

CHAPTER 304

PAROLES AND PARDONS

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Cross-reference: See definitions in s. 301.01.

304.01 Parole commission and commission chairperson; general duties. (1) The chairperson of the parole commission shall administer and supervise the commission and its activities and shall be the final parole granting authority, except as provided in s. 304.02.

(2) The parole commission shall conduct regularly scheduled interviews to consider the parole of eligible inmates of the adult correctional institutions under the control of the department of corrections, eligible inmates transferred under ch. 51 and under the control of the department of health and family services and eligible inmates in any county house of correction. The department of corrections shall provide all of the following to the parole commission:

(a) Records relating to inmates which are in the custody of the department and are necessary to the conduct of the commission's responsibilities.

(b) Scheduling assistance for parole interviews at the correctional institutions.

(c) Clerical support related to the parole interviews.

(d) Appropriate physical space at the correctional institutions to conduct the parole interviews.

History: 1989 a. 31; 1995 a. 27 s. 9126 (19).

304.02 Special action parole release. (1) The department shall use a special action release program to relieve crowding in state prisons by releasing certain prisoners to parole supervision using a procedure other than mandatory release under s. 302.11 or release under s. 304.06 (1) (b).

(2) The department shall promulgate rules for the special action release program, including eligibility criteria, procedures for the secretary to decide whether to grant a prisoner a special action release to parole supervision, procedures for notifying persons, offices or agencies under s. 304.06 (1) (c) and (g) of releases, and conditions of release. If applicable, the department shall also comply with s. 304.063.

(3) Notwithstanding any eligibility criteria prescribed by department rule, a prisoner is eligible for special action release to parole supervision without meeting the eligibility criteria if all of the following conditions are met:

(a) The prisoner population equals or exceeds the statewide prisoner population limit promulgated by rule under s. 301.055.

(b) The prisoner is not currently incarcerated regarding a felony conviction for an assaultive crime.

(c) The institution social worker or the probation, extended supervision and parole agent of record has reason to believe the prisoner will be able to maintain himself or herself in society without engaging in assaultive activity.

(d) The inmate is not granted a special action release more than 18 months before his or her expected release date under s. 302.11.

(e) The prisoner is eligible for release under s. 304.06 (1) (b).

(4) If a person is sentenced under s. 973.032, he or she is eligible for a release to parole supervision under this section and remains in the intensive sanctions program unless discharged by the department under s. 301.048 (6) (a).

(4m) A prisoner paroled under this section is subject to the restriction under s. 304.06 (2m), if applicable, relating to the counties to which prisoners may be paroled.

(5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life sentence under s. 939.62 (2m) (c) or 973.014 (1) (c) or (1g) is not eligible for release to parole supervision under this section.

(6) Notwithstanding subs. (1) to (3), a prisoner is not eligible for release to parole supervision under this section if he or she is serving a bifurcated sentence under s. 973.01.

History: 1989 a. 31, 336; 1991 a. 39; 1993 a. 16, 79, 97, 289; 1995 a. 48; 1997 a. 275, 283, 326; 1999 a. 32.

304.06 Paroles from state prisons and house of correction. (1) (a) In this subsection:

1. "Member of the family" means spouse, child, sibling, parent or legal guardian.

2. "Victim" means a person against whom a crime has been committed.

(b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2), 973.01 (6) or 973.0135, the parole commission may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year or more in a county house of correction or a county reforestation camp organized under s. 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6 months, whichever is greater. Except as provided in s. 939.62 (2m) (c) or 973.014 (1) (b) or (c), (1g) or (2), the parole commission may parole an inmate serving a life term when he or she has served 20 years, as modified by the formula under s. 302.11 (1) and subject to extension under s. 302.11 (1q) and (2), if applicable. The person serving the life term shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). The secretary may grant special action parole releases under s. 304.02. The department or the parole commission shall not provide any convicted offender or other person sentenced to the department's custody any parole eligibility or evaluation until the person has been confined at least 60 days following sentencing.

(c) If an inmate applies for parole under this subsection, the parole commission shall make a reasonable attempt to notify the following, if they can be found, in accordance with par. (d):

1. The office of the court that participated in the trial or that accepted the inmate's plea of guilty or no contest, whichever is applicable.

2. The office of the district attorney that participated in the trial of the inmate or that prepared for proceedings under s. 971.08 regarding the inmate's plea of guilty or no contest, whichever is applicable.

3. The victim of the crime committed by the inmate or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian, upon submission of a card under par. (f) requesting notification.

(d) 1. The notice under par. (c) shall inform the offices and persons under par. (c) 1. to 3. of the manner in which they may provide written statements under this subsection, shall inform persons under par. (c) 3. of the manner in which they may attend interviews or hearings and make statements under par. (eg) and shall inform persons under par. (c) 3. who are victims, or family members of victims, of crimes specified in s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07 of the manner in which they may have direct input in the parole decision-making process under par. (em). The parole commission shall provide notice under this paragraph for an inmate's first application for parole and, upon request, for subsequent applications for parole.

2. The notice shall be by 1st class mail to an office's or a person's last-known address sent at least 3 weeks before the interview or hearing upon the parole application.

3. The notice shall state the name of the inmate, the date and term of the sentence and the date when the written statement must be received in order to be considered. If the notice is to an office under par. (c) 1. or 2., the notice shall also state the crime of which the inmate was convicted.

3g. If applicable, the notice shall state the date of the interview or hearing that the person may attend.

