



---

# Budget Briefs

from the Legislative Reference Bureau

---



Budget Brief 09-1

September 2009

## EARLY RELEASE AND SENTENCING REFORMS

The biennial state budget act, 2009 Wisconsin Act 28, passed by the legislature and signed by Governor Jim Doyle on June 29, 2009, creates or modifies rules which permit eligible inmates to be released early from prison. Time subtracted from an inmate's confinement time will be added to the extended community supervision portion of the sentence so that the total length of the sentence remains the same. The changes are designed to provide incentives that promote proper behavior and rehabilitation efforts, improve prison safety, and save money. The provisions take effect October 1, 2009.

### "TRUTH-IN-SENTENCING"

Prior to enactment of the "Truth-in-Sentencing" law (1997 Wisconsin Act 283), most incarcerated persons did not serve their entire prison sentences. Instead, they were generally eligible for parole after serving 25% of their confinement terms. Inmates were typically paroled at the discretion of the Parole Commission by their "mandatory release date" which was set at two-thirds of their sentence. Act 283 eliminated parole and created for crimes committed after December 31, 1999, a determinate sentencing structure requiring that convicts serve the entire lengths of their bifurcated sentences, consisting of a period of confinement followed by a period of extended supervision.

In a change to "Truth-in-Sentencing," 2001 Wisconsin Act 109 permitted certain felons to petition the sentencing court to adjust the confinement portion of their sentence if the inmate has served at least 85% of the confinement portion of the original sentence in the case of a Class C through E felony, or at least 75% of the incarceration period for a Class F through I felony. Only one petition may be filed per sentence, and the court must deny the petition if the district attorney or crime victim (in the case of certain crimes) objects.

The early release provisions in 2009 Wisconsin Act 28, described below, make additional changes to "Truth-in-Sentencing."

### EARNED RELEASE REVIEW COMMISSION

Act 28 creates the Earned Release Review Commission (ERRC). In addition to performing the duties of the Parole Commission it replaces, it will review petitions for early release as described below. The chairperson is appointed by the governor with senate confirmation, with the remaining seven members appointed by the chairperson from the classified state service. In reviewing petitions, the commission may consider the inmate's conduct; efforts at and progress in rehabilitation; participation and progress in education, treatment, or other correctional programs; and whether sentence reduction is in the interests of justice. The chairperson is the final authority for approving early release petitions. [ss. 15.145 (1) and 304.01, Wisconsin Statutes]

### POSITIVE ADJUSTMENT TIME AND EARLY RELEASE

Most incarcerated prisoners sentenced for crimes committed since December 31, 1999, will earn "positive adjustment time" (sometimes referred to as "good time") for good behavior. Positive adjustment time will be earned for complying with prison regulations or performing required or assigned duties. Positive adjustment time will be earned at different rates, primarily depending on the type and severity of the inmate's crime.

**Mandatory Early Release for Good Behavior.** An inmate serving time 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.] may earn one day of positive adjustment time for each two days of good behavior. Disqualifying violent crimes include offenses such as homicide, sexual assault, and robbery. In addition, an inmate must not be a registered sex offender or have committed other specified serious crimes, and must not have been found ineligible for positive adjustment time (at the rate of one day per two days served) under s. 973.01 (3d) (b), which provides for an objective assessment process by

which the Department of Corrections (DOC) determines whether an inmate poses a high risk of reoffending.

Inmates who accumulate sufficient positive adjustment time must be released early by DOC to extended supervision. The department must notify the sentencing court when an inmate is within 90 days of anticipated release, and the release may proceed if the court does not opt within 30 days to schedule a review hearing, at which it may accept, modify, or deny the release. [s. 302.113 (2) (b)]

**Petitions for Early Release.** An inmate sentenced for a misdemeanor or a nonviolent Class F to I felony, and who has been determined to pose a high risk of reoffending, or inmates sentenced for a Class F to I felony that is a violent offense, may earn one day of positive adjustment time for every three days of good behavior. Inmates sentenced for a Class C to E felony may earn one day of positive adjustment time for every 5.7 days of good behavior.

An inmate may petition the ERRC, and may be released at the discretion of the commission, if enough positive adjustment time has been accumulated and the sentencing court does not object after an optional review hearing. An inmate convicted under the current early release law may not also petition for sentence adjustment under Act 28 provisions. [s. 304.06 (1) (bg)]

**Discretionary Early Release for Low-Risk Offenders.** DOC is authorized to release to extended supervision certain inmates convicted of a misdemeanor or a nonviolent Class F to I felony who are within 12 months of their established release date and if they meet specified criteria such as being able to maintain themselves outside prison without engaging in assaultive activity. [s. 301.113 (9h)]

### **EARNED RELEASE PROGRAM**

2003 Wisconsin Act 33 created an Earned Release Program (ERP) for certain inmates who successfully complete an alcohol or drug abuse treatment program if their criminal behavior was substantially related to their substance abuse problem. The court determines at sentencing whether an inmate will be eligible for the program. Those who committed certain violent or serious crimes are not eligible. To be released

early, inmates who voluntarily participate must sign an agreement to fully take part in all aspects of the program, have a good prison record, and serve a minimum of 25% or six months of their confinement time, whichever is greater.

Act 28 modifies the ERP to allow more inmates to be eligible for early release from confinement if they complete a rehabilitation program, which does not necessarily have to be for substance abuse. [ss. 302.05, 972.15 (2b), 973.01 (3g), and 973.01 (8) (ag)]

### **RELEASE FOR ELDERLY INMATES OR THOSE WITH EXTRAORDINARY HEALTH CONDITIONS**

Certain elderly and terminally ill inmates were previously allowed (2001 Wisconsin Act 109) to petition for early release. Act 28 expands eligibility to certain inmates serving life sentences, and inmates may now request early release based on an "extraordinary health condition," defined as advanced age, infirmity, or disability or a need for medical treatment or services not available within the correctional institution. To be eligible due to age, an inmate must be at least 65 years old and have served at least 5 years in prison, or at least 60 years of age and completed at least 10 years. Another petition may not be filed within one year after ERRC denial. [s. 302.1135]

### **RISK REDUCTION SENTENCES**

Act 28 creates a Risk Reduction Program under which the judge may order that, if an eligible person agrees at sentencing to cooperate in appropriate programming or treatment, he or she will be released early to extended supervision after serving at least 75% of the confinement portion of his or her sentence. To be released, DOC must determine the inmate has maintained a record of good conduct and has completed the required programming or treatment. [ss. 302.042 and 973.031]

### **FOR MORE INFORMATION**

Department of Corrections Web site:  
[http://www.wi-doc.com/2009-11budget\\_documents.htm](http://www.wi-doc.com/2009-11budget_documents.htm)

For statutes cited: <http://www.legis.wisconsin.gov/>;  
select "Searchable Infobase."