

## Report From Agency

### WISCONSIN EARNED RELEASE REVIEW COMMISSION PROPOSED RULE MAKING ORDER CR 09-119

#### INTRODUCTORY CLAUSE

The Wisconsin Earned Release Review Commission (formerly the Parole Commission) proposes an order to repeal and recreate chapter PAC 1, relating to the release of inmates from state prison through parole or other procedures established through 2009 Wis. Act 28.

#### TEXT OF RULE:

SECTION 1. Chapter PAC 1 is repealed and recreated to read:

#### Chapter PAC 1

#### GENERAL PROVISIONS

**PAC 1.01 Authority.** This chapter is promulgated under ss. 227.11 (2), 304.06 (1) (e), and 304.06 (1) (em), Stats.

**PAC 1.02 Purpose.** This chapter establishes the process by which the commission reviews requests for parole or release to extended supervision under ch. 302 and 304, Stats.

**PAC 1.03 Definitions.** In this chapter:

(1) "Chairperson" means the chairperson of the commission. "Chairperson" includes a commissioner who is designated by the chairperson to perform a specific assignment or duty.

(2) "Commission" means the earned release review commission, including the chairperson and commissioners.

(3) "Commissioner" means a member of the earned release review commission, including the chairperson.

(4) "Deferral" means an action by a commissioner, which follows release consideration and which denies release for a specified period of time.

(5) "Denial" means an action by a commissioner which denies early release to extended supervision or release prior to mandatory release.

(6) "Department" means the department of corrections.

(7) "Direct input" means the opportunity for the victim to communicate with the commission regarding the offender's release.

(8) "Extended supervision" means the portion of a bifurcated sentence imposed under s. 973.01, Stats., wherein the individual is released by the department to supervision in the community.

(9) "Extraordinary health condition" means a condition afflicting a person such as advanced age, infirmity or disability of the person or a need for medical treatment or services not available within a correctional institution.

(10) "Family member" means spouse, domestic partner under ch. 770, Stats., minor child, adult child, sibling, parent or legal guardian.

(11) "File review" means release consideration that takes place outside the presence of the inmate.

(12) "Informational deferral" means an action by a commissioner to hold release consideration in abeyance.

(13) "Mandatory release" or "MR" means the release of an inmate by the department to community supervision as provided under s. 302.11 (1), Stats.

(14) "No action" means release consideration that has been referred to the chairperson or the full commission.

(15) "Parole grant or release to extended supervision order" means the action by the chairperson, ordering the release of an inmate on or after a specified date to supervision by the department, to begin serving a sentence under 1997 Wis. Act 283, or to another case or sentence or count under s. 973.01, Stats.

(16) "Parole or release to extended supervision eligible" means qualified to be considered for release under ch. 302 or 304, Stats.

(17) "Presumptive mandatory release date" or "PMR" means the date that an eligible inmate may be released on parole unless the commission denies release under s. 302.11 (1g) (b), Stats.

(18) "Release consideration" means the process by which a commissioner reviews relevant information concerning an inmate who is approaching eligibility for parole or release to extended supervision.

(19) "Victim" means a person against whom a crime has been committed or a victim's family member.

**PAC 1.04 Purpose of release consideration.** The purpose of release consideration is to evaluate all of the following factors: (1) Depreciation of the seriousness of the offense resulting from early release.

(2) Risk to the community.

(3) Reasonable certainty of a crime-free reintegration of the inmate into society.

**PAC 1.05 Eligibility for release consideration. (1) INITIAL ELIGIBILITY.** The commission shall not consider for parole or release to extended supervision any person who is sentenced to the department's custody until the person has been confined at least 60 days following sentencing.

(2) PAROLE ELIGIBILITY. (a) *Early parole consideration.* For persons sentenced for offenses committed before December 31, 1999, the chairperson may waive the 25% service of sentence requirement under s. 304.06 (1) (b), Stats., if the chairperson determines that extraordinary circumstances warrant an earlier parole consideration and the sentencing court, district attorney,

and the victim, if available, have been notified and permitted to comment upon the proposed recommendation.

(b) *Initial parole eligibility.* For persons sentenced for offenses committed before December 31, 1999, the inmate's eligibility for discretionary parole will be determined under s. 304.06, Stats.

(c) *Subsequent parole eligibility.* 1. When incarceration follows parole revocation without the imposition of a new sentence, parole eligibility shall be established at 6 months from the date of return to the institution, less sentence credit under s. 973.155 (1), Stats.

2. When incarceration follows parole revocation and involves the imposition of a new sentence, parole eligibility shall be established at 6 months from the custody date, less sentence credit under s. 973.155 (1), Stats., or in accordance with the eligibility date of the new sentence.

3. When incarceration follows parole revocation and initial release consideration occurs, the imposition of a new sentence may affect parole eligibility if the 25 % service requirement under s. 304.06 (1) (b), Stats., of the new sentence results in a date that is later than the parole eligibility date that the commission establishes at initial consideration.

**(3) RELEASE TO EXTENDED SUPERVISION ELIGIBILITY.** (a) *Initial release to extended supervision eligibility.* For persons sentenced under s. 973.01, Stats., the inmate's eligibility for release consideration will be determined under s. 304.06 (1) (bg), Stats.

(b) *Subsequent release to extended supervision eligibility.* When incarceration follows revocation of extended supervision, an eligibility date will be established in accordance with s. 304.06 (1) (bg), Stats.

**(4) WAIVER OF RELEASE CONSIDERATION.** An inmate may waive release consideration at any time by notifying the commission in writing through institution staff. No review or decision will occur. A waiver will not effect future commission decisions

**(5) WITHDRAWAL OF CONSIDERATION.** If an inmate declines to appear before the commission at the time of a scheduled interview or appears but refuses to participate, the failure to appear or participate, unless excused by the commission, shall be construed as a withdrawal of release consideration. No review or decision will occur. A withdrawal will not affect future parole or release to extended supervision decisions.

**(6) RE-ESTABLISHMENT OF ELIGIBILITY FOR CONSIDERATION.** To become eligible for release consideration following a waiver or withdrawal, the inmate shall apply in writing to the commission through institution staff. The eligibility date shall be established in accordance with the inmate's sentence structure. An interview will be scheduled based on the inmate's application.

**PAC 1.06 Release consideration. (1)** Except as provided in s. PAC 1.05 (1), for persons sentenced for offenses that occurred before December 31, 1999, the initial release consideration shall be scheduled during the month prior to the date of first statutory eligibility for parole, unless waived in writing by the inmate, the inmate is not available, in which case the commissioner will set a new interview date, or the inmate has been transferred after which an interview will be scheduled as soon as practicable.

**(2)** Except as provided in s. PAC 1.05 (1), for persons sentenced under s. 973.01, Stats., the inmate will be scheduled for release consideration prior to the earliest eligibility date established under s. 304.06 (1) (bg), Stats., if practicable.

**(3)** After initial consideration, the commission may schedule a subsequent review to determine if the inmate meets the criteria for release.