3m. If applicable, the notice shall state the manner in which the person may have direct input in the parole decision-making process.

4. If the notice is for a first application for parole, the notice shall inform the offices and persons under par. (c) 1. to 3. that notification of subsequent applications for parole will be provided only upon request.

(e) The parole commission shall permit any office or person under par. (c) 1. to 3. to provide written statements. The parole commission shall give consideration to any written statements provided by any such office or person and received on or before the date specified in the notice. This paragraph does not limit the authority of the parole commission to consider other statements or information that it receives in a timely fashion.

(eg) The parole commission shall permit any person under par. (c) 3. to attend any interview or hearing on the parole application of an applicable inmate and to make a statement at that interview or hearing.

(em) The parole commission shall promulgate rules that provide a procedure to allow any person who is a victim, or a family member of a victim, of a crime specified in s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07 to have direct input in the parole decision-making process.

(f) The parole commission shall design and prepare cards for persons specified in par. (c) 3. to send to the commission. The cards shall have space for these persons to provide their names and addresses, the name of the applicable prisoner and any other information the parole commission determines is necessary. The parole commission shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in par. (c) 3. These persons may send completed cards to the parole commission. All commission records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s.

19.35 (1). Before any written statement of a person specified in par. (c) 3. is made a part of the documentary record considered in connection with a parole hearing under this section, the parole commission shall obliterate from the statement all references to the mailing addresses of the person. A person specified in par. (c) 3. who attends an interview or hearing under par. (eg) may not be required to disclose at the interview or hearing his or her mailing addresses.

(g) Before a person is released on parole under this subsection, the parole commission shall so notify the municipal police department and the county sheriff for the area where the person will be residing. The notification requirement under this paragraph does not apply if a municipal department or county sheriff submits to the parole commission a written statement waiving the right to be notified. If applicable, the department shall also comply with s. 304.063.

(1m) The parole commission may waive the 25% or 6-month service of sentence requirement under sub. (1) (b) under any of the following circumstances:

(a) If it determines that extraordinary circumstances warrant an early release and the sentencing court has been notified and permitted to comment upon the proposed recommendation.

(b) If the department recommends that the person be placed on parole that includes the condition under sub. (1x) and the commission orders that condition.

(1q) (a) In this subsection, "serious child sex offender" means a person who has been convicted of committing a crime specified in s. 948.02 (1) or (2) or 948.025 (1) against a child who had not attained the age of 13 years.

(b) The parole commission or the department may require as a condition of parole that a serious child sex offender undergo pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. This paragraph does not prohibit the department from requiring pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen as a condition of probation.

(c) In deciding whether to grant a serious child sex offender release on parole under this subsection, the parole commission may not consider, as a factor in making its decision, that the offender is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or that the offender is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

(1x) The parole commission may require as a condition of parole that the person is placed in the intensive sanctions program under s. 301.048. In that case, the person is in the legal custody of the department under that section and is subject to revocation of parole under sub. (3).

(1y) If a person is sentenced under s. 973.032, he or she is eligible for a release to parole supervision under this section and remains in the intensive sanctions program unless discharged by the department under s. 301.048 (6) (a).

(2) No prisoner under sub. (1) may be paroled until the parole commission is satisfied that the prisoner has adequate plans for suitable employment or to otherwise sustain himself or herself. The paroled prisoner shall report to the department in such manner and at such times as it requires.

(2m) (a) In this subsection, "serious sex offense" means a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07 or a solicitation, conspiracy or attempt to commit a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07.

(b) Except as provided in par. (c), no prisoner who is serving a sentence for a serious sex offense may be paroled to any county where there is a correctional institution that has a specialized sex offender treatment program.

(c) A prisoner serving a sentence for a serious sex offense may be paroled to a county where there is a correctional institution that

has a specialized sex offender treatment program if that county is also the prisoner's county of residence.

(d) The parole commission or the department shall determine a prisoner's county of residence for the purposes of this subsection by doing all of the following:

1. The parole commission or the department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as *prima facie* evidence of intent to remain.

2. The parole commission or the department shall apply the criteria for consideration of residence and physical presence under subd. 1. to the facts that existed on the date that the prisoner committed the serious sex offense that resulted in the sentence the prisoner is serving.

(3) Every paroled prisoner remains in the legal custody of the department unless otherwise provided by the department. If the department alleges that any condition or rule of parole has been violated by the prisoner, the department may take physical custody of the prisoner for the investigation of the alleged violation. If the department is satisfied that any condition or rule of parole has been violated it shall afford the prisoner such administrative hearings as are required by law. Unless waived by the parolee, the final administrative hearing shall be held before a hearing examiner from the division of hearings and appeals in the department of administration who is licensed to practice law in this state. The hearing examiner shall enter an order revoking or not revoking parole. Upon request by either party, the administrator of the division of hearings and appeals shall review the order. The hearing examiner may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to (10). If the parolee waives the final administrative hearing, the secretary of corrections shall enter an order revoking or not revoking parole. If the examiner, the administrator upon review, or the secretary in the case of a waiver finds that the prisoner has violated the rules or conditions of parole, the examiner, the administrator upon review, or the secretary in the case of a waiver, may order the prisoner returned to prison to continue serving his or her sentence, or to continue on parole. If the prisoner claims or appears to be indigent, the department shall refer the prisoner to the authority for indigency determinations specified under s. 977.07 (1).

