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Details: Emergency Rule extension requests by Department of Corrections.  
(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules ...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

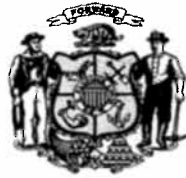
#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**Jim Doyle**  
Governor

**Rick Raemisch**  
Secretary



Mailing:

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## State of Wisconsin Department of Corrections

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December 16, 2009

Senator Jim Holperin  
Joint Committee for Review of Administrative Rules  
Room 409 South  
State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Representative Josh Zepnick  
Joint Committee for Review of Administrative Rules  
Room 219 North  
State Capitol  
Madison, Wisconsin 53708

Re: Emergency Rule Relating to Inmate Release Accounts under DOC 309.466, EmR 0920

Dear Senator Holperin and Representative Zepnick:

The Department of Corrections requests a 60 day extension on the proposed emergency rule relating to inmate release accounts under DOC 309.466. The Department had two public hearings on October 14, 2009, and has also received over 150 written comments relating to the proposed emergency rule. Written comments were being received by the Department as recently as November 23, 2009. The Department anticipates submitting its report to the Legislature before December 30, 2009.

The Department is filing a request for an extension based on our concern that the Legislature will not have time to act on the emergency rule prior to the lapse of the emergency rule. A lapse would prohibit inmates being released from prison to use their release account funds for purposes other than what is currently in the rule (limited to clothing and out of state release transportation), and not for additional items such as fees for obtaining social security cards and state identification cards, housing, and mode of transportation costs. As more inmates are being considered for release as a result of the 2009 Wisconsin Act 28 sentence modification provisions, it is critical to make the funds available to facilitate the transition from prison to a community setting. A lapse in the emergency rule prior to promulgation of the permanent rule will create problems for furthering successful reentry of inmates into the community.

The emergency rule expires on February 6, 2010. The legislative review process will likely take a minimum of 45 days. It is not likely that the process will be completed prior to the expiration of the emergency rule.

Jim Holperin  
Josh Zepnick  
December 16, 2009  
Page 2

If you have questions regarding this extension request, please contact Kathryn Anderson at (608) 240-5049 or [kathryn.anderson@wisconsin.gov](mailto:kathryn.anderson@wisconsin.gov).

Sincerely,



Rick Raemisch  
Secretary

Enclosures: Request For Extension  
Certified copy of Emergency Rule EmR 0920  
Fiscal Estimate

REQUEST FOR EXTENSION OF  
DEPARTMENT OF CORRECTIONS EMERGENCY RULE  
EmR 0920

The Department of Corrections hereby requests the Joint Committee for Review of Administrative Rules grant an extension of Emergency Rule EmR 0920, relating to inmate release accounts under DOC 309.466, based upon the following:

1. Evidence of a threat to the public peace, health, safety, or welfare that can be avoided only by extending the emergency rule.

The Department is filing a request for an extension based on our concern that the Legislature will not have time to act on the emergency rule prior to the lapse of the emergency rule. A lapse would prohibit inmates being released from prison to use their release account funds for purposes other than what is currently in the rule (limited to clothing and out of state release transportation), and not for additional items such as fees for obtaining social security cards and state identification cards, housing, and mode of transportation costs. As more inmates are being considered for release as a result of the 2009 Wisconsin Act 28 sentence modification provisions, it is critical to make the funds available to facilitate the transition from prison to a community setting. A lapse in the emergency rule prior to promulgation of the permanent rule will create problems for furthering successful reentry of inmates into the community.

2. Evidence that a permanent rule cannot be in effect on or before the date the emergency rule expires.

The emergency rule expires on February 6, 2010. The legislative review process will likely take a minimum of 45 days. It is not likely that the process will be completed prior to the expiration of the emergency rule.

Submitted this 16 day of December, 2009.



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Rick Raemisch  
Secretary

STATE OF WISCONSIN                    )  
  ) SS  
DEPARTMENT OF CORRECTIONS        )

I, Rick Raemisch, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed emergency rule, relating to inmate release accounts under section DOC 309.466, was duly approved and adopted by the Department on September 3, 2009.