**(4)** The institution responsible for scheduling release consideration shall give the inmate at least a 15-day written notice of the interview, except following an informational deferral, in which case subsequent notification is not required. When notification is not timely, the inmate may waive the 15-day requirement. If the inmate does not waive, consideration will be postponed until notice can be given. The notice of consideration for release shall address the criteria under sub. (15).

**(5)** The chairperson may assign one or more commissioners to conduct a release consideration interview.

**(6)** The inmate shall have access at the correctional institution where the inmate is confined to the documentary information which the commissioner considered, except information determined to be confidential may not be disclosed.

**(7)** During the release consideration interview, the inmate shall be afforded the opportunity to provide information that is relevant, material, and not unduly repetitious, including the opportunity to comment on perceived errors of material fact in the record.

**(8)** The commissioner's decision shall be based on information available, including file material, victim's statements if applicable, and any other relevant information.

**(9)** A deferral greater than 12 months requires the written approval of the chairperson.

**(10)** The interview shall be recorded. A transcript shall be prepared only upon an order of the court which has jurisdiction over a petition for judicial review of the decision.

**(11)** Release consideration may occur without the inmate present when one of the following circumstances occurs: (a) The inmate had an interview within the preceding 12 months.

(b) It is not practicable to arrange for an interview within the timeframe for considering release and the interest of justice as well as that of the inmate would best be served by a file review.

(c) The inmate is in segregation status.

(d) The inmate is within two months of MR or release to extended supervision.

**(12)** If release consideration occurs under sub. (11) without the inmate being present, the inmate may make a written request through institution staff for the opportunity to receive an explanation of the decision. The commission may grant the request.

**(13)** Representation by legal counsel during the interview for release consideration shall not be permitted, except for extraordinary health conditions under s. PAC 1.08.

**(14)** Interpretive services shall be provided for an inmate in order to facilitate effective communication.

**(15)** Release consideration is exempt from open meeting legislation under s. 19.85 (1) (d), Stats., and shall be closed to the public. However, upon request, and with the approval of the chairperson, persons with a civic, academic, or professional interest in the release consideration process may be allowed to observe individual proceedings. Observers shall not be allowed if the inmate objects.

**(16)** A recommendation for a parole grant or release to extended supervision order may be made after consideration of all the following criteria:

(a) The inmate has become parole or release to extended supervision eligible under s. 304.06, Stats., and s. PAC 1.05.

(b) The inmate has served sufficient time so that release would not depreciate the seriousness of the offense.

(c) The inmate has demonstrated satisfactory adjustment to the institution.

(d) The inmate has not refused or neglected to perform required or assigned duties.

(e) The inmate has participated in and has demonstrated sufficient efforts in required or recommended programs which have been made available by demonstrating one of the following:

1. The inmate has gained maximum benefit from programs.

2. The inmate can complete programming in the community without presenting an undue risk.

3. The inmate has not been able to gain entry into programming and release would not present an undue risk.

(f) The inmate has developed an adequate release plan.

(g) The inmate is subject to a sentence of confinement in another state or is in the United States illegally and may be deported.

(h) The inmate has reached a point at which the commission concludes that release would not pose an unreasonable risk to the public and would be in the interests of justice.

**(17)** The commission shall provide an opportunity for a victim to provide direct input and to attend the interview.

**(18)** The commission shall permit any office or person to submit a written statement for consideration in its decision-making process.

**PAC 1.07 Commission recommendations. (1)** Following release consideration under s. PAC 1.06, a commissioner may recommend release with or without special conditions, or may deny release and defer consideration for a specified period of time. The commissioner shall make the recommendation of release to the chairperson. If release is denied, the commissioner shall establish a date for reconsideration under s. PAC 1.06 (3), unless the inmate will reach the MR date or the extended supervision date prior to the reconsideration date.

**(2)** The inmate shall be advised in writing of the decision to defer or to recommend a grant of parole or release to extended supervision, the reasons for the decision, and the next opportunity for consideration or the recommended parole or release to extended supervision date.

**(3)** A commissioner may refer the case to the full commission for a decision. When the chairperson makes a final decision, the inmate shall be notified of the decision in writing. The inmate may make a written request through institution staff for the opportunity to receive an explanation of the decision. The commission may grant the request.

**(4)** If the chairperson disagrees with a recommendation of the commissioner, the chairperson shall inform the inmate in writing the reason for amending the recommendation.

(5) For persons sentenced under s. 973.01, Stats., if the chairperson approves a recommendation for release to extended supervision, the commission shall notify the sentencing court in accordance with s. 304.06 (1) (bk) 1., Stats., of its intent to modify the inmate's sentence and release the inmate to extended supervision or another case or sentence. The commission shall provide the sentencing court with justification for its recommendation. If the court does not schedule a review hearing within 30 days after notification, the commission will proceed with the action recommended. The commission shall issue an order for sentence modification. The term of confinement in the prison portion of the inmate's sentence will be reduced by the period of release and the term of extended supervision of the inmate's sentence will be lengthened by the period of release so that the total length of the sentence as originally imposed by the court will remain unchanged.

(6) A commissioner may withdraw a recommendation for parole or release to extended supervision prior to the issuance of the grant of parole or order for release to extended supervision whenever the circumstances affecting the original recommendation have, in the opinion of the commissioner, changed sufficiently to require withdrawal of the recommendation.

(7) If there is a change in circumstances, requiring a denial of the grant or order, subsequent to the issuance of a parole grant or release to extended supervision order but prior to release, the inmate shall be provided written notice of the reasons for rescission and a summary of the evidence supporting the reasons for rescission. The inmate shall be given an opportunity to appear and be heard by an impartial hearing examiner from the division of hearings and appeals in the department of administration. At the hearing the inmate shall be given the right to present witnesses and evidence which are material, relevant, and not unduly repetitious, the right to confront and cross-examine witnesses against the inmate, the right to receive a written statement of the evidence relied upon, and the right to be represented by counsel. After a review of the findings of fact, conclusions of law, and recommendation of the hearing examiner, the chairperson shall make a final decision.

(8) For persons sentenced for offenses committed before December 31, 1999, the chairperson may grant or deny parole at any time, if extraordinary circumstances affecting an inmate are documented and verified.

**PAC 1.08 Release due to extraordinary health condition or age. (1) ELIGIBILITY.** An inmate serving a bifurcated sentence imposed under s. 973.01, Stats., or, notwithstanding s. 973.014 (1g) (a) or (2), Stats., serving a life sentence imposed under s. 973.014, Stats., may petition the commission for modification of the inmate's sentence to be released to extended supervision if the inmate meets one of the following eligibility criteria:

- (a) The inmate is 65 years of age or older and has served at least 5 years of the term of confinement in the prison portion of the bifurcated sentence for a sentence imposed under s. 973.01, Stats., or has served at least 5 years for a life sentence imposed under s. 973.014, Stats.
- (b) The inmate is 60 years of age or older and has served at least 10 years of the term of confinement in the prison portion of the bifurcated sentence for a sentence imposed under s. 973.01, Stats., or has served at least 5 years for a life sentence imposed under s. 973.014, Stats.
- (c) The inmate has an extraordinary health condition.