(3d) Upon demand prior to a revocation hearing under sub. (3), the district attorney shall disclose to a defendant the existence of any videotaped oral statement of a child under s. 908.08 which is within the possession, custody or control of the state and shall make reasonable arrangements for the defendant and defense counsel to view the videotaped statement. If, subsequent to compliance with this subsection, the state obtains possession, custody or control of such a videotaped statement, the district attorney shall promptly notify the defendant of that fact and make reasonable arrangements for the defendant and defense counsel to view the videotaped statement.

(3e) The division of hearings and appeals in the department of administration shall make either an electronic or stenographic record of all testimony at each parole revocation hearing. The division shall prepare a written transcript of the testimony only at the request of a judge who has granted a petition for judicial review of the revocation decision. Each hearing notice shall include notice of the provisions of this subsection and a statement that any person who wants a written transcript may record the hearing at his or her own expense.

(3m) If the convicting court is informed by the department that a prisoner on parole has absconded and that the prisoner's whereabouts are unknown, the court may issue a *caapias* for execution by the sheriff.

(4) (a) If any person convicted of a misdemeanor or traffic offense, any person convicted of a criminal offense and sentenced to 2 years or less in a house of correction or any person committed to a house of correction for treatment and rehabilitation for addiction to a controlled substance or controlled substance analog

under ch. 961, during the period of confinement or treatment appears to have been rehabilitated or cured to the extent, in the opinion of the superintendent of the house of correction or the person in charge of treatment and rehabilitation of a prisoner at that institution, that the prisoner may be released, the prisoner may be released upon conditional parole. Before a person is released on conditional parole under this paragraph, the superintendent or person in charge of treatment and rehabilitation shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department a written statement waiving the right to be notified.

(b) Application for such conditional parole shall be made in writing by the superintendent of the house of correction to the court of commitment stating the facts justifying the application. The court shall proceed to take testimony in support of the application. If the judge is satisfied from the evidence that there is good reason to believe that the prisoner has been rehabilitated or cured to the extent that he or she may be released and that proper provision for employment and residence has been made for the prisoner, the judge may order the prisoner's release on parole to the superintendent of the house of correction, on such conditions to be stated in the order of release as the judge determines. In the event of violation of any such conditions by the prisoner, he or she shall be returned to the court and may be recommitted to the house of correction to serve the remainder of his or her sentence or for further treatment.

History: 1971 c. 125, 219; 1973 c. 90, 198, 333; 1975 c. 156, 199; 1977 c. 29, 353, 418, 449; 1979 c. 356; 1981 c. 266; 1983 a. 27, 64, 197, 528, 538; 1985 a. 262 s. 8; 1987 a. 244 ss. 1 to 3, 7; 1987 a. 412; 1989 a. 31 ss. 1699 to 1700p; Stats. 1989 s. 304.06; 1989 a. 107, 122; 1991 a. 39; 1993 a. 79, 89, 97, 178, 194, 227, 289, 377, 479, 491; 1995 a. 27, 77, 352, 387, 444, 448; 1997 a. 133, 181, 237, 275, 283, 284, 326; 1999 a. 32.

Amendment to s. 57.06 (1), 1987 stats. [now s. 304.06 (1)] by ch. 90, laws of 1973, did not restore right of trial court to fix minimum sentences. Ch. 90 did not remove 1 yr. period under ss. 973.02 and 973.15. Edelman v. State, 62 Wis. 2d 613, 215 N.W.2d 386.

A certiorari proceeding in the committing court to review a revocation of parole or probation is not a criminal proceeding. Contrary language in State ex rel. H&SS Dept. v. Circuit Court, 57 Wis. 2d 329, is withdrawn. State ex rel. Hanson v. H&SS Dept. 64 Wis. 2d 367, 219 N.W.2d 267.

Refusal of parole board to grant discretionary parole is subject to judicial review. Failure to notify prisoner of standards and criteria applied to parole application constituted denial of due process. State ex rel. Tyznik v. H&SS Dept. 71 Wis. 2d 169, 238 N.W.2d 66.

Every violation of probation or parole does not result in automatic revocation. Snajder v. State, 74 Wis. 2d 303, 246 N.W.2d 665.

Parole revocation hearing is not part of a criminal prosecution and thus the full panoply of rights, including Miranda warnings and the exclusionary rule, are not applicable. State ex rel. Struzik v. H&SS Dept. 77 Wis. 2d 216, 252 N.W.2d 660.

Neither double jeopardy clause nor doctrine of collateral estoppel precludes parole revocation on grounds of parolee's conduct related to alleged crime for which parolee was charged and acquitted. State ex rel. Flowers v. H&SS Dept. 81 Wis. 2d 376, 260 N.W.2d 727.

Presence incarceration due to indigency must be credited towards a life sentence for the purpose of determining eligibility for parole. Wilson v. State, 82 Wis. 2d 657, 264 N.W.2d 234.

Parole agent's failure to act on knowledge of similar prior violations did not preclude revocation. Van Ermen v. H&SS Dept. 84 Wis. 2d 57, 267 N.W.2d 17 (1978).

Prison inmates subject to parole rescission are entitled to Morrissey–Gagnon due process. State ex rel. Klinke v. H&SS Dept. 87 Wis. 2d 110, 273 N.W.2d 379 (Ct. App. 1978).

Secretary's authority to revoke under s. 57.06 (3), 1987 stats. [now s. 304.06 (3)] cannot be bound by agent's representations. State ex rel. Lewis v. H&SS Dept. 89 Wis. 2d 220, 278 N.W.2d 232 (Ct. App. 1979).

