 28, is amended to read:

24 **20.410 (2) (title) ~~EARNED RELEASE REVIEW~~ PAROLE COMMISSION.**

1 **SECTION 7.** 20.410 (2) (a) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 20.410 (2) (a) *General program operations.* The amounts in the schedule for
4 the general program operations of the ~~earned release review~~ parole commission.

5 **SECTION 8.** 20.923 (4) (b) 6. of the statutes, as affected by 2009 Wisconsin Act
6 28, is amended to read:

7 20.923 (4) (b) 6. ~~Earned release review~~ Parole commission: chairperson.

8 **SECTION 9.** 230.08 (2) (pd) of the statutes, as affected by 2009 Wisconsin Act 28,
9 is amended to read:

10 230.08 (2) (pd) The chairperson of the ~~earned release review~~ parole
11 commission.

12 **SECTION 10.** 301.03 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
13 is amended to read:

14 301.03 (3) Administer parole, extended supervision, and probation matters,
15 except that the decision to grant or deny parole ~~or to grant extended supervision~~
16 ~~under s. 304.06 (1)~~ to inmates shall be made by the ~~earned release review~~ parole
17 commission and the decision to revoke probation, extended supervision or parole in
18 cases in which there is no waiver of the right to a hearing shall be made by the
19 division of hearings and appeals in the department of administration. The secretary
20 may grant special action parole releases under s. 304.02. ~~The department may~~
21 ~~discharge inmates from extended supervision under s. 973.01 (4m) and may modify~~
22 ~~a bifurcated sentence under s. 302.113 (9h), and the earned release review~~
23 ~~commission may modify a sentence under s. 302.1135.~~ The department shall
24 promulgate rules establishing a drug testing program for probationers, parolees and
25 persons placed on extended supervision. The rules shall provide for assessment of

1 fees upon probationers, parolees and persons placed on extended supervision to
2 partially offset the costs of the program.

3 **SECTION 11.** 301.03 (3v) of the statutes is created to read:

4 301.03 (3v) Promulgate rules establishing a review procedure for granting
5 release to extended supervision for persons sentenced between October 1, 2009 and
6 the effective date of this subsection [LRB inserts date], for reviewing petitions for
7 release that were submitted between October 1, 2009 and the effective date of this
8 subsection [LRB inserts date], and for reviewing revocations of extended
9 supervision that occurred between October 1, 2009 and the effective date of this
10 subsection [LRB inserts date].

11 **SECTION 12.** 301.048 (2) (am) 3. of the statutes, as affected by 2009 Wisconsin
12 Act 28, is amended to read:

13 301.048 (2) (am) 3. The ~~earned release review~~ parole commission grants him
14 or her parole under s. 304.06 and requires his or her participation in the program as
15 a condition of parole under s. 304.06 (1x).

16 **SECTION 13.** 301.068 of the statutes, as affected by 2009 Wisconsin Act 28, is
17 repealed.

18 **SECTION 14.** 301.21 (1m) (c) of the statutes, as affected by 2009 Wisconsin Act
19 28, is amended to read:

20 301.21 (1m) (c) Any hearing to consider parole ~~or whether to grant extended~~
21 ~~supervision, if the inmate is sentenced under s. 973.01~~ to which an inmate confined
22 under this contract may be entitled by the laws of Wisconsin will be conducted by the
23 Wisconsin ~~earned release review~~ parole commission under rules of the department.

24 **SECTION 15.** 301.21 (2m) (c) of the statutes, as affected by 2009 Wisconsin Act
25 28, is amended to read:

1 301.21 (2m) (c) Any hearing to consider parole ~~or whether to grant extended~~
2 supervision, ~~if the prisoner is sentenced under s. 973.01~~ to which a prisoner confined
3 under a contract under this subsection may be entitled by the laws of Wisconsin shall
4 be conducted by the Wisconsin ~~earned release review~~ parole commission under rules
5 of the department.

6 **SECTION 16.** 302.042 of the statutes, as affected by 2009 Wisconsin Act 28, is
7 repealed.

8 **SECTION 17.** 302.045 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
9 is amended to read:

10 302.045 (1) PROGRAM. The department shall provide a challenge incarceration
11 program for inmates selected to participate under sub. (2). The program shall
12 provide participants with manual labor, personal development counseling,
13 substance abuse treatment and education, military drill and ceremony, counseling,
14 and strenuous physical exercise, for participants who have not attained the age of
15 30 as of the date on which they begin participating in the program, or
16 age-appropriate strenuous physical exercise, for all other participants, in
17 preparation for release on parole or extended supervision. ~~The program shall~~
18 ~~provide, according to each participant's needs as assessed under sub. (2) (d),~~
19 ~~substance abuse treatment and education, including intensive intervention when~~
20 ~~indicated, personal development counseling, education, employment readiness~~
21 ~~training, and other treatment options that are directly related to the participant's~~
22 ~~criminal behavior.~~ The department shall design the program to include not less than
23 50 participants at a time and so that a participant may complete the program in not
24 more than 180 days. The department may restrict participant privileges as
25 necessary to maintain discipline.

1 **SECTION 18.** 302.045 (2) (d) of the statutes, as affected by 2009 Wisconsin Act
2 28, is repealed and recreated to read:

3 302.045 (2) (d) The department determines, during assessment and
4 evaluation, that the inmate has a substance abuse problem.

5 **SECTION 19.** 302.045 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

7 302.045 (3) PAROLE ELIGIBILITY. Except as provided in sub. (4), if the department
8 determines that an inmate serving a sentence other than one imposed under s.
9 973.01 has successfully completed the challenge incarceration program, the ~~earned~~
10 ~~release review parole~~ commission shall parole the inmate for that sentence under s.
11 304.06, regardless of the time the inmate has served. When the ~~earned release~~
12 ~~review parole~~ commission grants parole under this subsection, it must require the
13 parolee to participate in an intensive supervision program ~~appropriate to the~~
14 ~~parolee's rehabilitation needs~~ for drug abusers as a condition of parole.

15 **SECTION 20.** 302.045 (3m) (d) of the statutes, as affected by 2009 Wisconsin Act
16 28, is repealed.

17 **SECTION 21.** 302.05 (title) of the statutes, as affected by 2009 Wisconsin Act 28,
18 is amended to read:

19 **302.05 (title) Wisconsin earned release substance abuse program.**

20 **SECTION 22.** 302.05 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
21 is renumbered 302.05 (1) (am) (intro.) and amended to read:

22 **302.05 Wisconsin earned release program.** (1) (am) (intro.) The
23 department of corrections ~~shall, at any correctional facility the department~~
24 ~~determines is appropriate, provide a rehabilitation program for inmates for the~~
25 ~~purposes of the earned release program described in sub. (3).~~ and the department of

1 health services may designate a section of a mental health institute as a correctional
2 treatment facility for the treatment of substance abuse of inmates transferred from
3 Wisconsin state prisons. This section shall be administered by the department of
4 corrections and shall be known as the Wisconsin substance abuse program. The
5 department of corrections and the department of health services shall ensure that
6 the residents at the institution and the residents in the substance abuse program:

7 **SECTION 23.** 302.05 (1) (am) 1. of the statutes is created to read:

8 302.05 (1) (am) 1. Have access to all facilities that are available at the
9 institution and are necessary for the treatment programs designed by the
10 departments.

