

Chapter DOC 302

ASSESSMENT AND EVALUATION, SECURITY CLASSIFICATION AND SENTENCE COMPUTATION

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Note: Many sections in this chapter have explanatory material which can be found in the appendix following the last section of the chapter.

Note: Chapter HSS 302 was renumbered Chapter DOC 302 and revised under s. 13.93 (2m) (b) 1., 2., 6. and 7., Stats., Register, April, 1990, No. 412.

DOC 302.01 Applicability. Pursuant to authority vested in the department of corrections by ss. 227.11 (2), 301.02, 301.03 (2), and 302.07, Stats., the department adopts this chapter which applies to the department and all inmates in its legal custody for implementation of ss. 301.046, 301.048, 302.045, 302.055, 302.07, 302.08, 302.15, 302.18, 302.27, 303.065 and 303.068, Stats.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr. Register January 2002 No. 553, eff. 2-1-02.

DOC 302.02 Purpose of classification. (1) The purpose of this chapter is to provide procedures for custody classification, program or treatment assignments, and transfers.

(2) The goals and objectives of this chapter are all of the following:

(a) To classify every inmate based upon risk factors relative to public safety, institutional security, and staff and inmate safety.

(b) To establish and review the custody classification, program or treatment assignments, and institution placement that ensures public, staff, and inmate safety.

(c) To involve inmates in the processes for custody classification, program or treatment assignments, and transfer consideration.

(d) To the extent possible, match inmate need to institution resources.

(e) To provide a documented current and historical reference of custody classification, program or treatment assignments, transfers and comments on each inmate.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr. Register January 2002 No. 553, eff. 2-1-02.

DOC 302.03 Definitions. In this chapter:

(1) "A&E" or "assessment and evaluation" means assessment and evaluation as performed under s. DOC 302.12.

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

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

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

(1t) "Certain earned release" means the process by which an inmate may be considered for release under s. 302.113 (9h), Stats., to extended supervision or another sentence.

(2) "Classification section chief" means the section chief of the bureau of offender classification and movement.

(3) "Classification specialist" means the A&E or program review staff person from the bureau of offender classification and movement.

(4) "Custody classification" means the security rating applied to an inmate based on the procedures of ss. DOC 302.13 and 302.17.

(5) "DAI" means the division of adult institutions, department of corrections.

(6) "DCC" means the division of community corrections, department of corrections.

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

(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.

(8) "Director" means the director of the bureau of offender classification and movement, department of corrections, or his or her designee.

(9) "Disciplinary hearing" means a hearing authorized under ch. DOC 303 for the discipline of inmates for misconduct.

(9g) "Enrolled victim" means a victim who has submitted a request to the office of victim services and programs for notification of inmate or offender status changes.

(9r) "Extended supervision" means the portion of a bifurcated sentence imposed under s. 973.01, Stats., to be served in the community under the supervision of the department.

(10) "Institution" means a correctional institution, correctional facility, or center or a prison defined under intensive sanctions

in ch. DOC 333 or a facility that the department contracts with for services to inmates.

(11) "IS" means intensive sanctions administered by the department of corrections.

(11m) "Office of victim services and programs" means the office in the department, which is responsible for victim information and advocacy.

(12) "PRC" means the program review committee.

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

(13) "Program needs" means the program or treatment needs of an individual inmate which reduce the risk to re-offend, escape, or be a security problem during confinement and promote readiness for community reintegration.

(14) "Program review" or "PR" means the ongoing process of monitoring of custody classification, institution placement and program or treatment assignments as performed under s. DOC 302.17.

(15) "Program or treatment" means the programs, treatment and services provided by an institution or the department such as education, alcohol and drug abuse treatment, sex offender treatment, and clinical and social service counseling.

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

(15r) "Release eligibility date" means the date that an inmate who is serving a risk reduction sentence under s. 973.031, Stats., has served 75% of the confinement portion of his or her sentence or the date that an inmate who is serving a bifurcated sentence under s. 973.01, Stats., has served 75% or 85% of the confinement portion of his or her sentence.

(16) "Secretary" means the secretary of the department of corrections, or his or her designee.

(17) "Security classification" means the security level of an institution based upon the physical plant characteristics, staff resources and degree of supervision of inmates.

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

(18) "Superintendent" means a superintendent, or designee, at a correctional center as established under s. 301.13, Stats.

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

(19) "Warden" means the warden, or designee, at an institution.

(20) "Working days" means all days except Saturday, Sunday, and state legal holidays.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr. Register January 2002 No. 553, eff. 2-1-02; **EmR0939: emerg. cr. as listed in CR 09-120, eff. 12-31-09; CR 09-120: cr. (1d), (1h), (1p), (1t), (7m), (9g), (9r), (11m), (12m), (15g), (15r), (17m), (18m) Register November 2010 No. 659, eff. 12-1-10.**

DOC 302.04 Custody classification. (1) The purpose of a custody classification is to determine the appropriate placement of an inmate in order to regulate the supervision and movement of inmates among institutions, and between institutions and community programs.

(2) Custody classification is determined by assessing the risk of each inmate regarding all of the following:

- (a) Assaultive or predatory behavior.
- (b) Escape, walk-away, and absconding occurrences.
- (c) Violation of inmate disciplinary rules under ch. DOC 303.
- (d) Disruption to the orderly processes of an institution.
- (e) Participation and progress in program or treatment.
- (f) Adjustment and history under community supervision.
- (g) Pending legal processes.

(3) The department initiates custody classification at A&E and changes it by an individualized assessment through the program review process using factors identified in s. DOC 302.07.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.05 Custody classification levels. An inmate is classified under one of the following 5 custody classification levels based upon the result of an assessment of the inmate's risk under the A&E or PR process:

(1) Maximum custody requires very close monitoring of inmate conduct, behavior and activities.

(2) Medium custody requires moderate monitoring of inmate conduct, behavior and activities.

(3) Medium-out custody requires moderate monitoring of inmate conduct, behavior and activities inside the institution and permits placement outside the confines of the institution under supervision.

(4) Minimum custody requires general monitoring of inmate conduct, behavior and activities inside the institution and permits placement outside the confines of the institution.

(5) Community custody requires limited monitoring of inmate conduct, behavior and activities. This classification is used for the following activities:

(a) Work or study release under ch. DOC 324.

(b) Off-grounds projects under the supervision of non-correctional staff under ch. DOC 325.

(c) Driving institution vehicles under ch. DOC 325.

(d) Leave for qualified inmates under ch. DOC 326.

(e) Community residential confinement under ch. DOC 327.

(f) Intensive sanctions under ch. DOC 333.

(g) Other programs which the department may establish.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.06 Institutional security classifications and relationship to custody classification. (1) Except for inmates awaiting transfers, and institutions in which there is a declared emergency or disturbance, an inmate's custody classification shall be no greater than the designated security classification of the institution in which the inmate is placed.

(2) Segregation units at any facility are considered maximum security.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.07 Factors in assigning a custody classification. The department may consider factors that include but are not limited to the following in assigning custody classification:

(1) The nature and seriousness of the offense the inmate was convicted of. In evaluating the seriousness of the offense, the department may consider the following:

(a) Potential of physical danger to another.

(b) Harm done to the victim in the commission of the offense.

(c) Whether the inmate exhibited physical aggressiveness that exposed another to harm.

