

GERIATRIC/TERMINAL RELEASE

2005

Effective February 1, 2005, the Wisconsin Legislature enacted 2001 Act 109 (also known as "TIS II"). One of the provisions of Act 109 created statutory authority for a court to release elderly TIS inmates, as well as terminally ill TIS inmates, before the end of the confinement portion of their sentences. That authority is found in Wis. Stat. § 302.113(9g).

Section 302.113 (9g) does not apply to New Law (parolable) inmates. This is because New Law inmates who are elderly or terminally ill may apply to the Parole Commission for release.

A TIS inmate who is serving a sentence other than a Class A or B felony is eligible to apply for terminal/elderly release if the inmate:

1. is 65 or older and has served at least 5 years of the confinement portion of the sentence;
2. is 60 years or older and has served at least 10 years of the confinement portion of the sentence; or
3. has a "terminal condition," defined as a condition resulting in a life expectancy of 6 months or less, attested to by two physicians.

Wis. Stat. § 302.113(9g)(b).

If a TIS inmate meets these eligibility requirements, the inmate must submit a petition to the Program Review Committee (PRC) at his or her institution. The PRC can deny the petition; and, if it does so, the inmate may not file another petition for a year. Wis. Stat. § 302.113(9g)(cm) and 302.113(9g)(l).

Or the PRC can approve the petition on the grounds that it is in the public interest. If it does approve the petition, the PRC will ask the sentencing court to conduct a hearing on the petition. *Id.* In that case, the court must then hold a hearing on the petition, at which the inmate and the district attorney have a right to be present. In addition, any victim has a right to receive notice of the hearing. Wis. Stat. §§ 302.113(9g)(d) and 302.113(9g)(g).

At the hearing before the sentencing court, the inmate has the burden of proving by the greater weight of the credible evidence that modification of the sentence would serve the public interest Wis. Stat. § 302.113(9g)(e). As with sentence adjustment under § 973.195, if the court grants the petition, the court will shorten the confinement period so that the inmate is released, and will increase the period of ES so that the overall sentence length does not change. Wis. Stat. § 302.113(9g)(f).

Both the state and the inmate have a right to appeal the court's decision on the petition. The standard on review on appeal is whether or not the sentencing court erroneously exercised its discretion. Wis. Stat. § 302.113(9g)(h).

If the court denies the inmate's petition, then the inmate cannot file another petition with the PRC within one year of the denial. Wis. Stat. § 302.113(9g)(l).

Included with this information sheet is a copy of Court Form CR-254, "Petition to Modify Bifurcated Sentence § 302.113(9g) (Geriatric/Terminal). However, unlike § 973.195 sentence adjustment, an indigent inmate who is seeking geriatric/early release does have a right to State Public Defender representation "in proceedings under this subsection." This apparently includes filing a petition with the PRC. Wis. Stat. §§ 302.113(9g)(j) and 977.05(4). Thus, if you meet the age/illness eligibility requirements to petition for geriatric/terminal release, *you should contact the Public Defender's office immediately*, to request appointment of counsel. Their address is:

Wisconsin State Public Defender
Madison Appellate Office
P.O. Box 7862
Madison, WI 53707-7862

There are no appellate court cases yet interpreting this new geriatric/terminal release statute. One unanswered question is whether the statute applies to TIS I inmates, as well as to TIS II inmates. The Wisconsin recently ruled that another provision of the TIS II legislation, sentence adjustment under Wis. Stat. § 973.195, does apply to TIS I inmates. See *State v. Tucker*, 2005 WI 46, ¶ 45, 279 Wis. 2d 697, 694 N.W.2d 926. Given the Supreme Court's ruling in *Tucker*, TIS I inmates should argue that the geriatric/terminal illness release provisions of § 302.113(3g) apply to them as well.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

State of Wisconsin

-vs-

Petition to Modify Bifurcated Sentence §302.113(9g) (Geriatric/Terminal)

_____, Defendant

Name

Case No. _____

_____, Date of Birth

- 1. I was sentenced for the crime of _____, on (date) _____.
- The total length of my bifurcated sentence for count _____ is _____ years, _____ months.
- My initial term of confinement in prison is _____ years, _____ months.
- The amount of extended supervision ordered by the court at the time of sentencing is _____ years, _____ months.

- I was sentenced for the crime of _____, on (date) _____.
- The total length of my bifurcated sentence for count _____ is _____ years, _____ months.
- My initial term of confinement in prison is _____ years, _____ months.
- The amount of extended supervision ordered by the court at the time of sentencing is _____ years, _____ months.

- I was sentenced for the crime of _____, on (date) _____.
- The total length of my bifurcated sentence for count _____ is _____ years, _____ months.
- My initial term of confinement in prison is _____ years, _____ months.
- The amount of extended supervision ordered by the court at the time of sentencing is _____ years, _____ months.

2. I am not serving a sentence for a Class A or B felony.

- 3. [] I have not previously filed a petition for modification of bifurcated sentence.
OR
[] I have previously had a petition for modification of bifurcated sentence denied by the Program Review Committee. The denial was on (date) _____, and it has been over one year since that denial.
OR
[] I have previously had a petition for modification of bifurcated sentence denied by the court. The denial was on (date) _____, and it has been over one year since that denial.

- 4. [] I am 65 years of age or older and have served at least 5 years of the term of confinement in prison.
OR
[] I am 60 years of age or older and have served at least 10 years of the term of confinement in prison.
OR
[] I have a terminal condition, and have attached and incorporated into this petition affidavits from two (2) physicians setting forth a diagnosis that I have a terminal condition.

5. [] My attorney, if any: Name: _____
Address: _____
Telephone: _____ Fax: _____

I request sentence modification.

_____, Signature of Petitioner

_____, Name Typed or Printed

_____, Date

Distribution:

- 1. Program Review Committee - Original