Parole violation may not be proved entirely by unsubstantiated hearsay testimony. State ex rel. Henschel v. H&SS Dept. 91 Wis. 2d 268, 280 N.W.2d 785 (Ct. App. 1979).

Equal protection does not require symmetry in probation and parole systems. State v. Aderhold, 91 Wis. 2d 306, 284 N.W.2d 108 (Ct. App. 1979).

Probationer's due process right to prompt revocation proceedings was not triggered where probationer was detained as result of unrelated criminal proceedings. State ex rel. Alvarez v. Lotter, 91 Wis. 2d 329, 283 N.W.2d 408 (Ct. App. 1979).

Inmate who entered into Mutual Agreement Program (MAP) "contract" for discretionary parole may not bring civil action for breach of contract. Coleman v. Percy, 96 Wis. 2d 578, 292 N.W.2d 615 (1980).

Mandatory release parole violator may be required to serve beyond final discharge date originally set by court. State ex rel. Bieser v. Percy, 97 Wis. 2d 702, 295 N.W.2d 179 (Ct. App. 1980).

Because courts have exclusive criminal jurisdiction, criminal charges against defendant were not collaterally estopped even though parole revocation hearing examiner concluded that defendant's acts did not merit parole revocation. State v. Spanbauer, 108 Wis. 2d 548, 322 N.W.2d 511 (Ct. App. 1982).

Due process was not violated by holding two revocation hearings dealing with same conduct where first hearing was based on facts and second hearing was based on conviction. *State ex rel. Leroy v. H&SS Dept.* 110 Wis. 2d 291, 329 N.W.2d 229 (Ct. App. 1982).

Sub. (1r) creates a presumption for parole for inmates who obtain a high school equivalency diploma that does not otherwise apply; to give effect to that presumption, a substantively different standard must be applied than in ordinary parole cases under sub. (1) (b). *Hansen v. Dane County Circuit Ct.* 181 Wis. 2d 993, 513 N.W.2d 139 (Ct. App. 1994).

When probationer or parolee is charged with a crime and may have otherwise violated conditions of release, revocation hearings based on the non-criminal violations should be held without delay. 65 Atty. Gen. 20.

Convict has no constitutional right to be paroled. *Greenholtz v. Nebraska Penal Inmates.* 442 U.S. 1 (1979).

When required by the right effectively to present a defense, the state, having authority to do so, in the exercise of sound discretion must issue, and for an indigent pay the costs of, compulsory process to obtain the attendance of witnesses on behalf of probationers and parolees at revocation proceedings. 63 Atty. Gen. 176.

Probation and parole revocation in Wisconsin. 1977 WLR 503.

304.062 Ordering parolees and persons on extended supervision to perform community service work.

(1) The department may order that a parolee or a person on extended supervision perform community service work for a public agency or a nonprofit charitable organization. An order may apply only if agreed to by the parolee or the person on extended supervision and the organization or agency. The department shall ensure that the parolee or the person on extended supervision is provided a written statement of the terms of the community service order and shall monitor the compliance of the parolee or person on extended supervision with the community service order.

(2) Any organization or agency acting in good faith to which a parolee or person on extended supervision is assigned under an order under this section has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the parolee or person on extended supervision. The department has immunity from any civil liability for acts or omissions by or impacting on the parolee or person on extended supervision regarding the assignment under this section.

History: 1995 a. 96; 1997 a. 283.

304.063 Notification prior to release on extended supervision or parole. (1) In this section:

(a) “Member of the family” means spouse, child, sibling, parent or legal guardian.

(b) “Victim” means a person against whom a crime has been committed.

(2) Before a prisoner is released on parole under s. 302.11, 304.02 or 304.06 or on extended supervision under s. 302.113 or 302.114, if applicable, for a violation of s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06 or 948.07, the department shall make a reasonable attempt to notify all of the following persons, if they can be found, in accordance with sub. (3) and after receiving a completed card under sub. (4):

(a) The victim of the crime committed by the prisoner or, if the victim died as a result of the crime, an adult member of the victim’s family or, if the victim is younger than 18 years old, the victim’s parent or legal guardian.

(b) Any witness who testified against the prisoner in any court proceeding involving the offense.

(3) The department shall make a reasonable attempt to send the notice, postmarked at least 7 days before a prisoner is released on parole or extended supervision, to the last-known address of the persons under sub. (2).

(4) The department shall design and prepare cards for any person specified in sub. (2) to send to the department. The cards shall have space for any such person to provide his or her name and address, the name of the applicable prisoner and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in sub. (2). These persons may send completed cards to the department. All department records or portions of records that

relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

History: 1993 a. 97, 227, 479, 491; 1997 a. 181, 283.

304.065 Offender release information. The department shall obtain computer software and use the software to provide local law enforcement agencies with information regarding offenders who have been released to or placed in the agencies’ jurisdictions.

History: 1993 a. 98.

304.071 Military parole. (1) The parole commission may at any time grant a parole to any prisoner in any penal institution of this state, or the department may at any time suspend the supervision of any person who is on probation or parole to the department, if the prisoner or person on probation or parole is eligible for induction into the U.S. armed forces. The suspension of parole or probation shall be for the duration of his or her service in the armed forces; and the parole or probation shall again become effective upon his or her discharge from the armed forces in accordance with regulations prescribed by the department. If he or she receives an honorable discharge from the armed forces, the governor may discharge him or her and the discharge has the effect of a pardon. Upon the suspension of parole or probation by the department, the department shall issue an order setting forth the conditions under which the parole or probation is suspended, including instructions as to where and when and to whom the paroled person shall report upon discharge from the armed forces.