11 **SECTION 24.** 302.05 (1) (am) 2. of the statutes is created to read:

12 302.05 (1) (am) 2. Are housed on separate wards.

13 **SECTION 25.** 302.05 (1) (b) of the statutes is created to read:

14 302.05 (1) (b) The department of corrections and the department of health
15 services shall, at any correctional facility the departments determine is appropriate,
16 provide a substance abuse treatment program for inmates for the purposes of the
17 earned release program described in sub. (3).

18 **SECTION 26.** 302.05 (2) of the statutes, as affected by 2009 Wisconsin Act 28,
19 is amended to read:

20 302.05 (2) Transfer to a correctional treatment facility for ~~participation in a~~
21 ~~program described in sub. (1)~~ the treatment of substance abuse shall be considered
22 a transfer under s. 302.18.

23 **SECTION 27.** 302.05 (3) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

1 302.05 (3) (b) Except as provided in par. (d), if the department determines that
2 an eligible inmate serving a sentence other than one imposed under s. 973.01 has
3 successfully completed a ~~rehabilitation~~ treatment program described in sub. (1), the
4 ~~earned release review parole~~ commission shall parole the inmate for that sentence
5 under s. 304.06, regardless of the time the inmate has served. If the ~~earned release~~
6 ~~review parole~~ commission grants parole under this paragraph, it shall require the
7 parolee to participate in an intensive supervision program ~~appropriate to the~~
8 ~~parolee's rehabilitation needs for drug abusers~~ as a condition of parole.

9 **SECTION 28.** 302.05 (3) (c) 1. of the statutes, as affected by 2009 Wisconsin Act
10 28, is amended to read:

11 302.05 (3) (c) 1. Except as provided in par. (d), if the department determines
12 that an eligible inmate serving the term of confinement in prison portion of a
13 bifurcated sentence imposed under s. 973.01 has successfully completed a
14 ~~rehabilitation~~ treatment program described in sub. (1), the department shall inform
15 the court that sentenced the inmate.

16 **SECTION 29.** 302.05 (3) (c) 2. (intro.) of the statutes, as affected by 2009
17 Wisconsin Act 28, is amended to read:

18 302.05 (3) (c) 2. (intro.) Upon being informed by the department under subd.
19 1. that an inmate whom the court sentenced under s. 973.01 has successfully
20 completed a ~~rehabilitation~~ treatment program described in sub. (1), the court shall
21 modify the inmate's bifurcated sentence as follows:

22 **SECTION 30.** 302.05 (3) (c) 3. of the statutes is repealed.

23 **SECTION 31.** 302.05 (3) (d) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

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

4 **SECTION 32.** 302.11 (1g) (b) (intro.) of the statutes, as affected by 2009
5 Wisconsin Act 28, is amended to read:

6 302.11 (1g) (b) (intro.) Before an incarcerated inmate with a presumptive
7 mandatory release date reaches the presumptive mandatory release date specified
8 under par. (am), the ~~earned release review~~ parole commission shall proceed under
9 s. 304.06 (1) to consider whether to deny presumptive mandatory release to the
10 inmate. If the ~~earned release review~~ parole commission does not deny presumptive
11 mandatory release, the inmate shall be released on parole. The ~~earned release~~
12 ~~review~~ parole commission may deny presumptive mandatory release to an inmate
13 only on one or more of the following grounds:

14 **SECTION 33.** 302.11 (1g) (b) 2. of the statutes, as affected by 2009 Wisconsin Act
15 28, is amended to read:

16 302.11 (1g) (b) 2. Refusal by the inmate to participate in counseling or
17 treatment that the social service and clinical staff of the institution determines is
18 necessary for the inmate, including pharmacological treatment using an
19 antiandrogen or the chemical equivalent of an antiandrogen if the inmate is a serious
20 child sex offender as defined in s. 304.06 (1q) (a). The ~~earned release review~~ parole
21 commission may not deny presumptive mandatory release to an inmate because of
22 the inmate's refusal to participate in a rehabilitation program under s. 301.047.

23 **SECTION 34.** 302.11 (1g) (c) of the statutes, as affected by 2009 Wisconsin Act
24 28, is amended to read:

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

5 **SECTION 35.** 302.11 (1g) (d) of the statutes, as affected by 2009 Wisconsin Act
6 28, is amended to read:

7 302.11 (1g) (d) An inmate may seek review of a decision by the ~~earned-release~~
8 ~~review~~ parole commission relating to the denial of presumptive mandatory release
9 only by the common law writ of certiorari.

10 **SECTION 36.** 302.11 (1m) of the statutes, as affected by 2009 Wisconsin Act 28,
11 is amended to read:

12 302.11 (1m) An inmate serving a life term is not entitled to mandatory release.
13 Except as provided in ss. 939.62 (2m) (c) and 973.014, the ~~earned-release-review~~
14 parole commission may parole the inmate as specified in s. 304.06 (1).

15 **SECTION 37.** 302.11 (7) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
16 is amended to read:

17 302.11 (7) (c) The ~~earned-release-review~~ parole commission may subsequently
18 parole, under s. 304.06 (1), and the department may subsequently parole, under s.
19 304.02, a parolee who is returned to prison for violation of a condition of parole.

20 **SECTION 38.** 302.113 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
21 is amended to read:

22 302.113 (1) An inmate is subject to this section if he or she is serving a
23 bifurcated sentence imposed under s. 973.01. ~~An inmate convicted of a misdemeanor~~
24 ~~or of a Class F to Class I felony that is not a violent offense, as defined in s. 301.048~~
25 (2) (bm) 1., and who is eligible for positive adjustment time under sub. (2) (b)

1 pursuant to s. ~~973.01 (3d) (b)~~ may be released to extended supervision under sub. (2)
2 (b) or (9h). ~~An inmate convicted of a Class C to Class E felony or a Class F to Class~~
3 ~~I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., or a Class F to~~
4 ~~Class I felony that is not a violent offense, as defined under s. 301.048 (2) (bm) 1., but~~
5 ~~who is ineligible for positive adjustment time under sub. (2) (b) pursuant to s. 973.01~~
6 ~~(3d) (b) may be released to extended supervision only under sub. (2) (a) or (9h) or s.~~
7 ~~304.06.~~

8 **SECTION 39.** 302.113 (2) (a) of the statutes, as affected by 2009 Wisconsin Act
9 28, is renumbered 302.113 (2) and amended to read:

10 302.113 (2) Except as provided in par. (b) and subs. (3) and (9) and s. 304.06,
11 an inmate subject to this section is entitled to release to extended supervision after
12 he or she has served the term of confinement in prison portion of the sentence
13 imposed under s. 973.01, as modified by the department under sub. (9h), as modified
14 under s. 302.1135 by the earned release review commission in the manner specified
15 in s. 302.1135 (6) (a), or as modified by the sentencing court under sub. (9g) or s.
16 302.045 (3m) (b) 1., 302.05 (3) (c) 2. a., or 973.195 (1r), if applicable.

