



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBs0257/1  
RLR:lmk:rs

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 666**

October 17, 2005 – Offered by Representative HONADEL.

- 1 **AN ACT** *to amend* 973.09 (7m) (a); and *to create* 973.09 (4) (d) of the statutes;  
2 **relating to:** reduction in a jail term for good behavior or community service.

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Under current law, a person who is convicted of a crime may be placed on probation as an alternative to sentencing (unless the person is convicted of a crime punishable by life imprisonment or certain crimes for which a mandatory minimum penalty must be imposed). As a condition of probation, a person may be confined in jail for up to one year. Also under current law, a person sentenced to serve time in jail, as opposed to serving time in jail as a condition of probation, may earn a reduction in the jail term for good behavior (“good time”). Court rulings in *Prue v. State*, 63 Wis. 2d 109 (1974), and *State v. Fearing*, 239 Wis. 2d 105 (Ct. App. 2000), provide that a person serving time in jail as a condition of probation is not eligible to earn statutory good time (except for a person on probation for a crime for which there is a mandatory or presumptive minimum penalty). A court may, however, specifically order that a person serving time in jail as a condition of probation be eligible to receive good time. Finally, a person serving time in jail as a condition of probation is eligible to earn a reduction in the jail term for performing court ordered community service.

This substitute amendment codifies the rulings in *Prue* and *Fearing* that a person serving time in jail as a condition of probation is not eligible to earn statutory good time. The substitute amendment further provides that a court may not order that a person placed on probation for a sex offense and ordered to serve time in jail as a condition of probation be eligible to earn good time. Finally, the substitute

amendment provides that a person placed on probation for a sex offense and ordered to serve time in jail as a condition of probation may not earn a reduction in the jail term for performing community service. A sex offense is an offense for which a person may be included on the Department of Corrections sex offender registry. The applicable offenses are: first-, second-, or third-degree sexual assault; sexual assault of a child; sexual exploitation by a therapist; incest; sexual exploitation of a child; causing a child to view or listen to sexual activity; incest with a child; child enticement; using a computer to facilitate a child sex crime; soliciting a child for prostitution; sexual assault of a student by school instructional staff; exposing a child to harmful material; possession of child pornography; child sex offender working with children; abduction of another's child; false imprisonment or kidnapping, if the victim is a minor and the offender is not the victim's parent; or solicitation, conspiracy, or attempt to commit any of the above listed offenses.

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

1           **SECTION 1.** 973.09 (4) (d) of the statutes is created to read:

2           973.09 (4) (d) Except as provided under sub. (1) (d), a person confined as a  
3 condition of probation under this subsection is not eligible to earn good time credit  
4 under s. 302.43. A court may not order that a person placed on probation for a sex  
5 offense, as defined in s. 301.45 (1d) (b), and confined as a condition of probation under  
6 this subsection be eligible for a reduction in the period of confinement for good  
7 behavior.

8           **SECTION 2.** 973.09 (7m) (a) of the statutes is amended to read:

9           973.09 (7m) (a) Except as provided in s. 943.017 (3), the court may require as  
10 a condition of probation that the probationer perform community service work for a  
11 public agency or a nonprofit charitable organization. The number of hours of work  
12 required may not exceed what would be reasonable considering the seriousness of the  
13 offense and any other offense which is read into the record at the time of conviction.  
14 An order may only apply if agreed to by the probationer and the organization or  
15 agency. The court shall ensure that the probationer is provided a written statement

1 of the terms of the community service order and that the community service order  
2 is monitored. If the court requires the conditions provided in this subsection and sub.  
3 (4), the probationer reduces the period of confinement under sub. (4) at a rate of one  
4 day for each 3 days of work performed, except that a person placed on probation for  
5 a sex offense, as defined in s. 301.45 (1d) (b), is not eligible for a reduction in the  
6 period of confinement for work performed. A day of work equals 8 hours of work  
7 performed.

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(END)