(d) Aggravating or mitigating factors in the commission of the offense for which the inmate was convicted.

(2) The inmate's criminal record and juvenile delinquency adjudications.

(3) The length of sentence being served.

(4) The inmate's motivation for the crime convicted of.

(5) The inmate's attitude regarding the offense and sentence.

(6) The inmate's record of adjustment and misconduct including any record of escape from a department facility, IS, a mental health facility, a local jail or any other confinement facility, or absconding from probation, parole, or extended supervision.

(7) The length of time the inmate has been in a particular custody classification and overall time served during the current period of incarceration.

(8) The inmate's medical and clinical needs, including physical or psychological treatment and observation.

(9) The risk to a victim, witness, the general public or the inmate of placing the inmate in the community where the offense was committed or where the institution is located. In determining this risk, the department may consider the general public's perception of the offense and the inmate as evidenced by statements of elected officials, judges, sheriffs, district attorneys, a victim, or a witness.

(10) The inmate's performance or refusal to participate in programs or treatment.

(11) A pending legal process, notification or detainer.

(12) Parole commission actions and stated expectations, and in the absence of any stated expectations, the likelihood of a release during the review period.

(13) The results of specially designed and researched risk rating instruments developed to assist with the individualized and objective assessment of a custody classification or program and treatment assignments and placements.

(14) The inmate's vulnerability to physical assault by other inmates.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.08 Requirements for assigning a minimum custody classification to an inmate serving a life sentence. (1) In this section, "life sentence" means a sentence of life imprisonment. An inmate sentenced to life imprisonment who is released on parole, violates a condition of parole and is returned to a state correctional institution with or without a new sentence is considered to be serving a life sentence. If the governor pardons or commutes a life sentence, it is no longer a life sentence. The life sentence definition also applies to an inmate from another jurisdiction who is serving a sentence of life imprisonment under that jurisdiction's laws.

(2) To be eligible for a minimum custody classification, an inmate serving a life sentence shall have:

(a) Reached parole eligibility or be within 5 years of extended supervision eligibility as defined in ss. 304.06 (1) and 973.014, Stats.

(b) A recommendation for minimum custody classification made by the PRC under s. DOC 302.17.

(c) Director's approval for minimum custody classification.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.09 Program consideration. Unless otherwise specified by the rules of the department or by state and federal law, inmates may be considered for school assignments, vocational programs or treatment assignments within the Wisconsin correctional system if all of the following conditions are met:

(1) The inmate has a program or treatment need that the program being considered would meet.

(2) There is space available in the program.

(3) The inmate attains the custody classification needed for transfer to the site where the program is available.

(4) The inmate meets program or treatment prerequisites.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.10 Factors in assigning a program or treatment component. (1) The department may consider factors including but not limited to the following in assigning an inmate to a program or treatment component:

(a) Factors under s. DOC 302.07.

(b) Program or treatment prerequisites.

(c) The inmate's past performance in programs.

(d) Federal or state law requirements.

(2) The inmate may choose not to participate in program and treatment with an understanding that a refusal may affect custody classification and placement.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.11 Purposes of A&E. The purposes of A&E shall be all of the following:

(1) To assess an inmate's risk under s. DOC 302.04 (2).

(2) To determine an inmate's custody classification.

(3) To provide an inmate with orientation to the department.

(4) To assess an inmate's criminal and social background, sentence structure, and academic and vocational requirements.

(5) To evaluate an inmate's academic, vocational, medical, social, and treatment needs.

(6) To determine an inmate's treatment and program needs and priorities and coordinate these with custody classification and institution or program placement.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.12 Applicability of the assessment and evaluation. (1) Every inmate shall participate in an assessment and evaluation or an alternative process as approved by the department. This process shall be completed not more than 8 weeks after the inmate's arrival.

(2) The director may alter the scope, purpose and duration of the assessment and evaluation process to meet security and bed needs of the department.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. am. (intro.) and cr. (1) (f), eff. 1-1-90; am. (1) (intro.), cr. (1) (f), Register, September, 1990, No. 417, eff. 10-1-90; correction in (1) (c) 3 made under s. 13.93 (2m) (b) 5., Stats., Register, June, 1994, No. 462; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.13 Procedure for custody classification at conclusion of A&E. (1) The classification specialist shall do all of the following:

(a) Collect and review information pertaining to the inmate such as offense history, adjustment, risk factors, program goals and other relevant concerns.

(b) Interview the inmate and afford the inmate an opportunity to provide information.

(c) Document the inmate's views.

(d) Prepare a report that includes all of the following:

1. A summary of the information gathered through pars. (a), (b), and (c).

2. A recommendation of custody classification, program or treatment needs, institution placement, and a date for program review not to exceed 12 months.

(2) The director shall review the recommendations and make the final custody classification, program, treatment, and institution placement decisions and establish a date for program review not to exceed 12 months.

(3) The department shall make available to the inmate a written copy of the decision.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 1-1-90; r. and recr. Register, September, 1990, No. 417, eff. 10-1-90; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.14 Applicability of program review. The department shall monitor custody classification, risk rating, institution placement and program or treatment assignments for every inmate.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 12-7-88; r. and recr. Register, August, 1989, No. 404, eff. 9-1-89; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.15 Purpose of program review. The purpose of program review is the following:

(1) To provide systematic review of the inmate's needs relating to education, medical, clinical, social, offense-related and other treatment needs.

(2) To assess the inmate's custody classification.

(3) To assess the inmate's motivation to become involved in treatment and programs.

(4) To secure program or treatment space as needed to permit the inmate to complete an assignment.

(5) To provide the inmate with supplemental or alternative treatment or program assignments.

(6) To provide a review of the inmate's adjustment, conduct and program participation.

(7) To evaluate the inmate's risk.

(8) To establish a date not to exceed 12 months for the next program review.

(9) To recommend placement changes to accommodate program objectives.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.16 Program review personnel. Every correctional institution and center shall have a program review committee composed of the following members:

(1) The director shall designate a classification specialist as the chairperson of the program review committee in a correctional institution.

(2) The superintendent shall designate a staff member to serve as the chairperson of the program review committee in a community correctional center.

(3) The warden shall designate at least one additional staff member to serve on the committee.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

DOC 302.17 Program review procedure. (1) Before the scheduled program review, an institution staff member, designated by the warden or superintendent, shall do all of the following:

(a) Investigate and document the inmate's adjustment and conduct, program or treatment assignments and other relevant factors to make a determination of progress and accomplishments.

(b) Make written comments to the program review committee regarding custody classification, program or treatment assignment, and institution placement, including the inmate's opinion of the appropriate security classification, program assignment or assignment to an institution.

(2) Before the scheduled review, classification staff will inform the inmate of the following:

(a) The program review date.

(b) The inmate's option to waive the interview appearance.

(c) That if the inmate disrupts the interview or refuses to attend the interview, staff shall conduct the review procedure without the inmate being present.

(d) The criteria for the review and the facts to be considered.

(3) At the program review committee interview, staff shall inform the inmate of the following:

(a) The purpose of the review.

(b) The staff comments regarding custody classification, program or treatment assignments, and institution placement.

(4) The inmate may present additional information and state an opinion about the custody classification, program or treatment assignment, or institution placement at the PRC interview. The inmate may present the additional information in writing if the inmate is unavailable for the PRC interview.