(2) If a prisoner is not eligible for parole under s. 939.62 (2m) (c), 961.49 (2), 973.01 (6), 973.014 (1) (c) or (1g) or 973.032 (5), he or she is not eligible for parole under this section.

History: 1989 a. 31 ss. 1702, 1703; Stats. 1989 s. 304.071; 1991 a. 39; 1993 a. 289; 1995 a. 48, 448; 1997 a. 283, 326; 1999 a. 32.

304.072 Period of probation, extended supervision or parole tolled. (1)

If the department of corrections in the case of a parolee, probationer or person on extended supervision who is reinstated or waives a hearing or the division of hearings and appeals in the department of administration in the case of a hearing determines that a parolee, probationer or person on extended supervision has violated the terms of his or her supervision, the department or division may toll all or any part of the period of time between the date of the violation and the date an order of revocation or reinstatement is entered, subject to credit according to the terms of s. 973.155 for any time the parolee, probationer or person on extended supervision spent confined in connection with the violation.

(2) If a parolee, probationer or person on extended supervision is alleged to have violated the terms of his or her supervision but the department or division determines that the alleged violation was not proven, the period between the alleged violation and the determination shall be treated as service of the probationary, extended supervision or parole period.

(3) Except as provided in s. 973.09 (3) (b), the department preserves jurisdiction over a probationer, parolee or person on extended supervision if it commences an investigation, issues a violation report or issues an apprehension request concerning an alleged violation prior to the expiration of the probationer’s, parolee’s or person’s term of supervision.

(4) The sentence of a revoked parolee or person on extended supervision resumes running on the day he or she is received at a correctional institution subject to sentence credit for the period of custody in a jail, correctional institution or any other detention facility pending revocation according to the terms of s. 973.155.

(5) The sentence of a revoked probationer shall be credited with the period of custody in a jail, correctional institution or any other detention facility pending revocation and commencement of sentence according to the terms of s. 973.155.

History: 1975 c. 41, 199; 1977 c. 353; 1983 a. 528; 1989 a. 31 s. 1704; Stats. 1989 s. 304.072; 1989 a. 107; 1997 a. 283.

NOTE: The following annotations concern s. 57.072, 1975 stats., [now s. 304.072] which was repealed and recreated by ch. 353, laws of 1977 and again by Act 528, laws of 1983.

The court can revoke a probation after the probationary period has expired when the defendant has committed several crimes during the period. *Williams v. State*, 50 Wis. 2d 709, 184 N.W.2d 844.

Before tolling statute applies, department must make final determination that violation occurred. *Locklear v. State*, 87 Wis. 2d 392, 274 N.W.2d 898 (Ct. App. 1978).

Where revocation proceedings were initiated prior to expiration of parole period, parole was properly revoked after period expired. *State ex rel. Avery v. Percy*, 99 Wis. 2d 459, 299 N.W.2d 886 (Ct. App. 1980).

Department may not grant jail credit where it is not provided for by statute. 71 Atty. Gen. 102.

304.073 Administrative and minimum supervision.

(1) In this section:

(a) “Administrative supervision” has the meaning given in rules promulgated under s. 301.08 (1) (c).

(b) “Minimum supervision” has the meaning given in rules promulgated under s. 301.08 (1) (c).

(2) Beginning on January 1, 1996, the department shall charge a fee to any probationer, parolee or person on extended supervision who is under minimum or administrative supervision and is supervised by the department. The fee does not apply if the person is supervised by a vendor under s. 301.08 (1) (c). The department shall set the fee sufficient to cover the cost of supervision. The department shall collect moneys for the fee charged under this subsection and credit those moneys to the appropriation account under s. 20.410 (1) (ge).

(2m) (a) If a probationer, parolee or person on extended supervision who owes unpaid fees to the department under sub. (2) is discharged from probation or from his or her sentence before the department collects the unpaid fees, the department shall, at the time of discharge, issue a notice to the probationer, parolee or person on extended supervision that states that he or she owes unpaid fees under sub. (2) and that he or she is responsible for the payment of the unpaid fees. The notice under this paragraph shall be issued with the certificate of discharge required under s. 304.078 or 973.09 (5).

(b) The department may request the attorney general to bring a civil action to recover unpaid fees owed to the department under sub. (2) by a person who has been discharged from probation or from his or her sentence and who, at the time of discharge, owed the department unpaid fees under sub. (2). Before requesting the attorney general to bring a civil action under this paragraph, the department shall deduct any fees owed to the department that were inaccurately assessed against the person.

(3) The department shall promulgate rules setting the rate under sub. (2) and providing the procedure and timing for collecting the fee charged under sub. (2).

(4) The department may decide not to charge a fee under sub. (2) to any probationer, parolee or person on extended supervision if the probationer, parolee or person on extended supervision demonstrates that he or she is unable to pay the fee because of any of the following:

(a) The probationer, parolee or person on extended supervision is undergoing treatment approved by the department and is unable to work.

(b) The probationer, parolee or person on extended supervision has a statement from a physician certifying to the department that the probationer, parolee or person on extended supervision should be excused from working for medical reasons.

