

Clearinghouse Rule 09-120

WISCONSIN DEPARTMENT OF CORRECTIONS

PROPOSED RULE MAKING ORDER

INTRODUCTORY CLAUSE

The Wisconsin Department of Corrections proposes an order to create DOC 302.03 (1d), (1h), (1p), (1t), (7m), (9m), (12m), (15g), (15r), (17m), and (18m); to repeal and recreate DOC 302.18; and to create DOC 302.33, DOC 302.34, DOC 302.35, DOC 302.36, DOC 302.37, DOC 302.38, DOC 302.39, DOC 302.40, and DOC 302.41, relating to sentence computation and modification.

RULE SUMMARY

Statutes Interpreted: sections 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, ss. 2700 – 2712, § 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, ss. 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, ss. 2722 and 2751, s. 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, § 973.031, as created by 2009 Wis. Act 28, § 3387t, § 302.042, as created by 2009 Wis. Act 28, s. 2699m, and s. 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, and s. 301.03 (2), Stats.

Statutory Authority: s. 227.11 (2), 301.02, 301.03 (2), and 302.07, Stats.

Explanation of agency authority:

The Department of Corrections is responsible for supervision of inmates sentenced to Wisconsin prisons, including sentence calculations. Under 2009 Wisconsin Act 28, specifically, ss. 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, ss. 2700 – 2712, s. 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, ss. 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, ss. 2722 and 2751, s. 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, § 973.031, as created by 2009 Wis. Act 28, s. 3387t, s. 302.042, as created by 2009 Wis. Act 28, s. 2699m, and s. 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, s. 2751, the legislature created several statutory provisions which affect the calculation of sentences. The Department is promulgating rules to address these changes. In addition, under § 301.03, Stats., the Department is responsible for the supervision of inmates. As part of that supervision, the Department reviews inmates for appropriate custody level, facility placement, program needs, and education needs.

Related Statute or Rule:

Sections 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, ss. 2700 – 2712, s. 302.113 (9g), as renumbered and amended by 2009 Wis. Act 28, ss. 2729j through 2738, 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, ss. 2722 and 2751, s. 302.113 (9h), as created by 2009 Wis. Act 28, § 2739, s. 973.031, as created by 2009 Wis. Act 28, s. 3387t, s. 302.042, as created by 2009 Wis. Act 28, s. 2699m, and s. 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, s. 2751

Chapter PAC 1, Wisconsin Administrative Code, which addresses release procedures for inmates, including those under 2009 Wisconsin Act 28.

Plain Language Analysis:

The rule amends chapter DOC 302 to bring it into compliance with significant changes made in sentence calculations and releases from prison under 2009 Wis. Act 28, including:

1. Creating definitions for the following terms: administrator, agent, assaultive activity, certain early release, detainer, extended supervision, positive adjustment time, projected extended supervision date, risk eligibility date, social worker, and victim.
2. Creating DOC 302.33, DOC 302.34, and DOC 302.35, relating to positive adjustment time under 302.113 (2) (b), 304.06 (1) (bg) 1. and 2., as created by 2009 Wis. Act 28, ss. 2722 and 2751. Under these sections, an inmate may earn positive adjustment time (PAT) at three rates (1 for 2, 1 for 3, or 1 for 5.7) depending on the offense of which the inmate was convicted. The inmate may be eligible for PAT, which may result in modification of the term of confinement of the inmate's bifurcated sentence if the department determines that the inmate is not at a high risk of reoffending, the inmate has not received a major penalty under s. DOC 303.68 (1), and the inmate has not neglected or refused to perform required or assigned duties. The inmate's term of extended supervision is extended by the PAT which results in early release. Thus, the overall length of the inmate's sentence is not changed.
3. Creating DOC 302.36 and DOC 302.37, relating to sentence calculations under s. 304.06 (1) (bg) 3. and 4., as created by 2009 Wis. Act 28, § 2751, for an inmate who has been convicted under s. 973.01, Stats., following the inmate's having served at least 75% or 85% of the confinement time of a bifurcated sentence, depending on the classification of the crime. The inmate may petition the Earned Release Review Commission for release to extended supervision under this provision.
4. Creating DOC 302.38 and DOC 302.39, relating to the challenge incarceration program and the earned release program under ss. 302.045 and 302.05, Stats., respectively, as amended by 2009 Wis. Act 28, ss. 2700 – 2712. The department had not previously had a rule provision addressing either of these two programs. The rule creates provisions which codifies the department's implementation of the programs and also update the provisions to reflect the legislative change which allows inmates who do not have AODA needs to participate.
5. Creating DOC 302.40, relating to the risk assessment program under s. 302.042, as created by 2009 Wis. Act 28, s. 2699m. A Court may impose a risk reduction sentence if the offender agrees to participate in the risk reduction plan