(5) The program review chairperson may suspend the program review in order to investigate any issue affecting custody classification, institution placement and program or treatment assignment.

(6) Each member of the committee shall have one vote. A recommendation for a change in custody classification, transfer, or institution placement requires a unanimous vote. If the vote is not unanimous, the classification specialist shall refer the decision to the classification section chief and the warden for a recommendation. If they are not able to agree, the classification section chief shall refer the case with comments to the director, who will make the decision. A recommendation for program or treatment assignment requires a majority vote.

(7) The committee shall consider as factors in assigning custody classification those stated in s. DOC 302.07. In addition, the criteria under s. DOC 302.08 shall apply to the custody classification of inmates serving a life sentence. Factors other than those in ss. DOC 302.07 and 302.08 may be considered to preserve the security and safety needs of inmates, staff, facilities or community.

(8) The committee's recommendation for custody or transfer requires the director's approval.

(9) If an inmate is unavailable to appear in person, the PRC may use interactive medium such as telephone conference calls, video or other electronic devices for program review.

(10) The classification specialist shall give the program review decision to the inmate in writing.

(11) PR may occur prior to the date set in s. DOC 302.15 (8) when one of the following occur:

(a) A significant change affecting custody, program or treatment assignments, or institution placement as determined by the classification specialist.

(b) A request by the director or warden.

(c) Referral by the institution adjustment committee as defined in s. DOC 303.02 (1).

(d) An inmate request for PR, made to an assigned social worker, who shall deliver the request to the PRC

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02.

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 classification, institution placement, program need, or treatment need, the inmate may request a review of the decision made under s. DOC 302.13 (2) or 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) (d) 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 302.13 (2) or 302.17 (8).

(b) The administrator if the director was the decision maker under s. DOC 302.13 (2) or 302.17 (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.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; CR 00-140: r. and recr., Register January 2002 No. 553, eff. 2-1-02; EmR0939: emerg. r. and recr. eff. 12-31-09; CR 10-120: r. and recr. Register November 2010 No. 659, eff. 12-1-10.

DOC 302.19 Transfers. (1) The director may transfer an inmate to any facility authorized by the department under either of the following circumstances:

(a) Permanent assignment pursuant to ss. DOC 302.13 and 302.17.

(b) Temporary placement due to a clinical, medical or security emergency. PR shall be conducted according to the following:

1. Except as provided in subd. 2., the department shall conduct a PR as provided under s. DOC 302.17 within 10 working days following placement under par. (b).

2. When temporary placement is made pursuant to a disciplinary infraction the department shall complete the PR no later than 10 working days following the completion of the disciplinary process under ch. DOC 303.

(2) Notwithstanding ss. DOC 302.17 and 302.13, when the PRC screens an inmate to determine eligibility for transfer to another institution, or decides to transfer the inmate to another institution, the department shall notify the inmate of the criteria and factors upon which the decisions are based, unless the department determines that release of such information would threaten the security of the prison system.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; am. (7), renum. (9) to be (10), cr. (9), Register, February, 1987, No. 374, eff. 3-1-87; emerg. r. and recr., eff. 12-7-88; r. and recr. Register, August, 1989, No. 404, eff. 9-1-89; CR 00-140: r. and recr. Register January 2002 No. 553, eff. 2-1-02.

DOC 302.20 Recordkeeping. (1) The director, section chief or a classification specialist may record information concerning an inmate between regularly scheduled PR regarding:

- (a) Program or treatment assignments.
- (b) Progress of program or treatment assignment.
- (c) Physical health.
- (d) Mental health.
- (e) Conduct and adjustment.
- (f) Placement.
- (g) Custody level.

(2) The classification specialist shall provide the inmate a copy of the record and shall permit the inmate to provide information at the next regularly scheduled program review.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. (1) and (3), eff. 12-7-88; r. and recr. (1) and (3), Register, August, 1989, No. 404, eff. 9-1-89; CR 00-140: r. and recr. Register January 2002 No. 553, eff. 2-1-02.

DOC 302.205 Emergency suspension of rules. The secretary may temporarily suspend the rules specified in this chapter if the warden determines that there is a disturbance or an emergency.

History: CR 00-140: cr. Register January 2002 No. 553, eff. 2-1-02.

DOC 302.21 Sentence computation. (1) **TIMELINESS IN COMPUTING DATES AND INFORMING INMATES.** (a) Within 10 working days after a person arrives at a correctional institution following sentencing or after an inmate returns from escape, the registrar shall compute the inmate's parole eligibility date, projected mandatory release date and projected discharge date, and shall inform the inmate in writing of these dates.

(b) Within a reasonable time after an inmate arrives at a correctional institution following revocation of probation, discretionary parole or mandatory release parole, the registrar shall inform the inmate in writing of the inmate's parole eligibility date, projected mandatory release date and projected discharge date.

(c) Within a reasonable time after the registrar becomes aware of any change in an inmate's parole eligibility date, projected mandatory release date or projected discharge date, the registrar shall inform the inmate in writing of that change. For an inmate not covered by 1983 Wis. Act 528, the projected mandatory release date may change due to loss of good time or failure to earn extra good time. For an inmate who, on or after June 1, 1984, committed the crime for which he or she was sentenced and for other inmates who chose to have 1983 Wis. Act 528 apply to them, the mandatory release date may be extended as a penalty for misconduct under ch. DOC 303.

(2) **DETERMINATION OF PAROLE ELIGIBILITY DATE.** (a) Except for an inmate serving a life sentence and as otherwise specified in chs. DOC 302 to 326, an inmate who committed a crime before November 3, 1983, shall be eligible for parole when one-half of the minimum sentence for the crime for which the person was convicted less all credit to which the inmate is entitled pursuant to s. 973.155, Stats., has been served. An inmate who committed a crime on or after November 3, 1983, shall be eligible for parole when 25% of the sentence imposed, or 6 months, whichever is greater, less all credit to which the inmate is entitled pursuant to s. 973.155, Stats., has been served. However, in no case may any inmate be eligible for parole before 60 days has elapsed from the date of the inmate's arrival at the institution. If an inmate was sentenced for more than one crime, he or she shall be eligible for parole on each sentence in order to be considered for parole. If an inmate has received a consecutive sentence, the inmate may not begin serving the consecutive sentence for purposes of parole eligibility until the person has become eligible for parole on the first sentence.

(b) 1. An inmate serving a life sentence who is not covered by 1983 Wis. Act 528 is eligible for parole after serving 11 years and 3 months, a period which may be extended for misconduct by forfeiture of good time under ch. DOC 303.

2. An inmate serving a life sentence who is covered by 1983 Wis. Act 528 is eligible for parole after serving 13 years and 4 months, a period which may be extended for misconduct under ch. DOC 303.

