

1991 Senate Bill 402

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# 1991 WISCONSIN ACT 253

**AN ACT** to amend 48.32 (1), 303.09, 974.06 (1), 974.06 (3) (intro.), 974.06 (3) (d), 974.06 (4), 974.06 (6) and 974.06 (8); and to create 48.245 (2) (a) 5, 48.32 (1d), 48.34 (14), 971.40 and 973.11 of the statutes, **relating to:** placing criminal defendants and children adjudicated or alleged to be delinquent or in need of protection or services with volunteers in probation programs.

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

**SECTION 1.** 48.245 (2) (a) 5. of the statutes is created to read:

48.245 (2) (a) 5. That the child be placed with a volunteers in probation program under such conditions as the intake worker determines are reasonable and appropriate, if the child is alleged to have committed an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the child's county of residence and if the intake worker determines that volunteer supervision under that volunteers in probation program will likely benefit the child and the community. The conditions that the intake worker may establish under this subdivision may include, but need not be limited to, a request to a volunteer to provide for the child a role model, informal counseling, general monitoring and monitoring of the conditions established by the intake worker, or any combination of these functions, and any other informal disposition that the intake worker may establish under this paragraph.

**SECTION 2.** 48.32 (1) of the statutes is amended to read:

48.32 (1) At any time after the filing of a petition for a proceeding relating to s. 48.12 or 48.13 and before the entry of judgment, the judge or juvenile court commissioner may suspend the proceedings and place the child

under supervision in the child's own home or present placement. The court may establish terms and conditions applicable to the parent, guardian or legal custodian, and to the child, including any conditions specified in ~~sub.~~ subs. (1d) and (1g). The order under this section shall be known as a consent decree and must be agreed to by the child if 12 years of age or older; the parent, guardian or legal custodian; and the person filing the petition under s. 48.25. If the consent decree includes any conditions specified in sub. (1g), the consent decree shall include provisions for payment of the services as specified in s. 48.361. The consent decree shall be reduced to writing and given to the parties.

**SECTION 3.** 48.32 (1d) of the statutes is created to read:

48.32 (1d) If the petition alleges that the child has committed an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the child's county of residence and if the judge or juvenile court commissioner determines that volunteer supervision under that volunteers in probation program will likely benefit the child and the community, the judge or juvenile court commissioner may establish as a condition under sub. (1) that the child be placed with that volunteers in probation program under such conditions as the judge or juvenile court commissioner determines are reasonable and appropriate. These conditions may include, but need not be limited to, any of the following:

(a) A directive to a volunteer to provide for the child a role model, informal counseling, general monitoring and monitoring of the conditions established by the judge or juvenile court commissioner, or any combination of these functions.

(b) Any other conditions that the judge or juvenile court commissioner may establish under this section.

**SECTION 4.** 48.34 (14) of the statutes is created to read:

48.34 (14) VOLUNTEERS IN PROBATION PROGRAM. If the child is adjudicated delinquent for the commission of an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the child's county of residence and if the judge determines that volunteer supervision under that volunteers in probation program will likely benefit the child and the community, placement of the child with that volunteers in probation program under such conditions as the judge determines are reasonable and appropriate. These conditions may include, but need not be limited to, any of the following:

(a) A directive to a volunteer to provide for the child a role model, informal counseling, general monitoring and monitoring of the conditions established by the judge, or any combination of these functions.

(b) Any other disposition that the judge may impose under this section, except a disposition under sub. (4m).

**SECTION 5.** 303.09 of the statutes is amended to read:

**303.09 Huber facilities.** (1) The county board of any county may establish, relocate and maintain an unlocked facility for use exclusively by persons granted leave privileges under s. 303.08 (1) and persons confined under s. 973.09 (4) or 973.11 (1)(b). The facility need not be located at the county seat.

(2) The county boards of 2 or more counties may jointly establish, relocate and maintain a facility described in sub. (1). The operation and expenses of the facility shall be governed by an agreement between those counties. In a jointly established facility, authority under ss. 303.08 (2m) ~~and~~ 973.09 (4) and 973.11 (1)(b) may be exercised by a sheriff of any of the counties which jointly establish the facility. The agreement shall specify who has authority to act under ss. 303.08 (2m) ~~and~~ 973.09 and 973.11 (1)(b).

**SECTION 6.** 971.40 of the statutes is created to read:

**971.40 Deferred prosecution agreement; placement with volunteers in probation program.** The court, district attorney and defendant may enter into a deferred prosecution agreement for the defendant to be placed with a volunteers in probation program under s. 973.11. The agreement must include the requirement that the defendant comply with the court's order under s. 973.11 (1).

