CHAPTER 973

SENTENCING

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Cross−reference: See definitions in s. 967.02.

973.01 Bifurcated sentence of imprisonment and extended supervision. (1) BIFURCATED SENTENCE REQUIRED. Except as provided in sub. (3), whenever a court sentences a person to imprisonment in the Wisconsin state prisons for a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003, the court shall impose a bifurcated sentence under this section.

(2) STRUCTURE OF BIFURCATED SENTENCES. A bifurcated sentence is a sentence that consists of a term of confinement in prison followed by a term of extended supervision under s. 302.113. The total length of a bifurcated sentence equals the length of the term of confinement in prison plus the length of the term of extended supervision. An order imposing a bifurcated sentence under this section shall comply with all of the following:

(a) *Total length of bifurcated sentence.* Except as provided in par. (c), the total length of the bifurcated sentence may not exceed the maximum period of imprisonment specified in s. 939.50 (3), if the crime is a classified felony, or the maximum term of imprisonment provided by statute for the crime, if the crime is not a classified felony, plus additional imprisonment authorized by any applicable penalty enhancement statutes.

(b) *Confinement portion of bifurcated sentence.* The portion of the bifurcated sentence that imposes a term of confinement in prison may not be less than one year and, except as provided in par. (c), is subject to whichever of the following limits is applicable:

1. For a Class B felony, the term of confinement in prison may not exceed 40 years.

3. For a Class C felony, the term of confinement in prison may not exceed 25 years.

4. For a Class D felony, the term of confinement in prison may not exceed 15 years.

5. For a Class E felony, the term of confinement in prison may not exceed 10 years.

6m. For a Class F felony, the term of confinement in prison may not exceed 7 years and 6 months.

7. For a Class G felony, the term of confinement in prison may not exceed 5 years.

8. For a Class H felony, the term of confinement in prison may not exceed 3 years.

9. For a Class I felony, the term of confinement in prison may not exceed one year and 6 months.

10. For any crime other than one of the following, the term of confinement in prison may not exceed 75 percent of the total length of the bifurcated sentence:

a. A felony specified in subds. 1. to 9.

b. An attempt to commit a classified felony if the attempt is punishable under s. 939.32 (1) (intro.).

(c) *Penalty enhancement.* 1. Subject to the minimum period of extended supervision required under par. (d), the maximum term of confinement in prison specified in par. (b) may be increased by any applicable penalty enhancement statute. If the maximum term of confinement in prison specified in par. (b) is increased under this paragraph, the total length of the bifurcated sentence that may be imposed is increased by the same amount.

2. If more than one of the following penalty enhancement statutes apply to a crime, the court shall apply them in the order listed in calculating the maximum term of imprisonment for that crime:

a. Sections 939.621, 939.632, 939.635, 939.645, 946.42 (4), 961.46, and 961.49.

b. Section 939.63.

c. Section 939.62 (1) or 961.48.

(d) *Minimum and maximum term of extended supervision.* The term of extended supervision may not be less than 25 percent of the length of the term of confinement in prison imposed under par. (b) and, for a classified felony, is subject to whichever of the following limits is applicable:

1. For a Class B felony, the term of extended supervision may not exceed 20 years.

2. For a Class C felony, the term of extended supervision may not exceed 15 years.

3. For a Class D felony, the term of extended supervision may not exceed 10 years.

4. For a Class E, F, or G felony, the term of extended supervision may not exceed 5 years.

5. For a Class H felony, the term of extended supervision may not exceed 3 years.

6. For a Class I felony, the term of extended supervision may not exceed 2 years.

(3) NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for a felony that is punishable by life imprisonment, he or she is not subject to this section but shall be sentenced under s. 973.014 (1g).

(3g) EARNED RELEASE PROGRAM ELIGIBILITY. When imposing a bifurcated sentence under this section on a person convicted of a crime other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, the court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible to participate in the earned release program under s. 302.05 (3) during the term of confinement in prison portion of the bifurcated sentence.