History: 1995 a. 27; 1997 a. 27, 283.

304.074 Reimbursement fee for persons on probation, parole, and extended supervision. (1) In this section:

(a) “Administrative supervision” has the meaning given in rules promulgated under s. 301.08 (1) (c).

(b) “Minimum supervision” has the meaning given in rules promulgated under s. 301.08 (1) (c).

(2) Beginning on January 1, 1996, the department shall charge a fee to probationers, parolees and persons on extended supervision to partially reimburse the department for the costs of providing supervision and services. The department shall set varying rates for probationers, parolees or persons on extended supervision based on ability to pay and with the goal of receiving at least \$1 per day, if appropriate, from each probationer, parolee and person on extended supervision. The department shall not charge a fee while the probationer, parolee or person on extended supervision is exempt under sub. (3). The department shall collect moneys for the fees charged under this subsection and credit those moneys to the appropriation account under s. 20.410 (1) (gf).

(3) The department may decide not to charge a fee under sub. (2) to any probationer, parolee or person on extended supervision while he or she meets any of the following conditions:

(a) Is unemployed.

(b) Is pursuing a full-time course of instruction approved by the department.

(c) Is undergoing treatment approved by the department and is unable to work.

(d) Has a statement from a physician certifying to the department that the probationer, parolee or person on extended supervision should be excused from working for medical reasons.

(4) The fee under sub. (2) does not apply to any probationer, parolee or person on extended supervision who is under minimum or administrative supervision.

(4m) (a) If a probationer, parolee or person on extended supervision who owes unpaid fees to the department under sub. (2) is discharged from probation or from his or her sentence before the department collects the unpaid fees, the department shall, at the time of discharge, issue a notice to the probationer, parolee or person on extended supervision that states that he or she owes unpaid fees under sub. (2) and that he or she is responsible for the payment of the unpaid fees. The notice under this paragraph shall be issued with the certificate of discharge required under s. 304.078 or 973.09 (5).

(b) The department may request the attorney general to bring a civil action to recover unpaid fees owed to the department under sub. (2) by a person who has been discharged from probation or from his or her sentence and who, at the time of discharge, owed the department unpaid fees under sub. (2). Before requesting the attorney general to bring a civil action under this paragraph, the department shall deduct any fees owed to the department that were inaccurately assessed against the person.

(5) The department shall promulgate rules setting rates under sub. (2) and providing the procedure and timing for collecting fees charged under sub. (2).

History: 1995 a. 27; 1997 a. 27, 283.

304.075 Loan fund for probationers, parolees and persons on extended supervision.

The department shall create a revolving fund out of any moneys in its hands belonging to probationers, parolees or persons on extended supervision who absconded, or whose whereabouts are unknown. The fund shall be used to defray the expenses of clothing, transportation, maintenance and other necessities for probationers, parolees and persons on extended supervision who are without means to secure those necessities. All payments made from the fund shall be repaid by probationers, parolees or persons on extended supervision for whose benefit they are made whenever possible; and any moneys belonging to them so paid into the revolving fund shall be repaid to them in accordance with law, in case a claim therefor is filed with the department upon showing the legal right of the claimant to such money.

History: 1977 c. 29; 1989 a. 31 s. 1705; Stats. 1989 s. 304.075; 1997 a. 283.

304.078 Civil rights restored to convicted persons satisfying sentence. Every person who is convicted of a crime obtains a restoration of his or her civil rights by serving out his or

her term of imprisonment or otherwise satisfying his or her sentence. The certificate of the department or other responsible supervising agency that a convicted person has served his or her sentence or otherwise satisfied the judgment against him or her is evidence of that fact and that the person is restored to his or her civil rights. The department or other agency shall list in the person's certificate rights which have been restored and which have not been restored. Persons who served out their terms of imprisonment or otherwise satisfied their sentences prior to August 14, 1947, are likewise restored to their civil rights from and after September 25, 1959.

History: 1987 a. 226; 1989 a. 31 s. 1706; Stats. 1989 s. 304.078.

Restoration of civil rights is not a "pardon" for the purposes of liquor and cigarette license statutes. 60 Atty. Gen. 452.

A person convicted of a crime may vote if he has satisfied his sentence. 61 Atty. Gen. 260.

A convicted felon who has been restored to his civil rights, pursuant to 57.078, 1987 stats. [now 304.078] is barred from the office of notary public, by sec. 3, unless he has been pardoned. 63 Atty. Gen. 74.

The operation of this section on a prior conviction is irrelevant to a conviction for which a prior conviction is a predicate. *Roehl v. U.S.* 977 F.2d 375 (1992).

304.08 Applications for pardon; regulations. All applications for pardon of any convict serving sentence of one year or more, except for pardons to be granted within 10 days next before the time when the convict would be otherwise entitled to discharge pursuant to law, shall be made and conducted in the manner hereinafter prescribed, and according to such additional regulations as may from time to time be prescribed by the governor.

History: 1989 a. 31 s. 1707; Stats. 1989 s. 304.08.

Executive clemency in Wisconsin. *Bauer*, 1973 WLR 1154.

304.09 Notice of pardon application. (1) In this section:

(a) "Member of the family" means spouse, child, sibling, parent or legal guardian.

(b) "Victim" means a person against whom a crime has been committed.

(2) The notice of the pardon application shall state the name of the convict, the crime of which he or she was convicted, the date and term of sentence and the date if known, when the application is to be heard by the governor. The notice shall be served on the following persons, if they can be found:

(a) The judge who participated in the trial of the convict.

