

# MODEL CRIMINAL PROCEDURE

## **Petition for Sentence Adjustment §973.195**

Pursuant to Wis. Stat. § 973.195, an inmate serving a sentence imposed under Wis. Stat. § 973.01, for a crime other than a Class A or B Felony, may petition the sentencing court to adjust the sentence. Sentence adjustment is available only if the inmate has served at least the applicable percentage of the prison portion of their sentence. If an inmate is subject to more than one sentence imposed under § 973.195, the sentences shall be treated individually for sentence adjustment purposes.

*All forms referred to in this procedure are state mandated forms and are available on the Circuit Court forms website.*

Upon receiving a Petition for Sentence Adjustment (PSAD) (CR-258), Verification of Time Served (VTS) (CR-261), and any attachments, the sentencing court may deny the petition or hold the petition for further consideration.

### **The clerk will:**

1. Receive and file/date stamp the petition, verification and any attachments.
2. Enter the event code PSAD and VTS for the petition and verification in the court record. This puts the case in Sentence Modification (SM) maintenance.
3. If the court denies the petition without further consideration, enter the Petition for Sentence Adjustment Denied-DA Objection (PSADD), Petition for Sentence Adjustment Denied-Public Interest (PSASI), Petition for Sentence Adjustment Denied-Percent Sent (PSADP), Petition for Sentence Adjustment Denied-Summarily (PSADS) or Petition for Sentence Adjustment Denied-Victim Object (PSADV) in the court record. This removes the Sentence Modification (SM) maintenance. The court shall complete and sign the Order Concerning Sentence Adjustment (OCSA) (CR-260). After the judge completes and signs the order, enter OCSA in the court record noting the court's decision. Forward two copies of the order to the district attorney.

*NOTE: In order to comply with Chapter 950, Wisconsin Statutes, and Article I, Section 9m, Wisconsin Constitution, the district attorney shall notify the victim(s) of the petition and provide the victim(s) with a copy of the order denying it.*

4. If the court holds the petition for further consideration, the court shall notify the district attorney of the inmate's petition. Complete the Notice to District Attorney/District Attorney Response on Petition for Sentence Adjustment (NDAR) (CR-259) and enter it in the court record. This event triggers the Sentence Adjustment Review (SAR) activity for 45 days. Forward two copies of the petition and any attachments to the district attorney.

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- If the district attorney objects within 45 days of receiving notice, and files the completed District Attorney Response section of *CR-259*, enter the response NDAR in the court record and forward the District Attorney's Response to the judge. In June 2005, *State v. Stenklyft*, 2005 WI 71, held that the district attorney's objection is no longer a basis for the court's automatic denial of an inmate's petition for a sentence adjustment under Wis. Stat. § 973.195. Following *Stenklyft*, the district attorney's objection is now only one of several factors the court considers in determining whether to grant or deny an inmate's petition.
- If the inmate is seeking adjustment of a sentence for an offense under Wis. Stat. §§ 940.225(2) or (3) (second or third-degree sexual assault), 948.02(2) (second-degree sexual assault of a child) or 948.08 (solicitation of a child for prostitution), the victim may object within 45 days of notice to the district attorney. Upon receiving the victim's objection, the court shall deny the inmate's petition. Complete and sign the Order Concerning Sentence Adjustment (*CR-260*). Enter OCSA in the court record. Forward two copies of the order to the district attorney.

If the sentencing court receives no objection from the victim, and the court weighs all the appropriate factors and determines the sentence adjustment is in the public interest, the court may adjust the inmate's sentence.

5. If the court grants the petition, enter Petition for Sentence Adjustment Granted (PSAG) or Petition for sentence Adjustment Granted-Law Change in the court record. This removes the Sentence Modification (SM) maintenance. Reopen the charge with the Reopen Charge code. Redispose the charge. The court shall complete and sign the Order Concerning Sentence Adjustment (OCSA) (*CR-260*). The order should specifically state reasons for any sentence adjustment granted. Enter OCSA in the court record. Forward two copies of the order to the district attorney. Prepare an Amended Judgment of Conviction (*CR-212A*).
6. If the court denies the petition, the court shall complete and sign the Order Concerning Sentence Adjustment (OCSA) (*CR-260*). After the judge completes and signs the order, enter the order in the court record, OCSA, noting the court's decision. Forward two copies of the order to the district attorney.