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2009 WISCONSIN ACT 28 SENTENCING REFORM FAQ SHEET (Updated 11/19/2009)

Positive Adjustment Time

1. *How are sentences calculated under 2009 Wisconsin Act 28?*

- Offense date, classification and crime type determines which law applies to the sentence.
- Records Office staff will review judgments of conviction and/or revocation orders, consider the sentencing dates and dates of offense and whether sentences are consecutive or concurrent to determine the applicable law and the relationship among multiple sentences.

The following information applies when calculating sentence structure:

- OLD LAW: Offenses prior to June 1, 1984 are sentenced under Old Law, see 53.11 and 53.12 of 1981 Wis. Stats. The MR date is established by applying statutory good time (sgt) and extra good time (egt).
- Opting in to 1983 Wisconsin Act 528 provision: If the offense occurred prior to June 1, 1984 but the inmate wishes to have the 1983 Wisconsin Act 528 apply to his/her case, the inmate must make the request within 60 days of reception at Dodge Correctional Institution or Taycheedah Correctional Institution.
- NEW LAW: Offenses on or after June 1, 1984 and prior to December 31, 1999 are sentenced under 1983 Wisconsin Act 528 (referred to as New Law), see sec. 53.11, Stats. (1983). The MR date is established at two-thirds of the sentence. NOTE: Certain serious felonies committed on or after April 21, 1994 but prior to December 31, 1999 have PRESUMPTIVE MR dates. See sec. 302.11 (1g), Stats. (1993).
- Truth in Sentencing (TIS): Offenses on or after December 31, 1999 are sentenced under 1997 Wisconsin Act 283. The court will impose a bifurcated sentence that consists of a term of confinement in prison followed by a term of extended supervision (ES). Prior to the implementation of the new sentencing reform, the term of confinement was without reduction for good behavior and was subject to extension in confinement time for negative behaviors.
- TIS 1: Offenses committed on or after December 31, 1999.
- TIS 2: Offenses committed on or after February 1, 2003. The penalty changes allowed inmates to petition the court for sentence adjustments under sec. 973.195. The courts determined the amount of re-confinement upon a revocation of extended supervision.
- TIS 3: Offense sentenced on or after October 1, 2009.

2. *Can TIS 3 inmates file a petition to the courts for a Sentence Adjustment for Positive Adjustment Time?*
 - No. See s. 973.195. Only inmates sentenced under TIS 1 & 2 are eligible to petition the courts for sentence adjustments.

3. *How will it be determined at what rate inmates are eligible to earn Positive Adjustment Time?*
 - Institution record office staff will review legal files to determine at what rate inmates sentenced under TIS 1 and TIS 2 are eligible to earn Positive Adjustment Time. A projected ES date is established using the designated PAT earning category.
 - TIS 1 and 2 inmates excluded from earning Positive Adjustment Time are listed in 304.06 (1) (bg) 1. am through o; 304.06(1) (bg) 2. am through n; and 302.113(2)(b) 1m to 18.

4. *Is it possible for an inmate to be placed in more than one sentencing track?*
 - Yes

5. *If an inmate is determined to be in the earning category of 1 day for every 2 track based on sentence structure alone, what may change the designation to place him or her in higher track of the 1 day for every 3 days served category?*
 - Risk assessment results
 - Additional sentence convictions

6. *Are inmates under TIS 3, serving time for class A or B felonies, eligible for early release under new language?*
 - No. Exclusions for early release eligibility are listed under 304.06 and 302.113.

7. *What is the Earned Release Review Commission (ERRC).*
 - Effective October 1, 2009, ERRC will be what is currently known as the Parole Commission

8. *When an inmate reaches his/her projected extended supervision date (earned Positive Adjustment time) is he/she automatically released from prison?*
 - On the 1-for-3 and 1-for-5.7 cases, the answer is no. The projected ES date is when an inmate becomes eligible to be reviewed by the ERRC or when an inmate may exercise his/her right to petition the court for sentence modification.
 - On the 1-for-2 cases, the inmate's release is subject to court review, as specified under 302.113 (2)(c).