(3m) CHALLENGE INCARCERATION PROGRAM ELIGIBILITY. When imposing a bifurcated sentence under this section on a person convicted of a crime other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, the court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible for the challenge incarceration program under s. 302.045 during the term of confinement in prison portion of the bifurcated sentence.

(4) NO GOOD TIME; EXTENSION OR REDUCTION OF TERM OF IMPRISONMENT. A person sentenced to a bifurcated sentence under sub. (1) shall serve the term of confinement in prison portion of the sentence without reduction for good behavior. The term of confinement in prison portion is subject to extension under s. 302.113 (3) and, if applicable, to reduction under s. 302.045 (3m), 302.05 (3) (c) 2. a., 302.113 (9g), 973.195 (1r), or 973.198.

(5) EXTENDED SUPERVISION CONDITIONS. Whenever the court imposes a bifurcated sentence under sub. (1), the court may impose conditions upon the term of extended supervision.

(6) NO PAROLE. A person serving a bifurcated sentence imposed under sub. (1) is not eligible for release on parole under that sentence.

(7) NO DISCHARGE. The department of corrections may not discharge a person who is serving a bifurcated sentence from custody, control and supervision until the person has served the entire bifurcated sentence.

(8) EXPLANATION OF SENTENCE. (a) When a court imposes a bifurcated sentence under this section it shall explain in writing all of the following to the person being sentenced:

1. The total length of the bifurcated sentence.

2. The amount of time the person will serve in prison under the term of confinement in prison portion of the sentence.

3. The amount of time the person will spend on extended supervision, assuming that the person does not commit any act that results in the extension of the term of confinement in prison under s. 302.113 (3).

4. That the amount of time the person must actually serve in prison may be extended as provided under s. 302.113 (3) and that because of extensions under s. 302.113 (3) the person could serve the entire bifurcated sentence in prison.

5. That the person will be subject to certain conditions while on release to extended supervision, and that violation of any of those conditions may result in the person being returned to prison, as provided under s. 302.113 (9).

(ag) If the court provides under sub. (3g) that the person is eligible to participate in the earned release program under s. 302.05 (3), the court shall also inform the person of the provisions of s. 302.05 (3) (c).

(am) If the court provides under sub. (3m) that the person is eligible for the challenge incarceration program, the court shall also inform the person of the provisions of s. 302.045 (3m).

(b) The court's explanation under par. (a) 3. of a person's potential period of extended supervision does not create a right to a minimum period of extended supervision.

History: 1997 a. 283; 2001 a. 109; 2003 a. 33; 2005 a. 277; 2007 a. 116, 226; 2009 a. 28; 2011 a. 38, 82.

While an offender must meet the eligibility requirements of s. 302.045 (2) to participate in the challenge incarceration program, the trial court must, pursuant to sub. (3m), also determine if the offender is eligible for the program, in the exercise of its sentencing discretion. State v. Steele, 2001 WI App 160, 246 Wis. 2d 744, 632 N.W.2d 112, 00−2864.

The exercise of sentencing discretion requires the court to exercise its discretion to create a sentence within the range provided by the legislature that reflects the circumstances of the situation and the particular characteristics of the offender. The court must consider the gravity of the offense, the offender's character and the public's need for protection. The weight given to any factor is left to the trial court's discretion. State v. Steele, 2001 WI App 160, 246 Wis. 2d 744, 632 N.W.2d 112, 00−2864.

If a defendant makes a fraudulent representation to the court, which the court accepts and relies upon in granting a sentence, the court may later declare the sentence void, and double jeopardy does not bar a subsequently increased sentence. State v. Jones, 2002 WI App 208, 257 Wis. 2d. 163, 650 N.W.2d 844, 01−2969.