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections, 3099 East Washington in the City of Madison, this 3rd day of September, 2009.

SEAL



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Rick Raemisch  
Secretary

C

ORDER OF THE  
DEPARTMENT OF CORRECTIONS  
CREATING RULES

**FINDING OF EMERGENCY**

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

Under 2009 WI Act 28, an increased number of inmates are being considered for release. In addition, the department has developed a number of release initiatives to address an inmate's successful transition from incarceration to community life. As part of those initiatives, there are costs associated with that transition, including acquiring housing, employment, and transportation. For example, an inmate must have a social security card, a driver's license or state identification card, the first months rent and security deposit for an apartment, and civilian clothing.

Under the current rule, an inmate may only use release account funds for "adequate clothing for release" and for "out-of-state release transportation." In addition, the rule limits the maximum amount of money which can be saved in the release account to \$500.00. The emergency rule immediately permits the use of release account money for a wide variety of purchases, including fees associated with obtaining a driver's license or state identification card, housing, and a mode of transportation (bus tickets, vehicle, bicycle, etc.). In the past the Department has borne some of these costs, despite an inmate having the money in his or her release account. Given the initiatives of reentry and release, an inmate should be responsible for these expenditures.

In addition, the emergency rule raises the limit on release accounts from \$500.00 to \$5,000.00. Since the current limit was established, the cost of living in the community has risen. The department seeks this change to reflect the significant costs of housing, transportation, and food and other necessities.

If the rule is not created promptly and immediately, the department will not be able to use inmate release account funds to pay for items which inmates need in preparation for their release to the community. The purpose of the emergency rule is to permit inmates to use release account funds for a greater range of expenditures related to their release from incarceration and transition back into the community. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the need to use inmate funds, not state funds, while permanent rules are being developed.

**ORDER**

Under the authority vested in the Department of Corrections by ss. 227.11(2), Stats., the Department of Corrections hereby promulgates an emergency rule relating to inmate release accounts under s. DOC 309.466 as follows:

**STATUTE INTERPRETED:** s. 301.32, Stats.

**STATUTORY AUTHORITY:** ss. 227.11 (2) and 301.03, Stats.

**EXPLANATION OF AGENCY AUTHORITY:**

The Department of Corrections has the authority to control an inmate's funds which are received during the inmate's period of incarceration. In addition, the Department has the responsibility of preparing inmates for their eventual release into the community, including assisting them in establishing a release account which can be used for a variety of purposes.

**PLAIN LANGUAGE ANALYSIS:**

The current rule prohibits the disbursement of funds from inmate release accounts, except for very limited purposes. Specifically, the rule limits the use of funds from inmate release accounts prior to release to the purchase of "adequate clothing for release" and for "out-of-state release transportation." The current rule provides for the Department to deduct fifteen percent (15 %) of all income earned by or received for the benefit of the inmate with the exception of work release or study release funds under ch. DOC 324. The current rule also has a limit on the amount which can be accumulated in the release account of \$500.00.

The rule proposal expands the purposes for which inmate release account funds can be used. Under the proposal, the Department may approve disbursement of funds for purposes which will aid in the inmate's reintegration into the community. The Department reduced the percentage of deduction to ten percent (10 %) but increased the amount which can be accumulated in the release account to \$5,000.00. The Department has also provided for the amount to be increased in accordance with the Consumer Price Index as defined in s. 16.004 (8) (e) 1., Stats., every five (5) years starting January 1, 2010. The increase in the limit and the process for a continued increase are in response to the increased living costs which inmates face upon release from prison.

**TEXT OF RULE:**

SECTION 1. DOC 309.466 (1) and (2) are amended to read:

**DOC 309.466 (1)** ~~After the crime victim and witness assistance surcharge has been paid in full, as provided for in s. DOC 309.465, and upon~~ Upon transfer of the inmate to the first permanent placement, following assessment and evaluation under s. DOC 302.12, and in all subsequent placements, the institution business office shall deduct ~~45~~ 10% of all income earned by or received for the benefit of the inmate, except from work release and study release funds under ch. DOC 324, until ~~\$500~~ \$5,000 is accumulated, and shall deposit the funds in a release account in the inmate's name. The department shall adjust the maximum release account amount every 5 years by multiplying \$5,000 by the percentage increase of the Consumer Price Index, as defined in s. 16.004 (8)

(e)1., Stats., from January 1, 2010 to January 1 of the next fifth year [2015, 2020] and adding that amount to \$5,000, rounded to the nearest \$100 increment. If the Consumer Price Index reflects a percentage decrease, the maximum release account amount will not be reduced but remain the same.