(b) The district attorney who participated in the trial of the convict.

(c) The victim or, if the victim is dead, an adult member of the victim's family.

(3) The notice shall inform the persons under sub. (2) of the manner in which they may provide written statements or participate in any applicable hearing. The applicant shall serve notice on the persons under sub. (2) (a) and (b) at least 3 weeks before the hearing of the application. The governor shall make a reasonable attempt to serve notice on the person under sub. (2) (c) at least 3 weeks before the hearing of the application. The notice shall be published at least once each week for 2 successive weeks before the hearing in a newspaper of general circulation in the county where the offense was committed. If there is no such newspaper, the notice shall be posted in a conspicuous place on the door of the courthouse of the county for 3 weeks before the hearing and published once each week for 2 consecutive weeks before the hearing in a newspaper published in an adjoining county. Publication as required in this subsection shall be completed by a date designated by the governor. The date shall be a reasonable time prior to the hearing date.

History: 1983 a. 364; 1989 a. 31 s. 1708; Stats. 1989 s. 304.09; 1997 a. 181.

304.10 Pardon application papers; victim's statement.

(1) An application for pardon shall be accompanied by the following papers:

(a) Notice of application and acknowledgments or affidavits showing due service and affidavits showing due publication and posting whenever required;

(b) A certified copy of the court record entries, the indictment or information, and any additional papers on file in the court, if obtainable, as the governor requires;

(c) A full sworn statement by the applicant of all facts and reasons upon which the application is based;

(d) Written statements by the judge and the district attorney who tried the case, if obtainable, indicating their views regarding the application and stating any circumstances within their knowledge in aggravation or extenuation of the applicant's guilt;

(e) A certificate of the keeper of the prison where the applicant has been confined showing whether the applicant has conducted himself or herself in a peaceful and obedient manner.

(2) When a victim or member of the victim's family receives notice under s. 304.09 (3), he or she may provide the governor with written statements indicating his or her views regarding the application and stating any circumstances within his or her knowledge in aggravation or extenuation of the applicant's guilt. Upon receipt of any such statement, the governor shall place the statement with the other pardon application papers.

(3) Any statement or paper containing a reference to the address of a victim or a member of the victim's family which is contained in a statement or other paper accompanying a pardon application is not subject to s. 19.35 and shall be closed to the public. The governor, using the procedure under s. 19.36 (6), shall delete any reference to the address in any statement or paper made public.

History: 1983 a. 364; 1989 a. 31 s. 1709; Stats. 1989 s. 304.10; 1991 a. 269, 316; 1995 a. 224.

304.11 Conditional pardon; enforcement. (1) In case a pardon is granted upon conditions the governor may issue a warrant to carry the conditions into effect.

(2) If it appears to the governor during the term of the sentence that the convicted person violated or failed to comply with any such condition, the governor may issue a warrant to any sheriff commanding the sheriff to arrest the convicted person and bring the convicted person before the governor.

(3) If upon inquiry it further appears to the governor that the convicted person has violated or failed to comply with any of those conditions, the governor may issue his or her warrant remanding the person to the institution from which discharged, and the person shall be confined and treated as though no pardon had been granted, except that the person loses any applicable good time which he or she had earned. If the person is returned to prison, the person is subject to the same limitations as a revoked parolee under s. 302.11 (7). The department shall determine the period of incarceration under s. 302.11 (7) (a). If the governor determines the person has not violated or failed to comply with the conditions, the person shall be discharged subject to the conditional pardon.

History: 1983 a. 528; 1989 a. 31 s. 1710; Stats. 1989 s. 304.11; 1991 a. 316.

304.115 Emergency removal. When an emergency exists which in the opinion of the secretary makes it advisable, the secretary may permit the temporary removal of a convicted person for such period and upon such conditions as the secretary determines. The secretary may delegate this authority to the deputy and the wardens and superintendents of the state prisons.

History: 1989 a. 31 s. 1711; Stats. 1989 s. 304.115.

304.12 Execution and record of warrants. When a convicted person is pardoned or the person's sentence is commuted, or the person is remanded to prison for the violation of any of the conditions of that person's pardon, the officer to whom the warrant is issued after executing it shall make return thereon to the governor forthwith and shall file with the clerk of the court in

which the offender was convicted a certified copy of the warrant and return, and the clerk shall enter and file the same with the records of the case.

History: 1989 a. 31 s. 1712; Stats. 1989 s. 304.12; 1991 a. 316.

304.13 Uniform act for out-of-state parolee supervision; state compacts. The governor of this state is authorized and directed to enter into a compact on behalf of this state with any state of the United States legally joining therein in the form substantially as follows:

A COMPACT.

Entered into by and among the contracting states, signatories hereto, with the consent of the congress of the United States of America, granted by an act entitled “An act granting the consent of congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes”.

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a sending state to permit any person convicted of an offense within the sending state and placed on probation or released on extended supervision or parole to reside in any receiving state while on probation, extended supervision or parole, if:

(a) Such person is in fact a resident of or has family residing within the receiving state and can obtain employment there; or

(b) Though not a resident of the receiving state and not having family residing there, the receiving state consents to such person being sent there.

(c) Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

(d) A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which that person has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers, persons on extended supervision or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers, persons on extended supervision and parolees.