17 **SECTION 40.** 302.113 (2) (b) of the statutes, as affected by 2009 Wisconsin Act
18 28, is repealed.

19 **SECTION 41.** 302.113 (2) (c) of the statutes, as affected by 2009 Wisconsin Act
20 28, is repealed.

21 **SECTION 42.** 302.113 (3) (d) of the statutes, as affected by 2009 Wisconsin Act
22 28, is amended to read:

23 302.113 (3) (d) If the term of confinement in prison portion of a bifurcated
24 sentence for a Class B felony is increased under this subsection, the term of extended

1 supervision is reduced so that the total length of the bifurcated sentence does not
2 change.

3 **SECTION 43.** 302.113 (3) (e) of the statutes, as affected by 2009 Wisconsin Act
4 28, is repealed.

5 **SECTION 44.** 302.113 (7) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

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

15 **SECTION 45.** 302.113 (9) (am) of the statutes, as affected by 2009 Wisconsin Act
16 28, is amended to read:

17 302.113 (9) (am) If a person released to extended supervision under this section
18 ~~or under s. 302.1135~~ violates a condition of extended supervision, the reviewing
19 authority may revoke the extended supervision of the person. If the extended
20 supervision of the person is revoked, the ~~reviewing authority~~ person shall be
21 returned to the circuit court for the county in which the person was convicted of the
22 offense for which he or she was on extended supervision, and the court shall order
23 the person to be returned to prison for any specified period of time that does not
24 exceed the time remaining on the bifurcated sentence. The time remaining on the
25 bifurcated sentence is the total length of the bifurcated sentence, less time served by

1 the person in confinement under the sentence before release to extended supervision
2 under sub. (2) and less all time served in confinement for previous revocations of
3 extended supervision under the sentence. The order returning a person to prison
4 under this paragraph shall provide the person whose extended supervision was
5 revoked with credit in accordance with ss. 304.072 and 973.155.

6 **SECTION 46.** 302.113 (9) (at) of the statutes, as affected by 2009 Wisconsin Act
7 28, is created to read:

8 302.113 (9) (at) When a person is returned to court under par. (am) after
9 revocation of extended supervision, the reviewing authority shall make a
10 recommendation to the court concerning the period of time for which the person
11 should be returned to prison. The recommended time period may not exceed the time
12 remaining on the bifurcated sentence, as calculated under par. (am).

13 **SECTION 47.** 302.113 (9) (b) of the statutes, as affected by 2009 Wisconsin Act
14 28, is amended to read:

15 302.113 (9) (b) A person who is returned to prison after revocation of extended
16 supervision shall be incarcerated for the entire period of time specified by the ~~order~~
17 court under par. (am). The period of time specified under par. (am) may be extended
18 in accordance with sub. (3). If a person is returned to prison under par. (am) for a
19 period of time that is less than the time remaining on the bifurcated sentence, the
20 person shall be released to extended supervision after he or she has served the period
21 of time specified by the ~~order~~ court under par. (am) and any periods of extension
22 imposed in accordance with sub. (3).

23 **SECTION 48.** 302.113 (9) (c) of the statutes, as affected by 2009 Wisconsin Act
24 28, is amended to read:

1 302.113 (9) (c) A person who is subsequently released to extended supervision
2 after service of the period of time specified by the ~~order~~ court under par. (am) is
3 subject to all conditions and rules under subs. (7) and, if applicable, (7m) until the
4 expiration of the remaining extended supervision portion of the bifurcated sentence
5 ~~or until the department discharges the person under s. 973.01 (4m), whichever is~~
6 ~~appropriate.~~ The remaining extended supervision portion of the bifurcated sentence
7 is the total length of the bifurcated sentence, less the time served by the person in
8 confinement under the bifurcated sentence before release to extended supervision
9 under sub. (2) and less all time served in confinement for previous revocations of
10 extended supervision under the bifurcated sentence.

11 **SECTION 49.** 302.113 (9g) of the statutes is created to read:

12 302.113 (9g) (a) In this subsection:

13 1. “Program review committee” means the committee at a correctional
14 institution that reviews the security classifications, institution assignments, and
15 correctional programming assignments of inmates confined in the institution.

16 2. “Terminal condition” means an incurable condition afflicting a person,
17 caused by injury, disease, or illness, as a result of which the person has a medical
18 prognosis that his or her life expectancy is 6 months or less, even with available
19 life-sustaining treatment provided in accordance with the prevailing standard of
20 medical care.

21 (b) An inmate who is serving a bifurcated sentence for a crime other than a
22 Class B felony may seek modification of the bifurcated sentence in the manner
23 specified in par. (f) if he or she meets one of the following criteria:

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

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

3 3. The inmate has a terminal condition.

4 (c) An inmate who meets the criteria under par. (b) may submit a petition to
5 the program review committee at the correctional institution in which the inmate is
6 confined requesting a modification of the inmate's bifurcated sentence in the manner
7 specified in par. (f). If the inmate alleges in the petition that he or she has a terminal
8 condition, the inmate shall attach to the petition affidavits from 2 physicians setting
9 forth a diagnosis that the inmate has a terminal condition.

10 (cm) If, after receiving the petition under par. (c), the program review
11 committee determines that the public interest would be served by a modification of
12 the inmate's bifurcated sentence in the manner provided under par. (f), the
13 committee shall approve the petition for referral to the sentencing court and notify
14 the department of its approval. The department shall then refer the inmate's
15 petition to the sentencing court and request the court to conduct a hearing on the
16 petition. If the program review committee determines that the public interest would
17 not be served by a modification of the inmate's bifurcated sentence in the manner
18 specified in par. (f), the committee shall deny the inmate's petition.

19 (d) When a court is notified by the department that it is referring to the court
20 an inmate's petition for modification of the inmate's bifurcated sentence, the court
21 shall set a hearing to determine whether the public interest would be served by a
22 modification of the inmate's bifurcated sentence in the manner specified in par. (f).
23 The inmate and the district attorney have the right to be present at the hearing, and
24 any victim of the inmate's crime has the right to be present at the hearing and to
25 provide a statement concerning the modification of the inmate's bifurcated sentence.