A court may, in specific circumstances, consider credit for time spent in presentence custody as a factor in determining an appropriate sentence. Because the length of the defendant's presentence custody affected the time the defendant would actually spend in prison and the expected incarceration term impacted the circuit court's goal that the defendant receive sex offender treatment in an institutional setting while not remaining incarcerated longer than was necessary to receive treatment, presentence credit was appropriately considered. State v. Fenz, 2002 WI App 244, 258 Wis. 2d 281, 653 N.W.2d 280, 01−1434.

Previously existing rules governing sentencing discretion are not unconstitutional when applied to sentences imposed under this section. State v. Gallion, 2002 WI App 265, 258 Wis. 2d 473, 653 N.W.2d 284, 01−0051.

Sub. (2) (c) does not authorize a sentencing court to impose any portion of a penalty enhancer as extended supervision. State v. Volk, 2002 WI App 274, 258 Wis. 2d 584, 654 N.W.2d 479, 01−3342.

Events subsequent to sentencing and relating to rehabilitation do not constitute a new sentencing factor justifying sentence modification. State v. Champion, 2002 WI App 267, 258 Wis. 2d 781, 654 N.W.2d 242, 01−1894.

Despite the failure to object, a defendant may be entitled to resentencing if the sentence was affected by a trial court's reliance on an improper factor. State v. Groth, 2002 WI App 299, 258 Wis. 2d 889, 655 N.W.2d 163, 01−3000.

When a statutory definition is available that provides a defendant with sufficient notice as to the expected course of conduct and an ascertainable standard for enforcement, the condition of extended supervision is not unconstitutionally vague. The definition of "dating relationship" in s. 813.12 (1) (ag) provided the appellant an objective standard and adequate notice of when a condition applied that required her to introduce any person she was "dating" to her supervising agent. State v. Koenig, 2003 WI App 12, 259 Wis. 2d 833, 656 N.W.2d 499, 02−1076.

Calculation of confinement and extended supervision for the presumptive minimum for unclassified felonies under this section prior to February 1, 2003 amendments are discussed. State v. Cole, 2003 WI 59, 262 Wis. 2d 167, 663 N.W.2d 700, 02−0681.

Resentencing on convictions that remain intact after one or more counts in a multi−count case is vacated is not always required. When the vacated count does not affect the overall dispositional structure of the original sentence, resentencing on the remaining counts is unnecessary. State v. Church, 2003 WI 74, 262 Wis. 2d 678, 665 N.W.2d 141, 01−3100.

Subs. (2) and (5) prohibit confinement in any facility as a condition of extended supervision. Absent express authority, a trial court cannot order confinement as a condition of extended supervision. State v. Larson, 2003 WI App 235, 268 Wis. 2d 162, 672 N.W.2d 322, 03−0019.

A penalty enhancer under s. 939.62 is not subject to bifurcation, nor is it to be added to the underlying term of imprisonment. State v. Jackson 2004 WI 29, 270 Wis. 2d 113, 676 N.W.2d 872, 02−0947.

Sub. (3m) allows a sentencing court to determine not only whether a defendant is eligible for the challenge incarceration program, but also to set a date of eligibility within the term of confinement in prison. State v. Lehman, 2004 WI App 59, 270 Wis. 2d 695, 677 N.W.2d 644, 03−1269.

Requisite to a prima facie valid sentence is a statement by the trial judge detailing the reasons for selecting the particular sentence imposed. Circuit courts shall: 1) specify the objectives of the sentence on the record and identify the general objectives of greatest importance; 2) describe the facts relevant to those objectives and explain why the particular component parts of the sentence imposed advance the specified objectives; 3) identify the factors that were considered in arriving at the sentence and indicate how those factors fit the objectives and influence the decision. State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, 01−0051.

The sentence imposed shall call for the minimum amount of custody or confinement consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant. Probation should be the disposition unless confinement is necessary to protect the public, the offender needs correctional treatment available only in confinement, or it would unduly depreciate the seriousness of the offense. State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, 01−0051.

The good character of a victim killed as the result of a crime is relevant to sentencing, but the court should not attempt to measure the relative value of the victim's life. Although there may be circumstances in which the court could weigh the positive contributions and worth of the victim in assessing the harm caused by the crime, it does not follow that there is a right to have a court consider that a victim was a terrible burden on society. State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, 01−0051.

