

TRUTH IN SENTENCING II

EXTENDED SUPERVISION & ITS REVOCATION

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Acronyms

- ✍ ALJ – Administrative Law Judge
- ✍ ATR – Alternative to Revocation
- ✍ DHA – Division of Hearings and Appeals
 - ✍ (part of the Department of Administration)
- ✍ DOA – Department of Administration
- ✍ DOC – Department of Corrections
- ✍ ES – Extended Supervision

Bifurcated Sentence

Bifurcated Sentence (Imprisonment)

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Term of Confinement in Prison

+

Term of Extended Supervision

[§973.01(2)]

Extended Supervision

- ✍ “ES”
- ✍ The term of extended supervision may not be less than 25% of the length of the term of confinement in prison...
[§973.01(2)(d)]

ES Conditions

- ✍ Conditions of ES may be set by the court. [§973.01(5); §302.113(7m)]

- ✍ Conditions of ES may be set by DOC if the conditions set by DOC do not conflict with the court's conditions. [§302.113(7)]

ES Conditions – Modification

✍ **DOC**

- ✍ May petition the sentencing court to modify any conditions set by the court
 - ✍ At any time
 - ✍ As often as DOC wishes
- [§302.113(7m)]

✍ **INMATE** [in Confinement]

- ✍ May not petition to modify ES conditions set by the court
 - ✍ Earlier than one year before scheduled date of release to ES
 - ✍ More than once before release to ES
- [§302.113(7m)(e) 1.]

✍ **PERSON** [on ES]

- ✍ May not petition to modify ES conditions set by the court
 - ✍ Within one year after release to ES
 - ✍ More than one time a year
- [§302.113(7m)(e) 2.]

ES Violations – Possible Sanctions

- ✍ Alternatives-to-Revocation (ATRs)
- ✍ Confinement Sanction [new]
- ✍ Revocation

Alternatives-to-Revocation

- ✍ Modify rules of supervision

- ✍ Increase level of supervision
- ✍ Complete a program
- ✍ Community service
- ✍ Halfway house placement
- ✍ Electronic monitoring
- ✍ Formal ATR in state correctional facility
- ✍ Curfews/home confinement
- ✍ Return to court to modify ES

Confinement Sanction

- ✍ a/k/a the 90 day “Time Out”
- ✍ Legal sanction bridging the gap between an ATR and full revocation
- ✍ Solution to the problem of punishable but not revocable conduct
- ✍ An additional ATR available as of July 30, 2002
- ✍ §302.113(8m)
- ✍ DOC allegation of violation of any ES condition or rule
- ✍ Person on ES signs a statement admitting a violation of a condition or rule
- ✍ DOC may confine the person for up to 90 days as a sanction
- ✍ Confinement may be in a regional detention facility or, with the approval of the sheriff, in a county jail
- ✍ Huber Law may be granted [§303.08(1)]
- ✍ Person is not eligible to earn good time credit
- ✍ *Nota Bene* –
Initially, DOC will not use the Confinement Sanction, except on a limited “pilot” basis. The Milwaukee Secure Detention Facility is the only facility approved for this purpose.

ES Revocation

- ✍ Procedure is set forth in §302.113(9)
- ✍ Applies to ES revocation proceedings commenced by DOC on or after Feb. 1, 2003

- ⌘ Decision whether to revoke or not is made by the “reviewing authority”
- ⌘ Reviewing authority is:
 - ⌘ DOC if person on ES waives a hearing;
 - ⌘ DHA(DOA) if person on ES requests a hearing
- ⌘ Revocation hearing, if requested, is conducted by an administrative law judge (ALJ) of the division of hearings and appeals (DHA) in the department of administration (DOA) [§302.113(9)]
- ⌘ Revocation hearing procedure is set forth in Wis. Admin. Code § HA 2.05
- ⌘ Decision of the ALJ may be appealed by either the person on ES or the DOC to the administrator of DHA(DOA)
- ⌘ The administrator may modify, sustain, reverse, or remand the ALJ’s decision
[Wis. Admin. Code § HA 2.05(8)(9)]
 - Revocation hearings in 1997
 - DOC submitted 1,495 requests for parole revocation hearings
 - Offenders waived hearing in 561 of those cases
 - DOC withdrew request in 324 of those cases
 - DHA conducted 576 hearings, revoking parole in 546 and not revoking parole in 30
- ⌘ Hearing before DHA
 - ⌘ Decision to revoke – person on ES may seek review
 - ⌘ Decision to not revoke – DOC may seek review
- ⌘ Review of decision may be sought only by an action for certiorari [§302.113(9)(g)]
- ⌘ If reviewing authority revokes ES, the person shall be returned to the circuit court for the county in which the person was convicted of the offense
[§302.113(9)(am)]
- ⌘ The reviewing authority shall make a recommendation to the court concerning the period of time for which the person should be returned to prison
[§302.113(9)(at)]

✍ The court shall order the person to be returned to prison for any specified period of time that does not exceed the time remaining on the bifurcated sentence

[§302.113(9)(am)]

✍ The time remaining on the bifurcated sentence is the total length of the bifurcated sentence, less time served by the person in confinement under the sentence before release to extended supervision and less all time served in confinement for previous revocations of extended supervision under the sentence

[§302.113(9)(am)]

✍ Time available for sentencing after ES revocation equals
total length of bifurcated sentence

minus

all time served in confinement

✍ Example-

John is convicted of burglary, a class F felony. The court at the original sentencing hearing imposed the maximum bifurcated sentence of 12.5 years (7.5 years confinement; 5 years ES). John is released to ES after serving the 7.5 year confinement time.

John's ES is revoked and he is sent back to court for a disposition hearing.

Q: How much time is available for the court to impose?

A: 5 years

Reason: total sentence 12.5 years

minus all confinement served 7.5 years

equals time available 5 years

Q: If the court imposes 3 years confinement at this time, what happens to the additional 2 years of the time available?

A: The 2 years becomes extended supervision to be served when the 3 year term of confinement is completed. [§302.113(9)(b)]

John's ES is revoked again and he is sent back to the court for a disposition hearing.

Q: How much time is available for the court to impose?

A: 2 years

Reason: total sentence	12.5 years
minus all confinement served	10.5 years (7.5 plus 3)
equals time available	2 years

☞ *Nota Bene* –

In some circumstances the amount of time an offender actually spends on ES could be longer than that ordered by the judge at the time of sentencing; it could even be longer than the maximum statutory periods of ES.

☞ Example -

John is convicted of burglary, a class F felony. The court imposes the maximum bifurcated sentence of 12.5 years (7.5 years confinement; 5 years ES). John is released to ES after serving the 7.5 year confinement time. John serves 4 years on ES and then his ES is revoked.

John is sent back to court for a disposition hearing. The court has 5 years available to impose. The court imposes 2 years confinement and 3 years ES. If John serves out this disposition without additional revocation of ES, John's total time served will be 9.5 years confinement and 7 years ES.