1 The court shall order such notice of the hearing date as it considers adequate to be
2 given to the department, the inmate, the attorney representing the inmate, if
3 applicable, and the district attorney. Victim notification shall be provided as
4 specified under par. (g).

5 (e) At a hearing scheduled under par. (d), the inmate has the burden of proving
6 by the greater weight of the credible evidence that a modification of the bifurcated
7 sentence in the manner specified in par. (f) would serve the public interest. If the
8 inmate proves that a modification of the bifurcated sentence in the manner specified
9 in par. (f) would serve the public interest, the court shall modify the inmate's
10 bifurcated sentence in that manner. If the inmate does not prove that a modification
11 of the bifurcated sentence in the manner specified in par. (f) would serve the public
12 interest, the court shall deny the inmate's petition for modification of the bifurcated
13 sentence.

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

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

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

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

23 2. When a court sets a hearing date under par. (d), the clerk of the circuit court
24 shall send a notice of hearing to the victim of the crime committed by the inmate, if
25 the victim has submitted a card under subd. 3. requesting notification. The notice

1 shall inform the victim that he or she may appear at the hearing scheduled under
2 par. (d) and shall inform the victim of the manner in which he or she may provide a
3 statement concerning the modification of the inmate's bifurcated sentence in the
4 manner provided in par. (f). The clerk of the circuit court shall make a reasonable
5 attempt to send the notice of hearing to the last-known address of the inmate's
6 victim, postmarked at least 10 days before the date of the hearing.

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

17 (h) An inmate may appeal a court's decision to deny the inmate's petition for
18 modification of his or her bifurcated sentence. The state may appeal a court's
19 decision to grant an inmate's petition for a modification of the inmate's bifurcated
20 sentence. In an appeal under this paragraph, the appellate court may reverse a
21 decision granting or denying a petition for modification of a bifurcated sentence only
22 if it determines that the sentencing court erroneously exercised its discretion in
23 granting or denying the petition.

24 (i) If the program review committee denies an inmate's petition under par. (cm),
25 the inmate may not file another petition within one year after the date of the program

1 review committee's denial. If the program review committee approves an inmate's
2 petition for referral to the sentencing court under par. (cm) but the sentencing court
3 denies the petition, the inmate may not file another petition under par. (cm) within
4 one year after the date of the court's decision.

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

14 **SECTION 50.** 302.113 (9h) of the statutes, as affected by 2009 Wisconsin Act 28,
15 is repealed.

16 **SECTION 51.** 302.1135 of the statutes, as affected by 2009 Wisconsin Act 28, is
17 repealed.

18 **SECTION 52.** 302.114 (9) (am) of the statutes, as affected by 2009 Wisconsin Act
19 28, is amended to read:

20 302.114 (9) (am) If a person released to extended supervision under this section
21 or under s. ~~302.1135~~ 302.113 (9g) violates a condition of extended supervision, the
22 reviewing authority may revoke the extended supervision of the person. If the
23 extended supervision of the person is revoked, the person shall be returned to the
24 circuit court for the county in which the person was convicted of the offense for which
25 he or she was on extended supervision, and the court shall order the person to be

1 returned to prison for a specified period of time before he or she is eligible for being
2 released again to extended supervision. The period of time specified under this
3 paragraph may not be less than 5 years and may be extended in accordance with sub.
4 (3).

5 **SECTION 53.** 302.114 (9) (c) of the statutes, as affected by 2009 Wisconsin Act
6 28, is amended to read:

7 302.114 (9) (c) A person who is subsequently released to extended supervision
8 under par. (bm) is subject to all conditions and rules under sub. (8) until the
9 expiration of the sentence ~~or until the department discharges the person under s.~~
10 ~~973.01 (4m), whichever is appropriate.~~

11 **SECTION 54.** 304.01 (title) of the statutes, as affected by 2009 Wisconsin Act 28,
12 is amended to read:

13 **304.01** (title) ~~**Earned release review**~~ **Parole commission and**
14 **commission chairperson; general duties.**

15 **SECTION 55.** 304.01 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
16 is amended to read:

17 304.01 (1) The chairperson of the ~~earned release review~~ parole commission
18 shall administer and supervise the commission and its activities and shall be the
19 final parole granting authority ~~for granting parole or release to extended~~
20 ~~supervision~~, except as provided in s. 304.02.

21 **SECTION 56.** 304.01 (2) (intro.) of the statutes, as affected by 2009 Wisconsin
22 Act 28, is amended to read:

23 304.01 (2) (intro.) The ~~earned release review~~ parole commission shall conduct
24 regularly scheduled interviews to consider the parole ~~or release to extended~~
25 ~~supervision~~ of eligible inmates of the adult correctional institutions under the

1 control of the department of corrections, eligible inmates transferred under ch. 51
2 and under the control of the department of health services and eligible inmates in
3 any county house of correction. The department of corrections shall provide all of the
4 following to the ~~earned release review~~ parole commission:

5 **SECTION 57.** 304.01 (2) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

7 304.01 (2) (b) Scheduling assistance for parole interviews for prisoners who
8 ~~have applied for parole or release to extended supervision~~ at the correctional
9 institutions.

10 **SECTION 58.** 304.01 (2) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
11 is amended to read:

12 304.01 (2) (c) Clerical support related to the interviews for prisoners who have
13 applied for ~~parole or release to extended supervision~~.

14 **SECTION 59.** 304.01 (2) (d) of the statutes, as affected by 2009 Wisconsin Act 28,
15 is amended to read:

16 304.01 (2) (d) Appropriate physical space at the correctional institutions to
17 conduct the parole interviews for prisoners ~~who have applied for parole or release to~~
18 ~~extended supervision~~.

19 **SECTION 60.** 304.06 (title) of the statutes, as affected by 2009 Wisconsin Act 28,
20 is amended to read:

21 304.06 (title) ~~Release to parole or extended supervision~~ Paroles from
22 state prisons and house of correction.

23 **SECTION 61.** 304.06 (1) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

1 304.06 (1) (b) Except as provided in s. 961.49 (2), 1999 stats., sub. (1m) or s.
2 302.045 (3), 302.05 (3) (b), 973.01 (6), or 973.0135, the ~~earned release review~~ parole
3 commission may parole an inmate of the Wisconsin state prisons or any felon or any
4 person serving at least one year or more in a county house of correction or a county
5 rehabilitation camp organized under s. 303.07, when he or she has served 25% of the
6 sentence imposed for the offense, or 6 months, whichever is greater. Except as
7 provided in s. 939.62 (2m) (c) or 973.014 (1) (b) or (c), (1g) or (2), the ~~earned release~~
8 ~~review~~ parole commission may parole an inmate serving a life term when he or she
9 has served 20 years, as modified by the formula under s. 302.11 (1) and subject to
10 extension under s. 302.11 (1q) and (2), if applicable. The person serving the life term
11 shall be given credit for time served prior to sentencing under s. 973.155, including
12 good time under s. 973.155 (4). The secretary may grant special action parole
13 releases under s. 304.02. The department or the ~~earned release review~~ parole
14 commission shall not provide any convicted offender or other person sentenced to the
15 department's custody any parole eligibility or evaluation ~~for parole or release to~~
16 ~~extended supervision~~ until the person has been confined at least 60 days following
17 sentencing.