A court, after giving consideration to the relevant sentencing factors, may give disproportionate or controlling weight to a single factor. Balancing the factors is for the trial court. Ordering a lengthy term of supervision in order to enable the defendant to pay a sizeable restitution amount did not violate the right to equal protection. State v. Longmire, 2004 WI App 90, 272 Wis. 2d 759, 681 N.W.2d 354, 03−0300.

The defendant's life expectancy, coupled with a lengthy sentence, while perhaps guaranteeing that the defendant will spend the balance of his or her life in prison, does not have to be taken into consideration by the circuit court. If the circuit court chooses to consider a defendant's life expectancy, it must explain, on the record, how the defendant's life expectancy fits into the sentencing objectives. State v. Stenzel, 2004 WI App 181, 276 Wis. 2d 224, 688 N.W.2d 224, 03−2974.

Consistent with *Lehman*, sub. (3g) allows a sentencing court to determine whether a defendant is eligible for the earned release program and to set a date of eligibility within the term of confinement in prison. State v. White, 2004 WI App 237, 277 Wis. 2d 580, 690 N.W.2d 880, 04−1211.

A defendant's age is a secondary factor that the trial court may, but is not required to, consider in fashioning an appropriate sentence. The trial court, if it considers age, determines whether it should carry any weight. State v. Davis, 2005 WI App 98, 281 Wis. 2d 118, 698 N.W.2d 823, 04−1163.

A condition of extended supervision need not directly relate to the defendant's criminal conduct in the underlying conviction. Trial courts are granted broad discretion in determining conditions necessary for extended supervision subject only to a standard of reasonableness and appropriateness determined by how well the condition serves the dual goals of supervision: 1) rehabilitation of the defendant; and 2) protection of a state or community interest. A condition of extended supervision that the defendant maintain his child support payments was reasonable and appropriate. State v. Miller, 2005 WI App 114, 283 Wis. 2d 465, 701 N.W.2d 47, 04−1406.

A condition of extended supervision and probation that the defendant have no contact with the drug community was not unconstitutionally overbroad or vague. When the trial court specifically told the defendant not be around any person when, or be in any place where, drugs are being possessed, used, or sold, the condition was clear and gave fair notice of what a drug community is. State v. Trigueros, 2005 WI App 112, 282 Wis. 2d 445, 701 N.W.2d 54, 04−1701.

When a person is being sentenced after revocation of extended supervision, discretion can exist without an explicit delineation of the *McCleary* sentencing factors: 1) the gravity of the offense; 2) the character of the offender; and 3) the need to protect the public. There must be an indication that the court considered those factors. State v. Jones, 2005 WI App 259, 288 Wis. 2d 475, 707 N.W.2d 876, 05−0018.

A defendant who requests resentencing due to the circuit court's use of inaccurate information at the sentencing hearing must show both that the information was inaccurate and that there was actual reliance, not prejudicial reliance, on the inaccurate information by the court in the sentencing. Once actual reliance on inaccurate information is shown, the burden then shifts to the state to prove the error was harmless. State v. Tiepelman, 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1, 04−0914.

Gallion does not require that the trial court explain why it imposed three years as opposed to one or two. State v. Klubertanz, 2006 WI App 71, 291 Wis. 2d 751, 713 N.W.2d 116, 05−1256.

That test of whether the statutory language is capable of being understood by reasonably well−informed persons in two or more different ways is adopted for sentence construction disputes. As it looks for legislative intent when faced with an ambiguous statute, the appellate court should look for the trial court's sentencing intent when faced with an ambiguous oral sentencing pronouncement. The appellate court is required to determine the trial court's sentencing intent from other parts of the record, including the judgment of conviction. Without more, the bald recital of a consecutive sentence in the judgment of conviction is insufficient to overcome the presumption of a concurrent sentence. State v. Oglesby, 2006 WI App 95, 292 Wis. 2d 716, 715 N.W.2d 727, 05−1565.

