

Jim Doyle
Governor

Rick Raemisch
Secretary



Mailing Address

3099 E. Washington Ave.
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 240-5000
Fax (608) 240-3300

State of Wisconsin Department of Corrections

2009 WISCONSIN ACT 28 SENTENCING REFORM FACT SHEET

Several sentencing reforms have been signed into law under 2009 Wisconsin Act 28, and will go into effect Oct. 1, 2009. Offenders **may be eligible** for a sentence modification under one or more of the new provisions, which **affect sentences handed down for crimes committed on or after Dec. 31, 1999**. This document provides a brief description of the following new provisions:

- Earning of Positive Adjustment Time (PAT)
- Consideration for Release Under s. 302.113 (9h)
- Extraordinary Health Conditions/Aged
- Expansion of Challenge Incarceration and Earned Release Programs
- Risk Reduction Sentences
- Early Discharge from Extended Supervision/Probation
- Revocation of Extended Supervision

The DOC Office of Victim Services and Programs will notify enrolled victims of any discretionary release review well in advance, in order to provide them with an opportunity to provide input into the release decision. For hearings conducted by the Earned Release Review Commission, victims will be given the opportunity to attend the hearing and make a statement, if they wish. In addition, enrolled victims will be notified in advance of an offender's release from custody or discharge from supervision.

Earning of Positive Adjustment Time: Eligible inmates will earn positive adjustment time at the rates noted below as long as they do not violate the rules and regulations of the prison or refuse or neglect to perform required or assigned duties. Inmates must be serving a bifurcated sentence under Truth in Sentencing (TIS) to be eligible. Please note that inmates sentenced for certain offenses outlined in Wisconsin Act 28 are automatically ineligible for PAT. **In addition, please note the sentencing judge has the opportunity to review the release decision for all three of the following positive adjustment time provisions and may overrule the proposed release, keeping the inmate confined.**

- **Earn 1 Day for Every 2 Days Served:** s. 302.113(2)(b) – Applies to inmates sentenced under 973.01 for a misdemeanor or non-violent felony Class F-I and eligible under 302.113 (2)(b), and determined to not be a high risk of re-offending. Inmates determined to be a high risk to re-offend will be eligible to earn PAT at the 1 day for every 3 served category described below. Once an inmate under this section serves the required confinement portion of their sentence, minus PAT earned, the inmate is identified as eligible for release to extended supervision, and the unserved portion of his/her confinement time is then added to his/her extended supervision time, keeping the total length of the sentence unchanged. The earliest an inmate could be released under this provision is at two-thirds of the confinement portion of his/her sentence.
- **Earn 1 Day for Every 3 Days Served:** s. 304.06(1)(bg)(1) – Applies to Inmates sentenced under 973.01 for Class F-I felonies or misdemeanors that are not violent offenses, as defined in

s. 301.048 (2)(bm)(1) and are ineligible for PAT under s. 302.113 (2)(b) or for a Class F-I felony that is a violent offense under s. 301.048 (2) (bm) (1). Once an inmate under this section serves the required confinement portion of his/her sentence, minus PAT earned, the inmate may petition the Earned Release Review Commission (formerly the Parole Commission) for release to extended supervision. If the ERRC approves the release, the inmate is scheduled for release to extended supervision, and the unserved portion of the inmate's confinement time is added to his/her extended supervision, keeping the total length of the sentence unchanged. The earliest an inmate could be released under this provision is at 75% of the confinement portion of his/her sentence.

- **Earn 1 Day for Every 5.7 Days Served:** s. 304.06(1)(bg)2 – Applies to inmates sentenced under 973.01 for a Class C-E Felony, as defined in s. 304.06(1)(bg)2. Once an inmate under this section serves the required confinement portion of his/her sentence, minus PAT earned, the inmate may petition the ERRC for release to extended supervision. If the ERRC approves the release, the inmate is scheduled for release to extended supervision, and the unserved portion of the inmate's confinement time is added to his/her extended supervision, keeping the total length of the sentence unchanged. The earliest an inmate could be released under this provision is at 85.1% of their confinement portion of their sentence.

Early Release of Certain Inmates: s. 302.113 (9h) – Applies to an inmate serving the confinement portion of a bifurcated sentence for a misdemeanor or Class F-I Non-Violent offense defined in s. 301.048(2)(bm)1 who is not more than 12 months before the person's extended supervision eligibility date. This provision provides the Department with discretionary authority to release the inmate to extended supervision. If the inmate is released to extended supervision, the unserved portion of the inmate's confinement time is added to his/her extended supervision, keeping the total length of the sentence unchanged.