~~(2) Release account funds may not be disbursed for any reasons until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation. Prior to release, the department may authorize the disbursement of release account funds for purposes that will aid the inmate's reintegration into the community or that will reimburse the department for incarceration costs, including legal loans and restitution. Following the inmate's release, these funds shall be disbursed in accordance with s. DOC 309.49 (5).~~

SECTION 2. DOC 309.466 (5) is created to read:

(5) The institution business office shall disburse release account funds in accordance with s. DOC 309.48.

SECTION 3. DOC 309.48 (title) is amended to read:

**DOC 309.48 Procedure for inmate requests for disbursements of general inmate account funds.**

SECTION 4. DOC 309.49 (title) is amended to read:

**DOC 309.49 (title) Disbursement of general inmate account funds.**

SECTION 5. DOC 309.49 (4m) is created to read:

DOC 309.49 (4m) An inmate may request that the institution business office disburse release account funds. The institution business office shall disburse release account funds only for reasons consistent with the purposes under s. DOC 309.466 or subject to a lawful court order.

SECTION 6. EFFECTIVE DATE: The emergency rule shall take effect upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

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

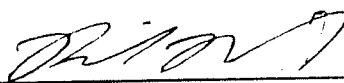
**FISCAL ESTIMATE.** See attached.



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

Wisconsin Department of Corrections

Dated: 9/3/9

By:   
RICK RAEMISCH  
Secretary

SEAL:

<b>2009 Session</b>	Administrative Rule Number <b>DOC 309</b>
<b>FISCAL ESTIMATE</b> DOA-2048 N(R06/99)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL

**Subject** Changing existing DOC 309, Wis Adm Code related to funds collected for inmate release accounts.

**Fiscal Effect**  
 State:  No State Fiscal Effect  
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
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**Local:**  No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Chapter 20 Appropriations</b>
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**Assumptions Used in Arriving at Fiscal Estimate**

Under the current administrative rule for inmate release accounts an inmate is required to deposit 15% of their earned or received income (received income is from a personal source) up to a maximum of \$500. The Department uses a declining balance approach for all outstanding debt based on the order deductions are to be applied and the percentage used. However, if an inmate has a FIFO (first in/first out) noted on his or her account, those debts must be met prior to any other outstanding obligations, including an inmate's release account. FIFO covers over draft payments, institution loans, medical co-payments, and victim witness obligations. Also, inmates that receive income from a personal source are not always obligated to pay outstanding debt with these funds. In some court cases a judge orders that income received from a personal source cannot be used towards outstanding debt. If that happens, the inmate receives these funds in full without any deductions applied.

The new administrative rule reduces the required deduction from 15% to 10% and increases the maximum amount from \$500 to \$5,000. The new rule also expands what an inmate can request out of his or her release account prior to release. Currently an inmate can only request funds for street clothing and out-of-state travel. Under this rule an inmate will be able to request funds prior to release to be used for re-entry purposes into the community as well as reimbursement costs related to incarceration, such as legal loans or restitution. The release of these funds must be authorized by the Department; otherwise the funds will be distributed upon release from prison.

The new rule also provides an adjustment to the maximum savings every five years based on the consumer price index percentage. The consumer price index increase should increase the total amount an inmate can save into their release account.

