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## State of Wisconsin Department of Corrections

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### 2009 WISCONSIN ACT 28 SENTENCING REFORM FAQ SHEET (Updated 10/7/2009)

#### 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.

### **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?*

- 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?*

- 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.

### **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.

**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.

**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.

## **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.

## **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.