(3) **DETERMINATION OF PROJECTED MANDATORY RELEASE DATE.**

(a) For an inmate not covered by 1983 Wis. Act 528:

1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, and provided that the inmate earns all the statutory and extra good time for which he or she is eligible unless good time is waived or forfeited in accordance with this chapter and ch. DOC 303;

2. The projected mandatory release date shall be the maximum term to which the inmate was sentenced, reduced by any sentence credit granted pursuant to s. 973.155, Stats., and by the statutory and extra good time the inmate may earn during the sentence. Statutory good time shall be credited from the beginning date of the inmate's sentence. Extra good time shall be credited beginning on the date following the inmate's date of arrival at the institution;

3. The registrar, in determining the projected mandatory release date of an inmate who is serving consecutive sentences for crimes which occurred before the person was committed under any of the sentences, shall treat the sentences as one continuous sentence for the purposes of good time credit; and

4. The registrar, in determining the projected mandatory release date of an inmate who is serving a consecutive sentence for a crime which was committed while the person was serving another sentence or on parole, shall treat the second sentence as a separate sentence. Accordingly, statutory good time shall be computed on the second sentence as if it were a first sentence.

(b) For an inmate covered by 1983 Wis. Act 528:

1. The projected mandatory release date is the date on which the inmate is to be released from the institution, if not granted parole earlier, unless that date is extended pursuant to s. DOC 303.84 for violation of a disciplinary rule or the resident waives entitlement to mandatory release in accordance with this chapter;

2. The projected mandatory release date shall be two-thirds the maximum term to which the inmate was sentenced, reduced by any sentence credit granted pursuant to s. 973.155, Stats. Inmates whose crimes were committed before June 1, 1984, but who chose to have 1983 Wis. Act 528 apply to them shall have their mandatory release dates extended by prior forfeitures of statutory and extra good time for misconduct in the institution or on parole.

Inmates covered by 1983 Wis. Act 528 do not earn statutory or extra good time; and

3. The registrar, in determining the projected mandatory release date of an inmate who is serving consecutive sentences, shall treat all consecutive sentences, no matter when the crimes were committed, as one continuous sentence.

(c) For any inmate:

1. The registrar, in determining the projected mandatory release date of an inmate serving concurrent sentences imposed at the same time, shall consider the longer sentence as controlling. Each sentence shall begin on the date the sentence is imposed, less any sentence credit granted pursuant to s. 973.155, Stats.; and

2. The registrar, in determining the projected mandatory release date of an inmate serving concurrent sentences imposed at different times, shall treat each sentence as beginning on the date that it was imposed, less any sentence credit granted to s. 973.155, Stats.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

DOC 302.22 Ambiguity in sentence. If a registrar is uncertain as to the terms of a sentence imposed on a resident, the registrar shall notify the court of the uncertainty in writing. The registrar shall also inform the resident in writing of the uncertainty and inform the resident of the legal services available at the institution to assist the resident.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79.

DOC 302.23 Discretionary parole violators not subject to 1983 Wis. Act 528. (1) This section applies to inmates who, before June 1, 1984, committed the crime for which they were sentenced and did not choose to have 1983 Wis. Act 528 apply to them.

(2) In this section, “discretionary parole violator” means an inmate released by the parole commission under s. 304.06 (1) (a), Stats., who violated parole prior to his or her mandatory release date.

(3) A discretionary parole violator shall receive credit toward the satisfaction of the sentence from the beginning date of the sentence until the date of violation of parole determined by a department of administration hearing examiner.

(4) A discretionary parole violator shall receive credit as determined by a department of administration hearing examiner for all time from the date of placement in custody after violation to the date of return to the institution, including statutory good time for the period during which the parolee was in custody. In this subsection, “in custody” means any time the parolee spent confined, as described in s. 973.155 (1), Stats., in connection with the violation.

(5) A discretionary parole violator may not be released until he or she has served the sentence to the recomputed mandatory release date plus tolled time defined in s. DOC 331.15 and forfeited good time less good time earned on the forfeited good time in accordance with the hearing examiner’s decision. The maximum discharge date shall be extended by the amount of time tolled.

(6) A department of administration hearing examiner may require a discretionary parole violator to serve forfeited statutory and extra good time. The amount of good time forfeited may not exceed the good time earned as of the date of violation. The hearing examiner may allow a discretionary parole violator to earn good time on the amount forfeited. If allowed, good time shall be earned at the rate applicable on the date of violation as a continuous sentence.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 9-10-86; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

DOC 302.24 Mandatory release parole violators not subject to 1983 Wis. Act 528. (1) This section applies to inmates who, before June 1, 1984, committed the crimes for which

they were sentenced and did not choose to have 1983 Wis. Act 528 apply to them.

(2) In this section, “mandatory release parole violator” is a person who violated parole after the mandatory release date, regardless of how the person was originally released.

(3) A mandatory release parole violator shall receive credit toward the satisfaction of sentence from the beginning date of the sentence to the mandatory release date.

(4) A mandatory release parole violator shall receive credit as determined by a department of administration hearing examiner for all time from the date of placement in custody after the mandatory release date to the date of return to the institution, including statutory good time for the period during which the parolee was in custody. In this subsection, “in custody” means any time the parolee spent confined, as described in s. 973.155 (1), Stats., in connection with the violation.

(5) A department of administration hearing examiner may require a mandatory release parole violator to serve forfeited statutory and extra good time. The amount of time forfeited may not exceed the amount of time from the mandatory release date to the maximum discharge date. The hearing examiner may allow a mandatory release parole violator to earn good time on the amount forfeited. If allowed, good time shall be earned at the rate applicable on the mandatory release date as a continuous sentence.

(6) A mandatory release parole violator’s maximum discharge date may be extended by an amount of time no greater than the amount of time tolled under s. DOC 331.15 plus the period from the mandatory release date to the date of violation.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. r. and recr. eff. 9-10-86; r. and recr. Register, February, 1987, No. 374, eff. 3-1-87.

DOC 302.25 Parole violators subject to 1983 Wis. Act 528. (1) This section applies to inmates who, on or after June 1, 1984, committed the crimes for which they were sentenced and to other inmates who chose to have 1983 Wis. Act 528 apply to them.

(2) In this section, “a parole violator” means a discretionary parole violator, as defined in s. DOC 302.23, or a mandatory release parole violator, as defined in s. DOC 302.24.

(3) A parole violator shall receive credit toward the satisfaction of the sentence from the beginning date of the sentence to the date of release to field supervision.

(4) A parole violator shall receive credit as determined by a department of administration hearing examiner for all periods during which the parolee was in custody following the date of release. In this subsection, “in custody” means any time the parolee spent confined, as described in s. 973.155 (1), Stats., in connection with the violation.

(5) A department of administration hearing examiner may require a parole violator to serve a period of confinement in a correctional institution up to the remainder of the sentence. The remainder of the sentence is the entire sentence less time served in custody prior to release to field supervision. This period of confinement is subject to extensions for misconduct in accordance with ch. DOC 303.

(6) A parole violator’s maximum discharge date shall be reestablished by counting the number of days equal to the remainder of the sentence beginning from the date of custody after violation of parole.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

DOC 302.26 Discretionary release for parole violators. Nothing in this chapter shall limit the authority of the parole commission to grant a discretionary parole in accordance with ch. PAC 1 to an inmate who had been previously paroled, revoked and returned to the institution.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462.