**Long-Range Fiscal Implications**

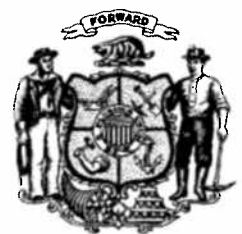
<b>Prepared by:</b> Sue Loniello	<b>Telephone No.</b> 240-5524	<b>Agency</b> Corrections
<b>Authorized Signature:</b> Robert Margolies <i>Robert Margolies</i>	<b>Telephone-No.</b> 240-5056	<b>Date</b> 8/31/09

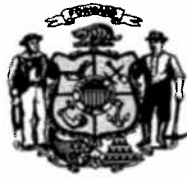
Based on Department inmate release collection data from FY07-09 (3-years) an average of \$210.65 was saved per inmate during that time period. The proposal reduces the savings percentage from 15% to 10% of an inmate's earned or received income. The result of this change would be reduced savings by (\$10.53) or \$200.12 per inmate over a three year period. Based on the new average savings amount it would take an inmate 75 years to accumulate \$5,000. Currently, it takes 7 years of incarceration to reach \$500.

The procedural changes are not expected to have any state fiscal impact.



# WISCONSIN STATE LEGISLATURE





**Jim Doyle**  
Governor

**Rick Raemisch**  
Secretary

Mailing Address

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Post Office Box 7925  
Madison, WI 53707-7925  
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## State of Wisconsin Department of Corrections

April 20, 2010

Senator Jim Holperin  
Joint Committee for Review of Administrative Rules  
Room 409 South  
State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Representative Josh Zepnick  
Joint Committee for Review of Administrative Rules  
Room 219 North  
State Capitol  
Madison, Wisconsin 53708

Re: Emergency Rule Relating to Changes in Various Statutory Provisions Relating to Sentence Calculations and Prison Release under DOC 302 and 2009 Wisconsin Act 28, EmR0939

Dear Senator Holperin and Representative Zepnick:

The Department of Corrections requests a 60 day extension on the proposed emergency rule relating to sentence calculations and prison release under DOC 302. The Department had two public hearings on February 25, 2010, at which six individuals appeared and provided testimony relating to the proposed emergency rule. The Department has also received over 25 written comments relating to the proposed emergency rule. The Department has not yet submitted its report to the Legislature but anticipates doing so within the next 30 days.

The Department <sup>permanent(?)</sup> is filing a request for an extension based on our concern that the Legislature will not have time to act on the ~~emergency~~ rule prior to the lapse of the emergency rule. [A lapse would require the Department to not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner.] In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The emergency rule expires on May 29, 2010. The legislative review process will likely take a minimum of 45 days. It is not likely that the process will be completed prior to the expiration of the emergency rule.

If you have questions regarding this extension request, please contact Kathryn Anderson at (608) 240-5049 or [kathryn.anderson@wisconsin.gov](mailto:kathryn.anderson@wisconsin.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Raemisch", written in a cursive style.

Rick Raemisch  
Secretary

Enclosures: Request for Extension  
Certified copy of Emergency Rule EmR0939  
Fiscal Estimate

## REQUEST FOR EXTENSION OF EMERGENCY RULE EmR0939

The Department of Corrections hereby requests an extension of Emergency Rule EmR0939 based upon the following:

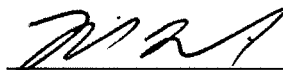
1. Evidence of a threat to the public peace, health, safety, or welfare that can be avoided only by extending the emergency rule.

The Department is filing a request for an extension based on our concern that the Legislature will not have time to act on the emergency rule prior to the lapse of the emergency rule. A lapse would require the Department to not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

2. Evidence that a permanent rule cannot be in effect on or before the date the emergency rule expires.

The emergency rule expires on May 29, 2010. The legislative review process will likely take a minimum of 45 days. It is not likely that the process will be completed prior to the expiration of the emergency rule.

Submitted this 20 day of April, 2010.



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Rick Raemisch  
Secretary





ORDER OF THE  
DEPARTMENT OF CORRECTIONS  
CREATING RULES

**FINDING OF EMERGENCY**

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

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

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

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

**ORDER**

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

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

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

**EXPLANATION OF AGENCY AUTHORITY:**

The Department of Corrections is responsible for supervision of inmates sentenced to Wisconsin prisons, including sentence calculations. Under 2009 Wisconsin Act 28, specifically, §§ 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, §§ 2700 – 2712, § 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, §§ 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, §§ 2722 and 2751, § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, § 973.031, as created by 2009 Wis. Act 28, § 3387t, § 302.042, as created by 2009 Wis. Act 28, § 2699m, and § 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, the legislature created several statutory provisions which affect the calculation of sentences. The Department is promulgating rules to address these changes. In addition, under § 301.03, Stats., the Department is responsible for the supervision of inmates. As part of that supervision, the Department reviews inmates for appropriate custody level, facility placement, program needs, and education needs.