Subs. (3g) and (3m) are not applicable to reconfinement under s. 302.113 (9) (am). State v. Hall, 2007 WI App 168, 304 Wis. 2d 504, 737 N.W.2d 13, 06−1439.

Sub. (5) does not require a sentencing court to make an ability−to−pay determination when the court orders a contribution payment as a condition of extended supervision. Neither the requirement that an ability−to−pay determination be made when a contribution surcharge is taxed against a defendant under s. 973.06 (1) or when a contribution surcharge is imposed as a condition of probation under s. 973.09 (1x), 2005 stats., applies to sub. (5). State v. Galvan, 2007 WI App 173, 304 Wis. 2d 466, 736 N.W.2d 890, 06−2052.

A fine that an offender has the ability to pay may satisfy sentencing objectives the trial court has found to be material and relevant to the particular defendant. A trial court is not required to explain the reason for a specific amount of a fine, but some explanation of why the court imposes a fine is required. If the sentencing court intends to impose a fine, the court must determine at the time of sentencing whether a defendant has the ability to pay a fine during the total sentence. The standard for imposing a fine, which is part of the punishment, should require no less consideration of the defendant's ability to pay than is required as part of an order of restitution. State v. Ramel, 2007 WI App 271, 306 Wis. 2d 654, 743 N.W.2d 502, 07−0355.

A defendant has a due process right to be sentenced based on accurate information. State v. Payette, 2008 WI App 106, 313 Wis. 2d 39, 756 N.W.2d 423, 07−1192.

The circuit court had the authority to order the defendant to reimburse his mother for forfeited bail his mother paid, either as restitution or as a condition of extended supervision. State v. Agosto, 2008 WI App 149, 314 Wis. 2d 385, 760 N.W.2d 415, 06−2646.

Sections 302.113 (4), 973.01, and 973.15 establish that consecutive periods of extended supervision are to be served consecutively, aggregated into one continuous period, so that revocation of extended supervision at any time allows revocation as to all consecutive sentences. State v. Collins, 2008 WI App 163, 314 Wis. 2d 653, 760 N.W.2d 438, 07−2580.

Due process requires that vindictiveness against a defendant for having successfully attacked his or her first conviction play no part in the sentence received after a new trial. When a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for doing so must be free from a retaliatory motive. Because retaliatory motives can be complex and difficult to prove, the U.S. Supreme Court has found it necessary to presume an improper vindictive motive, which also applies when a defendant is resentenced following a successful attack on an invalid sentence. However, the presumption stands only when a reasonable likelihood of vindictiveness exists. A new sentence that is longer than the original sentence that implements the original dispositional scheme is not tainted by vindictiveness. State v. Sturdivant, 2009 WI App 5, 316 Wis. 2d 197, 763 N.W.2d 185, 07−2508.

A sentencing court may consider uncharged and unproven offenses and facts related to offenses for which the defendant has been acquitted. Sentencing courts are obliged to acquire full knowledge of the character and behavior pattern of the defendant before imposing sentence. State v. Prineas, 2009 WI App 28, 316 Wis. 2d 414, 766 N.W.2d 206, 07−1982.

A court may certainly tell a defendant what could happen if his or her extended supervision is revoked. But telling a defendant what will happen imperils the defendant's due process right to an impartial judge at a reconfinement hearing. State v. Goodson, 2009 WI App 107, 320 Wis. 2d 166, 771 N.W.2d 385, 08−2623.

A defendant has a constitutional due process right not to be sentenced on the basis of race or gender. The defendant has the burden to prove that the circuit court actually relied on race or gender in imposing its sentence. The standard of proof is clear and convincing evidence. The defendant must provide evidence indicating that it is highly probable or reasonably certain that the circuit court actually relied on race or gender when imposing its sentence. A reasonable observer test is rejected. State v. Harris, 2010 WI 79, 326 Wis. 2d 685, 786 N.W.2d 409, 08−0810.