18 **SECTION 62.** 304.06 (1) (bg) of the statutes, as affected by 2009 Wisconsin Act
19 28, is repealed.

20 **SECTION 63.** 304.06 (1) (bk) of the statutes, as affected by 2009 Wisconsin Act
21 28, is repealed.

22 **SECTION 64.** 304.06 (1) (bn) of the statutes, as affected by 2009 Wisconsin Act
23 28, is repealed.

24 **SECTION 65.** 304.06 (1) (br) of the statutes, as affected by 2009 Wisconsin Act
25 28, is repealed.

1 **SECTION 66.** 304.06 (1) (c) (intro.) of the statutes, as affected by 2009 Wisconsin
2 Act 28, is amended to read:

3 304.06 (1) (c) (intro.) If an inmate applies for parole ~~or release to extended~~
4 ~~supervision~~ under this subsection, the ~~earned release review~~ parole commission
5 shall make a reasonable attempt to notify the following, if they can be found, in
6 accordance with par. (d):

7 **SECTION 67.** 304.06 (1) (d) 1. of the statutes, as affected by 2009 Wisconsin Act
8 28, is amended to read:

9 304.06 (1) (d) 1. The notice under par. (c) shall inform the offices and persons
10 under par. (c) 1. to 3. of the manner in which they may provide written statements
11 under this subsection, shall inform persons under par. (c) 3. of the manner in which
12 they may attend interviews or hearings and make statements under par. (e) and
13 shall inform persons under par. (c) 3. who are victims, or family members of victims,
14 of crimes specified in s. 940.01, 940.03, 940.05, 940.225 (1), ~~(2), or (3)~~ or (2), 948.02
15 (1) or (2), 948.025, 948.06 or 948.07 of the manner in which they may have direct
16 input in the decision-making process under par. (e) ~~for parole or release to~~
17 ~~extended supervision~~. The ~~earned release review~~ parole commission shall provide
18 notice under this paragraph for an inmate's first application for parole ~~or release to~~
19 ~~extended supervision~~ and, upon request, for subsequent applications for parole ~~or~~
20 ~~release to extended supervision~~.

21 **SECTION 68.** 304.06 (1) (d) 2. of the statutes, as affected by 2009 Wisconsin Act
22 28, is amended to read:

23 304.06 (1) (d) 2. The notice shall be by 1st class mail to an office's or a person's
24 last-known address sent at least 3 weeks before the interview or hearing upon the
25 application for parole ~~or release to extended supervision~~.

1 **SECTION 69.** 304.06 (1) (d) 3m. of the statutes, as affected by 2009 Wisconsin
2 Act 28, is amended to read:

3 304.06 (1) (d) 3m. If applicable, the notice shall state the manner in which the
4 person may have direct input in the decision-making process for parole ~~or release~~
5 ~~to extended supervision.~~

6 **SECTION 70.** 304.06 (1) (d) 4. of the statutes, as affected by 2009 Wisconsin Act
7 28, is amended to read:

8 304.06 (1) (d) 4. If the notice is for a first application for parole ~~or release to~~
9 ~~extended supervision~~, the notice shall inform the offices and persons under par. (c)
10 1. to 3. that notification of subsequent applications for parole ~~or release to extended~~
11 ~~supervision~~ will be provided only upon request.

12 **SECTION 71.** 304.06 (1) (e) of the statutes, as affected by 2009 Wisconsin Act 28,
13 is amended to read:

14 304.06 (1) (e) The ~~earned release review parole~~ parole commission shall permit any
15 office or person under par. (c) 1. to 3. to provide written statements. The ~~earned~~
16 ~~release review parole~~ parole commission shall give consideration to any written statements
17 provided by any such office or person and received on or before the date specified in
18 the notice. This paragraph does not limit the authority of the ~~earned release review~~
19 parole commission to consider other statements or information that it receives in a
20 timely fashion.

21 **SECTION 72.** 304.06 (1) (eg) of the statutes, as affected by 2009 Wisconsin Act
22 28, is amended to read:

23 304.06 (1) (eg) The ~~earned release review parole~~ parole commission shall permit any
24 person under par. (c) 3. to attend any interview or hearing on the application for

1 parole ~~or release to extended supervision~~ of an applicable inmate and to make a
2 statement at that interview or hearing.

3 **SECTION 73.** 304.06 (1) (em) of the statutes, as affected by 2009 Wisconsin Act
4 28, is amended to read:

5 304.06 (1) (em) ~~The earned release review parole~~ commission shall promulgate
6 rules that provide a procedure to allow any person who is a victim, or a family
7 member of a victim, of a crime specified in s. 940.01, 940.03, 940.05, 940.225 (1), ~~(2),~~
8 ~~or (3) or (2),~~ 948.02 (1) or (2), 948.025, 948.06 or 948.07 to have direct input in the
9 decision-making process for parole ~~or release to extended supervision~~.

10 **SECTION 74.** 304.06 (1) (f) of the statutes, as affected by 2009 Wisconsin Act 28,
11 is amended to read:

12 304.06 (1) (f) ~~The earned release review parole~~ commission shall design and
13 prepare cards for persons specified in par. (c) 3. to send to the commission. The cards
14 shall have space for these persons to provide their names and addresses, the name
15 of the applicable prisoner and any other information the ~~earned release review~~
16 ~~parole~~ commission determines is necessary. ~~The earned release review parole~~
17 commission shall provide the cards, without charge, to district attorneys. District
18 attorneys shall provide the cards, without charge, to persons specified in par. (c) 3.
19 These persons may send completed cards to the ~~earned release review parole~~
20 commission. All commission records or portions of records that relate to mailing
21 addresses of these persons are not subject to inspection or copying under s. 19.35 (1).
22 Before any written statement of a person specified in par. (c) 3. is made a part of the
23 documentary record considered in connection with a parole hearing ~~for parole, or~~
24 ~~release to extended supervision~~ under this section, the ~~earned release review parole~~
25 commission shall obliterate from the statement all references to the mailing

1 addresses of the person. A person specified in par. (c) 3. who attends an interview
2 or hearing under par. (eg) may not be required to disclose at the interview or hearing
3 his or her mailing addresses.