established by the department. The department is required to establish the plan, monitor the inmate's progress and participation in the plan, and evaluate the inmate's institutional conduct. If the department determines that the plan has been completed, the department will notify the sentencing court and the office of victim services. The department will release the inmate to extended supervision on or after the inmate's risk eligibility date when the inmate has completed the plan.

6. Creating DOC 302.41, relating to the early release of certain inmates within 12 months of their release under s. 302.113 (9h), as created by 2009 Wis. Act 28, s. 2739. Eligible inmates may be released to extended supervision not more than 12 months before the extended supervision eligibility date.
7. Repealing and recreating DOC 302.18, relating the inmate requests for review of Department decisions concerning custody, institution placement, program needs, or treatment needs. The revised section clarifies the process for review of the decisions relating to classification.

Summary of and Comparison with Existing or Proposed Federal Regulations that are intended to address the activities to be regulated by the proposed rule:

There are no federal regulations that regulate the activities addressed by the proposed rule.

Comparison of similar rules in adjacent states (Illinois, Iowa, Michigan, and Minnesota):

1. Illinois: Under 730 ILCS 5/3-6-3, the state of Illinois has provided for the early release of inmates on account of good conduct. Inmates are able to earn good conduct credit at the rate of 4.5 days of credit or 7.5 days of credit for each month of his sentence of imprisonment for certain very serious crimes. (For example, 1 for 4.5 crimes include: home invasion, armed robbery, and aggravated vehicular hijacking. 1 for 7.5 crimes include: gunrunning, narcotics racketeering, and drug-induced homicide.) For all other offenses, inmates are able to earn one day of good conduct credit for each day of the inmate's sentence of imprisonment. Good conduct credit may be revoked or lost following a due process determination by the Prisoner Review Board which is a citizen member board and which is independent of the IL DOC. Under 730 ILCS 5/5-8-1.1, Illinois has an Impact Incarceration Program which is similar to the Challenge Incarceration Program. It is not limited to individuals who have AODA needs but involves rigorous physical elements.
2. Iowa: Under ICA s. 903A.2, each inmate is eligible to earn a reduction of sentence by the accumulation of "earned time." Inmates who receive category A sentences are able to earn credit at the rate of 1.2 days of credit for each day the inmate demonstrates good conduct and satisfactory participation in programs or placement. An inmate may be eligible for an additional reduction of sentence of up to 365 days of the full term of the sentence for exemplary acts. Inmates who receive category B sentences may receive 15/85 of a day for each day of good conduct. Under IA ADC s. 201.-20.18(904), Iowa has established a rigorous program called "violation/shock probation programs" which are aimed at individuals who are on community supervision and who have violated the conditions of supervision. The goal is avoid lengthy periods of incarceration.