A sentencing court did not violate the 4th amendment or Article I, s. 11, by setting a condition of extended supervision that allows any law enforcement officer to search the defendant's person, vehicle, or residence for firearms, at any time and without probable cause or reasonable suspicion. While the condition that the circuit court imposed may have impinged on constitutional rights, it did not violate them as the circuit court made an individualized determination, pursuant to the court's authority under sub. (5), that the condition was necessary based on the facts in this case involving violence, threats, and a firearm. State v. Rowan, 2012 WI 60, 341 Wis. 2d 281, 814 N.W.2d 854, 10−1398.

The suggestion that dismissed charges not be considered in sentencing is not reasonable. It is better practice for the court to acknowledge and discuss dismissed charges, if they are considered by the court, giving them appropriate weight and describing their relationship to a defendant's character and behavioral pattern, or to the incident that serves as the basis for a plea. The defendant should be given an opportunity to explain or dispute these charges. State v. Frey, 2012 WI 99, 343 Wis. 2d 358, 817 N.W.2d 436, 10−2801.

In the context of interpreting plea bargains under contract law, dismissed charges do not have a static meaning. They are a product of the parties' negotiations and they mean what the parties intend them to mean. The one exception is that a plea agreement involving one or more dismissed charges cannot limit what the judge may consider at sentencing. Such agreements are contrary to public policy. The term "dismissed outright" should be discontinued. Instead, plea bargains should pin down whether a district attorney is agreeing not to prosecute a dismissed charge. State v. Frey, 2012 WI 99, 343 Wis. 2d 358, 817 N.W.2d 436, 10−2801.

Tiepelman teaches that a defendant is entitled to resentencing if the defendant meets the following two−pronged test: 1) the defendant shows that the information at the original sentencing was inaccurate; and 2) the defendant shows that the court actually relied on the inaccurate information at sentencing. Whether the circuit court actually relied on the incorrect information at sentencing turns on whether the circuit court gave "explicit attention" or "specific consideration" to the inaccurate information, so that the inaccurate information "formed part of the basis for the sentence." Upon determining that a circuit court actually relied upon inaccurate information at sentencing the reviewing court applies a harmless error analysis. State v. Travis, 2013 WI 38, 347 Wis. 2d 142, 832 N.W.2d 491, 11−0685.

The court's invocations of a religious deity during sentencing were ill−advised. However, not every "ill−advised word" will create reversible error. The transcript reflects that the court's offhand religious references addressed proper secular sentencing factors. The judge's comments did not suggest the defendant required a longer sentence to pay religious penance. State v. Betters, 2013 WI App 85, 349 Wis. 2d 428, 835 N.W.2d 249, 12−1339.

Sub. (2) (c) 1. is not applicable to misdemeanors. Whereas for a felony, an enhancement lengthens the otherwise applicable "maximum term of confinement in prison," for a misdemeanor, an enhancement transforms the misdemeanor sentence into a sentence to the state prisons, which then must be bifurcated. Because no "maximum term of confinement in prison" exists for a misdemeanor until the enhancement is applied, once it is applied, it cannot be applied again. State v. Lasanske, 2014 WI App 26, 353 Wis. 2d 280, 844 N.W.2d 417, 12−2016.

The limitation under s. 343.30 (5) that no court may suspend or revoke an operating privilege except as authorized by statute precludes not only restrictions on obtaining a physical license document, but also on the privilege to operate a vehicle. A court's broad authority to fashion appropriate conditions of extended supervision is limited by the provisions of s. 343.30 concerning suspension and revocation of operating privileges by the courts. State v. Hoppe, 2014 WI App 51, 354 Wis. 2d 219, 847 N.W.2d 869, 13−1457.

