

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

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

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

Under current law, a person who is sentenced to prison may be released to parole or extended supervision, depending on the date the offense was committed. Extended supervision applies to a bifurcated sentence for a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003. For all other offenses, a person under the department’s community supervision following a prison term is on parole.

To revoke a person’s extended supervision, the statutes require 2 hearings. The first hearing determines whether a person’s extended supervision is revoked. The 2nd hearing determines the length of the term of reconfinement. Unless the first hearing is waived, the revocation decision is determined by a hearing examiner in the Department of Administration, Division of Hearings and Appeals. The 2nd hearing is before the circuit court where the person was convicted.

A hearing examiner decides whether to revoke a person’s extended supervision status and makes a recommendation to the circuit court as to the length of time the person should spend in confinement in prison. The circuit court reviews the hearing examiner’s recommendations and determines the appropriate period of time that the person should spend in confinement. The initial term of confinement and additional terms of confinement following revocations may not exceed the total length of the bifurcated sentence.

To revoke a person’s parole status, the statutes require one hearing before the hearing examiner in the Department of Administration, Division of Hearings and Appeals. The time period a person spends in

prison following parole revocation is determined by the hearing examiner.

Current law also provides a framework for how time spent in prison after revocation may be extended for both extended supervision and parole. For both extended supervision and parole, the superintendent or warden may extend the time spent in prison by the following number of days for each offense, not to exceed the total length of the sentence (for parole) or bifurcated sentence (for extended supervision):

1. 10 days for the first offense.
2. 20 days for the 2nd offense.
3. 40 days for the 3rd and subsequent offenses.

Also, under current law, a person whose parole was revoked may be released from prison earlier than the release date determined by the hearing examiner through a special action release program. The Department of Corrections (DOC) may use a special action release program to place someone on parole if there is prison overcrowding. Current law also allows a person who has served 25% of the sentence or 6 months, whichever is greater, to apply to the parole commission to be released earlier than the release date determined at the revocation hearing.

This draft requires the reviewing authority to order an offender whose parole or extended supervision is revoked to be confined in prison for 6 months or the total length of the remaining sentence (for parole) or bifurcated sentence (for extended supervision), whichever is less. The reviewing authority is the hearing examiner in the Department of Administration, Division of Hearings and Appeals, or the DOC if the hearing is waived.

This draft also gives the 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.
2. Refusing or neglecting to perform required or assigned duties.
3. Refusing or neglecting to participate in programming or treatment as required by the DOC.

The draft removes authority from the parole commission to release a person from prison earlier than the time period determined by the hearing examiner. It retains the ability for the DOC to release a person

from prison through a special action release program if there is prison overcrowding.

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

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

7 (b) No extension of the release date under this subsection may require a person to serve
8 more days in prison than provided in the 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 the DOC, or refuses or neglects to participate in the programming or treatment required by the department. The extension of the release date may not exceed 90 days and may not exceed the total days in prison provided in the sentence.

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

10 302.11 **(7)** (am) The reviewing authority may return a parolee released under sub. (1)
11 or (1g) (b) or s. 304.02 or 304.06 (1) to prison for a period up to the remainder of the sentence
12 or for 6 months, whichever is less, for a violation of the conditions of parole. The remainder
13 of the sentence is the entire sentence, less time served in custody prior to parole. The period
14 of time may be extended in accordance with sub. (2m). The revocation order shall provide
15 the parolee with credit in accordance with 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 procedures explained in SECTION 1 of this draft.

COMMENT: The draft provides that a person whose parole or extended supervision is revoked must be given credit for time served in connection with the violation of parole or extended supervision, as provided under current law. Should the draft provide that the time served applies only to the person's underlying sentence so that the person serves the entire 6 months in prison in order to complete programming?

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

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

8 302.11 (7) (c) ~~The parole commission may subsequently parole, under s. 304.06 (1),~~
9 ~~and the department may subsequently parole, under s. 304.02, a parolee who is returned to~~
10 ~~prison for violation of a condition of parole.~~

NOTE: This SECTION removes the provision that allows the parole commission to release a person spending time in prison after parole revocation after the person has served 25% 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.

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

12 302.113 (3m) (a) The warden or superintendent shall keep a record of the conduct of
13 each person who is returned to prison after revocation of extended supervision, specifying
14 each infraction of the rules. If a person violates any regulation of the prison, refuses or neglects
15 to perform required or assigned duties, or refuses or neglects to participate in required

1 programming or treatment, the department may extend the term of confinement in prison by
2 not more than 90 days.

3 (b) No increase of a term of confinement in prison under this subsection may require
4 a person to serve more days in prison than the total length of the bifurcated sentence imposed
5 under 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.

