



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-6555/P4
MJW:emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to renumber and amend* 302.05 (3) (e); *to amend* 302.05 (title), 302.05
2 (1) (am) (intro.), 302.05 (1) (b), 302.05 (2), 302.05 (3) (b), 302.05 (3) (c) 2. (intro.),
3 302.05 (3) (d), 302.113 (2) and 973.01 (4); and *to create* 302.05 (1) (c), 302.05
4 (3) (c) 2m., 302.05 (3) (e) 2., 302.05 (4) and 302.05 (5) of the statutes; **relating**
5 **to:** earned release for inmates upon the completion of an employment readiness
6 training program and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Legislative Council Study Committee on Increasing Offender Employment Opportunities. The bill expands the current law earned release program to also apply to inmates who complete an employment readiness training program.

Current law allows eligible inmates to earn early release to extended supervision or parole if they complete a substance abuse program. Inmates are generally eligible for

early release to supervision under the program if they meet the following conditions: (1) the individual is serving time for a crime other than a specified violent crime; (2) the sentencing court deems the individual eligible; and (3) the individual successfully completes a Department of Corrections (DOC) substance abuse treatment program. An inmate who completes the earned release program will have his or her sentence modified by a court to convert remaining confinement time in prison to supervised time in the community. The program allows for early release while maintaining the total length of an individual's sentence. Presently, the earned release program is only available to inmates with substance abuse needs who complete substance abuse programs, and not to those who earn educational credentials or complete job training programs.

The bill expands the earned release program to also apply to eligible inmates who complete an employment readiness training program (ERTP) pursuant to DOC administrative rules. An "employment readiness training program" is an education, job training, employment, or other equivalent evidence-based program intended to lead to employment and reduce recidivism. An inmate cannot be released from confinement after completing an ERTTP until the individual has served at least two-thirds of the confinement in prison portion of his or her bifurcated sentence.

The bill permits eligible inmates serving bifurcated sentences to petition the sentencing court for ERTTP eligibility at any point after sentencing, if the inmate has DOC approval. DOC must prepare an annual report providing data on ERTTP participation rates, recidivism by released individuals, and cost savings resulting from reduced confinement time. The bill directs DOC to promulgate administrative rules for implementation of the earned release program, but delays the statutory changes to the program for one year.

1 **SECTION 1.** 302.05 (title) of the statutes is amended to read:

2 **302.05** (title) **Wisconsin substance abuse program earned release**
3 **program.**

4 **SECTION 2.** 302.05 (1) (am) (intro.) of the statutes is amended to read:

5 302.05 (1) (am) (intro.) The department of corrections and the department of
6 health services may designate a section of a mental health institute as a correctional
7 treatment facility for the treatment of substance abuse use disorder of inmates
8 transferred from Wisconsin state prisons. ~~This section shall be administered by the~~
9 ~~department of corrections and shall be known as the Wisconsin substance abuse~~
10 ~~program.~~ The department of corrections and the department of health services shall
11 ensure that the residents at the institution and the residents in the substance abuse
12 use disorder program:

NOTE: This bill changes the title of the program to the "Earned Release Program," so that all statutory references to the program are consistent. The bill also makes

nonsubstantive language changes to refer to “substance use disorder,” rather than “substance abuse,” to reflect terminology currently used in the field.

1 **SECTION 3.** 302.05 (1) (b) of the statutes is amended to read:

2 302.05 (1) (b) The department of ~~corrections~~ and the department of health
3 services shall, at any correctional facility the departments determine is appropriate,
4 provide a substance ~~abuse~~ use disorder treatment program for inmates for the
5 purposes of the program described in sub. (3).

6 **SECTION 4.** 302.05 (1) (c) of the statutes is created to read:

7 302.05 (1) (c) 1. In this paragraph, “employment readiness training program”
8 means an educational, job training, employment, or other equivalent
9 evidence-based program intended to lead to employment and reduce recidivism.
10 2. The department shall, at any correctional facility the department
11 determines is appropriate, provide employment readiness training programs for the
12 purposes of the program described in sub. (3).

