



2009 ASSEMBLY BILL 498

October 15, 2009 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to amend* 302.11 (7) (am), 302.11 (7) (b), 302.11 (7) (c), 302.113 (9) (am),
2 302.113 (9) (b) and 304.06 (3); and *to create* 302.11 (2m) and 302.113 (3m) of
3 the statutes; **relating to:** time spent in prison after revocation of parole or
4 extended supervision.

Analysis by the Legislative Reference Bureau

This bill is explained in the Notes provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Justice Reinvestment Initiative Oversight.

This bill requires the reviewing authority to order an offender whose parole or extended supervision is revoked to be confined in prison for six months or the total length of the remaining sentence (for parole) or bifurcated sentence (for extended supervision), whichever is less.

The bill also gives the Department of Corrections (DOC) the authority to extend the period of time a person spends in confinement after revocation up to 90 days for any of the following violations:

1. Violating any regulation of the prison.

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2. Refusing or neglecting to perform required or assigned duties.

3. Refusing or neglecting to participate in required programming or treatment.

1 **SECTION 1.** 302.11 (2m) of the statutes is created to read:

2 **302.11 (2m)** The warden or superintendent shall keep a record of the conduct
3 of each person who is returned to prison after revocation of parole, specifying each
4 infraction of the rules. If a person violates any regulation of the prison, refuses or
5 neglects to perform required or assigned duties, or refuses or neglects to participate
6 in required programming or treatment, the department may extend the release date
7 by not more than 90 days.

8 (b) No extension under par. (a) may require a person to serve more days in
9 prison than provided in his or her sentence.

NOTE: This SECTION gives the warden or superintendent the authority to extend the release date of a person returned to prison after revocation of parole if the person violates prison regulations, refuses or neglects to perform the duties required or assigned by DOC, or refuses or neglects to participate in the programming or treatment required by DOC. The extension of the release date may not exceed 90 days and may not exceed the total days in prison provided in the sentence.

10 **SECTION 2.** 302.11 (7) (am) of the statutes is amended to read:

11 **302.11 (7) (am)** The reviewing authority may return a parolee released under
12 sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) to prison for ~~a period up to the remainder~~
13 of the sentence or for 6 months, whichever is less, for a violation of the conditions of
14 parole. The remainder of the sentence is the entire sentence, less time served in
15 custody prior to parole. The period of time may be extended in accordance with sub.
16 (2m). The revocation order shall provide the parolee with credit in accordance with
17 ss. 304.072 and 973.155.

NOTE: This SECTION provides that a person whose parole is revoked and who is returned to prison must serve 6 months or the remainder of the sentence, whichever is less. The period of time spent in prison may also be extended according to the procedure explained in SECTION 1 of this bill.

18 **SECTION 3.** 302.11 (7) (b) of the statutes is amended to read:

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1 302.11 (7) (b) A parolee returned to prison for violation of the conditions of
2 parole shall be incarcerated for the entire period of time determined by the reviewing
3 authority unless paroled earlier under par. (c). The parolee is not subject to
4 mandatory release under sub. (1) or presumptive mandatory release under sub. (1g).
5 The period of time determined under par. (am) may be extended in accordance with
6 ~~subs. (1q) and (2)~~ sub. (2m).

NOTE: This SECTION changes the cross-reference relating to the authority of a warden or superintendent to extend the time spent in prison following a parole revocation, as specified in SECTION 1 of this draft.

7 **SECTION 4.** 302.11 (7) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
8 is amended to read:

9 302.11 (7) (c) ~~The earned release review commission may subsequently parole,~~
10 ~~under s. 304.06 (1), and the department may subsequently parole, under s. 304.02,~~
11 a parolee who is returned to prison for violation of a condition of parole.

NOTE: This SECTION removes the provision that allows the earned release review commission to release a person spending time in prison after parole revocation after the person has served 25 percent of the sentence or 6 months, whichever is greater. It retains DOC authority to use a special action release program to place a person on parole due to prison overcrowding.