3. Michigan: Under MCLA 800.33, each inmate shall receive a reduction from his or her sentence. The rate of reduction depends on when the crime was committed (there is a statutory change in the rate for crimes which occurred prior 4/1/87) and what the crime was. An inmate may be eligible for good time credit, disciplinary credit, or special disciplinary credit. Special disciplinary credit is additional credit which an inmate may earn if the inmate has not had a major conduct violation and upon the recommendation of the institution disciplinary credit committee. If the credit is lost, it cannot be restored. An inmate cannot earn any of the three types of credit during a month during which the inmate incurred a major conduct report.
4. Minnesota: Under Minnesota law, inmates convicted on or after August 1, 1993 are not eligible to earn good time sentence reduction credit. Under s. 244.171, MN Stats., the commissioner of corrections shall establish a challenge incarceration program.

Summary of the factual data and analytical methodologies that DOC used in support of its determination of the rule's fiscal effect on small businesses under s. 227.114, Stats.:

The Department of Corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in § 227.114, Stats.

Any analysis and supporting documents that DOC used in support of DOC's determination of the proposed rule's effect on small businesses or that was used when the DOC prepared an economic impact report:

Not applicable.

Effect on small businesses:

Not applicable.

Agency contact person (including email and telephone):

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Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule will be accepted and receive consideration if they are received by Friday, March 5, 2010. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email: Kathryn.Anderson@wisconsin.gov.

TEXT OF RULE:

SECTION 1. Sections DOC 302.03 (1d), (1h), (1p), (1t), (7m), (9m), (12m), (15g), (15r), (17m), and (18m) are created to read:

DOC 302.03 (1d) “Administrator” means the administrator of the division of adult institutions.

DOC 302.03 (1h) “Agent” has the meaning given in s. DOC 328.03 (4).

DOC 302.03 (1p) “Assaultive activity” means an action that results in or is intended to result in physical harm to another.

DOC 302.03 (1t) “Certain early release” means the release of an inmate from the institution to extended supervision by decision of the secretary or secretary’s designee prior to the completion of the confinement portion of a bifurcated sentence.

DOC 302.03 (7m) “Detainer” means a writ or other legal instrument issued by a competent officer, directing the warden or superintendent of a correctional facility to notify the issuing authority when the named person is about to be released so that the issuing authority may obtain custody of the named person if appropriate.

DOC 302.03 (9m) “Extended supervision” means the portion of a bifurcated sentence to be served under the supervision of the department.

DOC 302.03 (12m) “Positive adjustment time” means a period of time measured in days that can be earned to reduce an inmate’s period of confinement.

DOC 302.03 (15g) “Projected extended supervision date” means the date that an inmate who is serving a bifurcated sentence is eligible for early release under s. 302.113 (2) (b) and 304.06 (1) (bg) 1. and 2., Stats.

DOC 302.03 (15r) “Risk eligibility date” means the date that an inmate who is serving a risk reduction sentence under s. 973.031, Stats., has served 75% of their confinement time.

DOC 302.03 (17m) “Social worker” means the institution social worker to whom an inmate is assigned.

DOC 302.03 (18m) “Victim” has the meaning given in s. 950.02(4), Stats.

SECTION 2. DOC 302.18 is repealed and recreated to read:

DOC 302.18 Administrative Review of a Classification Decision. (1) Within 10 calendar days of an inmate’s receipt of a written decision concerning custody, institution placement, program need, or treatment need, the inmate may request a review of the decision under DOC 302.13 (2) or DOC 302.17 (8) if the inmate believes that the decision was based on erroneous information.

(2) Denial of a request for a classification review under s. DOC 302.17 (11) is not subject to review under this section.

(3) The inmate shall submit a request for review under this section on a form approved by the department.

(4) The review shall be completed by one of the following:

(a) The director if the director is not the decision maker under s. DOC 303.13 (2) or s. DOC 303.17 (8); or

(b) The administrator if the director was the decision maker under s. DOC 303.13 (2) or s. DOC 303.17 (8).

(5) The director or administrator shall respond within a reasonable period of time, following receipt of the administrative review request.

(6) The decision under sub. (5) is final.

SECTION 3. Sections DOC 302.33, DOC 302.34, DOC 302.35, DOC 302.36, DOC 302.37, DOC 302.38, DOC 302.39, DOC 302.40, and DOC 302.41 are created to read:

DOC 302.33 Positive adjustment time--one for two. (1) ELIGIBILITY.