**PLAIN LANGUAGE ANALYSIS:**

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

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

6. Creating DOC 302.41, relating to the early release of certain inmates within 12 months of their release under § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739; and
7. Repealing and recreating DOC 302.18, relating the inmate requests for review of Department decisions concerning custody, institution placement, program needs, or treatment needs.

#### TEXT OF RULE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**DOC 302.33 Positive adjustment time--one for two. (1) ELIGIBILITY.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (o) An inmate who is serving a sentence for a violation of s. 940.235, Stats.
- (p) An inmate who is serving a sentence for a violation of s. 940.32 (3), Stats.
- (q) An inmate who is serving a sentence for a violation of s. 941.21, Stats.
- (r) An inmate who is serving a sentence for a violation of s. 946.465, Stats.

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

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

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

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

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

- (a) the department has determined the inmate is not at a high risk of reoffending;
- (b) the inmate has not received a major penalty under s. DOC 303.68 (1); and
- (c) the inmate does not neglect or refuse to perform required or assigned duties.

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

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

- (a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.
- (b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the department has determined the inmate is not at a high risk of reoffending;
- (b) the inmate has not received a major penalty under s. DOC 303.68 (1); and
- (c) the inmate does not neglect or refuse to perform required or assigned duties.

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

(a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.  
(b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

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

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

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

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

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

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

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

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

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

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

- (m) An inmate who is serving a sentence for a violation of s. 948.03 (2) (a), Stats.
- (n) An inmate who is serving a sentence for a violation of s. 948.40 (4) (a), Stats.
- (3) **PETITION FOR RELEASE.** An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

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

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

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

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

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

**DOC 302.38 Challenge Incarceration Program.** (1) The department shall provide a challenge incarceration program which incorporates manual labor, education, military drill and ceremony, age appropriate strenuous physical activity and rehabilitative programming that is directly related to the inmate's criminal behavior in preparation for release on parole or extended supervision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

(a) Conduct; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**FISCAL ESTIMATE.** See attached.

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

Wisconsin Department of Corrections

Dated: 12/18/19

By:

  
\_\_\_\_\_  
RICK RAEMISCH  
Secretary

SEAL:

**FISCAL ESTIMATE**

DOA-2048 N(R06/99)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

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

**Fiscal Effect**

State:  No State Fiscal Effect

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

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

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
 Permissive  Mandatory  
2.  Decrease Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory  
4.  Decrease Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR    FED    PRO    PRS    SEG    SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used In Arriving at Fiscal Estimate**

**Positive Adjustment Time (PAT)**

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

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

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

**Long-Range Fiscal Implications**

Prepared by: <b>Sue Loniello</b>	Telephone No. <b>240-5524</b>	Agency <b>Corrections</b>
Authorized Signature: <b>Robert Margolies</b> <i>Robert Margolies</i>	Telephone--No. <b>240-5056</b>	Date <b>12/18/09</b>

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

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

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

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

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

#### **Bifurcated Sentence Modification for TIS1 & TIS2**

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

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

The review process begins when the records office creates a list of inmates that have served 75 or 85 percent of his or her bifurcated sentence and are eligible for review by ERRC. The records office forwards the eligibility list to institution social workers, agents and ERRC. The records office also notifies the inmate and the judge and District Attorney from the sentencing court of the upcoming review

by ERRC. After ERRC interviews the inmate the results are forwarded to the records office for processing as follows; 1) inmate is denied, 2) the decision is deferred for further review, or 3) the inmate is recommended for release.