Extraordinary Health Conditions/Aged: s. 302.1135(2) (a),(b), and (c) – An inmate may seek a modification of his/her sentence from the ERRC and be released to extended supervision if he/she meets one of the following criteria:

- The inmate is at least 65 years old and has served at least 5 years of confinement in prison portion of the bifurcated sentence for a sentence imposed under s. 973.01, or has served at least 5 years in prison for a life sentence imposed under s. 973.014.
- The inmate is at least 60 years old and has served at least 10 years of the term of confinement in prison portion of a bifurcated sentence for sentence imposed under s. 973.01 or has served at least 10 years in prison for a life sentence imposed under s. 973.014.
- The inmate has an extraordinary health condition as defined by s. 302.1135(1)(b), meaning a condition afflicting a person such as advanced age, infirmity, or disability of the person or a need for medical treatment or services not available within a correctional institution.

If the ERRC approves the release, the unserved portion of the inmate's confinement time is added to the period of extended supervision, keeping the total length of the original sentence unchanged.

Expansion of Challenge Incarceration Program and Earned Release Program: Patterned after existing law, the expansion of the Earned Release Program (ERP) and Challenge Incarceration Program (CIP) provides greater sentencing options for the courts by expanding the eligibility criteria to include those persons convicted of non-violent /non-assaultive crimes who **may or may not** have a substance abuse problem. Following an intensive six month residential program, the court places offenders who successfully complete ERP/CIP on Extended Supervision within 30 days of receiving the completion notice. The court shall modify the inmate's bifurcated sentence by reducing the

confinement part of the sentence and lengthening the extended supervision, resulting in no change in the total sentence.

- **CIP Eligibility:** In addition to CIP being intended for **non-assaultive and non-violent offenders**, the following **statutory program eligibility (s. 302.045 (2))** is to be considered: Offender volunteers to participate in the program; offender has not attained the age of 40 as of the date they will begin participating in the program for those sentenced on or after 7-26-03; offenders sentenced prior to that date must enter prior to the age of 30. When imposing a bifurcated sentence the offender is not eligible when convicted of a crime specified in Chapter 940 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. In addition, the offender is not to have psychological, physical or medical limitations that would preclude participation in the program.
- **ERP Eligibility:** In addition to ERP being intended for **non-assaultive and non-violent offenders**, the following **statutory eligibility (302.05(3))** is to be considered: When imposing a bifurcated sentence the offender is not eligible when convicted of crimes specified in Chapter 940 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.

Risk Reduction Sentences: Starting October 1, 2009, sentencing judges may impose a *risk reduction sentence (RRS)*. 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. If the programming need is not satisfied at the completion of 75% of their confinement, inmates may remain incarcerated for a time not to exceed the original confinement period of the bifurcated sentence. Please note that inmates serving time on a RRS may have the ability to earn PAT. The PAT is earned on the confinement period and not on the RRS. Offenses deemed ineligible for RRS consideration are listed under s. 973.031.

Early Discharge from Extended Supervision/Probation: Starting October 1, 2009, the department may discharge a person from extended supervision after he or she has served 2 years of extended supervision if the person has met the conditions of extended supervision and the reduction is in the interest of justice. This does not apply if the court sentences a person for a violation of 940.03, 940.06, 940.11 (1), 940.235, 940.302, 940.31 (1), 940.32 (3), 941.21, 946.465, 948.03 (2)(a), 948.40 (4)(a) or for an offense against an elderly or vulnerable person, as defined in s. 939.22 (20d), an offense related to ethical government, as defined in s. 939.22 (20m), or an offense related to school safety, as defined in s. 939.22 (20s). The department shall notify the victim of the person, as defined under s. 950.02 (4) (a), of its intent to discharge the person from extended supervision. The department may promulgate rules under Chapter 227 establishing guidelines and criteria for the exercise of discretion under this section. In addition, the department may modify a person's period of probation and discharge the person from probation if the person has completed at least 50 percent of his or her period of probation.

Revocation of Extended Supervision: Starting October 1, 2009, the authority for determination of the term of reconfinement after revocation of a term of extended supervision is shifted from the Circuit Court to the Department of Corrections, in the case of a waiver of a final hearing, or to the Division of Hearings and Appeals, in the case of a final revocation hearing. As a result, the requirement to make a recommendation to the sentencing court regarding reconfinement no longer applies.