

 <p style="text-align: center;"><b>DIVISION OF ADULT INSTITUTIONS</b></p> <p style="text-align: center;"><b>POLICY AND PROCEDURES</b></p>	<b>DAI Policy #:</b> 302.00.13	<b>Page</b> 1 of 10
	<b>Original Effective Date:</b> 10/10/05	<b>New Effective Date:</b> 11/20/22
	<b>Supersedes:</b> 302.00.13	<b>Dated:</b> 05/17/21
	<b>Administrator's Approval:</b> Sarah Cooper, Administrator – 11/7/22	
<b>Required Posting or Restricted:</b>		
<input checked="" type="checkbox"/> <b>Inmate</b> <input checked="" type="checkbox"/> <b>All Staff</b> <input type="checkbox"/> <b>Restricted</b>		
<b>Chapter:</b> 302 Inmate Classification, Sentence and Release Provisions		
<b>Subject:</b> TIS Petition to Modify Bifurcated Sentences for Geriatric/Extraordinary Health Condition		

**POLICY**

The Division of Adult Institutions shall review inmate petitions received for eligible inmates requesting modification of a bifurcated (TIS) sentence for geriatric or extraordinary health conditions.

**REFERENCES**

Wisconsin Administrative Code Ch. DOC 302 – Inmate Classification, Sentence and Release Provisions

Wisconsin Administrative Code Ch. DOC 303 - Discipline

Wisconsin Statutes s. 302.113(9g) – Release to extended supervision for felony offenders not serving life sentences

Records Office Procedure (ROP) B-05 – Amended – Modified Sentence

Records Office Procedure (ROP) I-01 – Ensuring Proper Release

Records Office Procedure (ROP) I-02 – Release from Facility

**DEFINITIONS, ACRONYMS AND FORMS**

ACA – Affordable Care Act

BHS – Bureau of Health Services

Bifurcated – A sentence consisting of a term of confinement in prison followed by a term of extended supervision. 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.

BOCM – Bureau of Offender Classification and Movement

Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) – An actuarial assessment tool which has been validated on a national norming population. It predicts the general likelihood that those with a similar history of offending are either less likely or more likely to commit another crime generally within the two-year period following release from custody. The COMPAS assessment does not attempt to predict specifically the likelihood that an offender shall commit a certain type of offense within the same two-year period, nor does it designate external classification inmate custody. In addition to identifying general levels of risk to re-offend, COMPAS also identifies criminogenic needs specific to that inmate which are most likely to affect future criminal behavior.

CR-255 – Referral by Department of Corrections to Sentencing Court

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DAI – Division of Adult Institutions

DAI Technical Specialist – A DAI staff member who has knowledge and expertise in processing petitions received under Wisconsin Statutes s. 302.113(9g). A technical specialist shall assist staff with processes associated with the petition including release planning and locating resources.

DCC – Division of Community Corrections

DOC – Department of Corrections

DOC-7E – Pre-Release Investigation

DOC-172 – Offender Data

DOC-327A – Sentence Computation

DOC-745 – Release Plan Information

DOC-1163J – Authorization for Disclosure of Documents Related to Petition to Modify Bifurcated Sentence

DOC-1208D – Program Review Committee Action – Geriatric/Extraordinary Health Condition

DOC-2250 – Verification of Time Served – Geriatric

DOC-2250A – Verification of Time Served – Extraordinary Health Condition

DOC-2501 – Petition to Modify Bifurcated Sentence – Geriatric/Extraordinary Health Condition

DOC-3612 – Affidavit of Extraordinary Health Condition

Extraordinary Health Condition (EHC) – Condition afflicting a person such as advanced age, infirmity, or disability of the person or a need for medical treatment or services not available within a correctional facility.

Geriatric – For the purposes of this policy, is 65 years of age or older and has served at least five years of the term of confinement in prison portion of the bifurcated sentence, or is 60 years of age or older and has served at least 10 years of the term of confinement in prison portion of the bifurcated sentence.