Although a sentencing court may not constitutionally impose a sentence based on national origin, the court may consider a defendant's relevant illegal conduct related to immigration without denying the defendant due process of law. In this case, the court did not deny the defendant due process in the form of reliance on an improper sentencing factor when the court mentioned the defendant's immigration status as a minor aspect of the court's comprehensive evaluation of the defendant's character. State v. Salas Gayton, 2016 WI 58, 370 Wis. 2d 264, 882 N.W.2d 459, 13−0646.

A sentencing court may consider a Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk assessment at sentencing without violating a defendant's right to due process if the risk assessment is used properly with an awareness of the limitations and cautions set forth in the opinion. Risk scores may not be used to determine 1) whether an offender is incarcerated; or 2) the severity of the sentence. Additionally, risk scores may not be used as the determinative factor in deciding whether an offender can be supervised safely and effectively in the community. Any Presentence Investigation Report (PSI) containing a COMPAS risk assessment must contain a written advisement listing those limitations and informing sentencing courts of certain cautions set forth in the opinion. State v. Loomis, 2016 WI 68, ___ Wis. 2d ___, 881 N.W.2d 749, 15−0157.

Truth−In−Sentencing Comes to Wisconsin. Brennan & Latorraca. Wis. Law. June 2000.

Fully Implementing Truth−In−Sentencing. Hammer & Latorraca. Wis. Law. Nov. 2002.

973.013 Indeterminate sentence; Wisconsin state prisons. (1) (a) If imprisonment in the Wisconsin state prisons for a term of years is imposed, the court may fix a term less than

the prescribed maximum. The form of such sentence shall be substantially as follows: "You are hereby sentenced to the Wisconsin state prisons for an indeterminate term of not more than .... (the maximum as fixed by the court) years."

(b) Except as provided in s. 973.01, the sentence shall have the effect of a sentence at hard labor for the maximum term fixed by the court, subject to the power of actual release from confinement by parole by the department or by pardon as provided by law. If a person is sentenced for a definite time for an offense for which the person may be sentenced under this section, the person is in legal effect sentenced as required by this section, said definite time being the maximum period. A defendant convicted of a crime for which the minimum penalty is life shall be sentenced for life.

(2) Upon the recommendation of the department, the governor may, without the procedure required by ch. 304, discharge absolutely, or upon such conditions and restrictions and under such limitation as the governor thinks proper, any inmate committed to the Wisconsin state prisons after he or she has served the minimum term of punishment prescribed by law for the offense for which he or she was sentenced, except that if the term was life imprisonment, 5 years must elapse after release on parole or extended supervision before such a recommendation can be made to the governor. The discharge has the effect of an absolute or conditional pardon, respectively.

(3) Female persons convicted of a felony may be committed to the Taycheedah Correctional Institution unless they are subject to sub. (3m).

(3m) If a person who has not attained the age of 16 years is sentenced to the Wisconsin state prisons, the department shall place the person at a juvenile correctional facility or a secured residential care center for children and youth, unless the department determines that placement in an institution under s. 302.01 is appropriate based on the person's prior record of adjustment in a correctional setting, if any; the person's present and potential vocational and educational needs, interests and abilities; the adequacy and suitability of available facilities; the services and procedures available for treatment of the person within the various institutions; the protection of the public; and any other considerations promulgated by the department by rule. The department may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). This subsection does not preclude the department from designating an adult correctional institution, other than the correctional institution authorized in s. 301.16 (1n), as a reception center for the person and subsequently transferring the person to a juvenile correctional facility or a secured residential care center for children and youth. Section 302.11 and ch. 304 apply to all persons placed in a juvenile correctional facility or a secured residential care center for children and youth under this subsection.

(4) If information under s. 972.15 (2m) has been provided in a presentence investigation report, the court shall consider that information when sentencing the defendant.

History: 1973 c. 90; 1975 c. 189 s. 99 (1); 1975 c. 224 s. 146m; 1983 a. 102, 1983 a. 371 s. 13; Stats. 1983 s. 973.013; 1987 a. 27; 1989 a. 31, 107; 1993 a. 486; 1995 a. 27; 1997 a. 283; 2001 a. 16, 103; 2005 a. 344.