9. *How can an inmate be reviewed by ERRC?*
 - An inmate will be scheduled to be reviewed by ERRC. This process will be similar to how reviews are conducted for those inmates eligible for parole hearings. An inmate's (PES) projected extended supervision eligibility date will be used to establish when he/she is eligible to be reviewed by ERRC. **Inmates who have exercised their rights to petition the courts on any count of any bifurcated sentence will NOT be eligible for review by the ERRC for the 75 percent and 85 percent adjustments. Inmates who are serving a TIS 1 or TIS 2 sentence may petition the courts for a sentence adjustment if a release is NOT recommended by the ERRC.**

10. *Can an inmate who has been reviewed by ERRC petition the Courts for Sentence adjustment?*
- Yes, inmates who are sentenced under TIS 1 & 2 and are eligible for the 75 percent and 85 percent adjustments may opt to petition the courts for a sentence adjustment.

11. *Can an inmate earn PAT on the reconfinement after revocation on or after October 1, 2009?*
- Yes.

**** 10/7/2009 Update**

12. *Who has the right to be present during ERRC hearings for reviews based on Positive Adjustment Time?*
- During an ERRC hearing, the offender may be present, and the victim or victims of the crime under consideration who have been notified of the hearing.

13. *Does the DOC need to have an agency representative attend an ERRC hearing for a review based on Positive Adjustment Time?*
- No.

14. *What would be considered a violation that would impact the earning of Positive Adjustment Time?*
- *Only major conduct reports count against the rate of earning Positive Adjustment Time. However, the rate of earning itself will not lead to a point of guaranteed release, but rather a point of decision about release by the ERRC and/or the court. It is this decision in which the frequency and type of minor conduct reports, refusal or willingness to complete treatment, and other relevant factors will be taken into account.*

15. *If an inmate petitions the court for a sentence adjustment based on TIS 2 (75 percent or 85 percent), and then the court rejects the petition, can the inmate then pursue the Positive Adjustment Time track?*
- Yes.

16. *Can an inmate be considered for Positive Adjustment Time multiple times?*
- On one sentence, an inmate might only be considered once based on a PAT track. An inmate may be considered if deferred by the Earned Release Review Commission, and will be considered for each sentence on which he/she is eligible.

17. *If an inmate is released under one of the TIS 3 tracks and is subsequently revoked, can they earn Positive Adjustment Time again?*
- Yes.

18. *What is the criteria for high risk of reoffending?*
- Determination of risk will be made on an individualized basis on a series of factors. The DOC-502 form will be utilized to make these determinations.

19. *Could inmates in segregation due to discipline start earning Positive Adjustment Time on October 1, 2009?*
- Yes.
20. *How often will Positive Adjustment Time be computed?*
- An inmate's Positive Adjustment Time will be computed during intake and subsequently based on the receipt of major conduct reports.

**** 11/19/2009 Update**

21. Are existing DOC database systems going to have a PAT date?
- No, a special database is being created to track activity under 2009 Wisconsin Act 28.
22. If an inmate is approved for early release and is pursuing an Interstate Compact transfer out of Wisconsin, does the inmate remain incarcerated pending an approval/denial of the receiving state?
- This may depend on the release track. Regarding PAT cases: For the 1:3, and 1:5.7, ERRC considers the release plan. If the transfer has not yet been accepted, the release should be contingent on an approved local plan, which may be continued in the event the transfer is denied. However, for the 1:2, DOC has to advise the Court when the inmate has reached this point. The Court decides if it should grant, deny, or extend to a period of time not to exceed initial incarceration.
23. When holding due process hearings relative to Positive Adjustment Time (PAT), are the days of the occurrences counted or just the day the hearing was held? (Often an inmate has several conduct reports written over a period of days and all are discussed at one hearing)
- An inmate violation under DOC 303 Wis. Admin Code.
24. How is violation of prison regulations being determined? What about documentation?
- When an inmate is found guilty of a major conduct violation, the inmate will not earn PAT on the date or dates the conduct occurred which resulted in a finding of guilt under DOC 303 Wis. Admin. Code.
25. Do agents need to attend the PAT hearings and if so- who will be notifying them?
- Agents do not need to attend PAT hearings. Social workers at the facility will contact the agents.