4 **SECTION 75.** 304.06 (1) (g) of the statutes, as affected by 2009 Wisconsin Act 28,
5 is amended to read:

6 304.06 (1) (g) Before a person is released on parole ~~or released to extended~~
7 ~~supervision~~ under this subsection, the ~~earned release review~~ parole commission
8 shall so notify the municipal police department and the county sheriff for the area
9 where the person will be residing. The notification requirement under this
10 paragraph does not apply if a municipal department or county sheriff submits to the
11 ~~earned release review~~ parole commission a written statement waiving the right to
12 be notified. If applicable, the department shall also comply with s. 304.063.

13 **SECTION 76.** 304.06 (1m) (intro.) of the statutes, as affected by 2009 Wisconsin
14 Act 28, is amended to read:

15 304.06 (1m) (intro.) The ~~earned release review~~ parole commission may waive
16 the 25% or 6-month service of sentence requirement under sub. (1) (b) under any of
17 the following circumstances:

18 **SECTION 77.** 304.06 (1q) (b) of the statutes, as affected by 2009 Wisconsin Act
19 28, is amended to read:

20 304.06 (1q) (b) The ~~earned release review~~ parole commission or the department
21 may require as a condition of parole that a serious child sex offender undergo
22 pharmacological treatment using an antiandrogen or the chemical equivalent of an
23 antiandrogen. This paragraph does not prohibit the department from requiring
24 pharmacological treatment using an antiandrogen or the chemical equivalent of an
25 antiandrogen as a condition of probation.

1 **SECTION 78.** 304.06 (1q) (c) of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 304.06 (1q) (c) In deciding whether to grant a serious child sex offender release
4 on parole under this subsection, the ~~earned release review~~ parole commission may
5 not consider, as a factor in making its decision, that the offender is a proper subject
6 for pharmacological treatment using an antiandrogen or the chemical equivalent of
7 an antiandrogen or that the offender is willing to participate in pharmacological
8 treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

9 **SECTION 79.** 304.06 (1x) of the statutes, as affected by 2009 Wisconsin Act 28,
10 is amended to read:

11 304.06 (1x) The ~~earned release review~~ parole commission may require as a
12 condition of parole that the person is placed in the intensive sanctions program under
13 s. 301.048. In that case, the person is in the legal custody of the department under
14 that section and is subject to revocation of parole under sub. (3).

15 **SECTION 80.** 304.06 (2m) (d) of the statutes, as affected by 2009 Wisconsin Act
16 28, is amended to read:

17 304.06 (2m) (d) The ~~earned release review~~ parole commission or the
18 department shall determine a prisoner's county of residence for the purposes of this
19 subsection by doing all of the following:

20 1. The ~~earned release review~~ parole commission or the department shall
21 consider residence as the voluntary concurrence of physical presence with intent to
22 remain in a place of fixed habitation and shall consider physical presence as prima
23 facie evidence of intent to remain.

24 2. The ~~earned release review~~ parole commission or the department shall apply
25 the criteria for consideration of residence and physical presence under subd. 1. to the

1 facts that existed on the date that the prisoner committed the serious sex offense that
2 resulted in the sentence the prisoner is serving.

3 SECTION 81. 304.06 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
4 is amended to read:

5 304.06 (3) Every paroled prisoner ~~paroled or released to extended supervision~~
6 remains in the legal custody of the department unless otherwise provided by the
7 department. If the department alleges that any condition or rule of parole ~~or~~
8 ~~extended supervision~~ has been violated by the prisoner, the department may take
9 physical custody of the prisoner for the investigation of the alleged violation. If the
10 department is satisfied that any condition or rule of parole ~~or extended supervision~~
11 has been violated it shall afford the prisoner such administrative hearings as are
12 required by law. Unless waived by the parolee ~~or person on extended supervision~~,
13 the final administrative hearing shall be held before a hearing examiner from the
14 division of hearings and appeals in the department of administration who is licensed
15 to practice law in this state. The hearing examiner shall enter an order revoking or
16 not revoking parole ~~or extended supervision~~. Upon request by either party, the
17 administrator of the division of hearings and appeals shall review the order. The
18 hearing examiner may order that a deposition be taken by audiovisual means and
19 allow the use of a recorded deposition under s. 967.04 (7) to (10). If the parolee ~~or~~
20 ~~person on extended supervision~~ waives the final administrative hearing, the
21 secretary of corrections shall enter an order revoking or not revoking parole ~~or~~
22 ~~extended supervision~~. If the examiner, the administrator upon review, or the
23 secretary in the case of a waiver finds that the prisoner has violated the rules or
24 conditions of parole ~~or extended supervision~~, the examiner, the administrator upon
25 review, or the secretary in the case of a waiver, may order the prisoner returned to

1 prison to continue serving his or her sentence, or to continue on parole ~~or extended~~
2 ~~supervision~~. If the prisoner claims or appears to be indigent, the department shall
3 refer the prisoner to the authority for indigency determinations specified under s.
4 977.07 (1).

5 **SECTION 82.** 304.06 (3e) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

7 304.06 (3e) The division of hearings and appeals in the department of
8 administration shall make either an electronic or stenographic record of all
9 testimony at each parole ~~or extended supervision~~ revocation hearing. The division
10 shall prepare a written transcript of the testimony only at the request of a judge who
11 has granted a petition for judicial review of the revocation decision. Each hearing
12 notice shall include notice of the provisions of this subsection and a statement that
13 any person who wants a written transcript may record the hearing at his or her own
14 expense.

15 **SECTION 83.** 304.06 (3m) of the statutes, as affected by 2009 Wisconsin Act 28,
16 is amended to read:

17 304.06 (3m) If the convicting court is informed by the department that a
18 prisoner on parole ~~or extended supervision~~ has absconded and that the prisoner's
19 whereabouts are unknown, the court may issue a capias for execution by the sheriff.

20 **SECTION 84.** 304.071 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
21 is amended to read:

22 304.071 (1) The ~~earned release review~~ parole commission may at any time
23 grant a parole ~~or release to extended supervision~~ to any prisoner in any penal
24 institution of this state, or the department may at any time suspend the supervision
25 of any person who is on probation, or parole, ~~or extended supervision~~ to the

1 department, if the prisoner or person on probation, or parole, ~~or extended~~
2 ~~supervision~~ is eligible for induction into the U.S. armed forces. The suspension of
3 parole, ~~extended supervision~~, or probation shall be for the duration of his or her
4 service in the armed forces; and the parole, ~~extended supervision~~, or probation shall
5 again become effective upon his or her discharge from the armed forces in accordance
6 with regulations prescribed by the department. If he or she receives an honorable
7 discharge from the armed forces, the governor may discharge him or her and the
8 discharge has the effect of a pardon. Upon the suspension of parole, ~~extended~~
9 ~~supervision~~, or probation by the department, the department shall issue an order
10 setting forth the conditions under which the parole, ~~extended supervision~~, or
11 probation is suspended, including instructions as to where and when and to whom
12 the person on parole ~~or extended supervision~~ shall report upon discharge from the
13 armed forces.