**SECTION 7.** 973.11 of the statutes is created to read:

**973.11 Placements with volunteers in probation program.** (1) PLACEMENTS. If a person is convicted of or pleads guilty or no contest to one or more misdemeanors for which mandatory periods of imprisonment are not required, if the chief judge of the judicial administrative district has approved a volunteers in probation program established in the applicable county, and if the court decides that volunteer supervision under the program will likely benefit the person and the community and subject to the limitations under sub. (3), the court may withhold sentence or judgment of conviction and order that the person be placed with that volunteers in probation program. Except as provided in sub. (3), the order shall provide any conditions that the court determines are reasonable and appropriate and may include, but need not be limited to, one or more of the following:

(a) A directive to a volunteer to provide one or more of the following functions for the defendant:

1. Role model.
2. Informal counseling.
3. General monitoring.
4. Monitoring of conditions set by the court.

(b) Any requirement that the court may impose under s. 973.09 (1g), (1x), (4) and (7m).

(2) APPROVAL OF PROGRAMS. In each judicial administrative district under s. 757.60, the chief judge of the district may approve volunteers in probation programs established in the district for placements under this section.

(3) STATUS. A defendant who is placed with a volunteers in probation program under sub. (1) is subject to the conditions set by the court. The defendant is not on probation under ss. 973.09 and 973.10 and the department of corrections is not responsible for supervising him or her. A court may place a defendant under sub. (1) prior to conviction only if a deferred prosecution agreement is reached under s. 971.40. In that case, the person is subject to the conditions set by the court under this section and the conditions provided in the agreement.

(4) TERM. The court shall set the length of the order, which may not exceed 2 years unless extended pursuant to a hearing under sub. (5). When the defendant has satisfied the conditions of the order, the court shall discharge the defendant and dismiss the charges against the defendant if a judgment of conviction was not previously entered.

(5) FAILURE TO COMPLY WITH ORDER. (a) If the defendant is alleged to have violated the conditions of an order under sub. (1), the court may hold a hearing regarding the allegations. The court shall notify the defendant at least 7 days prior to holding any such hearing. At the hearing, the defendant has the right to each of the following:

1. Counsel.
2. Remain silent.
3. Present and cross-examine witnesses.

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4. Have the hearing recorded by a court reporter.

(b) The court may extend the period of supervision for up to 45 days to accommodate a hearing under this subsection.

(c) Failure of the defendant to appear at a hearing under this subsection tolls the running of the period of supervision.

(d) If the court finds that the violation occurred, it may impose a sentence, revise the conditions of the order or allow the order to continue.

(6) OTHER MODIFICATIONS TO ORDER. At any time prior to the expiration of the order the court may shorten the length of the order or modify the conditions of the order. The court shall hold a hearing regarding a determination under this subsection if the defendant or district attorney requests a hearing.

**SECTION 8.** 974.06 (1) of the statutes is amended to read:

974.06 (1) After the time for appeal or postconviction remedy provided in s. 974.02 has expired, a prisoner in custody under sentence of a court or a person convicted and placed with a volunteers in probation program under s. 973.11 claiming the right to be released upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state, that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

**SECTION 9.** 974.06 (3) (intro.) of the statutes is amended to read:

974.06 (3) (intro.) Unless the motion and the files and records of the action conclusively show that the ~~prisoner~~ person is entitled to no relief, the court shall:

**SECTION 10.** 974.06 (3) (d) of the statutes is amended to read:

974.06 (3) (d) Determine the issues and make findings of fact and conclusions of law. If the court finds that the judgment was rendered without jurisdiction, or that

the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the ~~prisoner~~ person as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the ~~prisoner~~ person or resentence him or her or grant a new trial or correct the sentence as may appear appropriate.

**SECTION 11.** 974.06 (4) of the statutes is amended to read:

974.06 (4) All grounds for relief available to a ~~prisoner~~ person under this section must be raised in his or her original, supplemental or amended motion. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the ~~prisoner~~ person has taken to secure relief may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.

**SECTION 12.** 974.06 (6) of the statutes is amended to read:

974.06 (6) Proceedings under this section shall be considered civil in nature, and the burden of proof shall be upon the ~~prisoner~~ person.

**SECTION 13.** 974.06 (8) of the statutes is amended to read:

974.06 (8) A petition for a writ of habeas corpus or an action seeking that remedy in behalf of a ~~prisoner~~ person who is authorized to apply for relief by motion under this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced the ~~prisoner~~ person, or that the court has denied the ~~prisoner~~ person relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his or her detention.

**SECTION 14. Initial applicability.** This act first applies to agreements and orders made on the effective date of this SECTION.