Consideration for Release Under s. 302.113 (9h), titled "Certain Early Release"

1. *What is this provision?*
- Under s. 302.113 (9h) (a) The department may release to extended supervision certain persons serving the confinement portion of a bifurcated sentence. The release considerations are for inmates that are within 1 year of release.

2. *Can an inmate be released from community supervision early?*
- o Yes. See the section on Discharge from Extended Supervision for more information.

*****10/7/2009 Update**

3. *Under Certain Early Release, how does the statute define the word “believe” when agents and social workers must recommend whether an inmate will be able to maintain himself or herself while not confined without engaging in assaultive activity?*
- o The statute does not define “believe” beyond what is stated in the law. The reviewer will make a reasonable attempt to base the recommendation on the facts as shown in the inmate’s DAI and DCC files, considering the inmate’s prior record, adjustment in the institution and while under supervision, programming completion, and other relevant factors.

**** 11/19/2009 Update**

4. If an offender is released under Certain Early Release, will they still need to be on EMP if they are in a supervised Temporary Living Placement (TLP) facility?
- o Yes.
5. Under Certain Early Release, why is the single factor of “assaultive” behavior being used in the analysis, versus risk to “reoffend?”
- o The language being used is the language contained in 2009 Wisconsin Act 28.
6. If an inmate is granted Certain Early Release and commits a major offense, who is held accountable?
- o The Certain Early Release process has a number of checks and balances to help identify the most appropriate candidates prior to release, and to provide for strong supervision in the months following release. It is imperative that all DOC staff continue to perform their job duties with professionalism and dedication in managing offenders, regardless of whether they are in prison or in the community, and regardless of whether they are released under Act 28 provisions or not. Ultimately, the offender has to recognize that he or she will be held accountable for their own actions at all times.
7. Are victims going to be notified when offenders are released from supervision or incarceration early? How will they be notified?
- o Victims who have enrolled with the Office of Victim Services and Programs will be notified in writing of early release from prison. The statute requires notification 7 days prior to release but it has been DOC’s practice to provide 30 days advance notice of release whenever possible. The agent will notify victims of the case that the offender is being considered for early discharge from supervision and the victim will be given an opportunity to submit a written victim impact statement. The victim statement will be considered in making the decision regarding early discharge from supervision. The OVSP will notify enrolled victims of the early discharge from supervision after the discharge has been entered into the DOC’s data system.
8. For Certain Early Release: If the social worker sees a plan that is not developed, i.e., no housing plan, can the social worker use discretion to withdraw the packet?

- No. However, an inmate's release plan will be reviewed by the DOC Secretary/Designee.
9. Is special funding being allocated to acquire more Electronic Monitoring Program (EMP) units?
- DCC is currently assessing EMP unit inventory to identify the need/quantity of EMP units that may need to be purchased. Acquisition will be made within the agency's existing budget.
10. How do you determine which initiative an inmate is most appropriate for?
- Records staff as a practical matter are making calculations to prioritize initiatives in order of earliest potential release for each offender.
11. What happened to MAX-MEDIUM_MINIMUM for community supervision? Are they now low, medium and high?
- Supervision will continue as maximum, medium and administrative. Risk assessment levels will refer to high risk, medium risk and low risk to reduce confusion on which process is being referred to related to an offender's case.