14 **SECTION 85.** 801.50 (5) of the statutes, as affected by 2009 Wisconsin Act 28,
15 is amended to read:

16 801.50 (5) Venue of an action for certiorari to review a probation, extended
17 supervision, or parole revocation, a denial by ~~the earned release review commission~~
18 a program review committee under s. ~~302.1135 (5)~~ 302.113 (9g) of a petition for
19 modification of a bifurcated sentence, or a refusal of parole shall be the county in
20 which the relator was last convicted of an offense for which the relator was on
21 probation, extended supervision, or parole or for which the relator is currently
22 incarcerated.

23 **SECTION 86.** 809.30 (1) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

1 809.30 (1) (c) “Postconviction relief” means an appeal or a motion for
2 postconviction relief in a criminal case, other than an appeal, motion, or petition
3 under ss. 302.113 (7m), ~~302.1135~~ 302.113 (9g), 973.19, 973.195, 974.06, or 974.07 (2).
4 In a ch. 980 case, the term means an appeal or a motion for postcommitment relief
5 under s. 980.038 (4).

6 **SECTION 87.** 911.01 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
7 is amended to read:

8 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
9 rendition; sentencing, granting or revoking probation, modification of a bifurcated
10 sentence under s. ~~302.1135~~ 302.113 (9g), adjustment of a bifurcated sentence under
11 s. 973.195 (1r), ~~release to extended supervision under s. 302.113 (2) (b) or 304.06 (1)~~
12 ~~or discharge under s. 973.01 (4m)~~, issuance of arrest warrants, criminal summonses
13 and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1)
14 (c); proceedings with respect to pretrial release under ch. 969 except where habeas
15 corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

16 **SECTION 88.** 950.04 (1v) (f) of the statutes, as affected by 2009 Wisconsin Act
17 28, is amended to read:

18 950.04 (1v) (f) To have the ~~earned release review~~ parole commission make a
19 reasonable attempt to notify the victim of applications for parole ~~or release to~~
20 ~~extended supervision~~, as provided under s. 304.06 (1).

21 **SECTION 89.** 950.04 (1v) (g) of the statutes, as affected by 2009 Wisconsin Act
22 28, is amended to read:

23 950.04 (1v) (g) To have reasonable attempts made to notify the victim of
24 hearings or court proceedings, as provided under ss. 302.113 (9g) 2., 302.114 (6),
25 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

1 **SECTION 90.** 950.04 (1v) (gm) of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 950.04 (1v) (gm) To have reasonable attempts made to notify the victim of an
4 ~~offender who submits a petition~~ petitions for sentence adjustment as provided under
5 s. 973.195 (1r) (d), ~~an offender who applies for release to extended supervision under~~
6 ~~s. 302.113 (2) (b), 302.1135, or 304.06 (1), or an offender who applies for a reduction~~
7 ~~under s. 973.01 (4m).~~

8 **SECTION 91.** 950.04 (1v) (nt) of the statutes, as affected by 2009 Wisconsin Act
9 28, is amended to read:

10 950.04 (1v) (nt) To attend a hearing on a petition for modification of a
11 bifurcated sentence and provide a statement concerning modification of the
12 sentence, as provided under s. ~~302.1135 (4)~~ 302.113 (9g) (d).

13 **SECTION 92.** 973.01 (3d) of the statutes, as affected by 2009 Wisconsin Act 28,
14 is repealed.

15 **SECTION 93.** 973.01 (4) of the statutes, as affected by 2009 Wisconsin Act 28,
16 is amended to read:

17 973.01 (4) ~~EXTENSION~~ NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF
18 IMPRISONMENT. A person sentenced to a bifurcated sentence under sub. (1) shall serve
19 the term of confinement in prison portion of the sentence without reduction for good
20 behavior. The term of confinement in prison portion is subject to extension under s.
21 302.113 (3) and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a.,
22 302.113 (9g), or 973.195 (1r), ~~or adjustment under s. 302.113 (2) (b), 302.1135 (6) (a),~~
23 ~~or 304.06 (1).~~

24 **SECTION 94.** 973.01 (4m) of the statutes, as affected by 2009 Wisconsin Act 28,
25 is repealed.

1 **SECTION 95.** 973.01 (7) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 973.01 (7) ~~DISCHARGE~~ NO DISCHARGE. The department of corrections shall may
4 not discharge a person who is serving a bifurcated sentence from custody, control and
5 supervision ~~when~~ until the person has served the entire bifurcated sentence, ~~as~~
6 ~~modified under sub. (4m) or s. 302.113 (2) (b) or (9h), 302.1135, or 304.06 (1), if~~
7 applicable.

8 **SECTION 96.** 973.031 of the statutes, as affected by 2009 Wisconsin Act 28, is
9 repealed.

10 **SECTION 97.** 973.09 (3) (d) of the statutes, as affected by 2009 Wisconsin Act 28,
11 is repealed.

12 **SECTION 98.** 973.195 (1r) (a) of the statutes, as affected by 2009 Wisconsin Act
13 28, is amended to read:

14 973.195 (1r) (a) An inmate who is serving a sentence imposed under s. 973.01
15 ~~before October 1, 2009~~, for a crime other than a Class B felony may petition the
16 sentencing court to adjust the sentence if the inmate has served at least the
17 applicable percentage of the term of confinement in prison portion of the sentence.
18 If an inmate is subject to more than one sentence imposed under this section, the
19 sentences shall be treated individually for purposes of sentence adjustment under
20 this subsection.

21 **SECTION 99.** 973.195 (1r) (j) of the statutes, as affected by 2009 Wisconsin Act
22 28, is repealed.

23 **SECTION 100.** 974.07 (4) (b) of the statutes, as affected by 2009 Wisconsin Act
24 28, is amended to read:

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

9 **SECTION 101.** 976.03 (23) (c) of the statutes, as affected by 2009 Wisconsin Act
10 28, is amended to read:

11 976.03 (23) (c) The application shall be verified by affidavit, shall be executed
12 in duplicate and shall be accompanied by 2 certified copies of the indictment
13 returned, or information and affidavit filed, or of the complaint made to a judge,
14 stating the offense with which the accused is charged, or of the judgment of
15 conviction or of the sentence. The prosecuting officer, ~~earned release review~~ parole
16 commission, warden or sheriff may also attach such further affidavits and other
17 documents in duplicate as he, she or it deems proper to be submitted with the
18 application. One copy of the application, with the action of the governor indicated
19 by endorsement thereon, and one of the certified copies of the indictment, complaint,
20 information and affidavits, or of the judgment of conviction or of the sentence shall
21 be filed in the office of the governor to remain of record in that office. The other copies
22 of all papers shall be forwarded with the governor's requisition.