6 **SECTION 6.** 302.113 (9) (am) of the statutes is amended to read:

7 302.113 (9) (am) If a person released to extended supervision under this section violates
8 a condition of extended supervision, the reviewing authority may revoke the extended
9 supervision of the person. [~~If~~ Except as provided in this paragraph, if] the extended
10 supervision of the person is revoked, ~~the person shall be returned to the circuit court for the~~
11 ~~county in which the person was convicted of the offense for which he or she was on extended~~
12 ~~supervision, and the court~~ the reviewing authority shall order the person to be returned to
13 prison for ~~any specified~~ a period of time that does not exceed equals the time remaining on
14 the bifurcated sentence or for 6 months, whichever is less. [~~If the extended supervision of the~~
15 ~~person is revoked after a criminal complaint has been issued against the person alleging the~~
16 ~~commission of a Class A felony, a Class B felony, a Class C felony, a crime described under~~
17 ~~s. 301.45 (1d) (b), or a felony under ss. 941.20 to 941.298, the reviewing authority shall order~~
18 ~~the person to be returned to prison for any specified period of time that does not exceed the~~
19 time remaining on the bifurcated sentence.] The time remaining on the bifurcated sentence

1 is the total length of the bifurcated sentence, less time served by the person in confinement
2 under the sentence before release to extended supervision under sub. (2) and less all time
3 served in confinement for previous revocations of extended supervision under the sentence.
4 The court order of the reviewing authority returning a person to prison under this paragraph
5 shall provide the person whose extended supervision was revoked with credit in accordance
6 with ss. 304.072 and 973.155.

NOTE: This SECTION removes the requirement that a court order the period of time spent in prison after extended supervision is revoked and provides that[, except for a person charged with the commission of a Class A felony, a Class B felony, a Class C felony, a sex related crime described under s. 301.45 (1d) (b), stats., or a weapons-related felony under ss. 941.20 to 941.298 before a revocation order is entered,] an administrative law judge will order a revocation period equal to the time remaining on the bifurcated sentence or 6 months, whichever is less. [For a person charged with the commission of any of the listed crimes, an administrative law judge must order a revocation period that does not exceed the time remaining on the bifurcated sentence.]

COMMENT: The bracketed items in this SECTION and accompanying note create an exception to the proposed policy that a revocation of extended supervision generally will result in a 6-month period of reconfinement. Does the committee wish to add this language to this SECTION and to SECTIONS 2 and 9 of the draft relating to violations occurring while on mandatory release and parole, respectively?

7 **SECTION 7.** 302.113 (9) (at) of the statutes is repealed.

NOTE: This SECTION removes the statutory requirement that the Department of Administration, Division of Hearings and Appeals must make a recommendation to the circuit court regarding the length of the reconfinement period following a revocation of extended supervision.

8 **SECTION 8.** 302.113 (9) (b) and (c) of the statutes are amended to read:

9 302.113 (9) (b) A person who is returned to prison after revocation of extended
10 supervision shall be incarcerated for the entire period of time specified by the court reviewing
11 authority under par. (am). The period of time specified under par. (am) may be extended in
12 accordance with sub. ~~(3)~~ (3m). If a person is returned to prison under par. (am) for a period

1 of time that is less than the time remaining on the bifurcated sentence, the person shall be
2 released to extended supervision after he or she has served the period of time specified by the
3 ~~court~~ reviewing authority under par. (am) and any periods of extension imposed in accordance
4 with sub. ~~(3)~~ (3m).

5 (c) A person who is subsequently released to extended supervision after service of the
6 period of time specified by the ~~court~~ reviewing authority under par. (am) is subject to all
7 conditions and rules under subs. (7) and, if applicable, (7m) until the expiration of the
8 remaining extended supervision portion of the bifurcated sentence. The remaining extended
9 supervision portion of the bifurcated sentence is the total length of the bifurcated sentence, less
10 the time served by the person in confinement under the bifurcated sentence before release to
11 extended supervision under sub. (2) and less all time served in confinement for previous
12 revocations of extended supervision under the bifurcated sentence.

NOTE: This SECTION specifies that the reviewing authority, the Department of Administration, Division of Hearings and Appeals, not the circuit court, is the entity that orders the length of time a person is returned to prison after extended supervision is revoked.

13 **SECTION 9.** 304.06 (3) of the statutes is amended to read:

14 304.06 **(3)** Every paroled prisoner remains in the legal custody of the department unless
15 otherwise provided by the department. If the department alleges that any condition or rule of
16 parole has been violated by the prisoner, the department may take physical custody of the
17 prisoner for the investigation of the alleged violation. If the department is satisfied that any
18 condition or rule of parole has been violated it shall afford the prisoner such administrative
19 hearings as are required by law. Unless waived by the parolee, the final administrative hearing
20 shall be held before a hearing examiner from the division of hearings and appeals in the
21 department of administration who is licensed to practice law in this state. The hearing

1 examiner shall enter an order revoking or not revoking parole. Upon request by either party,
2 the administrator of the division of hearings and appeals shall review the order. The hearing
3 examiner may order that a deposition be taken by audiovisual means and allow the use of a
4 recorded deposition under s. 967.04 (7) to (10). If the parolee waives the final administrative
5 hearing, the secretary of corrections shall enter an order revoking or not revoking parole. If
6 the examiner, the administrator upon review, or the secretary in the case of a waiver finds that
7 the prisoner has violated the rules or conditions of parole, the examiner, the administrator upon
8 review, or the secretary in the case of a waiver, may order the prisoner returned to prison to
9 ~~continue serving~~ for the remainder of his or her sentence or for 6 months, whichever is less,
10 or to continue on parole. The period of time spent in prison may be extended in accordance
11 with s. 302.11 (2m). If the prisoner claims or appears to be indigent, the department shall refer
12 the prisoner to the authority for indigency determinations specified under s. 977.07 (1).

NOTE: This SECTION provides that if parole is revoked, the period of time a person is required to spend in prison after parole revocation is 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 procedures set forth in SECTION 1 of this draft.

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(END)