Inmates who are sentenced under s. 973.01, Stats., for a misdemeanor or for a Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats., may earn one (1) day of positive adjustment time for every two (2) days served if all of the following apply:

(a) the department has determined the inmate is not at a high risk of reoffending. If an inmate is determined to be at a high risk to reoffend, they may be reviewed for eligibility under 302.34;

(b) the inmate has not received a major penalty under s. DOC 303.68 (1); and

(c) the inmate does not neglect or refuse to perform required or assigned duties.

(2) EXCLUSIONS. Notwithstanding sub. (1), this subsection does not apply to any of the following: (a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.

(b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

(c) An inmate who has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.

(d) An inmate who is required to register under s. 301.45, Stats.

(e) An inmate who has, in his or her lifetime, been committed under ch. 975, Stats.

(f) A violent offender, as defined in s. 16.964 (12) (a), Stats.

(g) An inmate who is serving, begins to serve, or who has served during his or her current period of confinement, a sentence for a Class F to Class I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats.

(h) An inmate who is serving, begins to serve, or who has served during his or her current period of confinement, a sentence for a Class C to Class E felony.

(i) An inmate who is ineligible for positive adjustment time under this paragraph pursuant to s. 973.01 (3d) (b), Stats.

(j) An inmate who is serving a sentence for an offense against an elderly or vulnerable person, as defined in s. 939.22 (20d), Stats.

(k) An inmate who is serving a sentence for an offense related to ethical government, as defined in s. 939.22 (20m), Stats.

(l) An inmate who is serving a sentence for an offense related to school safety, as defined in s. 939.22 (20s), Stats.

(m) An inmate who is serving a sentence for a felony murder under s. 940.03, Stats.

(n) An inmate who is serving a sentence for a violation of s. 940.11 (1), Stats.

(o) An inmate who is serving a sentence for a violation of s. 940.235, Stats.

(p) An inmate who is serving a sentence for a violation of s. 940.32 (3), Stats.

(q) An inmate who is serving a sentence for a violation of s. 941.21, Stats.

(r) An inmate who is serving a sentence for a violation of s. 946.465, Stats.

(3) NOTIFICATION TO COURT. When an inmate is within 90 days of release to extended supervision under sub. (5), the department shall notify the sentencing court that it intends to modify the inmate's sentence and release the inmate to extended supervision. As part of its notification, the department shall provide the court with a copy of the objective risk instrument and conduct record.

(4) COURT ACTION. If the court does not schedule a review hearing within 30 days after notification, or the court accepts the department's recommendation following a hearing, the department may proceed under sub. (5). If the court issues an order denying the department's recommendation, the inmate will not be released under this section.

(5) RELEASE. An inmate under sub. (1) shall be released to extended supervision when he or she has served the term of confinement in the prison portion of his or her bifurcated sentence, less positive adjustment time earned unless denied by the court.

(6) MODIFICATION OF EXTENDED SUPERVISION. When an inmate who has served less than the entire confinement time of the sentence imposed under s. 973.01, Stats., is released to extended supervision under sub. (5), the term of extended supervision is increased so that the total length of the bifurcated sentence does not change.

302.34 Positive adjustment time--one for three. (1) ELIGIBILITY. Inmates who are sentenced under s. 973.01, Stats., for a Class F to Class I felony or a misdemeanor that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats., and who is ineligible for positive adjustment time under s. 302.113 (2) (b), Stats., pursuant to s. 973.01(3d) (b), Stats., or for a Class F to Class I felony that is a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats., may earn one (1) day of positive adjustment time for every three (3) days served if all of the following apply:

(a) the department has determined the inmate is not at a high risk of reoffending;

(b) the inmate has not received a major penalty under s. DOC 303.68 (1); and

(c) the inmate does not neglect or refuse to perform required or assigned duties.