23 **SECTION 102.** 977.05 (4) (jm) of the statutes, as affected by 2009 Wisconsin Act
24 28, is amended to read:

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB

.....
↑ or six months
whichever was
greater

INSERT ANALYSIS:

2009 Wisconsin Act 28 (the Act) made several changes to the adult correctional system, most of which took effect on October 1, 2009. Prior to the effective date of the provisions relating to the adult correctional system (pre-Act), a person who was imprisoned for a felony he or she committed prior to December 31, 1999, was allowed to petition the Parole Commission in the department of corrections (DOC) to be released to parole after the person has served 25 percent of his or her sentence. The Parole Commission determined whether, and under what conditions, the person should be released to parole. A person who committed a felony on or after December 31, 1999, is sentenced to a bifurcated sentence, with the first portion of the sentence served in confinement and the second portion served under extended supervision in the community.

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

The law pre-Act allowed a person who is sentenced to a bifurcated sentence for a Class C to Class I felony to petition the sentencing court to adjust his or her sentence and release the person from prison to extended supervision if he or she has served 85 percent (for Class C to Class E felonies) or 75 percent (for Class F to Class I felonies) of the confinement portion of the sentence. If a person's confinement portion was reduced by the sentencing court, the law pre-Act required his or her extended supervision portion to be extended so that the total length of the person's sentence remains unchanged. Pre-Act, a person who was released to extended supervision was required to serve his or her entire sentence before extended supervision terminates.

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

The Act requires DOC to release the person to extended supervision when he or she serves his entire incarceration period minus positive adjustment time earned. Under the Act, if a person's incarceration period is reduced by positive adjustment time, his or her period of extended supervision is increased so that the length of the sentence does not change. The Act requires the ERRC to perform the duties previously performed by the Parole Commission and to review petitions for early release from confinement.

remained
terminated

of confinement

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

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

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

Under the Act, the reviewing authority determines how long to imprison the person whose extended supervision is revoked and enters its own order for the person to remain in prison for a period of time that does not exceed the time remaining on his or her bifurcated sentence.

This bill eliminates positive adjustment time, restores the Parole Commission, eliminates the ERRC, and returns the sentencing provisions, the provisions relating to early release from confinement or imprisonment, and the provisions relating to review of revocation of release to pre-Act law.

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

INSERT NONSTAT:

SECTION 1. Nonstatutory provisions.

- (1) This act applies to persons who are sentenced on or after December 31, 1999.

violent offense

In addition under the Act

also had a -2- be filed by a person with any serious health condition and reached reached

any

31

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

LRB-4097/1dn
PJH:nwn:md

Date

Tad:

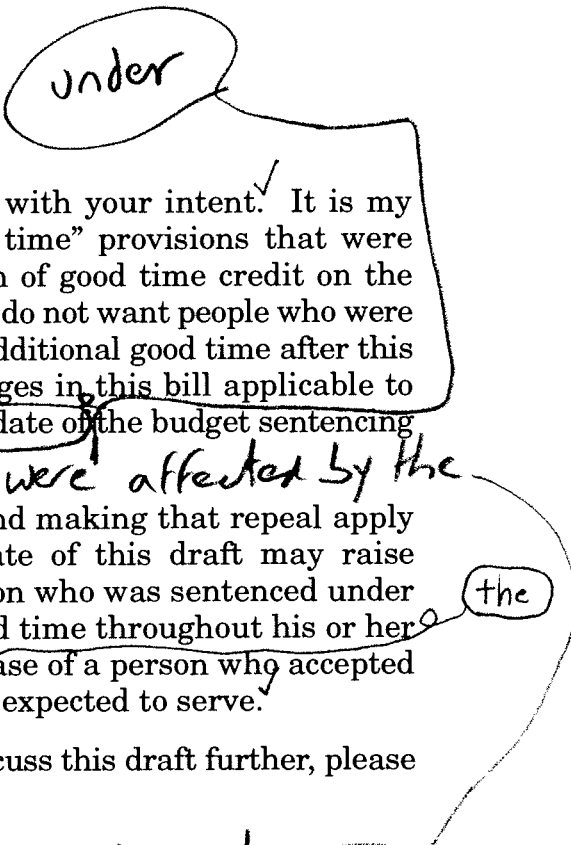
Please review this draft to ensure that it is consistent with your intent. It is my understanding that your intent is to repeal the "good time" provisions that were enacted in the budget bill and to stop the accumulation of good time credit on the effective date of this bill. It is my understanding that you do not want people who were sentenced under the good time provisions to accrue any additional good time after this bill goes into effect. To that end, I have made the changes in this bill applicable to persons who were first sentenced on or after the effective date of the budget sentencing provisions and to those whose sentences were affected by the

As we discussed, repealing the "good time" provisions and making that repeal apply to people who were sentenced before the effective date of this draft may raise constitutional problems. It could be argued that a person who was sentenced under the good time scheme is entitled to continue to earn good time throughout his or her sentence. This may be particularly problematic in the case of a person who accepted a plea-bargain based, in part, on the sentence he or she expected to serve.

If you have any questions or concerns or would like to discuss this draft further, please let me know.

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

Budget .
Sentencing
provisions (i.e. persons
sentenced under
Truth in Sentencing



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

LRB-4097/1dn
PJH:nwn:md

February 23, 2010

Tad:

Please review this draft to ensure that it is consistent with your intent. It is my understanding that your intent is to repeal the "good time" provisions that were enacted in the budget bill and to stop the accumulation of good time credit on the effective date of this bill. It is my understanding that you do not want people who were sentenced under the good time provisions to accrue any additional good time after this bill goes into effect. To that end, I have made the changes in this bill applicable to persons who were sentenced under the budget sentencing provisions and to those whose sentences were affected by the budget sentencing provisions (i.e., persons sentenced under Truth in Sentencing).

As we discussed, repealing the "good time" provisions and making that repeal apply to people who were sentenced before the effective date of this draft may raise constitutional problems. It could be argued that a person who was sentenced under the good time scheme is entitled to continue to earn good time throughout his or her sentence. This may be particularly problematic in the case of a person who accepted a plea-bargain based, in part, on the sentence he or she expected to serve.

If you have any questions or concerns or would like to discuss this draft further, please let me know.

Peggy Hurley
Legislative Attorney
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Duerst, Christina

From: Hilgemann, Luke
Sent: Wednesday, February 24, 2010 11:01 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-4097/1 Topic: Sentencing modification

Please Jacket LRB 09-4097/1 for the ASSEMBLY.