NOTE: This bill creates a definition of “employment readiness training program” and provides that eligible inmates who complete such a program will be paroled under supervision or have their remaining confinement time converted into extended supervision time.

13 **SECTION 5.** 302.05 (2) of the statutes is amended to read:

14 302.05 (2) Transfer to a correctional treatment facility for the treatment of
15 substance ~~abuse~~ use disorder shall be considered a transfer under s. 302.18.

16 **SECTION 6.** 302.05 (3) (b) of the statutes is amended to read:

17 302.05 (3) (b) Except as provided in par. (d), if the department determines that
18 an eligible inmate serving a sentence other than one imposed under s. 973.01 has
19 successfully completed a substance use disorder treatment program described in
20 sub. (1) (am) or (b) or an employment readiness training program described in sub.
21 (1) (c), the parole commission shall parole the inmate for that sentence under s.

1 304.06, regardless of the time the inmate has served. If the parole commission grants
2 parole under this paragraph for the completion of a substance use disorder treatment
3 program, it shall require the parolee to participate in an intensive supervision
4 program for drug abusers as a condition of parole.

NOTE: The bill limits the amount of confinement time that can be converted to supervision time for eligible inmates serving bifurcated sentences under the "Truth in Sentencing" system, but not for those subject to parole under the prior sentencing system. Most inmates subject to the parole system are already eligible for mandatory release on parole supervision after serving two-thirds of their sentences. Additionally, individuals sentenced under the parole system who remain in prison are typically ineligible for the earned release system because they committed disqualifying violent crimes.

5 **SECTION 7.** 302.05 (3) (c) 2. (intro.) of the statutes is amended to read:

6 302.05 (3) (c) 2. (intro.) Upon being informed by the department under subd.
7 1. that an inmate whom the court sentenced under s. 973.01 has successfully
8 completed a substance use disorder treatment program described in sub. (1) (am) or
9 (b), the court shall modify the inmate's bifurcated sentence as follows:

10 **SECTION 8.** 302.05 (3) (c) 2m. of the statutes is created to read:

11 302.05 (3) (c) 2m. Upon being informed by the department under subd. 1. that
12 an inmate whom the court sentenced under s. 973.01 has successfully completed an
13 employment readiness training program described in sub. (1) (c), the court shall
14 modify the inmate's bifurcated sentence as follows:

15 a. The court shall reduce the term of confinement in prison portion of the
16 inmate's bifurcated sentence in a manner that provides for the release of the inmate
17 to extended supervision either within 30 days of the date on which the court receives
18 the information from the department under subd. 1. or on a date that reduces the
19 confinement in prison portion of the inmate's bifurcated sentence by one third of the
20 total confinement in prison portion of the inmate's bifurcated sentence, whichever
21 is later.

1 b. The court shall lengthen the term of extended supervision imposed so that
2 the total length of the bifurcated sentence originally imposed does not change.

NOTE: The bill limits the amount of prison time that may be converted to supervision time to one-third of the confinement term. An eligible inmate who completes a qualifying ERTTP will have his or her term of confinement reduced and term of extended supervision increased by a court. The bill specifies that an inmate is released to extended supervision either 30 days after the court converts the remaining confinement portion to supervision, or on the date that reduces the confinement portion by one-third of total confinement, whichever is later.

3 **SECTION 9.** 302.05 (3) (d) of the statutes is amended to read:

4 302.05 (3) (d) The department may place intensive sanctions program
5 participants in a treatment program described in sub. (1) (am) or (b), but pars. (b) and
6 (c) do not apply to those participants.