Extraordinary Health Conditions Release

1. *How does an inmate petition for release under the Extraordinary Health Conditions provision?*
- An inmate who meets the criteria (see Fact Sheet) may submit a petition packet. A policy is under development to set an appropriate process in place.
2. *What right does the victim have during this process?*
- The victim has the right to attend a scheduled hearing and/ or submit a statement concerning the modification of the inmate's sentence under the Extraordinary Health Conditions provision.
3. *What is the process once the petition has been submitted to the Earned Release Review Commission?*
- A hearing date will be established by the ERRC and a notice will be sent to the victim, District Attorney, inmate, attorney representing the inmate, if applicable, and the institution.
4. *What is the purpose of the hearing scheduled in accordance with the Extraordinary Health Conditions provision?*
- To determine if a release under the Extraordinary Health Conditions provision would serve the public interest.
5. *Can an inmate be represented by counsel during the hearing?*
- Yes, the inmate may be represented by counsel in accordance with 302.1135 (10).
6. *How does an approved petition, filed in accordance with the Extraordinary Health Conditions provision, affect an inmate's sentence structure?*
- The remaining term of confinement will be added to the term of extended supervision so that the total length of the original sentence imposed does not change.

7. *When a petition filed in accordance with the Extraordinary Health Conditions provision is approved, when will the inmate be released?*
 - An inmate will be released within 30 days after the date on which the Earned Release Review Commission modifies the bifurcated or Life sentence.
8. *What happens if a petition, filed in accordance with the Extraordinary Health Conditions, provision is denied?*
 - The inmate may not file another petition within one year after the date of the denial.
9. *Can an inmate appeal the decision of the Earned Release Review Commission?*
 - An inmate may seek a review of the decision by the common law Writ of Certiorari.

***** 10/7/2009 Update**

10. *How will releases be handled for aged/extraordinary health condition cases in which the inmate is a Special Bulletin Notification (SBN) case, requiring release preparation in excess of 30 days?*
 - The ERRC is asked to take the SBN procedures into account and provide advance notification to DOC, so that the timing of a final decision to release will provide adequate time for the SBN process to be completed.

***** 11/19/2009 Update**

11. Is mental illness considered a “condition” for potential extraordinary health releases?
 - mental health condition could be considered an extraordinary health condition depending on type and extent. The ERRC will consider how the mental health issue might affect the inmate’s risk for re- offending.
12. Where will people be released due to extraordinary health conditions? Where will they receive health care if they do not have health insurance?
 - Inmates will need to have an approved release plan before they are released from the institution, just like all inmates do. Where an inmate will receive health care will vary as well and could include options such as private health insurance or public assistance (Medicaid/Medicare).
13. Will early release of aged inmates increase the safety risk in the community?
 - A transition plan will be created by the agent with the social worker and offender input. The offender’s risk to the community needs to be considered as part of the ERRC’s release decision.
14. Who will pay for nursing home and health needs for aged offenders released into the community?
 - It will depend on the specific case. Agents currently assess available funds such as SSI benefits and may work with the Department’s third party provider Vestica, to assist in securing other resources.
15. Are inmates who are in prison for life without parole eligibility, life with parole eligibility, life with eligibility for parole after a specified time eligible for release under Extraordinary health/aged?

- Some. Only inmates with a TIS sentence are eligible for release under the Extraordinary Health/Aged provision, which may include life sentences.