(2) SPECIAL CONSIDERATION. Inmates ineligible for positive adjustment time under DOC 302.33 (1) (a) may be considered for eligibility under this section.

(3) EXCLUSIONS. This section does not apply to any of the following:

(a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.

(b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

(c) An inmate who has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.

(d) An inmate who is required to register under s. 301.45, Stats.

(e) An inmate who has, in his or her lifetime, been committed under ch. 975, Stats.

(f) An inmate who is serving, begins to serve, or who has served during his or her current period of confinement, a sentence for a Class C to Class E felony.

- (g) An inmate who is serving a sentence for an offense against an elderly or vulnerable person, as defined in s. 939.22(20d), Stats.
- (h) An inmate who is serving a sentence for an offense related to ethical government, as defined in s. 939.22 (20m), Stats.
- (i) An inmate who is serving a sentence for an offense related to school safety, as defined in s. 939.22 (20s), Stats.
- (j) An inmate who is serving a sentence for a felony murder under s. 940.03, Stats.
- (k) An inmate who is serving a sentence for a violation of s. 940.11 (1), Stats.
- (l) An inmate who is serving a sentence for a violation of s. 940.235, Stats.
- (m) An inmate who is serving a sentence for a violation of s. 940.32 (3), Stats.
- (n) An inmate who is serving a sentence for a violation of s. 941.21, Stats.
- (o) An inmate who is serving a sentence for a violation of s. 946.465, Stats.
- (4) PETITION FOR RELEASE.** An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

DOC.302.35 Positive adjustment time--one for 5.7. (1) ELIGIBILITY. Inmates who are sentenced under s. 973.01, Stats., for a Class C to Class E felony may earn one (1) day of positive adjustment time for every 5.7 days served if all of the following apply:

- (a) the department has determined the inmate is not at a high risk of reoffending;
- (b) the inmate has not received a major penalty under s. DOC 303.68 (1); and
- (c) the inmate does not neglect or refuse to perform required or assigned duties.

(2) EXCLUSIONS. This section does not apply to any of the following:

- (a) An inmate who is the subject of a bulletin issued under s. 301.46 (2m), Stats.
- (b) An inmate who has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.
- (c) An inmate who has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.
- (d) An inmate who is required to register under s. 301.45, Stats.
- (e) An inmate who has, in his or her lifetime, been committed under ch. 975, Stats.
- (f) An inmate who is serving a sentence for an offense against an elderly or vulnerable person, as defined in s. 939.22 (20d), Stats.
- (g) An inmate who is serving a sentence for an offense related to ethical government, as defined in s. 939.22 (20m), Stats.
- (h) An inmate who is serving a sentence for an offense related to school safety, as defined in s. 939.22 (20s), Stats.
- (i) An inmate who is serving a sentence for a felony murder under s. 940.03, Stats.
- (j) An inmate who is serving a sentence for a violation of s. 940.06, Stats.
- (k) An inmate who is serving a sentence for a violation of s. 940.302, Stats.
- (l) An inmate who is serving a sentence for a violation of s. 940.31 (1), Stats.
- (m) An inmate who is serving a sentence for a violation of s. 948.03 (2) (a), Stats.
- (n) An inmate who is serving a sentence for a violation of s. 948.40 (4) (a), Stats.
- (3) PETITION FOR RELEASE.** An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

DOC 302.36 Modification of bifurcated sentence after serving 75 percent of confinement time. (1) ELIGIBILITY. An inmate sentenced under s. 973.01, Stats., for a misdemeanor or for a Class F to Class I felony committed prior to October 1, 2009, and who has not petitioned a sentencing court for a sentence adjustment under s. 973.195 (1r), Stats., for any offense for which he or she is incarcerated may apply for release to extended supervision when he or she has served at least 75% of the term of confinement portion of his or her bifurcated sentence.

(2) EXCLUSION. This section does not apply to an inmate who is serving, begins to serve, or who has served during his or her current period of confinement, a sentence for a Class C to Class E felony.

