



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2367/1
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2021 ASSEMBLY BILL 174

March 23, 2021 - Introduced by Representatives SANFELIPPO, BRANDTJEN, HORLACHER, JAMES, KNODL, KUGLITSCH, MAGNAFICI, MURPHY, RAMTHUN, ROZAR and WICHGERS, cosponsored by Senators BRADLEY, JACQUE, FEYEN and STROEBEL. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to renumber and amend** 973.015 (1m) (b); **to amend** 302.113 (8m) (a),
2 302.114 (8m) (a), 304.06 (3), 973.015 (1m) (a) 3. and 973.10 (2) (intro.); and **to**
3 **create** 973.015 (1m) (b) 1. b. of the statutes; **relating to:** recommendation to
4 revoke extended supervision, parole, or probation if a person is charged with a
5 crime and expunging a criminal record of a crime.

Analysis by the Legislative Reference Bureau

Under current law, a person who is released on extended supervision, parole, or probation is subject to conditions or rules of the release. If the person violates a condition or rule, the person is subject to sanctions for the violation, which may include revocation of release. This bill requires the Department of Corrections to recommend revoking a person's extended supervision, parole, or probation if the person is charged with a crime while on release.

Under current law, a sentencing court may order a person's criminal record expunged of a crime if the court determines that the person will benefit and society will not be harmed and if all of the following apply: 1) the maximum term of imprisonment for the crime is six years or less (Class H felony and below); 2) the person committed the crime before the age of 25; 3) if the crime is a felony, the person had not been previously convicted of a felony; and 4) the crime was not a violent felony. The bill adds that the court may not order the record expunged of a crime if the person had previously been convicted of a crime, including a crime for which the record had been expunged.

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Current law specifies that the expungement order must be made only at sentencing and then the record is not expunged until the person completes his or her sentence. Under current law, a person is not considered to have completed his or her sentence if the person has been convicted of a subsequent offense or, if on probation, the probation was revoked and the person has not satisfied all conditions of probation. The bill adds that a person has not completed his or her sentence if criminal charges are pending against the person or, if the person was on probation, the person violated any rule or condition of the probation or at least one year has not elapsed since being placed on probation.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 302.113 (8m) (a) of the statutes is amended to read:

2 302.113 **(8m)** (a) Every person released to extended supervision under this
3 section remains in the legal custody of the department. If the department alleges
4 that any condition or rule of extended supervision has been violated by the person,
5 the department may take physical custody of the person for the investigation of the
6 alleged violation. If the person is charged with a crime, the department shall
7 recommend that the person's extended supervision be revoked.

8 **SECTION 2.** 302.114 (8m) (a) of the statutes is amended to read:

9 302.114 **(8m)** (a) Every person released to extended supervision under this
10 section remains in the legal custody of the department. If the department alleges
11 that any condition or rule of extended supervision has been violated by the person,
12 the department may take physical custody of the person for the investigation of the
13 alleged violation. If the person is charged with a crime, the department shall
14 recommend that the person's extended supervision be revoked.

15 **SECTION 3.** 304.06 (3) of the statutes is amended to read:

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1 304.06 (3) Every paroled prisoner remains in the legal custody of the
2 department unless otherwise provided by the department. If the department alleges
3 that any condition or rule of parole has been violated by the prisoner, the department
4 may take physical custody of the prisoner for the investigation of the alleged
5 violation. If the department is satisfied that any condition or rule of parole has been
6 violated, it shall afford the prisoner such administrative hearings as are required by
7 law. If the prisoner is charged with a crime, the department shall recommend that
8 the person's parole be revoked. Unless waived by the parolee, the final
9 administrative hearing shall be held before a hearing examiner from the division of
10 hearings and appeals in the department of administration who is licensed to practice
11 law in this state. The hearing examiner shall enter an order revoking or not revoking
12 parole. Upon request by either party, the administrator of the division of hearings
13 and appeals shall review the order. The hearing examiner may order that a
14 deposition be taken by audiovisual means and allow the use of a recorded deposition
15 under s. 967.04 (7) to (10). If the parolee waives the final administrative hearing, the
16 secretary of corrections shall enter an order revoking or not revoking parole. If the
17 examiner, the administrator upon review, or the secretary in the case of a waiver
18 finds that the prisoner has violated the rules or conditions of parole, the examiner,
19 the administrator upon review, or the secretary in the case of a waiver, may order the
20 prisoner returned to prison to continue serving his or her sentence, or to continue on
21 parole. If the prisoner claims or appears to be indigent, the department shall refer
22 the prisoner to the authority for indigency determinations specified under s. 977.07
23 (1).