Expansion of Challenge Incarceration and Earned Release Program

1. *Where will the new programs be located?*
 - The non-AODA Earned Release Program (ERP) program for men will be located at the Oakhill Correctional Institution near Madison Wisconsin. The female program will be at the Robert E. Ellsworth Correctional Center near Racine Wisconsin.
 - Both the male and female non-AODA Challenge Incarceration Programs (CIP) will be located at the St. Croix Correctional Center in New Richmond Wisconsin.
2. *How will an inmate be identified to get into these programs?*
 - In accordance with Wisconsin state statutes the Courts will find offenders either eligible or ineligible and indicate it on the Judgment of Conviction. The Department of Corrections will then determine whether the inmate is suitable for the program(s). Not all inmates found eligible by the courts will be placed in one of the programs.
3. *Are the CIP and ERP voluntary?*
 - Yes, they are voluntary.
4. *When will the new non-AODA programs start?*
 - For males and females, both are scheduled to begin October 1, 2009.
5. *If an inmate is currently in prison can he/she get in the ERP/CIP non-AODA programs?*
 - Yes, however the judgment of conviction (JOC) will need to indicate that the inmate is eligible. In some cases inmates will have to petition the court to get an amended JOC.
6. *What if an inmate's JOC does not indicate one way or the other whether he/she is eligible for either program?*
 - In some cases the JOC is silent on the ERP/CIP issue. In these cases the inmate will have to petition the court for an amended JOC indicating eligibility.
7. *If an inmate was found ineligible on his/her JOC previously because he/she did not have a drug or alcohol program need, can he/she re-petition to get into the new non-AODA programs?*
 - Yes, inmates can re-petition.
8. *Can an inmate be found eligible for one of the programs on one conviction and ineligible on another?*
 - Yes, the Department of Corrections will look at cases on an individual basis and make a determination on whether the inmates can enter an ERP.
9. *Can an inmate get into the programs if he/she still have a case pending in the courts?*

- It depends on several factors regarding the active case. If the inmate is required to appear in court on a case, the DOC may keep the inmate out of the program until his/her participation can be more consistent. If the inmate is not required to attend hearings, the DOC may allow participation.

10. *If an inmate completes the program, what happens?*

- For TIS cases: The DOC sends a letter to the sentencing court and notifies the judge that the inmate has completed an earned release program in accordance with Wisconsin State Statute 302.045(1). Typically, the Judge will amend the JOC and the inmate will be released on extended supervision in the community.
- For parole-eligible cases: The DOC notifies the Earned Release Review Commission, which will authorize the release of the inmate into community supervision.

Risk Reduction Sentences

1. *What is a Risk Reduction Sentence?*

- A Risk Reduction Sentence (RRS) is a sentencing option available to a judge when a bifurcated sentence is imposed. The RRS allows early release of the inmate if he/she agrees to cooperate in an assessment and to participate in programming or treatment the Department of Corrections assigns for the person under s. 302.042 (1), and after serving 75% of the confinement portion of a bifurcated sentence.

*****10/7/2009 Update**

2. *Can an inmate with a Risk Reduction Sentence earn Positive Adjustment Time while in the institution?*

- Yes, inmates can be in multiple tracks.

3. *Will there be guidelines for DOC staff to follow when considering inmates' behaviors under Risk Reduction Sentence cases?*

- Yes, guidelines are currently under development.

*****11/19/2009 Update**

4. *Are there any instances in which an inmate released early under an Act 28 provision does not have the remaining period of incarceration added to their period of extended supervision?*

- The only time the remaining period of incarceration would not be added to an offender's extended supervision would be under a Risk Reduction Sentence, which is ordered by the judge.

5. *If a person has a Risk Reduction Sentence (RRS), is released from prison after successful completion of their RRS and subsequently revoked and admitted to prison for no new sentence, do they remain eligible for early release under RRS?*

- Not under RRS, but they may be eligible based on other Act 28 provisions.