**(2) RIGHT TO REPRESENTATION.** An inmate who is eligible to petition for modification of the sentence under this section has a right to be represented by counsel in proceedings under this section. An inmate or the department on the inmate's behalf, may apply to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (jm), Stats., before or after the filing of the petition.

**(3) PETITION.** An inmate who files a petition for release under this section shall include all of the following in support of his or her petition:

- (a) Date of birth.

(b) Dates of incarceration for current sentence.

(c) Affidavits of 2 physicians, as defined under s. 448.01 (5), Stats., who practice in this state, setting forth the inmate's diagnosis, medical condition, including physical or mental limitations or disabilities, treatment, and prognosis if the inmate is alleging that he or she has an extraordinary health condition. One of the affidavits shall be from the inmate's current attending physician.

(d) A signed authorization on a form specified by the commission, authorizing the release of a copy of the petition and supporting documentation to the sentencing court, the district attorney, and victims of the inmate's crime for purposes of reviewing and processing the petition.

(e) Other information as required by the commissioner.

**(4) HEARING.** (a) Upon receipt of a petition from an inmate, the commission shall review the petition to determine if the inmate is eligible for consideration under sub. (1). If the inmate meets one of the criteria for review, the commission shall schedule the petition for hearing to determine whether the public interest would be served by a modification of the inmate's sentence under s. 302.1135, Stats. The commission may seek additional information regarding the factual bases of the inmate's petition for sentence modification under this section, including additional medical information.

(b) The commission shall notify in writing the inmate, the district attorney, any victims of the inmate's crime, the attorney representing the inmate, if applicable, the agent of record, the institution social worker, and the institution record office staff, of the date, time and location of the hearing. The commission will notify victims through the department's office of victim services. The notice of hearing shall be sent to the last-known address of the inmate's victim, postmarked at least 10 days before the date of the hearing.

(c) In advance of the hearing the commission may request from the agent or social worker additional information, including the inmate's release plan. The commission may request the department to provide information concerning the inmate's status regarding civil commitment under ch. 980, Stats., and community notice under ss. 302.45, 302.46, and 302.47, Stats.

(d) The commissioner conducting the hearing shall review the inmate's social service and legal files prior to the hearing.

(e) The commission shall permit the inmate, the attorney representing the inmate, if applicable, the district attorney, and any victims of the inmate's crime to attend the hearing and give a written or oral statement regarding the inmate's petition for sentence modification, specifically addressing the issue of whether the public interest would be served by the modification. During the hearing the commission may request additional information. The hearing may be held in person, by telephone, videoconferencing or other virtual communication means at the discretion of the commission.

(f) Information about the address of a victim will not be released or disclosed.

(g) The inmate has the burden of proving by the greater weight of the credible evidence that a modification of the sentence under this section would serve the public interest.

(h) The hearing shall be recorded. A transcript shall be prepared only upon an order of the court which has jurisdiction over a petition for judicial review of the decision.

**(5) DECISION.** (a) Upon conclusion of the hearing, the commissioner conducting shall prepare a report for submission to the chairperson. The report shall contain a summary of the information provided at the hearing, including relevant documents, a recommendation to approve or deny the petition, and the justification for the recommendation.

(b) The commission may defer making a decision or hold a decision in abeyance in order to receive additional relevant information, including medical information. If additional information is received, the commission shall reconvene the hearing. Notice will be given to individuals who were present at the initial hearing. The hearing may be held in person, by telephone, videoconferencing or other virtual communication means at the discretion of the commission.

(c) The chairperson shall issue a decision on the petition based on the report and documents submitted by the commissioner.

1. If the petition is approved, the chairperson shall modify the sentence by establishing a new release date and give notice to the department. The department shall release the inmate to extended supervision within 30 days after the date on which the commission modified the

sentence. The modification shall reduce the term of confinement in the prison portion of the inmate's sentence and lengthen the term of extended supervision imposed so that the total length of the sentence originally imposed does not change.

2. If the petition is denied, the inmate may not file another petition within one year of the date of the denial.

3. The commission shall provide notice of its decision in writing to the inmate, the district attorney, any victims of the inmate's crime, the attorney representing the inmate, if applicable, the agent of record, the institution social worker, and the institution record office staff.

**(6) APPEAL.** (a) An inmate may seek review of the decision to deny the petition for modification only by common law writ of certiorari.

(b) The state may appeal the decision to grant the petition to circuit court.

**PAC 1.09 Presumptive mandatory release review** **(1)** For an inmate who is subject to PMR and who has been deferred to the mandatory release date of the PMR offense or has waived consideration but is approaching the mandatory release date, a commissioner shall conduct a review two months prior to the mandatory release date.

**(2)** The institution responsible for scheduling release consideration shall give the inmate at least a 15-day written notice of the interview. When notification is not timely, the 15 day requirement may be waived by the inmate. If the inmate does not waive, consideration will be postponed until notice can be given.

**(3)** An inmate may waive appearance at the interview, which will result in the commissioner issuing a decision based on available information.

**(4)** If an inmate is unavailable for the interview, a commissioner may issue a decision based on available information or may re-schedule an interview if time allows.

**(5)** The inmate shall have access at the correctional institution where the inmate is confined to the documentary information considered by the commissioner, except information determined to be confidential may not be disclosed.

**(6)** During the PMR interview, the inmate shall be afforded the opportunity to provide relevant information for the commissioner's consideration including the opportunity to comment on perceived errors of material fact in the record.

**(7)** The commissioner's decision shall be based on information available, including file material and any other relevant information.

**(8)** Presumptive mandatory release may be denied for protection of the public or due to refusal by the inmate to participate in counseling or treatment deemed necessary.

**(9)** If a commissioner denies PMR release, the commission shall schedule a subsequent review to consider whether circumstances have changed and the inmate meets the criteria for release.

**(10)** An inmate may be held until his or her maximum discharge date.

**(11)** If the commissioner does not deny PMR, the inmate shall be released to parole supervision.

**(12)** The interview shall be recorded. A transcript shall be prepared only upon an order of the court which has jurisdiction over a petition for judicial review of the decision.



SECTION 2: Effective date: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro), Stats.

## **RULE SUMMARY**

A. Statutes interpreted: s. 302.1135, Stats, as created by 2009 WI Act 28, ss. 2729j – 2738 and 2739d – 2739j, ch. 304, Stats., s. 304.06 (1) (bg) 1., 2., 3., and 4., Stats., as created by 2009 WI Act 28, s. 2751, and ch. 770, Stats.

B. Statutory Authority to Promulgate the Rule: ss. 227.11 (2), 304.06 (1) (c), and 304.06 (1) (em), Stats

C. Explanation of agency authority

The Earned Release Review Commission or ERRC (formerly the Parole Commission) has the authority to promulgate rules which govern the procedures for considering inmate petitions for release from prison to parole or extended supervision. This rule updates the current rule (PAC 1) to reflect changes in procedures, practice, and the law.

Under s. 302.1135, Stats, as created by 2009 WI Act 28, ss. 2729j – 2738 and 2739d – 2739j, the Earned Release Review Commission (formerly the Parole Commission) has the authority to consider inmate petitions for release due to age or extraordinary health condition. This rule sets forth the procedure which the ERRC will follow in reviewing these petitions.