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

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

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

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

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

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

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

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

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

### **Risk Reduction Sentence (RRS)**

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

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

The Department anticipates incarcerated offenders will be released early to extended supervision under the new legislation for a RRS. However, the Department is not able to estimate the number of offenders that may be released under the new RRS rules. We anticipate a reduction in incarceration costs and a reduction in extended supervision costs since the remaining 25% on the confinement portion of the sentence dissolves and is not added to the extended supervision term on the bifurcated sentence.

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

### **Certain Early Releases (CER)**

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

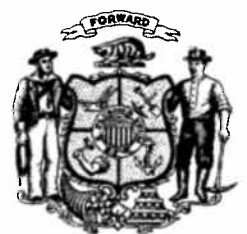
1. The person is serving the confinement portion of a bifurcated sentence for a misdemeanor or a class F to I felony that is not a violent offense as defined in s. 301.048(2)(bm)1.
2. The prison social worker or ES agent of record has reason to believe that the person will be able to maintain himself/herself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

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

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



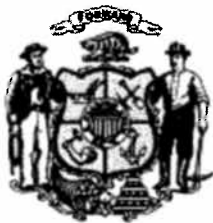
# WISCONSIN STATE LEGISLATURE



SENATOR JIM HOLPERIN  
CO-CHAIR

PO Box 7882  
MADISON, WI 53707-7882

(608) 266-2509



REPRESENTATIVE JOSH ZEPNICK  
CO-CHAIR

PO BOX 8953  
MADISON, WI 53707-8953

(608) 266-1707

Friday, May 28, 2010

Rick Raemisch, Secretary  
Wisconsin Department of Corrections  
P.O. Box 7925  
Madison, WI 53707

Dear Secretary Raemisch:

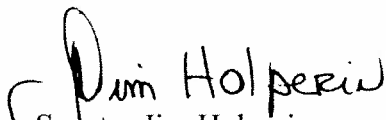
The Joint Committee for the Review of Administrative Rules met in Executive Session on May 25, 2010 and adopted the following motions:

Moved by Representative Hubler, seconded by Representative Hebl that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Corrections, relating to sentence calculations and prison release and to administrative review of inmate classification decisions (EmR0939), for a period of 60 days through July 28, 2010.

Moved by Representative Hubler, seconded by Representative Hebl that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Earned Release Review Commission, relating to the release of inmates through parole or other procedures (EmR0940), for a period of 60 days through July 28, 2010.

Both Motions Passed 8-2.

Sincerely

  
Senator Jim Holperin  
Senate Co-Chair

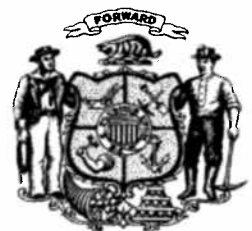
Representative Josh Zepnick  
Assembly Co-Chair

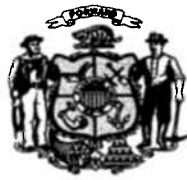
cc: Bruce Hoesly, Legislative Reference Bureau  
Ron Sklansky, Legislative Council





# WISCONSIN STATE LEGISLATURE





**Jim Doyle**  
Governor

**Rick Raemisch**  
Secretary

Mailing Address

3099 E. Washington Ave.  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 240-5000  
Fax (608) 240-3300

## State of Wisconsin Department of Corrections

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June 24, 2010

Senator Jim Holperin  
Joint Committee for Review of Administrative Rules  
Room 409 South  
State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Representative Josh Zepnick  
Joint Committee for Review of Administrative Rules  
Room 219 North  
State Capitol  
Madison, Wisconsin 53708

Re: Emergency Rule Relating to Changes in Various Statutory Provisions Relating to Sentence Calculations and Prison Release under DOC 302 and 2009 Wisconsin Act 28, EmR0939

Dear Senator Holperin and Representative Zepnick:

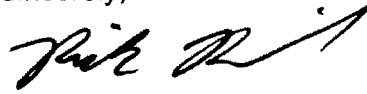
The Department of Corrections requests a second 60 day extension on the proposed emergency rule relating to sentence calculations and prison release under DOC 302. The Department had two public hearings on February 25, 2010, at which six individuals appeared and provided testimony relating to the proposed emergency rule. The Department has also received over 25 written comments relating to the proposed emergency rule. The Department sought an initial 60 day extension on April 20, 2010, which was granted. The Department has not yet submitted its report to the Legislature but anticipates doing so within the next 30 days.