24 **SECTION 4.** 973.015 (1m) (a) 3. of the statutes is amended to read:

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1 973.015 **(1m)** (a) 3. No court may order a record of conviction expunged under
2 this subsection if the person has, in his or her lifetime, been convicted of a separate
3 felony or a separate misdemeanor, including a conviction for which the record has
4 been expunged under this subsection. No court may order that a record of a
5 conviction for any of the following be expunged:

6 a. A Class H felony, ~~if the person has, in his or her lifetime, been convicted of~~
7 ~~a prior felony offense, or if the felony that is a violent offense, as defined in s. 301.048~~
8 (2) (bm), or is a violation of s. 940.32, 948.03 (2), (3), or (5) (a) 1., 2., 3., or 4., or 948.095.

9 b. A Class I felony, ~~if the person has, in his or her lifetime, been convicted of a~~
10 ~~prior felony offense, or if the felony that is a violent offense, as defined in s. 301.048~~
11 (2) (bm), or is a violation of s. 948.23 (1) (a).

12 **SECTION 5.** 973.015 (1m) (b) of the statutes is renumbered 973.015 (1m) (b) 1.
13 (intro.) and amended to read:

14 973.015 **(1m)** (b) 1. (intro.) A person has successfully completed the sentence
15 if all of the following apply:

16 a. The person has not been subsequently convicted of a subsequent offense and,
17 if misdemeanor or felony.

18 c. If the person was placed on probation, the probation has not been was not
19 revoked, the probationer did not violate any rule or condition of the probation, at
20 least one year has elapsed since the probationer was placed on probation, and the
21 probationer has satisfied the conditions of probation.

22 2. Upon successful completion of the sentence the detaining or probationary
23 authority shall issue a certificate of discharge which shall be forwarded to the court
24 of record and which shall have the effect of expunging the record. If the person has

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1 been imprisoned, the detaining authority shall also forward a copy of the certificate
2 of discharge to the department.

3 **SECTION 6.** 973.015 (1m) (b) 1. b. of the statutes is created to read:

4 973.015 **(1m)** (b) 1. b. The person has no criminal charges pending.

5 **SECTION 7.** 973.10 (2) (intro.) of the statutes is amended to read:

6 973.10 **(2)** (intro.) If a probationer violates the conditions of probation, the
7 department of corrections may initiate a proceeding before the division of hearings
8 and appeals in the department of administration. If the probationer is charged with
9 a crime, the department shall recommend that the person's probation be revoked.
10 Unless waived by the probationer, a hearing examiner for the division shall conduct
11 an administrative hearing and enter an order either revoking or not revoking
12 probation. Upon request of either party, the administrator of the division shall
13 review the order. If the probationer waives the final administrative hearing, the
14 secretary of corrections shall enter an order either revoking or not revoking
15 probation. If probation is revoked, the department shall:

16 **SECTION 8. Initial applicability.**

17 (1) The treatment of ss. 302.113 (8m) (a), 302.114 (8m) (a), 304.06 (3), and
18 973.10 (2) (intro.) first applies to charges that are filed on the effective date of this
19 subsection.

20 (2) The treatment of s. 973.015 (1m) (a) 3. first applies to orders made at
21 sentencing on the effective date of this subsection.

22 (3) The renumbering and amendment of s. 973.015 (1m) (b) and the creation
23 of s. 973.015 (1m) (b) 1. b. first apply to determinations as to whether a person has