Under s. 304.06 (1) (bg) 1. and 2., as created by 2009 WI Act 28, s. 2751, the Earned Release Review Commission has the authority to consider inmate petitions for release to extended supervision after an inmate has served the term of confinement of his or her bifurcated sentence less positive adjustment time he or she has earned. This rule sets forth the procedure which the ERRC will follow in reviewing these petitions.

Under s. 304.06 (1) (bg) 3. and 4., as created by 2009 WI Act 28, s. 2751, the Earned Release Review Commission has the authority to consider inmate petitions for release to extended supervision after an inmate has served either 75% or 85% of his or her term of confinement, depending on the offense for which the inmate was sentenced. This rule sets forth the procedure which the ERRC will follow in reviewing these petitions.

D. Related statute or rule: None

E. Plain Language Analysis

The rule:

1. Revised s. PAC 1.02, Purpose, to more clearly state that the purpose of the rule chapter is to set forth the procedures under which the earned release review commission (formerly parole commission) operates.
2. Updated terminology and phrasing throughout the rule to reflect the responsibility of the commission for parole and release to extended supervision under 2009 Wisconsin Act 28.

3. Added definitions for the following terms: denial, extended supervision, extraordinary health condition, file review, informational deferral, no action, and presumptive mandatory release date.
  4. Moved the definition of “direct input,” which had previously been in s. PAC 1.06 (9) (c) to the definition section.
  5. Modified the term “member of the family” to “family member” and included domestic partners under ch. 770, Stats., in the definition of covered persons.
  6. Modified definitions to include reference to release to extended supervision in light of 2009 Wisconsin Act 28. Specifically, “parole grant” became “parole grant or release to extended supervision order,” and “parole eligible” became “parole or release to extended supervision eligible,” and “parole consideration” became “release consideration.”
  7. Clarified the purpose of release consideration in s. PAC 1.04.
  8. Modified s. PAC 1.05 to address the commission’s authority to consider parole eligibility or release to extended supervision eligibility for inmates depending on the date on which the offense for which they were convicted was committed.
  9. Deleted s. PAC 1.05 (2) which stated that consecutive sentences will be considered as one continuous sentence. The commission concluded that the rule provision was unnecessary since the statutes have the same provision (s. 302.11 (3), Stats., for sentences imposed for offenses committed before December 31, 1999 and s. 302.113 (4), Stats., for sentences under s. 973.01, Stats.).
  10. Modified s. PAC 1.06 to more clearly state the process by which the commission will consider an inmate for release to parole or extended supervision, including the scheduling of release consideration for persons sentenced under s. 973.01, Stats. Also, included are the additional criteria which are to be considered and which are noted in 2009 Wisconsin Act 28, specifically the inmate has not refused or neglected to perform required or assigned duties. Clarified the criteria used to evaluate participation in required or recommended programming. Finally, deleted the listing of specific offenses which require giving a victim the opportunity for direct input. The commission gives victims who are registered with the office of victim services an opportunity for direct input in all cases.
  11. Modified s. PAC 1.07 to include the process for release recommendations for inmates sentenced under s. 973.01, Stats., including those inmates being considered for positive adjustment time and those who have served 75% or 85% of their sentences.
  12. Added to s. PAC 1.07 the authority and the procedures of the commission to modify an inmate’s bifurcated sentence in accordance with s. 304.06 (1) (bk) 1., Stats.
  13. Clarified that a commissioner may withdraw a recommendation for parole or release to extended supervision prior to the issuance of the release order whenever the circumstances affecting the original recommendation have in the opinion of the commissioner, changed sufficiently to require withdrawal of the recommendation.
  14. Created s. PAC 1.08 to establish procedures for the commission to review inmate petitions for release due to extraordinary health condition or age.
  15. Created s. PAC 1.09 to establish procedures for the commission to review inmates who are subject to presumptive mandatory release.
- F. Summary of and Comparison with Existing or Proposed Federal Regulations that are intended to address the activities to be regulated by the proposed rule

There are no federal regulations which address the procedures for parole or release consideration in Wisconsin.

G. Comparison of similar rules in adjacent states (Michigan, Minnesota, Illinois, Iowa, Indiana)

1. Illinois:

The rules of the Illinois Prisoner Review Board (IPRB) are found in 20 Ill. Adm. Code ss. 1610.10 - 1610.180. Like the ERRC the IPRB notifies the inmate in advance of the parole

consideration hearing that the hearing has been scheduled and gives inmates access to the evidence to be considered by the IPRB prior to the hearing. Like the ERRC the purpose of the IPRB hearings is to gather information to determine whether release should occur. The IPRB rules specifically state that the hearings are not adversarial. However, an IL inmate has an attorney present at his or her own expense. The ERRC does not permit an attorney to be present, except for hearings on petitions for release due to extraordinary health condition or age. The IPRB rules set forth a more detailed list of criteria to be considered for release. However, the ERRC listing covers all of the same issues for consideration. The IPRB requires a decision to be made within 7 days of the hearing. There is no comparable timeframe for the ERRC. The IPRB rules provide for a hearing in cases where the IPRB is considering rescinding a grant of parole. The hearing process appears to be comparable to the process used for an initial hearing. In the current rule the hearing on the decision to rescind is a full hearing before an administrative law judge from the Division of Hearings and Appeals, including the opportunity to confront and cross examine witnesses. In the proposed rule the ERRC has removed the opportunity for a hearing on the issue of rescission. Unlike the ERRC the IPRB provides the opportunity for rehearing.

2. Iowa:

The rules of the Board of Parole are found in IA 205 chapters 1-8, most specifically IA-ADC 205-8.1, et seq. The agency responsible for making parole and work release determinations is the Iowa Parole Board (Board). The Board is responsible for assessing the risk of each inmate committed to the custody of the IA DOC. Inmates are not eligible for parole if they are serving a mandatory minimum sentence under IC s. 902.11. The Board reviews an inmate annually for parole consideration. If an interview is to be conducted, the Board gives the inmate notice. Factors which are to be considered in parole decisions are: previous criminal record, nature and circumstances of the offense, recidivism record, convictions or behavior indicating a propensity for violence, participation in institutional programs, including academic and vocational training, psychiatric and psychological evaluations, length of time served, evidence of serious or habitual institutional misconduct, success or failure while on probation, prior parole or work release history, prior refusal to accept parole or work release, history of drug or alcohol use, a parole plan formulated by the inmate, general attitude and behavior while incarcerated, and risk assessment. The Board may request that a psychiatric or psychological evaluation be done on an inmate to assist in its determination. Information considered by the Board will normally be made available to the inmate for review. Like the ERRC the Board can conduct an interview and/or a case review when considering release. IA parole proceedings are open to the public, except as "otherwise necessary or proper." If a person from the public attends, that person may not participate in the proceedings. The number of persons other than the inmate and institution staff who may attend may be limited by the Board. The Board has extensive rules on the conduct of the media during parole proceedings. The Board rules incorporate actual risk assessment scores into its evaluation of whether an inmate is suitable for parole. Depending on the score and an assessment of whether the inmate can be released without detriment to the community or to the inmate, the Board may grant the parole if at least 3 members agree for risk assessment scores of 1 through 6, if at least 4 members agree for scores of 7 or 8, and if the Board is unanimous for a score of 9. The Board may grant an inmate parole at any time following successful completion of work release. Successful completion is a defined concept.

