

1        **AN ACT** to amend 973.09 (1) (d); and to create 973.09 (4g) of the statutes; relating  
2        to: judicial authority to order home detention as a condition of probation.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the Joint Legislative Council’s Study Committee on Problem–Solving Courts, Alternatives, and Diversions.

**Background**

Current law provides that if a person is convicted of an offense, for which there is a mandatory or presumptive minimum period of one year or less of imprisonment, a court may place the person on probation if the court requires, that the person be confined for at least that mandatory or presumptive minimum period as a condition of the probation. The person is eligible to earn good time credit calculated regarding the period of confinement. In *State v. Eastman*, 220 Wis. 2d 330, 339, (Ct. App. 1998), the Court of Appeals clarified that a court’s authority did not include the ability to order home detention as a condition of probation if a person is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment.

Current law also authorizes a county sheriff, or a house of correction superintendent, to place any person confined in jail who has been arrested for, charged with, convicted of, or sentenced for a crime in the home detention program.

**Bill Draft**

The draft provides express authority for a court to order that a person be placed on home detention as a condition of probation during such period of the term of probation as the court prescribes, but not to exceed one year. The draft also provides express authority for the court to order that a person who is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment be either confined or placed in detention at the defendant’s place of residence, or other place designated by the court, as a condition of probation during such period of the term of probation as the court prescribes, but not to exceed one year. The detention must be monitored by the use of an electronic device worn continuously on the

probationer's person and capable of providing positive identification of the wearer at the detention location at any time. A person on home detention is eligible for good time credit.

Under the draft, the condition of probation of home detention may be imposed only if agreed to by the defendant. The court shall ensure that the defendant is provided a written statement of the terms of the condition of probation of home detention, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms of the condition of probation of home detention may include a requirement that the defendant pay a daily fee to cover the costs associated with the monitoring. In that case, the terms must specify to whom the payments are made.

If the probationer fails to comply with the terms of the condition of probation of detention, the draft authorizes the court to order that the probationer be brought before the court and to order that the remainder of the period of detention be served in the county jail.

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

2           973.09 (1) (d) If a person is convicted of an offense that provides a mandatory or  
3 presumptive minimum period of one year or less of imprisonment, a court may place the  
4 person on probation under par. (a) if the court requires, as a condition of probation, that the  
5 person be confined under sub. (4) or be placed on home detention under sub. (4g) for at least  
6 that mandatory or presumptive minimum period. The person is eligible to earn good time  
7 credit calculated under s. 302.43 regarding the period of confinement or home detention.

**NOTE:** SECTION 1 provides express statutory authority for a court to decide to either confine or place a person on home detention as a condition of probation in cases where the person is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment. This SECTION also allows a person placed on home detention to be eligible to earn good time credit.

**COMMENT:** Does the committee want to limit the option of home detention as a condition of probation to participants in a treatment court project?

8           **SECTION 2.** 973.09 (4g) of the statutes is created to read:

1           973.09 (4g) A court may also require, as a condition of probation, that the probationer  
2 be placed in detention at the defendant's place of residence or other place designated by the  
3 court as a condition of probation during such period of the term of probation as the court  
4 prescribes, but not to exceed one year. The detention shall be monitored by the use of an  
5 electronic device worn continuously on the probationer's person and capable of providing  
6 positive identification of the wearer at the detention location at any time. A condition of  
7 probation of home detention may be imposed only if agreed to by the defendant. The court  
8 shall ensure that the defendant is provided a written statement of the terms of the condition  
9 of probation of home detention, including a description of the detention monitoring  
10 procedures and requirements and of any applicable liability issues. The terms of the condition  
11 of probation of home detention may include a requirement that the defendant pay a daily fee  
12 to cover the costs associated with monitoring him or her. In that case, the terms must specify  
13 to whom the payments are made.

14           (b) If the probationer fails to comply with the terms of the condition of probation of  
15 detention, the court may order the probationer brought before the court and the court may order  
16 that the remainder of the condition of probation of detention be served in the county jail.

**NOTE:** This SECTION provides express statutory authority for a court to require that the probationer be placed in detention at the defendant's place of residence or other place designated by the court as a condition of probation during such period of the term of probation as the court prescribes, but not to exceed one year. The detention must be monitored by the use of an electronic device worn continuously on the probationer's person and capable of providing positive identification of the wearer at the detention location at any time.

This SECTION also provides that the court must ensure that the defendant is provided with a written statement of the terms of the condition of probation of home detention, including a description of the detention monitoring procedures and requirements, and of any applicable liability issues. The terms may include a requirement that the defendant pay a

daily fee to cover the costs associated with monitoring the probationer, and if so, the terms must specify to whom the payments are made.

Lastly, if the probationer fails to comply with the terms of the condition of probation or detention, the court may order that the probationer be brought before the court. The court may also order that the remainder of the condition of probation or detention be served in the county jail.

**COMMENT:** Under SECTION 2, the ability for a court to require home detention as a condition of probation is available to all probationers, not just probationers convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment. Is this the committee's intent?

Does the committee want to require that the probationer be assessed a daily fee to cover the costs associated with the monitoring or let the court decide whether the probationer should pay? Should the probationer be required to consent to home detention as a condition of probation? In cases where the probationer fails to comply with the terms of the home detention, does the bill draft need to specify that the court has authority to order that the remainder of the detention be served in the county jail?

Also, in *State v. Eastman*, 220 Wis. 2d 330, 339, (Ct. App. 1998), the Court of Appeals stated in a footnote that it appeared that a sheriff has the authority to place a probationer who was confined as a condition of probation on home detention. Does the committee want to amend current law to clearly state that a sheriff has this authority?