Early Discharge from Extended Supervision

1. *What are the statutory requirements for early discharge from extended supervision?*
 - Must have served a minimum of 2 years on extended supervision.
 - Must have met conditions of extended supervision.
 - The early discharge must be in the interest of justice.
 - The department must notify the victim of the intent to discharge the offender from extended supervision early. See Sec. 973.01(4m) of Wis. Stats.
2. *Does early discharge apply to offenders sentenced under TIS 1, 2 and 3?*
 - Yes
3. *When does early discharge from extended supervision take effect?*
 - Beginning on October 1, 2009, offenders who meet the criteria are eligible for consideration for early discharge from extended supervision.
4. *Can offenders who have been on extended supervision for 2 years, as of October 1, 2009, be considered for early discharge?*
 - Yes, as long as they meet the criteria.
5. *Does the court play a role in granting an early discharge?*
 - No, early discharges are granted by the Department of Corrections.
6. *Will victims be notified?*
 - The statutory language requires the department to notify victims of an early discharge.
7. *Can a WI offender out of state on Interstate Compact be considered for early discharge?*
 - Yes, as long as an offender meets the statutory criteria for early discharge.
8. *If granted early discharge, when does it take effect?*
 - The date it is signed by the Regional Chief or designee.
9. *If early discharge is denied, may an offender be considered again at a later date?*
 - Yes, as long as they meet the criteria.

*****11/19/2009 Update**

10. Are sex offenders eligible to be early discharged from Extended Supervision or probation supervision under 2009 Wisconsin Act 28?
 - No.

Early Discharge from Probation

1. *What is the statutory requirement for early discharge from probation?*
 - The department may modify a person's period of probation and discharge the person from probation if the person has completed 50 percent of his or her period of probation.
2. *Is this different from the current criteria for early discharge from probation?*
 - Yes, effective October 1, 2009 the following criteria is no longer applicable to early discharge from probation:

- Must have served at least 1 year if on supervision for a felony.
 - Must have served at least 6 months if on for a misdemeanor.
3. *When is the new early discharge criterion effective?*
 - Anyone on probation as of October 1, 2009 could be considered for early discharge
 4. *If an offender has served at least 50 percent of his/her probation on October 1, 2009, may he/she be considered for early discharge?*
 - Yes, if they meet the additional criteria set by the department.
 5. *Can an offender on lifetime supervision be early discharged?*
 - Yes, an offender placed on lifetime supervision may petition the court for early discharge.
 6. *Can a WI offender out of state on Interstate Compact be considered for early discharge?*
 - Yes, as long as they meet the statutory criteria for early discharge.
 7. *If granted early discharge, when does it take effect?*
 - The date it is signed by the Regional Chief or designee.

*****11/19/2009 Update**

8. Will the 50% early discharge from Probation stay the same? Even for sentences of 1 year or less?
 - The length of time required to be served on probation in order to be considered for early discharge has changed in that a probationer must serve at least 50% of his/her term. All other requirements remain substantially the same and do not require a specific length of term in ordered to be considered.

ES Revocations

1. *How will the length of reconfinement be determined for final revocation hearings for Extended Supervision case?*
 - The DOC will determine length of reconfinement for cases in which the final revocation hearing is waived and this period of time will be included in the revocation order and warrant.
 - The Division of Hearings and Appeals, Administrative Law Judge will receive a recommendation regarding reconfinement time on ES cases from the agent using the current processes for cases where a revocation hearing takes place. The Administrative Law Judge will determine the length of time for reconfinement and issue an order to include this reconfinement time.

*****11/19/2009 Update**

2. In the event of a parole or ES waived revocation, will a good time and/or reconfinement hearing be held, and at what point will the hearing be held?
 - A good time/reincarceration/reconfinement hearing will be held if requested by the offender. At the time of waiver of the final revocation hearing, the offender is afforded an opportunity to either waive or request a good time forfeiture/reincarceration/reconfinement hearing. (Note: this is the existing process for all pre-TIS cases, i.e., good time forfeiture/reincarceration. The only change in the process is the addition of ES cases). After receipt of the Revocation Order and Warrant, if the offender has requested a reconfinement hearing, the agent will submit a request to Division of Hearings and Appeals (DHA). DHA will then schedule the hearing, to be held at the institution where the offender is assigned.

3. If an inmate is released early on a sentence modification and are revoked, can they be released again on an Act 28 sentencing modification track?
 - o Yes, prior eligibility does not go away if an inmate is released and subsequently revoked.