(3) PETITION FOR RELEASE. An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

DOC 302.37 Modification of bifurcated sentence after serving 85 percent of confinement time. (1) ELIGIBILITY. An inmate sentenced under s. 973.01, Stats., for a Class C to Class E felony committed prior to October 1, 2009, and who has not petitioned a sentencing court for a sentence adjustment under s. 973.195 (1r), Stats., for any offense for which he or she is incarcerated may apply for release to extended supervision when he or she has served at least 85% of the term of confinement portion of his or her bifurcated sentence.

(2) PETITION FOR RELEASE. An inmate may petition the earned release review commission for release to extended supervision under PAC 1.

DOC 302.38 Challenge Incarceration Program. (1) The department shall provide a challenge incarceration program which incorporates manual labor, education, military drill and ceremony, age appropriate strenuous physical activity and rehabilitative programming that is directly related to the inmate's criminal behavior in preparation for release on parole or extended supervision.

(2) Inmate's convicted of a crime specified in ch. 940, Stats., 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, Stats., are excluded from eligibility.

(3) The department or sentencing court shall determine eligibility under one of the following:

(a) For inmates sentenced for crimes committed on or before December 30, 1999 the department determines eligibility.

(b) For inmates sentenced for crimes committed on or after December 31, 1999 the sentencing court determines eligibility.

(4) The department may place an inmate into the challenge incarceration program if the inmate meets all of the following criteria:

(a) The inmate is determined to be eligible for participation under sub. (3);

(b) The inmate volunteers to participate in the program and agrees to the rules and regulations of the program;

(c) The inmate has not attained the age of 40 as of the date the inmate will begin the program;

(d) The inmate meets physical, medical and psychological criteria required for program participation; and

(e) The department determines, using evidence-based assessments that one of the following applies:

1. The inmate has a substance abuse treatment need that requires an intensive level of treatment;

2. The inmate has a substance abuse treatment need that does not require an intensive level of treatment but does require education or outpatient services, and the inmates substance use is not a key factor in his or her criminal behavior; or

3. The inmate has one or more treatment needs not related to substance abuse that is directly related to his or her criminal behavior

(5) The department may restrict participant privileges as necessary to maintain discipline.

(6) The department will determine if placement is appropriate and when placement will occur.

(7) For inmates sentenced for crimes committed on or after December 31, 1999, the department shall determine successful completion of the challenge incarceration program and notify the sentencing court of the successful completion to initiate a modification of the inmate's sentence.

(8) The department shall release the inmate within 6 working days upon receipt of a court order modifying the inmate's bifurcated sentence.

(9) For inmates sentenced for crimes committed before December 31, 1999, the department will determine successful completion of the rehabilitation program and notify the earned release review commission.

DOC 302.39 Wisconsin earned release program. (1) The department shall provide a rehabilitation program for the purposes of release.

(2) Inmate's convicted of a crime specified in ch. 940, Stats., 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, Stats., are excluded from eligibility.

(3) The department or sentencing court shall determine eligibility under one of the following:

(a) For inmates sentenced for crimes committed on or before December 30, 1999 the department determines eligibility.

(b) For inmates sentenced for crimes committed on or after December 31, 1999 the sentencing court determines eligibility.

(c) For inmates who are serving a bifurcated sentence and whose sentence was imposed on or after December 31, 1999 but before July 26, 2003, the inmate may petition the sentencing court with the department's approval to determine eligibility. The inmate shall serve a copy of the petition on the district attorney who prosecuted him or her.

(4) The department may place an inmate into the Wisconsin earned release program if the inmate meets all the following criteria:

(a) The inmate is determined to be eligible for participation under sub. (3);

(b) The inmate volunteers to participate in the program and agrees to the rules and regulations of the program; and

(c) The department determines, using evidence-based assessments that one of the following applies:

1. The inmate has a substance abuse treatment need that requires an intensive level of treatment.

2. The inmate has a substance abuse treatment need that does not require an intensive level of treatment but does require education or outpatient services, and the inmates substance use is not a key factor in his or her criminal behavior.