DOC 302.27 Revocation of probation. When probation is revoked, the probationer shall receive credit toward the satisfaction of sentence as follows:

(1) If the probationer has already been sentenced, the term of the sentence shall begin on the date the probationer enters the prison. The length of the term shall be reduced by the sentence credit granted pursuant to s. 973.155 (1), Stats.;

(2) If the probationer has not been sentenced, he or she shall be returned to court for sentencing and, unless the sentence is consecutive, the term of the sentence shall begin on the date of sentencing; and

(3) Every probationer whose probation is revoked shall receive credit toward the satisfaction of the sentence, including sentence credit in accordance with s. 973.155 (1), Stats., for all periods during which the probationer was in custody. Probationers not subject to 1983 Wis. Act 528 shall receive credit for statutory good time earned while in this custody. Probationers subject to 1983 Wis. Act 528 are not eligible to earn good time.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

DOC 302.28 Sentence credit. (1) A department of administration hearing examiner shall, upon proper proof and verification, make sentence credit determinations and issue appropriate orders in the following situations:

(a) When parole is revoked and sentence is credited subject to the provisions of ss. DOC 302.23, 302.24, and 302.25;

(b) When probation is revoked for a probationer whose sentence was imposed and stayed; and

(c) When judgments were entered prior to May 17, 1978, the effective date of s. 973.155, Stats.;

(2) In situations not covered by sub. (1) the department of administration may not make sentence credit determinations and shall refer requests for sentence credit to the sentencing court.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

DOC 302.29 Effect of escape on sentence. A resident who escapes from custody shall receive no credit toward the service of the sentence during the period the person is unlawfully absent from custody. A resident shall be regarded as unlawfully absent unless he or she is in the custody of law enforcement officials of any state or the United States in connection with the escape, except that the person shall be treated as unlawfully absent while in custody serving a sentence other than a sentence to a Wisconsin correctional institution.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; renum. from HSS 302.25, Register, February, 1987, No. 374, eff. 3-1-87.

DOC 302.30 Waiver of good time or entitlement to mandatory release. (1) In this section "good time" means credit which diminishes an inmate's period of incarceration, and includes both statutory good time, under s. 53.11, 1981 Stats., which is credit for good conduct and performing all required duties, and extra good time, which is credit for diligence and which is earned according to the conditions and procedures set forth in s. DOC 302.27. Inmates who committed crimes before June 1, 1984, and did not choose to have 1983 Wis. Act 528 apply to them earn good time.

(2) An inmate or a person on mandatory release may waive good time and an inmate or person on mandatory release who committed an offense on or after June 1, 1984, or who makes a written request to the department pursuant to section 29 of 1983 Wis. Act 528, may waive entitlement to mandatory release. All waivers are subject to approval by the department.

(3) The inmate or person on mandatory release who wants to waive good time or mandatory release shall do this in accordance with the following conditions and procedures:

(a) Except in an emergency, an inmate's request to waive good time or mandatory release shall be made not earlier than 90 days

before the projected mandatory release date and not later than 30 days before that date;

(b) Not less than 15 days and not more than 180 days of good time may be waived at one time, and similarly a waiver may not result in extending the mandatory release date for less than 15 days or more than 180 days, except that a person on mandatory release may waive 360 days of good time at one time;

(c) Good time or mandatory release that is waived shall not be reinstated, except for good cause;

(d) A request to waive good time or mandatory release shall be made in writing by the inmate or person on mandatory release; and

(e) The inmate shall consult with his or her social worker and the person on mandatory release shall consult with his or her parole agent before the department will make a decision to approve a waiver of good time or of mandatory release.

(4) The administrator of the division of adult institutions or a designee shall make decisions on waivers by inmates, and the administrator of the division of probation and parole or a designee shall make decisions on waivers by mandatory release parolees. The administrator or designee shall evaluate each request according to the criteria in this subsection and shall make a record of the reasons for the decision. Waiver requests may be approved only if extension of incarceration or new incarceration does not contribute to unreasonable overcrowding or threaten institutional security and only if:

(a) An inmate or person on mandatory release wants to complete an on-going course of medical treatment or care for an illness or injury which began in the correctional facility;

(b) An inmate wants to complete an educational or vocational program begun in the correctional facility;

(c) Time is needed to reestablish a release plan that is no longer functional; or

(d) Another objective that promotes the individual's reintegration into society will be accomplished.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; emerg. am. eff. 8-5-85; am. Register, February, 1986, No. 362, eff. 3-1-86; renum. from HSS 302.26, Register, February, 1987, No. 374, eff. 3-1-87.

DOC 302.31 Extra good time for inmates not covered by 1983 Wis. Act 528. (1) This section does not apply to inmates who committed crimes on or after June 1, 1984, and to other inmates who chose to have 1983 Wis. Act 528 apply to them.

(2) **CONDITIONS FOR EARNING CREDIT.** In order to provide an incentive to inmates in approved work and study programs to develop and reinforce positive behavior, and to promote institutional order, an inmate shall earn extra good time credit if he or she is:

(a) Assigned to a vocational, job, school, or program assignment under ch. DOC 302 and surpasses the general average in diligence in labor or study for that assignment (see sub. (4));

(b) Involuntarily unassigned and:

1. His or her last assignment was terminated because of medical or psychological problems caused or aggravated by the assignment, which were verified by the clinical staff and which made it difficult or impossible to perform in the assignment, and the appropriate staff member was notified within 2 working days after termination of the last assignment, of the inmate's willingness to work at another assignment consistent with his or her abilities; or

2. Is eligible for an assignment but has not been offered one by the program review committee (PRC) under ch. DOC 302;

(c) In administrative confinement under ch. DOC 308 and was earning extra good time credit in his or her status immediately prior to this confinement;

(d) In observation under ch. DOC 311 and was earning extra good time credit in his or her status immediately prior to this confinement;

(e) In temporary lockup (TLU) under ch. DOC 303 and was earning extra good time credit in his or her prior status; or in TLU immediately after being in program adjustment, or control segregation under ch. DOC 303, and he or she was earning extra good time credit in the prior nonsegregation status. If the inmate's status in TLU is a result of a disciplinary charge, he or she may earn extra good time credit until the time of the disposition of the charge. If found innocent, the inmate may continue to earn extra good time credit. If found guilty, the inmate shall not thereafter be eligible to earn extra good time credit until he or she leaves segregation;

(f) Participating in a correspondence course approved for study assignment by the PRC;

(g) Out of the institution for a court appearance or dental or medical appointment and he or she was earning extra good time credit in the status immediately prior to leaving the institution for such matters;

(h) In sick cell status and he or she was earning extra good time credit in the status immediately prior to this status; or

(i) In a hospital placement (including those inmates transferred to mental health or medical facilities) and was earning extra good time credit in the status immediately prior to this status.

(3) CONDITIONS UNDER WHICH EXTRA GOOD TIME CREDIT SHALL NOT BE EARNED. An inmate shall not earn extra good time credit if the conditions under sub. (1) are not satisfied or if he or she:

(a) Is voluntarily unassigned;

(b) Is involuntarily unassigned for reasons other than those stated under sub. (2) (b), for instance, to simply avoid work or study;

(c) Is in adjustment segregation;

(d) Is in program segregation;

(e) Is in control segregation;

(f) Refuses to accept a work or study assignment offered by the PRC; or

(g) Is in voluntary confinement — unless the inmate requested placement in this status upon the recommendation of, or with approval of the security director for the purpose of ensuring the inmate's safety and the inmate was earning extra good time prior to such placement.

