



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 38
[2011 Senate Bill 57]

Repeal of Early Release

2011 Wisconsin Act 38 relates to corrections and sentencing, and, generally, repeals most of the provisions of the sentencing modification laws that were created or affected by 2009 Wisconsin Act 28, the 2009-11 Biennial Budget Act.

REPEALED EARNED RELEASE PROGRAMS

The Act eliminates the Earned Release Review Commission, restores the Parole Commission, and moves many of the review functions to the sentencing court for an inmate's petition for the retained early or earned release programs.

The Act eliminates:

- The earned release programs that use "positive adjustment time."
- Risk reduction sentences.
- Earned release within 12 months of the inmate's eligible release date.
- Early discharge after serving two years of extended supervision.

RETAINED EARLY AND EARNED RELEASE PROGRAMS

The Act retains and restores the applicability of the early release provision for the sentencing adjustment program for each eligible inmate who has served at least 75% to 85% of the term of imprisonment, as the provision existed prior to Act 28.

The Act retains the earned release for substance abuse rehabilitation and challenge incarceration programs that existed prior to being modified by Act 28. The substance abuse rehabilitation program is

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

restored to substance abuse only, not other types of rehabilitation as allowed under Act 28, and allows an inmate to be transferred to a mental health institute with the Department of Health Services for the treatment of substance abuse. Likewise, the challenge incarceration program (“boot camp”) is restored to each eligible inmate with substance abuse treatment needs, but not other treatment needs.

The Act maintains the language from Act 28 that provides a six working day timeline for release from incarceration by the Department of Corrections (the department) after receipt of a court order modifying the inmate’s bifurcated sentence based on successful completion of the earned release for the substance abuse rehabilitation or challenge incarceration programs.

The Act also largely retains an allowance for early release based on a health condition or advanced age, as it existed prior to being modified by Act 28. However, the Act retains language from Act 28 defining an “extraordinary” health condition, rather than prior language for a “terminal” health condition. Under the Act, an inmate serving a life sentence or a bifurcated sentence for a Class B felony is not eligible for this type of release.

MODIFIED EARLY DISCHARGE FROM PROBATION

The Act maintains the provision from Act 28 that allows for early discharge from probation. The Act moves the authority to discharge from the department to the court, creates criteria for determining if a person is eligible for early discharge, and creates a procedure for a victim of the crime to be notified of the hearing and provide a statement for consideration of early discharge from probation.

The criteria for eligibility for early discharge from probation are: completion of 50% of the period of probation; satisfaction of conditions of probation set by the sentencing court; satisfaction of all rules and conditions set by the department; and fulfillment of all financial obligations to victims of the crime, the court, and the department, including fines, forfeitures, fees, surcharges, and restitution.

GRANDFATHERING OF POSITIVE ADJUSTMENT TIME AND RISK REDUCTION SENTENCES

The Act allows grandfathering for an inmate who is serving a bifurcated sentence imposed on or after December 31, 1999, but before the effective date of the Act, who earned positive adjustment time or was given a risk reduction sentence to petition the sentencing court for adjustment under the positive adjustment time earned between October 1, 2009, and the effective date of the Act, or to be released upon successful completion of a risk reduction sentence imposed between October 1, 2009, and the effective date of the Act.

The Act specifies a six working day timeline for release from incarceration by the department after receipt of a court order releasing the inmate to extended supervision upon successful completion of the requirements of a risk reduction sentence.

For the grandfathering of positive adjustment time earned, the Act specifies that an inmate may petition the court for a sentencing adjustment based on the number of days of positive adjustment time the inmate claims have been earned, rather than requiring the inmate to include documentation from the department in the petition to the court. The Act also specifies that a year must pass from a petition based on positive adjustment time before an inmate may petition the court for a sentencing adjustment based on serving at least 75% to 85% of the term of imprisonment.

Effective date: Act 38 takes effect on August 3, 2011, and applies to any person sentenced on or after December 31, 1999.

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August 3, 2011

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