

FISCAL ESTIMATE

DOA-2048 N(R06/99)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject DOC 302, Wis Adm Code - Sentencing Modifications Created in 2009 Wisconsin ACT 28

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Positive Adjustment Time (PAT)

This rule implements 2009 Wisconsin ACT 28 language that allows a new mechanism for release of inmates sentenced under bifurcated sentences from confinement to extended supervision (ES). The statutory language created Positive Adjustment Time (PAT) which measures the period of time in days that can be earned to reduce an inmate's period of confinement. PAT has three separate release tracks depending on eligibility as follows:

1. Inmates may be eligible to earn 1 day for every 2 days of confinement towards early release under the following provisions:
 - a. The inmate must have a non-violent misdemeanor conviction or a non-violent Class F-I felony conviction.
 - b. The Department has determined the inmate is "not" high risk for reoffending in the community.
 - c. The inmate must follow established prison rules and not refuse or neglect to perform assigned duties while confined.
 - d. The inmate has not received a major penalty while confined.

When an inmate has earned early release under this new PAT provision, DOC will notify the court within 90 days of release that the inmate qualifies for early release to ES and provide the court with a copy of the objective risk assessment and the inmates conduct report. The court has 30 days to schedule a hearing to determine release, deny release or change the release date to a date not longer then the original confinement portion on the bifurcated sentence. If the 30 days passes without the court scheduling a hearing, the inmate will be released to ES.

Long-Range Fiscal Implications

Prepared by:
Sue Loniello

Telephone No.
240-5524

Agency

Corrections

Authorized Signature:
Robert Margolies
Robert Margolies

Telephone--No.
240-5056

Date
12/18/09

If the court decides to review the inmate for early release, a hearing will be scheduled and an order issued within 60 days. At the hearing the court has three options; 1) reject PAT and return the inmate to prison to serve the remaining confinement portion of the sentence before release to ES, 2) release the inmate to ES, or 3) order the inmate to begin serving the next sentence.

2. Inmates may be eligible to earn 1 day for every 3 days of confinement towards early release under the following provisions:
 - a. Inmates convicted of non-violent misdemeanor's or non-violent Class F-I felonies will not be eligible to earn PAT on the first track (1 day for every 2 days), if the Department has determined these inmates are at high risk of reoffending in the community. Instead these inmates will be eligible to earn PAT on the second track (1 day for every 3 days).
 - b. The inmate has a violent Class F-I felony conviction.
 - c. The inmate must follow established prison rules and not refuse or neglect to perform assigned duties while confined.
 - d. The inmate has not received a major penalty while confined.
3. Inmates may be eligible to earn 1 day for every 5.7 days of confinement towards early release under the following provisions:
 - a. The conviction must be a Class C-E felony.
 - b. The inmate must follow established prison rules and not refuse or neglect to perform assigned duties while confined.
 - c. The inmate has not received a major penalty while confined.

When an inmate has earned early release under the 1 day for every 3 days or the 1 day for every 5.7 days, the inmate has only one opportunity to be seen by the Earned Release Review Commission, (ERRC) formerly the Parole Commission. The inmate must request to be seen by the ERRC and if ERRC recommends release, ERRC must notify the court of the release and the court has the opportunity to schedule a hearing within 30 days. If the court holds a hearing the judge has the option to affirm, deny or change the release date to a date not longer than the original confinement portion. Release is not automatic even if the inmate has achieved his or her goals. The ERRC may or may not recommend early release, and the Court may or may not approve early release.

The Department anticipates that incarcerated inmates will be released early to extended supervision under the new legislation for a PAT. However, the Department is not able to estimate the number of inmates that may be released under PAT and therefore is unable to estimate a state fiscal impact or any savings that may result from early release.

The Department anticipates an increase in workload for Social Workers, Supervising Staff, the Records Office, Bureau of Classification and Movement (BOCM) and probation & parole agents. However, a fiscal impact cannot be estimated for the increased workload.

Bifurcated Sentence Modification for TIS1 & TIS2

Under 2009 Wisconsin ACT 28, two early release options were established for inmates currently serving the confinement portion of a bifurcated sentence under TIS1 or TIS2. Inmates may petition the Earned Release Review Commission (ERRC) under the following two options.

- 1) The inmate has served 75% of his or her sentence, the crime was a misdemeanor violation or a Class F to I felony, the crime was committed prior to October 1, 2009 and the inmate has not petitioned the sentencing court for early release to ES.
- 2) The inmate has served 85% of his or her sentence, the crime was a Class C to E felony, the crime was committed prior to October 1, 2009 and the inmate had not petitioned the sentencing court for early release to ES.

The review process begins when the records office creates a list of inmates that have served 75 or 85 percent of his or her bifurcated sentence and are eligible for review by ERRC. The records office forwards the eligibility list to institution social workers, agents and ERRC. The records office also notifies the inmate and the judge and District Attorney from the sentencing court of the upcoming review

by ERRC. After ERRC interviews the inmate the results are forwarded to the records office for processing as follows; 1) inmate is denied, 2) the decision is deferred for further review, or 3) the inmate is recommended for release.