(4) CRITERIA FOR AWARDING EXTRA GOOD TIME CREDIT. The department shall establish reasonably uniform written criteria that shall be used for the awarding of extra good time credit for all vocational, job, school, and program assignments with similar necessary skills and responsibilities within all adult correctional facilities.

(a) To the extent that is necessary because of the unique requirements of a vocational, job, school or programming assignment each supervisor shall establish additional reasonable criteria consistent with the necessary skills and responsibilities of that assignment that shall be used to evaluate an inmate's diligence in that assignment for the purpose of awarding extra good time credit.

(b) The criteria under sub. (3) or (4) shall be the only criteria used in the determination of whether to award credit and shall state what is meant by "the general average in diligence in labor or study" for that assignment.

(c) If an inmate is not capable of performing in his or her assignment at the level of "the general average in diligence," for instance, because of poor dexterity skills or mental, developmental, or physical disabilities that have been confirmed through clinical testing, the supervisor shall develop new reasonable criteria for evaluation consistent with the skills and responsibilities of that assignment and the special disabilities of the inmate, if the inmate, his or her social worker, and supervisor agree that a change of assignment is unnecessary or undesirable.

(d) The criteria for evaluating inmate diligence in performance for each assignment and any special criteria developed pursuant

to par. (c) shall be available to inmates prior to commencement of the assignment and to the staff upon request.

(5) PERFORMANCE EVALUATIONS. (a) Each supervisor shall make a written evaluation of the inmate's performance under the following circumstances;

1. When it is required under s. DOC 309.55;

2. If the supervisor does not recommend extra good time credit for an inmate for a particular month based on the inmate's performance; or

3. The inmate's social worker requests a written performance evaluation.

(b) The written evaluation under par. (a) shall indicate whether or not extra good time credit is recommended for an inmate. If extra good time is not recommended for a particular month, the reasons for this decision shall be noted on the evaluation.

(c) If extra good time credit is not recommended for an inmate for a particular month, he or she shall receive written notice of the decision from the supervisor, including the reasons for it, within 5 working days of the decision.

(d) An inmate may appeal a decision under sub. (4) to his or her supervisor within 5 days of receipt of notice. The supervisor shall have the authority to amend his or her earlier decision in favor of the inmate within 5 working days of the appeal. If amended, the registrar and the inmate shall receive written notification of the change and the reasons for it. Failure by the supervisor to render a decision within the allowed time shall signify an affirmation of the earlier decision, and the inmate shall be notified of this.

(e) If the supervisor fails to amend his or her earlier decision within the time allowed, the inmate may appeal to the superintendent within 5 working days after that time. If the superintendent fails to render a decision within 5 working days after the appeal, the decision of the supervisor under sub. (10) is affirmed, and the inmate shall be notified of this.

Note: There is no DOC 302.31 (10).

(f) Any question regarding an inmate's eligibility for credit under sub. (1) or (2) shall be referred to the superintendent for resolution.

(6) SCHEDULE OF GOOD TIME CREDIT. An inmate shall earn extra good time credit as follows:

Extra good time credit earned for a calendar month (in days)	Cumulative number of days in a calendar month in a status eligible for credit	Cumulative number of days in a calendar month in a status not entitling inmate to credit
0	0	30
1	6	24
2	12	18
3	18	12
4	24	6
5	30	0

(a) If an inmate is entitled to extra good time for any fraction of a calendar day, that whole day shall be credited.

(b) An inmate shall earn fractions of one day of extra good time for each day in a status entitling the inmate to credit.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; renun. from HSS 302.27, cr. (1), Register, February, 1987, No. 374, eff. 3-1-87; r. (5) (intro.), renun. (5) (a) to (d) to be (c) to (f), cr. (5) (a) and (b), Register, June, 1989, No. 402, eff. 7-1-89; correction in (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register December 2006 No. 612.

DOC 302.32 Special action release program.

(1) DEFINITIONS. In this section:

(a) "Agent of record" or "agent" means the employee of the department's division of probation and parole to whom an inmate is assigned before release under this section.

(b) "Assaultive conduct" means an action inside or outside a correctional institution that results in or is intended to result in

physical harm to another. Inside a correctional institution, assaultive conduct may be evidenced by violations of the department's disciplinary rules under ch. DOC 303, which demonstrate physical harm to another or an intention to physically harm another.

(c) "Department" means the Wisconsin department of corrections.

(d) "Detainer" means a writ or instrument issued or made by a competent officer, directing the keeper of a prison 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.

(e) "Discretionary parole" means release of an inmate from the institution on recommendation of the parole commission under ch. PAC 1.

(f) "Mandatory release" means release of an inmate from the institution to supervision as required by s. 302.11, Stats., if not granted discretionary parole or special action release earlier.

(g) "Parole-eligible" means qualified to be considered for discretionary parole pursuant to s. 304.06, Stats., and ch. PAC 1.

(h) "Secretary" means the secretary of the department or the secretary's designee.

(i) "SAR" or "special action release" means release of an inmate from the institution to parole supervision by decision of the secretary or the secretary's designee prior to mandatory release or a discretionary parole recommended by the parole commission.

(j) "SAR coordinator" means the employee of the department who assembles all documents on an inmate relevant to SAR consideration and submits them to the secretary.

(k) "Social worker" means the institution social worker to whom an inmate is assigned.

(2) PURPOSE. The special action release program is intended to relieve crowding in state prisons by releasing select prisoners to parole supervision using a procedure other than mandatory release or a discretionary parole recommended by the parole commission. The program intends to maintain the highest possible levels of public safety commensurate with good correctional practice by basing release determinations on individual differences among inmates, their offenses, their institutional records, and their abilities to comply with the rules of parole and to maintain themselves in open society without engaging in criminal activity.

(3) ELIGIBILITY FOR SPECIAL ACTION RELEASE CONSIDERATION.

(a) To be eligible for special action release consideration, an inmate:

1. Shall be parole-eligible under s. 304.06, Stats., and ch. PAC 1;

2. Shall have served a minimum of 6 months in the Wisconsin state prison system;

3. May not have been granted a special action release previously, if the inmate is currently serving time on a new criminal conviction;

4. May never have had a felony or misdemeanor conviction for an assaultive crime;

5. May not have a known history of assaultive conduct inside or outside of a correctional institution, except that an inmate who has a known history of assaultive conduct that did not result in a conviction may be considered for special action release if one of the following applies:

a. The conduct occurred more than 5 years prior to SAR review by the social worker under sub. (4) (a) 1.;

b. The inmate acted in self-defense or defense of property;

c. The inmate is to be released to a structured living arrangement such as a halfway house;

d. The inmate's conduct was an isolated incident not likely to be repeated; or

e. The inmate's age or physical condition makes repeat of the assaultive conduct unlikely;

6. Shall agree to intensive supervision and any other special conditions the secretary under sub. (7) (a) and (c) or the parole agent under sub. (7) (b) and (c) may impose;

7. Shall have a parole plan, investigated by the agent of record; and

8. If he or she is to be supervised in another state, shall be accepted for supervision by that other state.

(b) No special action release may be granted more than 12 months prior to the inmate's mandatory release date.