3. Michigan:

The authority for the Michigan Parole Board (Board) is found in MCLA 791.231a, et seq., and MI ADC R. 791.7715, et seq. Like Wisconsin, the Board may parole an inmate once the inmate has served a minimum term imposed by the sentencing court less allowances for good time. Michigan prohibits release before the inmate has served the minimum term, despite the earning of good time for certain enumerated crimes, including those sentenced to an indeterminate sentence, controlled or counterfeit substance offenses, and habitual

offender. Factors to be considered in making a parole decision include: the offense for which the inmate is incarcerated, the inmate's institutional conduct, program performance, prior criminal record, and other relevant factors; also, the inmate's statistical risk screening and age. The Board may grant a parole without interviewing the inmate if after evaluating the inmate the Board determines that the inmate has a high probability of being paroled and the Board intends to parole the inmate. The Board is required to give the inmate 1 month notice of the parole interview, including date and issues and concerns to be discussed during the interview. An inmate may waive the right to an interview before one Board member. The inmate may have a representative of his choice but the representative may not be another inmate or an attorney. There is no right to the appointment of public counsel. Institution staff prepares a parole eligibility report which includes misconduct reports, institution work and education record, health and mental health examination results, and cooperation with the payment of financial obligations. If the Board denies parole, the inmate shall be given a written explanation for the denial and, if appropriate, specific recommendations for corrective action. The Board may amend or rescind a parole decision for cause before the inmate is released on parole. However, at least one member of the Board must conduct an interview with the inmate for the purpose of considering and acting upon information received after the original parole release decision. A parole order may be amended but is not effective until the inmate is given written notice of the amendment. The Board sets the conditions of parole and the amount of the supervision fees to be collected during the period of supervision. In the administrative rules, the Board may consider the inmate's criminal behavior, institutional adjustment, readiness for release, the inmate's personal history and growth, the inmate's physical and mental health. If an inmate is being considered for parole, the inmate shall receive a psychological or psychiatric evaluation before release if the inmate has been hospitalized for mental illness in the last 2 years, has a history of predatory or assaultive sexual offenses, or has serious or persistent history of assaultiveness within the institution. Inmates are evaluated for a parole guideline score which is based on a combination of the length of the time the inmate has been incarcerated for the offense and other listed factors.

#### 4. Minnesota:

The State of Minnesota does not have a separate Parole Board. The entity which grants paroles and work release is called the executive officer of hearings and release, who has been delegated this authority by the commissioner of corrections. The relevant provisions can be found in MN ADC chapter 2940 [MN ADC 2940.0100, et seq.]. Prior to a reentry review, an inmate is given notice of the date and time of the review. The notice must include the purpose of the review, the material to be covered and the right to review documents which will be considered as part of the review. The inmate may submit written documentation and appear and speak on his or her own behalf during the hearing. Institution discipline may cause an inmate to lose good time or extend a term of incarceration. For inmates with life sentences, there is an advisory panel which is comprised of the deputy commissioner for institutions, the deputy commissioner for community services, the superintendent or warden of the inmate's current residence, and the executive officer of the hearings and release unit and whose duties is to review each inmate 3 years before the inmate's parole or supervised release eligibility date in order to establish a projected release date or future review date. The panel shall assist the commissioner of corrections in considering the inmate's case history, including the facts and circumstances of the offense for which the life sentence is being served, past criminal history, institutional adjustment, program team reports, psychological and psychiatric reports where pertinent, and the results of community investigations.

- H. Summary of the factual data and analytical methodologies that ERRC used in support of its determination of the rule's fiscal effect on small businesses under s. 227.114, Stats.

This rule does not affect small businesses. The rule establishes procedures for the release of inmates under ch. 302 and 304, Stats.

- I. Any analysis and supporting documents that ERRC used in support of ERRC's determination of the rule's fiscal effect on small businesses under s. 227.114, Stats.

No economic impact report was required.

- J. Effect on small businesses

The Earned Release Review Commission 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 § 227.114, Stats.

- K. Agency contact person (including email and telephone)

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections  
3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707-7925  
(608) 240-5049; FAX (608) 240-3306  
[Kathryn.Anderson@wisconsin.gov](mailto:Kathryn.Anderson@wisconsin.gov)

- L. Place where comments are to be submitted and deadline for submission

Written comments on the proposed rule were accepted and received consideration if they were received by Friday, March 5, 2010. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email: [Kathryn.Anderson@wisconsin.gov](mailto:Kathryn.Anderson@wisconsin.gov).

**EFFECTIVE DATE:** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro), Stats.

**FISCAL ESTIMATE:** See attached.

**FINAL REGULATORY FLEXIBILITY ANALYSIS:** The Earned Release Review Commission 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.

**STATEMENT EXPLAINING THE NEED FOR THE PROPOSED RULE:**

1. Repeal and recreate the PAC 1 to update, renumber and reorder for clarity provisions addressing the release of inmates to parole.
2. Bring the rule into conformity with 2009 Wisconsin Act 28, which provides for the consideration for release of inmates who receive a bifurcated sentence under s. 973.01, Stats., to extended supervision under certain circumstances, including consideration for release for inmates with an extraordinary health condition or who reach a certain age and have served a certain number of years of their sentences, inmates who are eligible for positive adjustment time and who meet certain additional criteria, and inmates who have served 75% or 85% of their period of confinement and who meet certain additional criteria.

**STATEMENT OF THE BASIS AND PURPOSE OF THE RULE, INCLUDING HOW THE RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The Earned Release Review Commission (ERRC) proposes to make modifications and additions to PAC 1 for the following purposes:

1. The ERRC last comprehensively reviewed and revised PAC 1 in 1993. By this rule process the commission seeks to change PAC 1 to better reflect the changes in its practices and procedures. The proposed rule also addresses changes in technology, including the opportunity for video and teleconferencing.
2. Under 2009 Wisconsin Act 28, the legislature created several release mechanisms for inmates who are serving bifurcated sentences under s. 973.01, Stats. The ERRC has created a process for the Commission to consider inmates for release, including those inmates who are eligible for positive adjustment time and those inmates who have served at least 75% or 85% of the period of confinement. In addition, ERRC has created a section to address inmates who seek release based on an extraordinary health condition or due to age.
3. The ERRC is seeking revision of PAC 1, which not only reflects changes in law and practice, but also seeks to revise current language for better clarity.
4. More details and a listing of significant changes can be found in the Plain Language Analysis Section of this document. (See pages 9 and 10.)