The Department is filing a second request for an extension based on our concern that the Legislature will not have time to act prior to the lapse of the emergency rule. A lapse would require the Department to not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact on the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The current extension of the emergency rule expires on July 28, 2010. The legislative review process will likely take a minimum of 45 days. It is not likely that the process will be completed prior to the expiration of the emergency rule.

If you have questions regarding this extension request, please contact Kathryn Anderson at (608) 240-5049 or [kathryn.anderson@wisconsin.gov](mailto:kathryn.anderson@wisconsin.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Raemisch", with a stylized flourish at the end.

Rick Raemisch  
Secretary

Enclosures: Request for Second Extension  
Certified copy of Emergency Rule EmR0939  
Fiscal Estimate

## REQUEST FOR SECOND EXTENSION OF EMERGENCY RULE EmR0939

The Department of Corrections hereby requests a second extension of Emergency Rule EmR0939 based upon the following:

1. Evidence of a threat to the public peace, health, safety, or welfare that can be avoided only by extending the emergency rule.

The Department is filing a request for a second extension based on our concern that the Legislature will not have time to act prior to the lapse of the emergency rule. A lapse would require the Department to not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact on the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

2. Evidence that a permanent rule cannot be in effect on or before the date the emergency rule expires.

The current extension of the emergency rule expires on July 28, 2010. The legislative review process will likely take a minimum of 45 days. It is not likely that the process will be completed prior to the expiration of the emergency rule.

Submitted this 24<sup>th</sup> day of June, 2010.



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Rick Raemisch  
Secretary

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF CORRECTIONS )

I, Rick Raemisch, Secretary, Department of Corrections, and custodian of the official records, certify that the annexed emergency rule, relating to changes in various statutory provisions relating to sentence calculations and prison release under 2009 Wisconsin Act 28, specifically, §§ 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, §§ 2700 – 2712, § 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, §§ 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, §§ 2722 and 2751, § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, § 973.031, as created by 2009 Wis. Act 28, § 3387t, § 302.042, as created by 2009 Wis. Act 28, § 2699m, and § 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, and relating to an administrative review of inmate classification decisions, was duly approved and adopted by the Department on December 18, 2009.

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Corrections, 3099 East Washington Avenue, in the City of Madison, this 18<sup>th</sup> day of December, 2009.

SEAL



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Rick Raemisch  
Secretary

ORDER OF THE  
DEPARTMENT OF CORRECTIONS  
CREATING RULES

**FINDING OF EMERGENCY**

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

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

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

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

**ORDER**

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

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

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

**EXPLANATION OF AGENCY AUTHORITY:**

The Department of Corrections is responsible for supervision of inmates sentenced to Wisconsin prisons, including sentence calculations. Under 2009 Wisconsin Act 28, specifically, §§ 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, §§ 2700 – 2712, § 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, §§ 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, §§ 2722 and 2751, § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, § 973.031, as created by 2009 Wis. Act 28, § 3387t, § 302.042, as created by 2009 Wis. Act 28, § 2699m, and § 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, the legislature created several statutory provisions which affect the calculation of sentences. The Department is promulgating rules to address these changes. In addition, under § 301.03, Stats., the Department is responsible for the supervision of inmates. As part of that supervision, the Department reviews inmates for appropriate custody level, facility placement, program needs, and education needs.

**PLAIN LANGUAGE ANALYSIS:**

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

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

6. Creating DOC 302.41, relating to the early release of certain inmates within 12 months of their release under § 302.113 (9h), as created by 2009 Wis. Act 28, § 2739; and
7. Repealing and recreating DOC 302.18, relating the inmate requests for review of Department decisions concerning custody, institution placement, program needs, or treatment needs.

#### TEXT OF RULE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**DOC 302.33 Positive adjustment time--one for two. (1) ELIGIBILITY.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the department has determined the inmate is not at a high risk of reoffending;
- (b) the inmate has not received a major penalty under s. DOC 303.68 (1); and
- (c) the inmate does not neglect or refuse to perform required or assigned duties.