HSU – Health Services Unit

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JOC – Judgment of Conviction

Life Sentence – Life sentence imposed under s. 973.014 (1g) (a) or (2) for crimes committed on or after December 31, 1999.

OCS – Offender Classification Specialist

OVSP – Office of Victim Services and Programs

POA – Power of Attorney

Program Review Committee (PRC) – For the purposes of this policy, is the committee designated to review the geriatric and extraordinary health petitions to determine if public interest would be served by a modification of the inmate’s bifurcated sentence per Wisconsin Statutes s. 302.113(9g).

SOT – Sex Offender Treatment

SOT-CPO – Sex Offender Treatment – Child Pornography Only

Truth in Sentencing (TIS) – Bifurcated sentence 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.

## **PROCEDURE**

### **I. Statutory Eligibility**

- A. Inmates shall be advised at intake of the statutory criteria per Wisconsin Statutes s. 302.113(9g).
- B. Statutory eligibility requirements are:
  1. For convictions occurring before April 10, 2022, an inmate who is serving a bifurcated sentence for a crime, other than a Class A or B felony.
  2. For convictions occurring on or after April 10, 2022, an inmate who is serving a bifurcated sentence for a crime other than a Class A or B felony; or any felony under s. 941.29 (1g) (a); a crime specified in s. 941.29 (1g) (b), not including s. 951.02, 951.08, 951.09, or 951.095; a crime under s. 948.02 (3), 948.055, 948.075, or 948.095.
- C. Statutorily eligible inmates may seek modification of the bifurcated sentence if he or she meets one of the following criteria per Wisconsin Statutes s. 302.113(9g):
  1. Is 65 years of age or older and has served at least five years of the term of confinement in prison portion of the bifurcated sentence(s).
  2. Is 60 years of age or older and has served at least 10 years of the term of confinement in prison portion of the bifurcated sentence(s).
  3. Has an EHC.

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## **II. Submission of a Geriatric/EHC Petition**

- A. An eligible inmate may submit a petition to the BOCM office at the facility where the inmate is located or to the assigned BOCM office.
- B. Petitions may be submitted on behalf of the inmate by the following individuals:
  1. Attorney
  2. Guardian, as permitted under the guardianship documents
  3. Durable POA for Health Care, as permitted under the POA.
- C. The inmate or individual petitioning on behalf of the inmate shall submit a complete petition packet that includes:
  1. DOC-2501.
  2. DOC-745.
  3. DOC-1163J.
  4. Two medical affidavits from two separate physicians when alleging an EHC.
    - a. The facility multi-disciplinary team shall ensure the person meets statutory criteria to petition prior to seeking a medical affidavit.
    - b. The physicians shall describe the symptoms, description of limitations in functioning and prognosis.
    - c. One medical affidavit must be submitted on DOC-3612 and be completed by a DOC physician presently treating the inmate.
      - i. Affidavits require a notary.
      - ii. Coordination and completion of medical affidavits and/or DOC-3612 may require assistance from the inmate's on-site HSU staff.
      - iii. Medical affidavits shall be completed within 90 days of the date the petition is submitted to BOCM.
- D. Upon receipt of a petition, BOCM staff shall review the petition documents to ensure the petition is complete.
- E. Incomplete petitions shall be returned to the inmate or individual petitioning on behalf of the inmate indicating the reason for the return. Once complete, the petition may be resubmitted.
- F. The BOCM Director shall designate a regional OCS to chair the PRC reviewing the petitions. The designated OCS shall have training in processing geriatric/EHC petitions to determine if public interest may be served by a modification of the bifurcated sentence.
- G. Complete petition packets shall be submitted to the designated regional OCS.

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### III. Petition Process

- A. The regional OCS shall determine if the inmate meets the statutory criteria to petition.
  