**PUBLIC HEARINGS:**

- A. Two public hearings were held February 23, 2010 on the rule, one in Milwaukee and one in Madison. Written public comments were also received.
- B. List of persons who appeared or registered for or against the proposed rule at the public hearings

Milwaukee hearing:

Marvin Jensen, Franklin, WI	registered "for" and testified
Penny Adrian, Milwaukee, WI	registered "not sure yet" and testified
Kathleen Hart, Greendale, WI	testified
Renita Clark, Milwaukee, WI	signed in but did not register for or against or testify
Rose Scott, Milwaukee, WI	testified
Jim Kennedy, Milwaukee, WI	testified
Robert Hollman, Milwaukee, WI	registered "for"
Lizzie Thompson, Milwaukee, WI	testified
Joseph Ellwanger, Milwaukee, WI	registered "for"
Yusaf Ali, Milwaukee, WI	testified
Kristi Hansen, Eagle, WI	testified
Ron Koepke, Colgate, WI	testified

Madison hearing:

Kari Matti, Fairchild WI	registered "for" and testified
Judy Cooper, Madison, WI	registered "for" and testified
Michele Donahue, Stoughton, WI	registered "for" and testified

- C. Summary of public comments on the rule and ERRC responses to those comments

The comments received were favorable to the new legislation. Most of the comments addressed general observations and concerns which not directly related to the rule as proposed. A summary of the comments and the ERRC response are as follows:

1. Programming—before and after release

- Comments: More programming is needed in the prisons and the programming should begin early in the period of incarceration.

ERRC Response: The ERRC does not control programming which is under the authority of the Department of Corrections. However, given limited resources, programming is made available to inmates based on the inmate's needs, department operations, and the meeting of conflicting priorities.

- Comments: More programming should be made available to inmates at the time of release.

ERRC Response: The ERRC does not control programming which is under the authority of the Department of Corrections. Limited resources in the community dictate what programming is available.

- Comments: Even low risk inmates should receive programming after release.

ERRC Response: The ERRC does not control programming which is under the authority of the Department of Corrections. Limited resources in the community dictate what programming is available.

- Comments: The proposed rule does not address the adequacy of supervision in the areas of treatment and mentorship following release.

ERRC Response: The proposed rule is intended only to address the process and procedures for consideration of release to parole or extended supervision. The ERRC does have authority over offenders who are under community supervision.

- Comments: There is a need to start reentry programs while in prison and provide continued follow up for three years after release.

ERRC Response: The ERRC does not control programming which is under the authority of the Department of Corrections. Limited resources in the community dictate what programming is available.

- Comments: Early release will motivate inmates to take programming to correct behavior.

ERRC Response: The ERRC does not control programming which is under the authority of the Department of Corrections.

- Comments: The ERRC should consider the fact that the spouse of an inmate has insurance coverage for treatment in its consideration of the inmate for release.

ERRC Response: The ERRC does consider an inmate's release plan when reviewing the individual for release. However, that is only one factor which is considered.

- Comments: There should be consideration of programming in the release consideration.

ERRC Response: The ERRC does consider whether an inmate has participated in and successfully completed programming. However, given limited resources, the ERRC does consider whether the programming was made available to the inmate and whether the programming is available in the community.

- Comments: There is a concern that those persons who sponsor or mentor inmates before release are not able to continue the relationship after release because of department policies.

ERRC Response: The proposed rule is intended only to address the process and procedures for consideration of release to parole or extended supervision. The ERRC does not control programming which is under the authority of the Department of Corrections.

- Comments: The Department of Corrections should permit department employees to submit letters in support under s. PAC 1.06 (18).

ERRC Response: The proposed rule is intended only to address the process and procedures for consideration of release to parole or extended supervision. The ERRC does have authority over the department in this regard.

## 2. ERRC hearings, agents, and presumption of release

- Comments: It was suggested that the PRC and ERRC use discretion.

ERRC Response: The ERRC does exercise discretion as provided under the statutes and rules in its consideration of the release of an inmate to parole or extended supervision.

- Comments: Inmates should be informed of what they need to do to get paroled and that the ERRC should have less discretion.

ERRC Response: Inmates have access to the statutes and rules which address eligibility for parole, as well as information from the records office of the institution at which they are incarcerated as to the specifics of their individual situation. The ERRC exercises the discretion granted to it by the legislature.

- Comments: Concern was expressed regarding the speed of consideration by the PRC and ERRC.

ERRC Response: The ERRC does not have authority over the Department of Corrections PRC. With respect to its own processing of release petitions, it acts expeditiously given its limited resources.

- Comments: A suggestion was made that there being a presumption of release after the serving of 25% of a sentence.

ERRC Response: The ERRC complies with the statutory provision under s. 304.06 (1) (b), which permits consideration for release after an inmate serves 25% of his or her sentence.

- Comments: Hearings should be held before the entire commission.

ERRC Response: Given limited resources, this recommendation is not possible without an extreme delay in consideration of individuals for release.

- Comments: Rehearings should be held immediately when incorrect or missing information is involved rather than a deferral.



ERRC Response: The ERRC provides for an inmate to comment on any perceived errors of material fact in the record under s. PAC 1.06 (7).

- Comments: A suggestion was made that deferrals should not be longer than one year.

ERRC Response: Under s. PAC 1.06 (9), a deferral of longer than 12 months requires the approval of the chairperson.

- Comments: Hearings should be recorded and a tape provided to an inmate.

ERRC Response: Under s. PAC 1.06 (10) release consideration hearings or interviews are recorded. An inmate may obtain a copy of the record at his or her own expense by making a request.

- Comments: Attorneys, advocates, or family members should be allowed at all hearings.

ERRC Response: There is no statutory requirement that inmates have legal representation during release consideration hearings. Given the nature of the interviews or hearings, the ERRC does permit representation. If someone wishes to submit information for consideration, the inmate may make the arrangements for the submission at the time of the hearing.

- Comments: A suggestion was made that there should be a presumption of parole.

ERRC Response: There is no statutory presumption of parole.

- Comments: Concerns questioning the number of deferrals were received. Inmates need to know the criteria for avoiding deferrals.

ERRC Response: The ERRC issues a deferral for a number of reasons. Since there is no presumption of release, the ERRC applies the criteria applicable in each situation. If the inmate is not eligible for release, then the ERRC will consider the inmate at a future date.

- Comments: There was a need to work with inmates while in prison but also after their release. Agents should be trained to help inmates to succeed.

ERRC Response: The ERRC does not have authority over the issues raised by these comments.

- Comments were received, concerning the fact that an inmate pays for an agent who does not help.

ERRC Response: The ERRC does not have authority over the issues raised by these comments. Presumably, these comments question the supervision fees imposed on offenders.

- Comments: The ERRC should parole inmates after 3 to 4 years.

ERRC Response: The ERRC is limited in its actions by the statutes which establish its authority and the length of the sentence imposed by the Court.

- Comments: The PRC, ERRC, and BOCM should be regulated and consistent with guidelines.

ERRC Response: The ERRC acts within the statutes which apply to it and within the rules which it has promulgated. With regard the DOC PRC and BOCM, the ERRC has no authority over the Department of Corrections in this regard.

- Comments: The ERRC should release all eligible inmates who do not pose a significant risk to others.