(c) An inmate in an affected correctional institution may be eligible for SAR consideration without meeting the criteria under pars. (a) 3., 4., 5. and (b) if:

1. The department is subject to a court order or consent decree entered on or prior to August 24, 1988, which imposes a maximum population capacity for or otherwise requires inmate releases from a correctional institution;

2. The inmate is not currently serving time on a felony or misdemeanor conviction for an assaultive crime;

3. The institution social worker or agent of record has reason to believe the inmate will be able to maintain himself or herself in society without engaging in assaultive activity; and

4. The inmate is not granted a special action release more than 24 months prior to the inmate's mandatory release date.

(d) An inmate who has an active detainer is eligible for SAR consideration without meeting the criteria under par. (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.

(e) An inmate may waive eligibility for SAR consideration at any time by notifying the institution social worker, except that an inmate who has an active detainer may not waive eligibility for SAR consideration. To reestablish eligibility following a waiver, the inmate shall notify the institution social worker that the inmate no longer waives eligibility for SAR consideration.

(4) PROCEDURE FOR APPROVAL FOR SAR CONSIDERATION. (a) *Social worker responsibilities.* 1. Social workers shall review inmate files assigned to them to identify inmates who may be eligible for SAR consideration. The social worker may contact the agent of record to obtain further information concerning an inmate's eligibility.

2. If an inmate appears to be eligible for SAR consideration, the social worker in consultation with the inmate shall develop a parole plan which considers the inmate's institutional conduct, the inmate's resources and plans for the inmate's residence and job placement upon release.

3. The social worker shall send a copy of the parole plan to the agent of record, the SAR coordinator and the social worker's supervisor.

4. The department shall notify in writing the office of the district attorney which prosecuted the inmate, the court which sentenced the inmate and the victim of the crime committed by the inmate, if the victim submits a card under s. 304.06 (1) (f), Stats., that the inmate is being considered for SAR. The notice shall advise the district attorney, court and the victim that they are permitted to submit written comments regarding the proposed release, which will be placed in the special action release record developed by the SAR coordinator under par. (c) 1. for the secretary. The notice shall be mailed at least 21 days before the secretary under sub. (5) makes a decision concerning the release of the inmate.

(b) *Agent responsibilities.* 1. Upon receipt of the parole plan from the social worker, the agent shall carry out an investigation to determine if the plan is appropriate and shall include in that investigation assessments of the inmate's proposed residence, employment and community treatment plans.

2. If the plan is not appropriate, the agent shall suggest alternatives to the inmate and social worker and attempt to develop an acceptable plan in consultation with the inmate and social worker.

3. The agent shall write a report which shall include the results of the investigation under subs. 1. and 2. The report shall address probable reaction to the inmate in the community where the inmate proposes to reside and shall contain other relevant information that is not available to the institution.

4. The agent shall send a copy of the report under subd. 3. to the SAR coordinator.

(c) *SAR coordinator responsibilities.* 1. The SAR coordinator shall assemble all relevant documents on an inmate, including the inmate's parole plan, the agent's report, any comments received from the district attorney's office, judge or victim, a summary of the inmate's arrests and convictions, reasons why the parole commission denied parole, if applicable, and any other relevant information requested by the secretary.

2. The SAR coordinator shall submit the relevant information to the secretary for consideration.

(5) DECISION. (a) After reviewing the information about the inmate submitted by the SAR coordinator, the secretary shall decide whether to grant or deny an SAR. The secretary may consider the following factors in deciding whether to grant or deny an SAR:

1. Parole eligibility;
2. The inmate's criminal record, the nature of the offense of which the inmate was convicted and any known history of assaultive conduct outside a correctional institution;
3. Institutional adjustment;
4. Adequacy of the parole plan;
5. Population pressures;
6. Risk to the public safety; and
7. Any other factors which relate to whether the inmate will be able to comply with the rules of parole and maintain himself or herself in open society without engaging in assaultive or any other criminal activity.

(b) The secretary's decision is final.

(c) If the SAR is granted, the secretary may impose in writing any special conditions that are appropriate.

(d) The institution where the inmate is incarcerated shall inform the inmate of the decision to grant or deny an SAR and, if granted, of any conditions imposed on the inmate's release.

(6) NOTIFICATION. Before the inmate is released, the department shall notify the municipal police department and the county sheriff for the area where the inmate plans to reside and shall notify the victim of the crime committed by the inmate, if the victim submits a card under s. 304.06 (1) (f), Stats., and if the victim can be found.

(7) CONDITIONS. (a) The conditions that the secretary may impose under sub. (5) (c) include but are not limited to the following:

1. A period of intensive supervision which requires the former inmate to report to the agent on the first day of release and to contact the agent in person at least once a week for a minimum of 90 days, and which requires the agent to visit the former inmate's place of residence or employment once a month during the period of intensive supervision;

2. Restrictions on residence;
3. Restrictions on travel and local movement;
4. Restrictions on associations;
5. Restrictions on possessions;
6. Restrictions on consumption of drugs and alcohol;
7. Requirements for inpatient or outpatient treatment, including treatment for alcohol abuse or other drug abuse;
8. Requirements for training and participation in other self-improvement programs including job training;

9. Requirements for the former inmate to make himself or herself available for any tests or searches ordered by the agent, including urinalysis, breathalyzer and blood sample tests, or for search of the former inmate's residence, person or any property under his or her control;

10. Electronic monitoring; and

11. Any other specific condition to achieve the purpose of maintaining the former inmate in open society without engaging in criminal activity.

(b) In addition to the rules provided under ch. DOC 328, the agent may develop additional written rules and specific conditions for the new client's parole supervision to achieve the goals and objectives of supervision under ch. DOC 328.

(c) The secretary may modify the conditions of the former inmate's special action release at any time until discharge from supervision, and the agent may modify the rules and specific conditions of the new client's parole supervision at any time until discharge from supervision.

(d) A client released under special action release who violates the rules or conditions of his or her supervision is subject to revocation under ch. DOC 331 procedures.

History: Emerg. cr. eff. 4-1-88; emerg. am. eff. 9-8-88; cr. Register, December, 1988, No. 396, eff. 1-1-89; correction in (1) (e) and (g) and (3) (a) 1. made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462.

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 day of positive adjustment time for every two 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, the inmate may be reviewed for eligibility under s. DOC 302.34.

(b) The inmate has not received a major penalty under s. DOC 303.68 (1) (a) on any day counted toward positive adjustment time.

(c) The inmate does not neglect or refuse to perform required or assigned duties, including programming and treatment identified by the department.

(2) EXCLUSIONS. Notwithstanding sub. (1), 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) 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.

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

(t) An inmate who is serving, begins to serve, or has served during his or her current period of confinement a sentence for a felony defined in ch. 940, Stats.

(3) CRITERIA CONSIDERED FOR RELEASE. The department shall consider all of the following when making a decision to release an inmate under this section:

(a) The inmate meets the eligibility criteria under sub. (1) and is not excluded from consideration under sub. (2).

(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 in the institution.

(d) The inmate has not refused or neglected to perform required or assigned duties, including programming and treatment identified by the department.

(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 and treatment in the community without presenting an undue risk.

3. The inmate has not been able to gain entry into programming and treatment 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 department concludes that release would not pose an unreasonable risk to the public and would be in the interests of justice.

(4) VICTIM NOTIFICATION. (a) Prior to its decision to recommend release of an inmate under this section, the department shall notify an enrolled victim for the purpose of giving the victim the opportunity of providing input.