(3) That the duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation, extended supervision or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation, extended supervision or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer, person on extended supervision or parolee there should be pending against that person within the receiving state any criminal charge, or that person should be suspected of having committed within such state a criminal offense, that person shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all such states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) That this compact shall continue in force and remain binding upon such ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees, persons on extended supervision or probationers residing therein at the time of withdrawal or until finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months’ notice in writing of its intention to withdraw the compact to the other states party thereto.

(8) In this section:

(a) “Receiving state” means a party to this compact other than a sending state.

(b) “Sending state” means a party to this compact permitting its probationers, persons on extended supervision and parolees to reside in a receiving state.

(9) This section may be cited as the “Uniform Act for Out-of-State Parolee Supervision”.

History: 1979 c. 89; 1983 a. 189; 1989 a. 31 s. 1713; Stats. 1989 s. 304.13; 1991 a. 316; 1997 a. 283.

Cross-reference: See Appendix for a list of states which have ratified this compact.

Statutory distinction between parolees out of state under 57.13, 1987 stats. [now 304.13] and absconding parolees, denying extradition to the former but not the latter, is constitutionally valid classification under Omernik test. *State ex rel. Niederer v. Cady*, 72 Wis. 2d 311, 240 N.W.2d 626.

Although sending state could retake compact parolee under 57.13 [now s. 304.13] without process, if it chooses to extradite parolee it must meet extradition requirements. *State ex rel. Reddin v. Meekma*, 99 Wis. 2d 56, 298 N.W.2d 192 (Ct. App. 1980). *Aff’d*, 102 Wis. 2d 358, 306 N.W.2d 664 (1981).

Preapproval of an interstate probation transfer is contemplated by this provision, but where the probationer has consented to the transfer of probation supervision to Wisconsin compliance with the statute was not required. *State v. Martinez*, 198 Wis. 2d 222, 542 N.W.2d 215 (Ct. App. 1995).

Probationer, like a parolee, is entitled to a preliminary and a final revocation hearing. *Gagnon v. Scarpelli*, 411 U.S. 778.

304.135 Out-of-state supervision of parolees and persons on extended supervision without compact.

The department may permit any person convicted of an offense within this state and placed on probation or released on extended supervision or parole to reside in any other state not a party to the compact authorized by s. 304.13 whenever the authorities of the receiving state agree to assume the duties of visitation of and supervision over the probationer, person on extended supervision or parolee, governed by the same standards that prevail for its own probationers, persons on extended supervision and parolees, on the same terms as are provided in s. 304.13 (1) and (2) in the case of states signatory to the compact. Before permitting any probationer, person on extended supervision or parolee to leave this state under this section, the department shall obtain from him or her a signed agreement to return to this state upon demand of the department and an irrevocable waiver of all procedure incidental to extradition. The department may, in like manner, receive for supervision probationers, persons on extended supervision and parolees convicted in states not signatory to the compact, and shall have the same custody and control of those persons as it has over probationers, persons on extended supervision and parolees of this state.

History: 1989 a. 31 s. 1714; Stats. 1989 s. 304.135; 1997 a. 283.

Probation order to spend 3 years in India doing charitable work exceeded trial court’s authority. *State v. Dean*, 102 Wis. 2d 300, 306 N.W.2d 286 (Ct. App. 1981).

304.137 Determination concerning submission of human biological specimen.

(1) PERSONS RELEASED OR PLACED ON PROBATION BEFORE JANUARY 1, 2000. If the department accepts supervision of a probationer, person on extended supervision or parolee from another state under s. 304.13 or 304.135 and the person was placed on probation or released on parole or extended supervision before January 1, 2000, the department shall determine whether the violation of law for which the person is on probation, extended supervision or parole is comparable to

a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025. If the department determines that a person on probation, extended supervision or parole from another state who is subject to this subsection violated a law that is comparable to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025, the department shall direct the probationer, person on extended supervision or parolee to provide a biological specimen under s. 165.76.

(2) PERSONS RELEASED OR PLACED ON PROBATION ON OR AFTER JANUARY 1, 2000. If the department accepts supervision of a probationer, person on extended supervision or parolee from another state under s. 304.13 or 304.135 and the person was placed on probation or released on parole or extended supervision on or after January 1, 2000, the department shall determine whether the violation of law for which the person is on probation, extended supervision or parole would constitute a felony if committed by an adult in this state. If the department determines that a person on probation, extended supervision or parole from another state who is subject to this subsection violated a law that would constitute a felony if committed by an adult in this state, the department

shall direct the probationer, person on extended supervision or parolee to provide a biological specimen under s. 165.76.

History: 1995 a. 440; 1997 a. 283; 1999 a. 9.

304.14 Cooperative return of parole, extended supervision and probation violators. The secretary may deputize any person regularly employed by another state to act as an officer and agent of this state in effecting the return of any person who has violated the terms and conditions of parole, extended supervision or probation as granted by this state. In any matter relating to the return of such person, any agent so deputized shall have all the powers of a police officer of this state. Any deputization pursuant to this section shall be in writing and any person authorized to act as an agent under this section shall carry formal evidence of the deputization and shall produce the same upon demand.

History: 1989 a. 31 s. 1715; Stats. 1989 s. 304.14; 1991 a. 316; 1997 a. 283.

304.15 Nonapplicability of chapter. This chapter does not apply to a person who is subject to an order under s. 48.366.

History: 1987 a. 27; 1989 a. 31 s. 1716; Stats. 1989 s. 304.15.