- B. For geriatric petitions only, if the inmate meets statutory criteria, the regional OCS shall review for the following:
  1. Be classified medium, minimum or minimum community custody.
  2. Have completed SOT-CPO, SOT-2 and SOT-4 if assigned the program.
  3. Have no more than 10 years to serve until their adjusted release date.
  4. Have not received a major conduct report disposition within 6 months of the date of the petition for:
    - a. Any offenses under Subchapter II of DOC 303-Offenses Against Bodily Security.
    - b. Any offenses under Subchapter III of DOC 303-Offenses Against Institutional Security.
    - c. Behaviors which present a risk to others or could present a danger to the community.
  
- C. If the inmate meets statutory criteria and the criteria listed above, the regional OCS shall obtain the following:
  1. DOC-172.
  2. DOC-327A or most recent sentence computation.
  3. JOC(s) for the applicable cases.
  4. DOC-2250 or DOC-2250A Request completion by the Records Office for all cases/counts served during current incarceration associated with the petition.
  
- D. The receipt of a petition shall be documented in the designated information management system(s) by the regional OCS receiving the petition.
  
- E. If the inmate does not meet the statutory criteria to petition:
  1. The regional OCS shall complete the DOC-2501 and distribute.
  2. The petition packet shall be returned to the inmate or individual petitioning on behalf of the inmate.
  3. The return of the petition and the reason the inmate is not statutorily eligible shall be documented in the designated information management system(s) by the regional OCS and the process is complete.
  
- F. For geriatric petitions, if the inmate does not meet the criteria listed in III. B., public interest would not be served by modification of the bifurcated sentence and the petition is denied.
  1. The regional OCS shall complete the DOC-2501 and distribute.
  2. The denial of the petition and the reason for the denial shall be documented in the designated information management system(s) by the regional OCS and the process is complete.

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- G. If the inmate is eligible to proceed with the process, the regional OCS shall notify the following:
1. Warden/designee at the current location and if applicable, Warden/designee at the supervising location.
  2. Assigned Social Worker.
  3. DCC Regional Chief/Designee.
  4. Assigned DCC Agent.
  5. OVSP Director/Designee.
  6. Infirmary Social Worker (when applicable).
  7. BHS Nursing Coordinator/designee (when applicable).
- H. When determined necessary to coordinate release planning, a conference call shall be coordinated by the assigned social worker with the assigned DCC agent within five working days of receipt of a petition to address the release plan and actions required to move the petition forward. Planning conference may include Infirmary social worker, Health Services Manager, Nurse Clinician 4 and/or BHS Nursing Coordinator as applicable.
- I. The HSU staff and/or DAI technical specialists shall:
1. Assist in the development of a release plan that addresses ongoing medical treatment and needs as applicable.
  2. Provide needed medical information and discharge medication.
  3. Ensure medication and medical treatment is coordinated upon release.
- J. The social worker shall facilitate the release planning process with the DCC agent and HSU, complete a COMPAS assessment and assist with ACA and/or social security processes as applicable.
- K. The release plan shall be documented on the DOC-7E by the DCC Agent. An approved release plan is required prior to submission of a petition to the sentencing court and shall include:
1. A residence.
  2. Method by which the inmate shall support him/herself.
  3. Recommended release conditions and community needs.
  4. Required programming and/or anticipated referrals for programming.
  5. Plan for medical treatment and resources to support required medical treatment (if applicable).
- L. The OVSP Director/designee shall complete a review of OVSP file information and prepare a statement indicating potential impact of release on the victim and the community for PRC to consider at the review.
- M. When the petition packet is complete and necessary information is received, the regional OCS shall establish a date to review the petition with PRC. The inmate shall be advised of the review date via DOC-2501.

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#### **IV. PRC Members**

- A. The PRC reviewing the petition shall include, but is not limited to:
  1. Regional OCS.
  2. BOCM Director/designee.
  3. A supervisor representing Social Services from the site at which the inmate is located and/or the assigned social worker.
  
- B. Those present at the hearing include:
  1. The PRC.
  2. Inmate and/or the individual petitioning on behalf of the inmate.
  3. Inmate's attorney, when applicable.

