

KeyCite Yellow Flag - Negative Treatment  
Proposed Regulation

Wisconsin Administrative Code  
Earned Release Review Commission  
Chapter **Pac 1.** Parole Procedure (Refs & Annos)

Wis. Adm. Code § **PAC 1.08**

**PAC 1.08.** Release due to extraordinary health condition or age.

Currentness

- (1) Eligibility. An inmate serving a bifurcated sentence imposed under s. 973.01, Stats., or, notwithstanding s. 973.014 (1g) (a) or (2), Stats., serving a life sentence imposed under s. 973.014, Stats., may petition the commission for modification of the inmate's sentence to be released to extended supervision if the inmate meets one of the following eligibility criteria:
- (a) The inmate is 65 years of age or older and has served at least 5 years of the term of confinement in the prison portion of the bifurcated sentence for a sentence imposed under s. 973.01, Stats., or has served at least 5 years for a life sentence imposed under s. 973.014, Stats.
  - (b) The inmate is 60 years of age or older and has served at least 10 years of the term of confinement in the prison portion of the bifurcated sentence for a sentence imposed under s. 973.01, Stats., or has served at least 5 years for a life sentence imposed under s. 973.014, Stats.
  - (c) The inmate has an extraordinary health condition.
- (2) Right to representation. An inmate who is eligible to petition for modification of the sentence under this section has a right to be represented by counsel in proceedings under this section. An inmate or the department on the inmate's behalf, may apply to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (jm), Stats., before or after the filing of the petition.
- (3) Petition. An inmate who files a petition for release under this section shall include all of the following in support of his or her petition:
- (a) Date of birth.
  - (b) Dates of incarceration for current sentence.
  - (c) Affidavits of 2 physicians, as defined under s. 448.01 (5), Stats., who practice in this state, setting forth the inmate's diagnosis, medical condition, including physical or mental limitations or disabilities, treatment, and prognosis if the inmate is alleging that he or she has an extraordinary health condition. One of the affidavits shall be from the inmate's current attending physician.
  - (d) A signed authorization on a form specified by the commission, authorizing the release of a copy of the petition and supporting documentation to the sentencing court, the district attorney, and victims of the inmate's crime for purposes of reviewing and processing the petition.
  - (e) Other information as required by the commissioner.
- (4) Hearing.

(a) Upon receipt of a petition from an inmate, the commission shall review the petition to determine if the inmate is eligible for consideration under sub. (1). If the inmate meets one of the criteria for review, the commission shall schedule the petition for hearing to determine whether the public interest would be served by a modification of the inmate's sentence under s. 302.1135, Stats. The commission may seek additional information regarding the factual bases of the inmate's petition for sentence modification under this section, including additional medical information.

(b) The commission shall notify in writing the inmate, the district attorney, any victims of the inmate's crime, the attorney representing the inmate, if applicable, the agent of record, the institution social worker, and the institution record office staff, of the date, time and location of the hearing. The commission will notify victims through the department's office of victim services. The notice of hearing shall be sent to the last-known address of the inmate's victim, postmarked at least 10 days before the date of the hearing.

(c) In advance of the hearing the commission may request from the agent or social worker additional information, including the inmate's release plan. The commission may request the department to provide information concerning the inmate's status regarding civil commitment under ch. 980, Stats., and community notice under ss. 301.45, 301.46, and 301.47, Stats.

(d) The commissioner conducting the hearing shall review the inmate's social service and legal files prior to the hearing.

(e) The commission shall permit the inmate, the attorney representing the inmate, if applicable, the district attorney, and any victims of the inmate's crime to attend the hearing and give a written or oral statement regarding the inmate's petition for sentence modification, specifically addressing the issue of whether the public interest would be served by the modification. During the hearing the commission may request additional information. The hearing may be held in person, by telephone, videoconferencing or other virtual communication means at the discretion of the commission.

(f) Information about the address of a victim will not be released or disclosed.

(g) The inmate has the burden of proving by the greater weight of the credible evidence that a modification of the sentence under this section would serve the public interest.

(h) The hearing shall be recorded. A transcript shall be prepared only upon an order of the court which has jurisdiction over a petition for judicial review of the decision.

**(5) Decision.**

(a) Upon conclusion of the hearing, the commissioner conducting shall prepare a report for submission to the chairperson. The report shall contain a summary of the information provided at the hearing, including relevant documents, a recommendation to approve or deny the petition, and the justification for the recommendation.

(b) The commission may defer making a decision or hold a decision in abeyance in order to receive additional relevant information, including medical information. If additional information is received, the commission shall reconvene the hearing. Notice will be given to individuals who were present at the initial hearing. The hearing may be held in person, by telephone, videoconferencing or other virtual communication means at the discretion of the commission.

(c) The chairperson shall issue a decision on the petition based on the report and documents submitted by the commissioner.

1. If the petition is approved, the chairperson shall modify the sentence by establishing a new release date and give notice to the department. The department shall release the inmate to extended supervision within 30 days after the date on which the commission modified the sentence. The modification shall reduce the term of confinement in the prison portion of the inmate's sentence and lengthen the term of extended supervision imposed so that the total length of the sentence originally imposed does not change.

2. If the petition is denied, the inmate may not file another petition within one year of the date of the denial.

3. The commission shall provide notice of its decision in writing to the inmate, the district attorney, any victims of the inmate's crime, the attorney representing the inmate, if applicable, the agent of record, the institution social worker, and the institution record office staff.