12 **SECTION 5.** 302.113 (3m) of the statutes is created to read:

13 302.113 (3m) (a) The warden or superintendent shall keep a record of the
14 conduct of each inmate who is returned to prison after revocation of extended
15 supervision, specifying each infraction of the rules. If a person violates any
16 regulation of the prison, refuses or neglects to perform required or assigned duties,
17 or refuses or neglects to participate in required programming or treatment, the
18 department may extend the period imposed under sub. (9) by not more than 90 days.

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1 (b) No extension under par. (a) may require a person to serve more days in
2 prison than the total length of the bifurcated sentence imposed on the person under
3 s. 973.01.

NOTE: This SECTION gives the warden or superintendent the authority to extend the reconfinement period of a person returned to prison after revocation of extended supervision if that person violates prison regulations, refuses or neglects to perform the duties required or assigned by the DOC, or refuses or neglects to participate in the programming or treatment required by the department. The extension of reconfinement is 90 days, unless the days served in prison would exceed the total length of the bifurcated sentence.

4 **SECTION 6.** 302.113 (9) (am) of the statutes, as affected by 2009 Wisconsin Act
5 28, is amended to read:

6 302.113 (9) (am) If a person released to extended supervision under this section
7 or under s. 302.1135 violates a condition of extended supervision, the reviewing
8 authority may revoke the extended supervision of the person. If the extended
9 supervision of the person is revoked, the reviewing authority shall order the person
10 to be returned to prison for ~~any specified period of time that does not exceed 6 months~~
11 or the time remaining on the bifurcated sentence, whichever is less. The time
12 remaining on the bifurcated sentence is the total length of the bifurcated sentence,
13 less time served by the person in confinement under the sentence before release to
14 extended supervision under sub. (2) and less all time served in confinement for
15 previous revocations of extended supervision under the sentence. The order
16 returning a person to prison under this paragraph shall provide the person whose
17 extended supervision was revoked with credit in accordance with ss. 304.072 and
18 973.155.

NOTE: This SECTION provides that the revocation period will be equal to the time remaining on the bifurcated sentence or 6 months, whichever is less.

19 **SECTION 7.** 302.113 (9) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
20 is amended to read:

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1 302.113 (9) (b) A person who is returned to prison after revocation of extended
2 supervision shall be incarcerated for the entire period of time specified by the order
3 under par. (am). The period of time specified under par. (am) may be extended in
4 accordance with sub. (3) (3m). If a person is returned to prison under par. (am) for
5 a period of time that is less than the time remaining on the bifurcated sentence, the
6 person shall be released to extended supervision after he or she has served the period
7 of time specified by the order under par. (am) and any periods of extension imposed
8 in accordance with sub. (3) (3m).

9 **SECTION 8.** 304.06 (3) of the statutes, as affected by 2009 Wisconsin Act 28, is
10 amended to read:

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

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1 supervision waives the final administrative hearing, the secretary of corrections
2 shall enter an order revoking or not revoking parole or extended supervision. If the
3 examiner, the administrator upon review, or the secretary in the case of a waiver
4 finds that the prisoner has violated the rules or conditions of parole or extended
5 supervision, the examiner, the administrator upon review, or the secretary in the
6 case of a waiver, may order the prisoner returned to prison ~~to continue serving for~~
7 the remainder of his or her sentence or for 6 months, whichever is less, or may order
8 him or her to continue on parole or extended supervision. If the person is ordered
9 returned to prison, the period of time may be extended in accordance with s. 302.11
10 (2m), if the person is on parole, or in accordance with s. 302.113 (3m), if the person
11 is on extended supervision. If the prisoner claims or appears to be indigent, the
12 department shall refer the prisoner to the authority for indigency determinations
13 specified under s. 977.07 (1).

NOTE: This SECTION provides that if parole or extended supervision is revoked, the period of time a person is required to spend in prison after revocation is the lesser of the the time remaining on the bifurcated sentence or 6 months. The period of time spent in prison may also be extended according to the procedures set forth in SECTIONS 1 and 5 of this bill.

14 **SECTION 9. Initial applicability.**

15 (1) This act first applies to revocations that occur on the effective date of this
16 subsection.

17 (END)