If the inmate is recommended for release, ERRC will notify the sentencing court of the inmates release to ES. The court has 30 days to schedule a hearing; if the court does not schedule a hearing within 30 days the inmate will be processed for release to ES.

Either ERRC or the sentencing court can deny release of the inmate or release the inmate to a consecutive sentence. If a consecutive sentence exists, the records office will recalculate the overall ES date. An additional a calculation may be required to determine a new Release Eligibility Date (RED) or Projected Extended Supervision Date (PESD).

At this time a fiscal impact cannot be estimated since the Department cannot predict how many inmates will be released from a TIS1 or TIS2 bifurcated sentence.

Earned Release Program (ERP) & Challenge Incarceration Program (CIP)

Under 2009 WI ACT 28, statutory language was enacted that expanded the early release sentencing option for the courts on bifurcated sentences. The language for the Earned Release Program (ERP) and the Challenge Incarceration Program (CIP) now includes offenders that do not have alcohol or drug treatment needs. The prior language required an AODA component to be eligible for either program. The new language refers to an early release rehabilitation program.

The sentencing court would continue to determine statutory eligibility for the offender to participate in ERP or CIP. However, the change in the language allows the Department to determine if an offender has treatment needs not related to AODA that are directly related to his or her criminal behavior and to develop the criterion for entry into non-AODA ERP or CIP.

The Department shall continue to notify the court when the offender has successfully completed ERP or CIP. The court has 30 days to modify the sentence by adding the remaining confinement portion onto the extended supervision (ES) portion. The length of the sentence does not change. The Department has six working days to release the offender after receiving the modified court order.

The Department anticipates incarcerated offenders will be released early to extended supervision under the new non-AODA ERP and CIP programs. However, the Department is not able to estimate the future number of offenders that may be released, but anticipates a reduction in incarceration costs and increased supervision costs since the remainder of the confinement time is added to the extended supervision time.

The Department anticipates increased work duties for Social Workers, the Bureau of Classification & Movement, Probation & Parole Agents and Supervisory Staff. At this time a fiscal impact cannot be estimated for the increased work duties or the number of staff needed to accomplish the additional duties related to the new non-AODA ERP/CIP programs as a result of this legislation.

Risk Reduction Sentence (RRS)

Under 2009 Wisconsin ACT 28, courts may impose another sentencing option called the Risk Reduction Sentence (RRS). The RRS gives the court the ability to sentence a convicted felon to serve 75% of confinement time of a bifurcated sentence if the offender agrees to the RRS rules at sentencing. Under the rules of RRS the inmate must agree to a risk assessment analysis, participate in recommended program/treatment needs and maintain good conduct while confined.

When the Department determines an inmate has maintained good conduct during confinement and has completed the recommended programs/treatment and has served 75% of his or her confinement time on a bifurcated sentence, the Department will send notice to the sentencing court and the Office of Victim Services (OVS) that the inmate is ready to be released to extended supervision (ES). However, if the offender has not satisfied the program plan at the completion of 75% of his or her confinement term, the offender may remain confined for a period of time not to exceed the original confinement term on the bifurcated sentence.

The Department anticipates incarcerated offenders will be released early to extended supervision under the new legislation for a RRS. However, the Department is not able to estimate the number of offenders that may be released under the new RRS rules. We anticipate a reduction in incarceration costs and a reduction in extended supervision costs since the remaining 25% on the confinement portion of the sentence dissolves and is not added to the extended supervision term on the bifurcated sentence.

It's possible the Department may see a reduction in workload for probation & parole agents over time, depending on how many inmates are released under a RRS sentence and an increased workload for prison staff to track incarcerated inmates. At this time a fiscal impact cannot be estimated since the Department cannot predict how many offenders will receive an RRS sentence and the affect on length of confinement.

Certain Early Releases (CER)

This rule implements 2009 WI ACT 28 language that allows the Department of Corrections to release certain offenders serving the confinement portion of a bifurcated sentence to extended supervision (ES), if the offender meets the following criteria:

1. The person is serving the confinement portion of a bifurcated sentence for a misdemeanor or a class F to I felony that is not a violent offense as defined in s. 301.048(2)(bm)1.
2. The prison social worker or ES agent of record has reason to believe that the person will be able to maintain himself/herself while not confined without engaging in assaultive activity.
3. The release to extended supervision date is not more than 12 months before the person's extended supervision eligibility date.

The Department is unable to estimate the number of offenders who may be released early to ES or the fiscal impact resulting from these releases. It is assumed that there will be a reduction in incarceration costs and an increase in extended supervision costs under the new statutory language.

The Department also anticipates an increase in workload to the department for Social Workers, the Records Office, Probation & Parole Agents and Supervisory Staff. At this time a fiscal impact cannot be estimated for the increased workload or the number of staff needed to accomplish the additional duties required for Certain Early Release offenders.