3. The inmate has one or more treatment needs not related to substance abuse that is directly related to his or her criminal behavior.

(5) The department may restrict participant privileges as necessary to maintain discipline.

(6) The department will determine if placement is appropriate and when placement will occur

(7) For inmates sentenced for crimes committed after December 31, 1999, the department shall determine successful program completion and notify the sentencing court to initiate a modification of the inmate's sentence.

(8) The department shall release the inmate within 6 working days upon receipt of a court order modifying the inmate's bifurcated sentence.

(9) For inmates sentenced for crimes committed before December 31, 1999, the department will determine successful completion of the rehabilitation program and notify the earned release review commission.

DOC 302.40 Risk Reduction Program. (1) The department shall identify inmates who are sentenced under a risk reduction sentence under s. 973.031, Stats., for a felony under s. 973.01, Stats. For inmates sentenced under a risk reduction sentence the department shall do all of the following:

(a) Complete a validated and objective assessment to identify his or her criminogenic factors and risk to reoffend;

(b) Create a risk reduction plan that is designed to reduce the inmate's risk of reoffending; and

(c) Monitor and review the progress made towards completion of the risk reduction plan. The plan may be modified if programming is unavailable or a new program need is identified.

(2) The department shall determine if an inmate has completed the risk reduction program by review of the following:

(a) Conduct; and

(b) Participation in the program needs identified in the risk reduction plan

(3) The department may rescind or withhold a determination regarding the completion of the risk reduction plan based misconduct or failure to complete components of the risk reduction plan.

(4) If the department determines that the risk reduction plan has been completed, the department will notify the sentencing court, and the office of victim services.

(5) The department shall release an inmate to extended supervision on or after their risk eligibility date when they have completed the risk reduction program pursuant to sub. (2).

DOC 302.41 Certain early releases under s. 302.113 (9h), Stats. (1) ELIGIBILITY. The department may release to extended supervision under s. 302.113 (9h), Stats., certain persons serving the confinement portion of a bifurcated sentence and who meet all of the following conditions:

(a) The inmate is serving a confinement portion of a bifurcated sentence for misdemeanor or a Class F to Class I felony that is not a violent offense, as defined in s. 301.048 (2) (bm) 1., Stats.;

(b) The social worker or agent has reason to believe that the inmate will be able to maintain himself or herself while on extended supervision without engaging in assaultive activity.; and

(c) The release to extended supervision date is not more than 12 months before the inmate's extended supervision eligibility date.

(2) EXCLUSIONS. An inmate is not eligible for certain early release if any of the following apply:

(a) The inmate is the subject of a bulletin issued under s. 301.46 (2m), Stats.

(b) The inmate has, in his or her lifetime, been convicted of or found guilty by reason of mental disease or defect of a sex offense, as defined in s. 301.45 (1d) (b), Stats.

(c) The inmate has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in s. 301.45 (1d) (am), Stats.

(d) The inmate is required to register under s. 301.45, Stats.

(e) The inmate has, in his or her lifetime, been committed under ch. 975, Stats.

(3) RELEASE TO DETAINER. An inmate who has an active detainer is eligible for certain early release consideration without meeting the criteria under par. (1) (a) if the detainer concerns a sentence imposed in another jurisdiction and the remainder of that sentence is equal to or longer than the remainder of the Wisconsin sentence. In this paragraph, “active” means that the jurisdiction issuing the detainer intends to obtain custody of the inmate immediately upon release.

(4) NOTIFICATION. The department shall notify the victim before a release decision. The department shall notify the court and district attorney upon the inmate’s release.

(5) RELEASE AUTHORITY. The secretary may release eligible inmates under this section consistent with public safety and reentry goals.

SECTION 4. EFFECTIVE DATE. This rule will take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

FISCAL ESTIMATE: See attached.

EFFECTIVE DATE:

This rule will take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.