7 **SECTION 10.** 302.05 (3) (e) of the statutes is renumbered 302.05 (3) (e) 1. and
8 amended to read:

9 302.05 (3) (e) 1. If an inmate is serving the term of confinement portion of a
10 bifurcated sentence imposed under s. 973.01, the sentence was imposed before July
11 26, 2003, and the inmate satisfies the criteria under par. (a) 1., the inmate may, with
12 the department's approval, petition the sentencing court to determine whether he or
13 she is eligible or ineligible to participate in ~~the earned release program under this~~
14 subsection a substance use disorder treatment program described in sub. (1) (am) or
15 (b) during the term of confinement. The inmate shall serve a copy of the petition on
16 the district attorney who prosecuted him or her, and the district attorney may file a
17 written response. The court shall exercise its discretion in granting or denying the
18 inmate's petition but must do so no later than 90 days after the inmate files the
19 petition. If the court determines under this ~~paragraph~~ subdivision that the inmate
20 is eligible to participate in the ~~earned release~~ substance use disorder treatment
21 program, the court shall inform the inmate of the provisions of par. (c).

1 **SECTION 11.** 302.05 (3) (e) 2. of the statutes is created to read:

2 302.05 (3) (e) 2. Notwithstanding a previous finding of ineligibility under s.
3 973.01 (3g), if an inmate is serving the term of confinement portion of a bifurcated
4 sentence imposed under s. 973.01 and the inmate satisfies the criteria under par. (a)
5 1., the inmate may, at any time, with the department's approval, petition the
6 sentencing court to determine whether he or she is eligible to participate in an
7 employment readiness training program described in sub. (1) (c) during the term of
8 confinement. The inmate shall serve a copy of the petition on the district attorney
9 who prosecuted him or her, and the district attorney may file a written response. The
10 court shall exercise its discretion in granting or denying the inmate's petition but
11 must do so no later than 90 days after the inmate files the petition. If the court
12 determines under this subdivision that the inmate is eligible to participate in the
13 employment readiness training program, the court shall inform the inmate of the
14 provisions of par. (c).

NOTE: Under current law, an individual is deemed eligible or ineligible for the earned release program at the time the individual is initially sentenced. The bill allows an inmate who committed a non-violent crime and received a bifurcated sentence to petition the sentencing court for eligibility any time after sentencing, if DOC grants approval for the petition.

15 **SECTION 12.** 302.05 (4) of the statutes is created to read:

16 302.05 (4) (a) In this subsection, "recidivism" means any of the following:

17 1. A return to prison upon revocation of extended supervision, parole, or
18 probation.

19 2. A conviction for a crime that was committed within 3 years of release from
20 confinement.

21 (b) No later than June 15 of each year, the department shall submit a report
22 on employment readiness training programs provided under sub. (1) (c) in which

1 participants qualified for earned release under sub. (3) to the governor, the chief
2 clerk of each house of the legislature for distribution to the appropriate standing
3 committees under s. 13.172 (3), and the director of state courts. The report shall
4 include all of the following data:

5 1. A list of available employment readiness training programs and the number
6 of participants in each employment readiness training program.

7 2. The number of eligible inmates who are on the waiting list for participation
8 in an employment readiness training program and the department's methodology for
9 selecting participants from the waiting list.

10 3. The rate of recidivism among individuals who earned release through
11 completion of an employment readiness training program and whether the
12 recidivism event was a return to prison upon revocation of release, as described
13 under par. (a) 1., or was a conviction for a misdemeanor or felony, as described under
14 par. (a) 2. The department shall report this data by region and shall include
15 demographic information.

16 4. An accounting of the cost savings for the preceding 12-month period that
17 resulted from reduced terms of confinement in prison for participants in the earned
18 release program who were released to extended supervision or parole for completion
19 of an employment readiness training program.

NOTE: This bill requires DOC to submit a report every year providing data on 1) the number of available employment readiness training programs (ERTPs) that qualify for the earned release program; 2) the number of individuals participating in each ERTTP; 3) the number of eligible individuals on the waiting list for an ERTTP; 4) DOC's methods for selecting individuals from the waiting list; 5) the recidivism rate for those released following an ERTTP, reported by region and demographics; 6) whether recidivism by individuals released after an ERTTP was because of a revocation or because of a new misdemeanor or felony conviction, reported by region and demographics; and 7) the resulting cost savings from releasing individuals on supervision rather than keeping them confined in prison.

20 **SECTION 13.** 302.05 (5) of the statutes is created to read:

