

COVID Compassion Campaign still going, if cobbled

Here are the latest best mechanisms for release due to covid. It is 12 pages in all and I will be sending in letters and doing a 200 copy newsletter to spread the word= In the letters and newsl. all but the first form will be 2 in one to save space and #2 and # 3 have no forms, they are just instructions.

Please send FFUP names of people who you think should get this- those vulnerable who might not now get the newsletter- I will concentrate on sending this list via bulk mailing (minimum 200, at 18 cents a copy)to those most needing it .A regular news filled FFUP Bridge of Voices will come out later, again a limited version but a 200 I can do them often.

What's here

1)Pages 1-6 is the newest mechanism, from the public Defenders Office.They have been taking letters from prisoners at different PD offices around the state, some help some don't , Now we have the form and you can apply directly to your sentencing court. This the current judge decides I believe.

2) Pages 7-9 is the current state of Executive 31, for old law prisoners. The criteria are broad and laet in chain of deciders is parole chairman. This has taken years to get recognized. The warden edcides if you are parole eligible and can give recommendation. Make sure , if you try this, that John Tate, Parole chari does get your applications.

3) This is the latest from the DOC and I believe a direct result of pressure formour campaign. Evers will not owve but will direct the DOC to move. For those over 60 this is good, For those with medical conditions, We have in the pat found it impossible to get a physician in the DOC to sign an affidavit as to a condition warranting release- hope that has changed .

All three are worth a try.

STATE OF WISCONSIN CIRCUIT COURT
BRANCH COUNTY

STATE OF WISCONSIN,
Plaintiff,

v.

Case No.
(the case no. for the sentence you want modified)

(your name as it appears on judgment of conviction)
Defendant.

**FORM NOTICE OF MOTION AND MOTION
FOR SENTENCE MODIFICATION DUE TO COVID-19**

Pursuant to *State v. Harbor*, 2011 WI 28, ¶ 36, 38, 797 N.W.2d 828 (2011), _____, the Defendant in the above-
(your name)

captioned case, moves this court for modification of his/her sentence, based upon the existence of a “new factor”, namely the COVID-19 pandemic. The basis for this motion is as follows:

1. On _____, the Defendant was convicted of the
(date you were convicted)
offense(s) of _____. On _____,
(list of offense(s) you were convicted of) (date you were sentenced)

the Defendant was sentenced as follows: _____
(explain what sentence you received on each count)

2. The circuit court has the “inherent authority to modify a sentence.” *State v. Trujillo*, 2005 WI 45, ¶ 10, 279 Wis. 2d 712, 721, 694 N.W.2d 933 (2005). “This inherent power can be used to prevent the continuation of unjust sentences and must be exercised within defined parameters.” *Id.* A new factor is one such parameter. *Id.* It is within the circuit court’s discretion to decide whether the new factor warrants sentence

modification. *Id.* at ¶ 11. Therefore, the defendant must first show by clear and convincing evidence that a new factor exists, and second, that the new factor justifies sentence modification. *State v. Harbor*, 2011 WI 28, ¶ 36, 38, 797 N.W.2d 828 (2011).

3. A new factor is “a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all the parties.” *Id.* at ¶ 40. Although the new factor must be highly relevant to the imposition of sentence, it does not need to frustrate the purpose of the original sentence. *Id.* at ¶ 48.

COVID-19

4. The COVID-19 pandemic warrants either a stay or modification of Mr. Doe’s sentence. At the time of Mr. Doe’s sentencing, no one knew about the widespread devastation the new strain of coronavirus, which causes COVID-19, would cause. As of March 30, 2020, COVID-19 has infected over 729,100 people, leading to at least 34,689 deaths worldwide.¹ In Wisconsin, there are over 1,112 confirmed cases and 13 deaths.² On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.³ Governor Evers declared a State of Emergency on March 12, 2020. On March 17, 2020, Governor Evers ordered that no more than 10 people congregate in a public place, and on March 23, 2020, Governor Evers issued a

¹ *Coronavirus Map: Tracking the Spread of the Outbreak*, The New York Times (March 30, 2020), at <https://nyti.ms/2U4kmud> (updating regularly).

² Outbreaks in Wisconsin, WI Department of Health Services, (March 29, 2020) <https://www.dhs.wisconsin.gov/outbreaks/index.htm> (updating regularly).

³ *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (March 11, 2020) at <https://bit.ly/2W8dwpS>.

“safer-at-home” order, requiring all businesses but those providing “essential services” to shut down.⁴

5. The CDC has issued guidance that individuals at higher risk of contracting COVID-19—adults over 60 years old and people with chronic medical conditions such as lung disease, heart disease, and diabetes—take immediate preventative actions, including avoiding crowded areas and staying at home as much as possible.⁵ With confirmed cases in Wisconsin that indicate community spread, we must take every necessary action to protect vulnerable populations and the community at large.

6. Public health and governmental officials are strongly urging the public to practice social distancing, but social distancing is impossible for imprisoned individuals, who are kept in close proximity to one another. Infectious diseases that are uncommon in the general public, such as tuberculosis, form wide-spread outbreaks in prisons. Moreover, Wisconsin’s prison system is currently 33% over capacity, and severely understaffed, which can only serve to worsen the problem.⁶

7. Incarceration creates the ideal environment for the transmission of contagious disease. Inmates regularly cycle in and out of jails from all over the country and world, and people who work in the facilities leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited in jails.⁷ Many people who are incarcerated also have chronic conditions which

⁴ Gov. Tony Evers to Order Wisconsinites to Stay at Home, Will Close Non-Essential Businesses, JS Online (March 23, 2020) at <https://www.jsonline.com/story/news/politics/2020/03/23/wisconsin-gov-tony-evers-issues-safer-place-order/2897821001/>.

⁵ *People at Risk for Serious Illness from COVID-19*, CDC (March 23, 2020) at <https://bit.ly/2vgUt1P>.

⁶ WisContext, <https://www.wiscontext.org/bumpy-path-efforts-cut-wisconsins-prison-numbers>.

⁷ Laura M. Maruschak et al. (2015). *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfji1112.pdf>.

make them vulnerable to severe forms of COVID-19. According to public health experts, incarcerated individuals “are at a special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe.”⁸ “Infection control is challenging in these settings.”⁹

8. Inmates are not the only people in the jails and prisons who are at risk. Members of prison and jail staff are also at high risk because of contact with other staff and inmates. There are already confirmed COVID-19 cases for staff and inmates in prisons and jails in Wisconsin. As of March 27, 2020, there have been confirmed staff cases in Waupun Correctional, Columbia Correctional, and the Milwaukee Secure Detention Facility and confirmed cases with inmates at the Dane County Jail.¹⁰ Unfortunately, it is likely COVID-19 could reach all of Wisconsin’s prisons and jails.

⁸ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

⁹ *Id.*
¹⁰ Wisconsin Department of Corrections, COVID-19 (Coronavirus) Information Home, [https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19.aspx); *Two Dane County jail inmates test positive for COVID-19, results pending for 6 others* FOX6 (March 27, 2020) <https://fox6now.com/2020/03/27/2-dane-county-jail-inmates-test-positive-for-covid-19-results-pending-for-6-others/>

WHEREFORE, on the basis of the "new factor", the COVID-19 pandemic outlined above, the Defendant asks the court to modify his/her sentence as follows:


Dated this _____ day of _____, 2020.

Respectfully submitted,

(your signature)
(your typed or printed name)
(your address)
DEFENDANT PRO SE

cc: name and address of District Attorney

This form was created by the Office of the Wisconsin State Public Defender as a courtesy during a national pandemic. It is for informational purposes only; no attorney/client relationship is intended.

<p style="text-align: center;">WISCONSIN DEPARTMENT OF CORRECTIONS</p>  <p style="text-align: center;">EXECUTIVE DIRECTIVES</p> <p>3099 E. Washington Ave. P.O.Box 7925 Madison, WI 53707-7925 (608) 240-5000</p>	DOC Library # 600.500.0031	
	Original Effective Date: August 1993, revised October 1993	New Effective Date: November 1, 2013
	Reference:	Date of Approval: <i>10-15-13</i>
	By: <i>[Signature]</i> Secretary <i>[Signature]</i> Parole Commission Chair Owner: Wisconsin Parole Commission Chairperson	

EXECUTIVE DIRECTIVE # 31

Subject: Extraordinary Circumstances for Parole Consideration

I. Authority

Wisconsin Statutes s. 15.145 (1)
 Wisconsin Statutes ss. 304.01, 304.02, 304.06 (1m)
 Wisconsin Administrative Code Chapter DOC 330
 Wisconsin Administrative Code Chapter PAC 1

II. Background

This directive formalizes the process by which the Parole Commission reviews inmates for parole consideration under extraordinary circumstances.