ERRC Response: The ERRC considers the factors listed under s. PAC 1.06 (16) when deciding whether an inmate should be released. Unreasonable risk to the public is only one factor which is considered.

- Comments: Inmates should be deferred because they have not served enough time.

ERRC Response: The ERRC considers the factors listed under s. PAC 1.06 (16) when deciding whether an inmate should be released. One factor which is considered is whether the inmate has sufficient time so that release would not depreciate the seriousness of the offense.

- Comments: The ERRC focuses only on the crime and not changes that the inmate has undergone.

ERRC Response: The ERRC considers the factors listed under s. PAC 1.06 (16) when deciding whether an inmate should be released. Several of the factors reflect the inmate's activities and behaviors while incarcerated.

- Comments: Concerns questioning how long the crime remains the focus of the ERRC review were received.

ERRC Response: The ERRC considers the factors listed under s. PAC 1.06 (16) when deciding whether an inmate should be released.

- Comments: Depreciation of the seriousness of the crime should not be included under s. PAC 1.04.

ERRC Response: Under s. 304.06 (1) (bn) 3., Stats., the ERRC is required to consider whether release is in the interests of justice. Evaluating the nature of the offense committed is part of that review and consideration.

- Comments: Inmates should have access to confidential information.

ERRC Response: The ERRC only maintains certain information as confidential, including victim or confidential informant information.

- Comments: A suggestion was made to keep the process simple.

ERRC Response: Under the revised rules, the ERRC has attempted to clarify language. It has also incorporated the same procedure for release consideration which was applicable for parole consideration in order to maintain a fairly simple and effective process.

- Comments: Section PAC 1.06 (12) should leave discretion to the ERRC if an inmate requests that the interview be in person.

ERRC Response: The ERRC retains the right to determine whether there is need for the interview to be in person. The reasons for not holding an interview in person are limited to:

the inmate is in segregation status; the inmate had an interview within the last 12 months; the timeframe for considering release and the interests of justice as well as that of the inmate would best be served by a file review; or the inmate is within two months of release.

- Comments: An inmate should have the right to an attorney.

ERRC Response: There is no statutory right to an attorney at a release consideration, except for hearing on a petition for an extraordinary health or aged release.

- Comments: The term “maximum benefit” in s. PAC 1.06 (16) (e) 1., is immeasurable.

ERRC Response: Under this provision the ERRC reviews the inmate’s participation in the program without limiting its evaluation simply to completion. It is important for inmates not only to attend but to gain the knowledge and insight intended from the programming.

- Comments: If a victim is permitted to attend a release consideration hearing, then the inmate should be able to have a representative.

ERRC Response: As stated above, there is no legal right to representation at a release consideration hearing, except for inmates who petition for release due to extraordinary health or age. Under ss. 304.06 (1) (eg) and 950.04 (1v), Stats., victims have the right to make statements and to attend hearings related to release consideration.

- Comments: Under s. PAC 1.07 one commissioner, instead of a majority of the commission, can make a decision were received.

ERRC Response: There is no change to the ERRC procedure with regard to the use of one commissioner to act on a review of an inmate. For expediency and efficiency, one commissioner may consider an inmate for release. However, under s. 304.01 (1), Stats., the final authority with regard to whether an inmate is released by the ERRC belongs to the chairperson.

- Comments: The ERRC should release an inmate unless there is clear and convincing evidence that the inmate is a danger to himself or others.

ERRC Response: As stated above, risk to the public is only one of multiple factors considered by the ERRC in evaluating whether an inmate should be released. See s. PAC 1.06 (16).

- Comments: The term “sentence structure” is vague were received.

ERRC Response: The term “sentence structure” refers to the sentence or sentences under which the inmate is currently incarcerated. For example, if the inmate is currently incarcerated for several offenses, the calculation of his or her sentence could be dependent on a number of factors, including the class of the felonies of which the inmate was convicted and whether the sentences are concurrent or consecutive.

- Comments: There was not always enough time during a release consideration interview to review all of the pertinent documents for purposes of pointing out perceived errors of material fact under s. PAC 1.06 (7).

ERRC Response: Inmates have notice a minimum of two weeks in advance of the interview date that the review is occurring. At the time of the interview the inmate is asked whether he or she has had an opportunity to review his or her records. If the inmate indicates that he or

she has not, the commissioner will offer the inmate a deferral for a period of time for the inmate to review his or her records.

- Comments: Deferrals of longer than 12 months need no justification. The concern is that deferrals of longer than 12 months will become more frequent.

ERRC Response: Deferrals of 12 months or longer are subject to the approval of the chairperson under s. PAC 1.06 (9).

- Comments: The term “protection of the public” under s. PAC 1.09 (5) (a) was vague.

ERRC Response: Under s. 302.11 (1g) (b) 1., the ERRC may deny presumptive mandatory release to an inmate on the grounds of “protection of the public.” The term is not defined but is intended to be broadly interpreted based on the nature of the inmate’s offense, criminal history, and behavioral and institution history.

### 3. Extraordinary health and aged

- Comments: The new procedure for release under extraordinary health condition or age does not give an inmate a fair review, representation, or an opportunity to be heard.

ERRC Response: The process which the ERRC has established by rule closely follows the one established by the legislature under s. 302.1135, Stats. An inmate may have legal representation at this proceeding.

- Comments: There was a need for terminology to be defined and for a list of circumstances.

ERRC Response: The term “extraordinary health condition” is defined. Other than that term, the commentators did not identify what terms needed definition. With regard to listing the circumstances which meet the requirements for release, each situation will differ based on the particular inmate and the effects of the medical condition on that incarcerated individual.

- Comments: The process was too complicated and that a physician should be able to decide if the inmate meets the criteria.

ERRC Response: The ERRC process closely follows the statutory process. The expertise as to the health condition rests with the physicians. However, the expertise for determining suitability of an inmate for release to the public rests with the ERRC and the Courts.

- Comments: There should be aftercare plans for an inmate released under the extraordinary health condition provision.

ERRC Response: As part of consideration for evaluating a petition for release for extraordinary health condition or age, the ERRC may consider the inmate’s release plan. In addition, an inmate must prove by the greater weight of the credible evidence that the sentence modification he or she seeks under this provision will serve the public interest. Finally, the ERRC does not have the authority to address the issues of providing or requiring the provision of health care services once the inmate is in the community.

### 4. In the interest of justice

- Comments: The term “in the interest of justice” is vague and should be removed or defined.

ERRC Response: The phrase “in the interest of justice” appears in the statutes. It is not defined and is intended to have a broad concept to cover a variety of issues relating to public safety.

#### 5. Risk assessment

- Comments: A suggestion urging the use of a risk assessment prior to release eligibility was made.

ERRC Response: This is under the responsibility of the department of Corrections. It is the understanding of the ERRC that the department is developing a program of assessing the risk for all inmates.

#### 6. Sentencing and parole

- Comments: All inmates should be eligible for the same release consideration.

ERRC Response: The time of the offense or the time of conviction determines what sentencing provisions apply. As a result there are different provisions addressing the issue of release whether to parole or extended supervision. The ERRC has not authority over the statutory provisions.