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

(a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.  
(b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**DOC 302.38 Challenge Incarceration Program.** **(1)** The department shall provide a challenge incarceration program which incorporates manual labor, education, military drill and ceremony, age appropriate strenuous physical activity and rehabilitative programming that is directly related to the inmate's criminal behavior in preparation for release on parole or extended supervision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Conduct; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

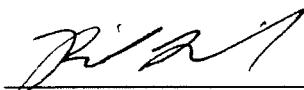
**FINAL REGULATORY FLEXIBILITY ANALYSIS.** The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats.

**FISCAL ESTIMATE.** See attached.

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

Wisconsin Department of Corrections

Dated: 12/18/19

By:   
RICK RAEMISCH  
Secretary

SEAL:

**FISCAL ESTIMATE**

DOA-2048 N(R06/99)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

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

**Fiscal Effect**

State:  No State Fiscal Effect

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

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

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

Local:  No local government costs

1.  Increase Costs  
 Permissive  Mandatory  
2.  Decrease Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory  
4.  Decrease Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR    FED    PRO    PRS    SEG    SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

**Positive Adjustment Time (PAT)**

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

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

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

**Long-Range Fiscal Implications**

Prepared by: <b>Sue Loniello</b>	Telephone No. <b>240-5524</b>	Agency <b>Corrections</b>
Authorized Signature: <b>Robert Margolies</b> <i>Robert Margolies</i>	Telephone--No. <b>240-5056</b>	Date <b>12/18/09</b>



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

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

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

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

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

#### **Bifurcated Sentence Modification for TIS1 & TIS2**

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

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

The review process begins when the records office creates a list of inmates that have served 75 or 85 percent of his or her bifurcated sentence and are eligible for review by ERRC. The records office forwards the eligibility list to institution social workers, agents and ERRC. The records office also notifies the inmate and the judge and District Attorney from the sentencing court of the upcoming review

by ERRC. After ERRC interviews the inmate the results are forwarded to the records office for processing as follows; 1) inmate is denied, 2) the decision is deferred for further review, or 3) the inmate is recommended for release.

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

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

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

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

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

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

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

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

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

### **Risk Reduction Sentence (RRS)**

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

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

The Department anticipates incarcerated offenders will be released early to extended supervision under the new legislation for a RRS. However, the Department is not able to estimate the number of offenders that may be released under the new RRS rules. We anticipate a reduction in incarceration costs and a reduction in extended supervision costs since the remaining 25% on the confinement portion of the sentence dissolves and is not added to the extended supervision term on the bifurcated sentence.

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

### **Certain Early Releases (CER)**

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

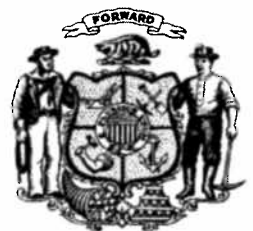
1. The person is serving the confinement portion of a bifurcated sentence for a misdemeanor or a class F to I felony that is not a violent offense as defined in s. 301.048(2)(bm)1.
2. The prison social worker or ES agent of record has reason to believe that the person will be able to maintain himself/herself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

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

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



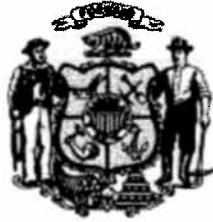
# WISCONSIN STATE LEGISLATURE



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CO-CHAIR

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August 6, 2010

Richard Raemisch, Secretary  
Wisconsin Department of Corrections  
3099 E. Washington Ave.  
Madison, WI 53707

Dear Secretary Raemisch:

Re: Emergency Rule Relating to Changes in Various Statutory Provisions Relating to Sentence Calculations and Prison Release under DOC 302 and 2009 Wisconsin Act 28, EmR0939

Moved by Representative Hubler and seconded by Representative Hebl that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Corrections, relating to sentence calculations and prison release and to administrative review of inmate classification decisions (EmR0939), for a period of 60 days through September 26, 2010.

Motion Passed 7-3,

Sincerely,

Senator Jim Holperin  
Senate Co-Chair

Representative Josh Zepnick  
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau  
Ron Sklansky, Legislative Council