(6) Appeal. (a) An inmate may seek review of the decision to deny the petition for modification only by common law writ of certiorari.

(b) The state may appeal the decision to grant the petition to circuit court.

#### Credits

**History:** EmR0940: emerg. r. and recr. eff. 12-31-09; CR 09-119: cr. Register November 2010 No. 659, eff. 12-1-10; corrections in (4) (c) made under s. 13.92 (4) (b) 7., Stats., Register November 2010 No. 659.

Current through Wisconsin Register 772B, published April 27, 2020

Wis. Admin. Code § PAC 1.08, WI ADC § PAC 1.08

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#### Statutes for PAC 1.08

##### 973.01 Bifurcated sentence of imprisonment and extended supervision.

(1) Bifurcated sentence required. Except as provided in sub. (3), whenever a court sentences a person to imprisonment in the Wisconsin state prisons for a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003, the court shall impose a bifurcated sentence under this section.

(2) Structure of bifurcated sentences. A bifurcated sentence is a sentence that consists of a term of confinement in prison followed by a term of extended supervision under s. [302.113](#). The total length of a bifurcated sentence equals the length of the term of confinement in prison plus the length of the term of extended supervision. An order imposing a bifurcated sentence under this section shall comply with all of the following:

(a) *Total length of bifurcated sentence.* Except as provided in par. (c), the total length of the bifurcated sentence may not exceed the maximum period of imprisonment specified in s. [939.50 \(3\)](#), if the crime is a classified felony, or the maximum term of imprisonment provided by statute for the crime, if the crime is not a classified felony, plus additional imprisonment authorized by any applicable penalty enhancement statutes.

(b) *Confinement portion of bifurcated sentence.* The portion of the bifurcated sentence that imposes a term of confinement in prison may not be less than one year and, except as provided in par. (c), is subject to whichever of the following limits is applicable:

##### Wisconsin Statutes 973.014 Sentence of life imprisonment; parole eligibility determination; extended supervision eligibility determination Terms Used In Wisconsin Statutes 973.014

Except as provided in sub. (2), when a court sentences a person to life imprisonment for a crime committed on or after July 1, 1988, but before December 31, 1999, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

(a) The person is eligible for parole under s. [304.06 \(1\)](#).

(b) The person is eligible for parole on a date set by the court. Under this paragraph, the court may set any later date than that provided in s. [304.06 \(1\)](#), but may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. [304.06 \(1\)](#).

(c) The person is not eligible for parole. This paragraph applies only if the court sentences a person for a crime committed on or after August 31, 1995, but before December 31, 1999.

(1g)

(a) Except as provided in sub. (2), when a court sentences a person to life imprisonment for a crime committed on or after December 31, 1999, the court shall make an extended supervision eligibility date determination regarding the person and choose one of the following options:

1. The person is eligible for release to extended supervision after serving 20 years.

2. The person is eligible for release to extended supervision on a date set by the court. Under this subdivision, the court may set any later date than that provided in subd. [1](#), but may not set a date that occurs before the earliest possible date under subd. [1](#).

3. The person is not eligible for release to extended supervision.

(b) When sentencing a person to life imprisonment under par. (a), the court shall inform the person of the provisions of s. [302.114 \(3\)](#) and the procedure for petitioning under s. [302.114 \(5\)](#) for release to extended supervision.

(c) A person sentenced to life imprisonment under par. (a) is not eligible for release on parole.

(2) When a court sentences a person to life imprisonment under s. [939.62 \(2m\) \(c\)](#), the court shall provide that the sentence is without the possibility of parole or extended supervision.



# Wisconsin Department of Corrections

Governor Tony Evers | Secretary Kevin A. Carr

6/15/20

**DATE:** June 15, 2020

**TO:** DAI Persons in Our Care (PIOC)

[POST FOR PIOC]

**FROM:** Makda Fessahaye, Administrator  
Division of Adult Institutions

**SUBJECT:** Parole Eligible Individuals in the Division of Adult Institutions

The Bureau of Offender Classification and Movement (BOCM), the Office of Program Services (OPS) and the Wisconsin Parole Commission have discussed ways to work together to assist in preparation for success while confined and when released into the community. DAI is invested in case planning that supports parole eligible individuals with preparation towards release consideration. Consideration of parole commission comments and endorsements will continue to be considered when determining case plans, custody assignment, program enrollment and facility site placements. Program providers may consider program enrollment based upon a parole eligibility date, overall case dynamics and available resources. Parole eligible individuals, regardless of the time until the parole eligibility date, may be considered for program enrollment or reassessment.

To assist in case planning, broad guidelines of parole deferral periods follows:

- **Release Planning:** Individuals with deferral periods of less than 12 months are generally engaged in release planning and are addressing factors that will support and sustain a successful release in the near future. This *may* mean enrollment into primary programs and custody reduction. Parole eligible individuals in this deferral range are the highest priority amongst parole eligible individuals for additional resources to help transition them back to the community.
- **Risk Reduction:** Individuals with deferral periods of 12-18 months are generally engaged in completing steps that facilitate risk reduction. This *may* mean enrollment into primary programs and custody reduction.
- **Protection of the Public:** Individuals with deferral periods greater than 18 months may be considered for release in the future. The primary focus is on protection of the public, as determined by, but not limited to, the severity/profile of the offense, institution conduct and compliance with expectations.

While BOCM, Parole and OPS have different and independent responsibilities and authority, which may result in differences in decisions, these entities will continue to work closely together to achieve a common goal.