#### 7. Violent classification

- Comments: There were no non-violent C or D felonies.

ERRC Response: The designation of violent or nonviolent for Class F through I felonies is a function of the legislature. If there should be a comparable designation for class C or D felonies, the legislature will need to act.

- Comments: Concerns that the Department of Corrections is responsible for determining if an inmate is a violent offender under s. 302.113 (1) (b) 6., Stats., were received.

ERRC Response: By statute, inmates that meet the definition of a violent offender under s. 16.964 (12) (a), Stats. are ineligible for positive adjustment time at the rate of one day for every two days served. That provision is under the responsibility of the department of corrections.

#### 8. Statutory matters

- Comments: Concerns that the 10 day minimum notice under s. PAC 1.08 (4) (b) is not adequate were received.

ERRC Response: Under s. 302.1135 (7) (b), Stats., the ERRC is required to make a reasonable attempt to send a notice of hearing minimum of 10 day in advance of the hearing.

- Comments: The definition of “victim” in the rule does not include an adult child.

ERRC Response: The proposed rule did not differentiate between a minor and an adult child. However, the ERRC has modified the rule to reflect the comment and bring its definition into conformance with the statutory definition under s. 950.02 (3), Stats.

#### 9. Victim contact

- Comments: Inmates should be able to contact victims directly.

ERRC Response: The ERRC does not have the authority to permit this nor does the Commission believe that this would be in the best interests of justice.

In addition, over 34 inquiries were received from inmates regarding the impact of the 2009 Wisconsin Act 28 sentence reform measures on them personally, as opposed to comments about the proposed rule. The Commission requested that the inmates direct their inquiries to the records offices of the institution in which the inmates were currently incarcerated. Those offices have the information concerning an individual inmate, including the judgment of conviction, institution history, and programming in order to respond to the inquiry.

D. Modifications made in the proposed rule as a result of the testimony received at public hearings or public comments made.

The ERRC modified the definition of “family member” to specifically include both an adult child and a minor child.

#### **LEGISLATIVE COUNCIL STAFF CLEARINGHOUSE REPORT:**

See attached.

#### **RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS IN THE CLEARINGHOUSE REPORT:**

The commission has quoted verbatim only those Legislative Council Staff Recommendations which the commission has accepted with comment or has rejected.

##### **1. Statutory Authority.**

Section PAC 1.03 (19) defines the term “victim” to mean a person against whom a crime has been committed or against a victim’s family member. What is the statutory authority for this definition given that the statutes include a victim’s family member for purposes of protecting victim’s rights only in certain circumstances? For example, see ss. 304.06 (1) (a) 2., (c) 3., and (d) 1., 304.063 (1) (b) and 2., and 950.02 (4), Stats.

**ERRC Response:** The definition in the current rule is the same definition that has been used by the commission for over a decade. The more expansive definition of victim does not expand the rights of a victim or victim’s family in contravention of the statutes. It simply provides for notice to be given in situations outlined in the rule when release is being considered.

##### **2. Form, Style, and Placement in Administrative Code.**

**(a) (1), (2), (3), and (4): DOC Response:** Accepted

**(b): ERRC Response:** Accepted

**(c): ERRC Response:** Accepted

**(d): ERRC Response:** Accepted

**(e): ERRC Response:** Accepted

(f): **ERRC Response:** Accepted

#### 4. Adequacy of References to Related Statutes, Rules, and Forms.

##### ERRC Response:

(a): **ERRC Response:** Accepted

(b): **ERRC Response:** Accepted

(c): **ERRC Response:** Accepted

(d): **ERRC Response:** Accepted

#### 5. Clarity, Grammar, Punctuation, and Use of Plain Language.

(a): **ERRC Response:** Accepted

(b): **ERRC Response:** Accepted

(c) In s. PAC 1.04 (15) and (16), it is unclear whether the definitions “parole grant or release order” and parole or release eligible” combine two terms for brevity, or are in fact new phrases. As written, they are phrases, but these phrases are not used in ch. PAC 1. For example, in s. PAC 1.06 (16), the term “parole eligible,” is used, not “parole or release eligible.” If the intent is not to create phrases, the department should divide these new definitions apart such that there are four definitions.

**ERRC Response:** Accepted. The commission changed the term from “parole or release” to “parole or release to extended supervision.” The commission corrected the text so that the terms, “parole grant or release to extended supervision order” and “parole or release to extended supervision eligible” are used.

(d) In s. PAC 1.05 (title), it appears that the phrase “parole or” should be inserted before the phrase “release consideration.” [See also the title to s. PAC 1.06.]

**ERRC Response:** The revised definition of “release consideration” includes the concept of release through parole, as well as to extended supervision, thus it is unnecessary to include parole in the title of either of the two sections.

(e) Section PAC 1.05 (2) (c) 2. states that when incarceration follows parole revocation and involves the imposition of a new sentence, parole eligibility shall be established at six months. Six months from when? Also, par. (c) 3. refers to the “eligibility date.” How is the eligibility date determined? [See also s. PAC 1.06 (3).]

**ERRC Response:** Accepted. The commission modified ss. PAC 1.05 (2) (c) 2. and 3. to clarify how the dates are established. The commission modified s. PAC 1.06 (3) to clarify the commission’s process of scheduling additional reviews to determine if the inmate meets the criteria for release after the initial consideration has occurred.

(f): **ERRC Response:** Accepted

(g): **ERRC Response:** Accepted

(h) Section PAC 1.08 (4) (c) refers to the criteria for review under ch. 980, Stats. A more specific cross-reference should be used.

**ERRC Response:** Accepted. The commission modified the paragraph to clarify that it may request from the department of corrections the status of an inmate for purposes of civil commitment under ch. 980, as well as any requirement for the inmate who is a sex offender to comply with ss. 301.45, 301.46, or 301.47, Stats.

(i): **ERRC Response:** Accepted

(j): **ERRC Response:** Accepted

**EXPLANATION OF ANY CHANGES THAT HAVE BEEN MADE TO THE PLAIN LANGUAGE ANALYSIS OR THE FISCAL ESTIMATE:**

Changes to the Plain Language Analysis:

1. Paragraphs 2 and 6. Rephrased for better clarity.
2. Paragraph 9. The commission deleted from the rule the provision which stated that consecutive sentences shall be treated as one continuous sentence. The commission concluded that there was no need for the rule provision since the issue is clearly stated in the statutes under s. 302.11 (3), Stats., for sentences imposed for offenses committed before December 31, 1999 and s. 302.113 (4), Stats., for bifurcated sentences under s. 973.01, Stats.
3. Paragraphs 10 and 11. Rephrased for better clarity.
4. Paragraph 13. In the draft of the rule which was reviewed by Legislative Council, the commission had deleted the standard for modifying a recommendation for release. As the commission reviewed the rule for purposes of final submission, it decided that the standard should be kept. Thus, a commission may withdraw a recommendation for release prior to the issuance of a release order, "whenever the circumstances affecting the original recommendation have, in the opinion of the commissioner, changed sufficiently to require withdrawal of the recommendation."

Changes to the Fiscal Estimate: None