#### **V. PRC Review of the Petition**

- A. The PRC shall conduct a review that concludes with a decision to approve or deny the petition. The committee may defer the review to obtain information relevant to the petition.
  
- B. The review shall include the following components:
  1. Reason for the review.
  2. Explanation of what will be determined at the review.
  3. Summary of the facts of the inmate's case and petition.
  4. Inmate presentation regarding why public interest will be served by a modification of his/her sentence.
  5. Committee discussion.
  6. The committee may consult with other divisions, offices or units within the department.
  
- C. Factors considered when determining if public interest may be served by a modification of the inmate's bifurcated sentence, includes but is not limited to:
  1. Risk to the community/public safety
    - a. Offense and offense history.
    - b. Motivation and attitude toward the offense.
    - c. Prior adjustment to supervision.
    - d. Time served for the offense.
    - e. Escape behaviors.
    - f. Detainers or pending legal matters.
    - g. Effects of age or illness, degree of impairment, limitations on activities of daily living.
    - h. Custody classification.
    - i. Impact on the victim as found in file information or inmate report.
  2. Facility adjustment
    - a. Number and type of conduct reports.
    - b. Positive changes in behavior since incarceration began.
    - c. Demonstration of good judgment and self-control.
  3. Program participation
    - a. Efforts in required or recommended programs.

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- b. Review of program discharge summaries.
- c. Ability to complete programs.
- d. Amenability/refusal of programs.
- e. Education achievements.
- 4. Impact on DOC resources
  - a. Compliance with medical treatments.
  - b. Financial impact and cost of treatment.
  - c. Results of psychological tests and evaluations.
- 5. Release plan
  - a. Availability of an approved and viable release plan.
  - b. Stable residence upon release.
  - c. Resources to address health conditions.
  - d. Resources and ability to provide for him or herself.
  - e. Community support systems.

D. The DCC Agent and Warden/designee shall be advised of the results of the review.

## **VI. Approved Petitions**

- A. The PRC review of the petition shall be summarized and documented on the DOC-1208D. Referral of a petition to the sentencing court requires a unanimous decision.
- B. Approved petitions shall be submitted to the sentencing court, district attorney's office, the petitioner and the inmate's attorney (when applicable) by the BOCM Office. The petition packet to the court shall include:
  - 1. CR-255.
  - 2. DOC-1163J
  - 3. DOC-1208D.
  - 4. DOC-3612 – Two medical affidavits if alleging an EHC.
- C. After referral to the sentencing court, the petition packet shall be distributed and placed in the designated file.
- D. The Regional OCS shall notify OVSP Director/designee of approved petitions submitted to the sentencing court.
- E. OVSP shall provide a notification to any victims registered with OVSP of the PRC approved petition.
- F. At the time of the hearing conducted by the court, any victim of the crime has the right to be present and to provide a statement concerning the modification of the inmate's bifurcated sentence per Wisconsin Statutes s. 302.113(9g) (d) and (g).



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- G. Upon notification of a modified sentence from the sentencing court, records staff, the social worker and DCC agent shall coordinate and implement the approved release plan with HSU, DCC and others per procedures.
- H. The results of the review shall be documented in designated information management system(s) by the regional BOCM OCS.

**VII. Denied Petitions**

- A. Denied petitions shall not be forwarded to the sentencing court. The petition packet shall be distributed and placed in the designated file.
- B. The inmate may not file another petition within one year after the date of the PRC or court denial.
- C. The results of the review shall be documented in designated information management system(s) by the regional BOCM OCS.

## DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES

<b>Facility:</b> Name		
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<b>Will Implement</b> <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
<b>Warden's/Center Superintendent's Approval:</b>		

### REFERENCES

### DEFINITIONS, ACRONYMS AND FORMS

### FACILITY PROCEDURE

- I.
  - A.
  - B.
    - 1.
    2.
      - a.
      - b.
      - c.
    - 3.
  - C.

II.

III.

### RESPONSIBILITY

I. Staff

II. Inmate

III. Other