(b) Prior to release of an inmate under this section, the department shall notify an enrolled victim that the inmate is to be released.

(5) COURT NOTIFICATION. When an inmate is within 90 days of release to extended supervision under sub. (7), the department shall notify the sentencing court that it intends to modify the inmate's sentence and release the inmate to extended supervision or to another sentence. The department shall provide the sentencing court with rationale for its recommendation.

(6) COURT ACTION. If the court does not schedule a review hearing within 30 days after notification, or the court accepts the department's recommendation, the department may proceed

under sub. (7). If the court issues an order rejecting the department's recommendation, the inmate may not be released under this section. If the court orders the inmate to remain in prison for a period not to exceed the time remaining on the inmate's term of confinement, the department will proceed in accordance with the court order.

(7) RELEASE. An inmate under sub. (1) shall be released to extended supervision or to another sentence 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.

(8) 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 or to another sentence under sub. (7), the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

History: EmR0939: emerg. cr. eff. 12-31-09; CR 09-120: cr. Register November 2010 No. 659, eff. 12-1-10.

DOC 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 are 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 inmate has not received a major penalty under s. DOC 303.68 (1) on any day counted toward positive adjustment time.

(b) The inmate does not neglect or refuse to perform required or assigned duties, including programming and treatment identified by the department.

(2) SPECIAL CONSIDERATION. Inmates ineligible for positive adjustment time under s. 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 or another sentence under this section as provided in ch. PAC 1. Procedures for release consideration under this section, including victim notification, are found in ch. PAC 1.

(5) 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 or to another sentence under this section, the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

History: EmR0939: emerg. cr. eff. 12-31-09; CR 09-120: cr. Register November 2010 No. 659, eff. 12-1-10.

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 inmate has not received a major penalty under s. DOC 303.68 (1) on any day counted toward positive adjustment time.

(b) The inmate does not neglect or refuse to perform required or assigned duties, including programming and treatment identified by the department.

(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 or another sentence under this section as provided in ch. PAC 1. Pro-

cedures for release consideration under this section, including victim notification, are found in ch. PAC 1.

(4) 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 or to another sentence under this section, the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

History: EmR0939: emerg. cr. eff. 12-31-09; CR 09-120: cr. Register November 2010 No. 659, eff. 12-1-10.

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 as modified by the sentencing court under s. 302.045 (3m) (b) 1. or 302.05 (3) (c) 2. a., Stats., less any positive adjustment time he or she has earned.

(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 this section as provided in ch. PAC 1. Procedures for release consideration under this section, including victim notification, are found in ch. PAC 1.

(4) 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 or to another sentence under this section, the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

History: EmR0939: emerg. cr. eff. 12-31-09; CR 09-120: cr. Register November 2010 No. 659, eff. 12-1-10.

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 as modified by the sentencing court under s. 302.045 (3m) (b) 1. or 302.05 (3) (c) 2. a., Stats., less any positive adjustment time he or she has earned.

(2) PETITION FOR RELEASE. An inmate may petition the earned release review commission for release to extended supervision under this section as provided in ch. PAC 1. Procedures for release consideration under this section, including victim notification, are found in ch. PAC 1.

(3) 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 or to another sentence under this section, the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

History: EmR0939: emerg. cr. eff. 12-31-09; CR 09-120: cr. Register November 2010 No. 659, eff. 12-1-10.

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) Inmates 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.

(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 inmate's 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 shall 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 shall determine successful completion of the rehabilitation program and notify the earned release review commission.

(10) The department shall provide notice to an enrolled victim prior to an inmate's release under this section.

History: EmR0939; emerg. cr. eff. 12-31-09; CR 09-120; cr. Register November 2010 No. 659, eff. 12-1-10.

DOC 302.39 Wisconsin earned release program.

(1) The department shall provide a rehabilitation program for the purposes of release.

(2) Inmates 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 before December 31, 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.

(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 inmate's 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 shall determine if placement is appropriate and when placement will occur.

(7) For inmates sentenced under s. 973.01, Stats., 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 shall determine successful completion of the rehabilitation program and notify the earned release review commission.

(10) The department shall provide notice to an enrolled victim prior to an inmate's release under this section.

History: EmR0939; emerg. cr. eff. 12-31-09; CR 09-120; cr. Register November 2010 No. 659, eff. 12-1-10.

DOC 302.40 Risk reduction program. (1) For inmates

ordered to serve a risk reduction sentence, the department shall do all of the following:

(a) Complete a validated and objective assessment to identify the inmate's criminogenic factors and risk to reoffend.

(b) Create a risk reduction plan that is designed to address the identified criminogenic factors and reduce the inmate's risk of reoffending.

(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) The inmate has demonstrated satisfactory institution adjustment.

(b) The inmate has participated and demonstrated sufficient efforts in meeting all the requirements of the risk reduction plan.

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

(d) Release would not pose an unreasonable risk to the public.

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

(4) If the department determines that the risk reduction plan has been completed and institution adjustment is satisfactory, the department will notify the sentencing court at least 30 days prior to release. The department will notify an enrolled victim that the inmate will be released under this section.

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

(6) If an inmate is released after successfully completing the risk reduction program and demonstrating satisfactory institution adjustment but prior to his or her release eligibility date, the inmate's overall sentence shall be reduced by the confinement time not served. The term of extended supervision shall not be increased.

History: EmR0939; emerg. cr. eff. 12-31-09; CR 09-120; cr. Register November 2010 No. 659, eff. 12-1-10.

DOC 302.41 Certain earned releases under s. 302.113 (9h), Stats. (1) ELIGIBILITY. Under s. 302.113 (9h), Stats., the department may release to extended supervision or to another sentence certain persons who are 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 a 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.

(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 earned 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 not 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.

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

(g) An inmate who is serving, begins to serve, or has served during his or her current period of confinement a sentence for a felony defined in ch. 940, Stats.

(3) **CRITERIA CONSIDERED FOR RELEASE.** The department shall consider all of the following when making a decision to release an inmate under this section:

(a) The inmate meets the eligibility criteria under sub. (1) and is not excluded from consideration under sub. (2).

(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 in the institution.

(d) The inmate has not refused or neglected to perform required or assigned duties, including programming and treatment identified by the department.

(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 and treatment in the community without presenting an undue risk.

3. The inmate has not been able to gain entry into programming and treatment 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 department concludes that release would not pose an unreasonable risk to the public and would be in the interests of justice.

(4) **RELEASE TO DETAINER.** An inmate who has an active detainer is eligible for certain earned release consideration without meeting the criteria under sub. (1) (a) if the detainer concerns a sentence imposed in another jurisdiction and the remainder of the confinement portion of that sentence is equal to or longer than the remainder of the confinement portion 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.

(5) **VICTIM NOTIFICATION.** (a) Prior to its decision to recommend release of an inmate under this section, the department shall notify an enrolled victim for the purpose of giving the victim the opportunity of providing input.

(b) Prior to release of an inmate under this section, the department shall notify an enrolled victim that the inmate is to be released.

(6) **COURT AND DISTRICT ATTORNEY NOTIFICATION.** The department shall notify the court and district attorney upon the inmate's release.

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

(8) **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 or to another sentence under this section, the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

History: EmR0939; emerg. cr. eff. 12-31-09; CR 09-120; cr. Register November 2010 No. 659, eff. 12-1-10.