III. Definitions, Acronyms & References

"Chairperson" means the chairperson of the Commission. "Chairperson" includes a commissioner who is designated by the Chairperson to perform a specific assignment or duty.

"Commission" means the Parole Commission, including the Chairperson and the Commissioners.

"Commissioner" means a member of the Parole Commission, including the Chairperson.

"Extraordinary circumstances" means advanced age, infirmity or disability of the inmate, need for treatment or services not available within the correctional institution, a sentence to a term of imprisonment that is substantially disparate from the sentence usually imposed for a particular offense, or other circumstances warranting an early release which are made known to the sentencing court pursuant to section PAC 1.05 (1) (a), Wis. Adm. Code.

"inmate" means a person who is incarcerated in a DOC facility or a facility under contract with the DOC for a crime committed in the state of Wisconsin.

"Parole" means release from a prison of an inmate before the expiration of his or her sentence to the supervision of the Division of Community Corrections.

"Parole eligibility date" means the date whereby the inmate has served 25 percent of the sentence imposed or six months of the sentence, whichever is greater, or the date imposed by the sentencing court.

"Victim" means a person against whom a crime has been committed, or if the victim is deceased, an adult member of the victim's family or, if the victim is under 18 years old, the victim's parent or legal guardian. (See s. 304.06 (1) (c) 3., Stats.)

IV. Scope

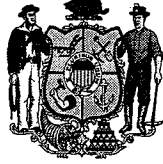
This Executive Directive applies only to inmates who are statutorily eligible for parole consideration in accordance with Wisconsin Statutes s. 304.01. Inmates serving a sentence under s. 973.01, Stats., are not eligible for parole consideration for extraordinary circumstances for that sentence but may petition for release under the procedures set forth in s. 302.113 (9g), Wis. Stats.

V. Policy

Inmates who have not reached their parole eligibility date may be considered for extraordinary circumstances release under s. 304.06 (im), Stats. The sentencing court, district attorney and *victim*, if available, must be notified and permitted to comment upon the proposed recommendation for release.

Vi. Procedure General Guidelines

- A. The Chairperson, Warden, inmate or the inmate's guardian may request consideration for release due to extraordinary circumstances regardless of the parole **eligibility** date. If an inmate has previously waived parole eligibility, the inmate or the inmate's legal guardian must request reinstatement of parole eligibility prior to any action being taken in accordance with s. PAC 1.05 (6), Wis. Adm. Code.
- B. All requests will be forwarded to the Warden who will review the request to determine if the inmate is statutorily eligible for consideration and forward the request to the Chairperson with a recommendation.
- C. The Chairperson shall consider all of the following: eligibility for parole, sufficiency of time served, satisfactory adjustment to institution, satisfactory program participation, adequate release planning and risk to the public.
- D. The Department will provide the Chairperson with requested information, including release plans.
- E. The Chairperson will determine whether or not it is appropriate to waive the 25 percent of service sentence requirement under s. 304.06 (1) (b), Stats. In accordance with S. PAC 1.05 (1) (a), notice of the determination to the court, district attorney and victim is required.
- F. The Chairperson will make a decision to approve, deny, or defer for continued monitoring of the extraordinary circumstances.



John Tate II
Chairperson

State of Wisconsin
Parole Commission

E-Mail:
ParoleCommission@Wisconsin.Gov

April 3, 2020

Peg Swan
FFUP 29631 Wild Rose Drive
Blue River, WI
53518

Dear Ms. Swan,

We have received your letter regarding Executive Directive 31. Prison wardens have access to ED 31. Persons-in-custody sentenced under TIS are not eligible for ED31. For those that are eligible, they will have to make a request for consideration at the institution. The Parole Commission will consider requests under ED31 upon recommendation from the Warden. Those sentenced under TIS can file a petition to modify bifurcated sentences for geriatric/extraordinary health conditions with the Bureau of Offender Classification and Movement (BOCM) at their institution under DAI policy 302.00.13.

Sincerely,


Wisconsin Parole Commission
OBWPC

CC: Social Service File

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

End of Document

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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.