The sentencing judge shall state for the record, in the presence of the defendant, the reasons for selecting the particular sentence imposed or, if the sentencing judge considers it in the interest of the defendant not to state reasons in the presence of the defendant, shall prepare a statement for transmission to the reviewing court as part of the record. McCleary v. State, 49 Wis. 2d 263, 182 N.W.2d 512 (1971).

It was not a denial of equal protection to sentence a defendant to 4 years' imprisonment, although other persons involved, all minors, received lesser or no punishment. State v. Schilz, 50 Wis. 2d 395, 184 N.W.2d 134 (1971).

An abuse of discretion, as it relates to sentencing procedures, will be found only if there is no rational basis for the imposition of the sentence or the rationale is not articulated in, or inferable from, the record, or if discretion is exercised on the basis of clearly irrelevant or improper factors. Davis v. State, 52 Wis. 2d 697, 190 N.W.2d 890 (1971).

The seriousness of the offense is a proper criterion for imposing a maximum sentence. While warehousing dangerous individuals is not the sole purpose for imposing long prison terms, it is a legitimate factor for a trial court to consider. Bastian v. State, 54 Wis. 2d 240, 194 N.W.2d 687 (1972).

A prison sentence is reduced to reflect days of pretrial incarceration during which the defendant was unable to raise bail because of indigency. Wilkins v. State, 66 Wis. 2d 628, 225 N.W.2d 492 (1975).

A defendant's change in attitude or rehabilitative progress subsequent to sentencing is a factor to be considered in determining parole but is not a proper consideration upon which a trial court might base a reduction of sentence. State v. Wuensch, 69 Wis. 2d 467, 230 N.W.2d 665 (1975).

Although evidence concerning incidents of sexual activity abroad was relevant as to defendant's character and admissible at the sentencing hearing, the trial court abused its discretion by punishing the defendant not only for the crime of which he stood convicted, but for the events that occurred outside Wisconsin, as indicated by the fact that both sentencing hearings were devoted largely to these foreign incidents. Rosado v. State, 70 Wis. 2d 280, 234 N.W.2d 69 (1975).

The trial court exceeded its jurisdiction by specifying conditions of incarceration. State v. Gibbons, 71 Wis. 2d 94, 237 N.W.2d 33 (1976).

A plea bargain agreement by law enforcement officials not to reveal relevant and pertinent information to the sentencing judge was unenforceable as being against public policy. Grant v. State, 73 Wis. 2d 441, 243 N.W.2d 186 (1976).

Chronic offenses of theft by fraud by promising to marry several persons provided a rational basis for a lengthy sentence. Lambert v. State, 73 Wis. 2d 590, 243 N.W.2d 524 (1976).

A sentencing judge does not deny due process by considering pending criminal charges in determining a sentence. The scope of judicial inquiry prior to sentencing is discussed. Handel v. State, 74 Wis. 2d 699, 247 N.W.2d 711 (1976).

A defendant's refusal to name accomplices was properly considered by the sentencing judge. Because the defendant had pleaded guilty to the crime, self−incrimination would not have resulted from the requested cooperation. Holmes v. State, 76 Wis. 2d 259, 251 N.W.2d 56 (1977).

Courts may correct formal or clerical errors or an illegal sentence at any time. Krueger v. State, 86 Wis. 2d 435, 272 N.W.2d 847 (1979).

The double jeopardy clause did not bar prosecution of a charge after it was considered as evidence of character in sentencing the defendant on a prior unrelated conviction. State v. Jackson, 110 Wis. 2d 548, 329 N.W.2d 182 (1983).

Increasing a sentence following the vacation of a bargained for no contest plea did not violate due process. The test for judicial vindictiveness is discussed. State v. Stubbendick, 110 Wis. 2d 693, 329 N.W.2d 399 (1983).

An 80−year sentence for a first−time sexual offender was not an abuse of discretion. State v. Curbello−Rodriguez, 119 Wis. 2d 414, 351 N.W.2d 758 (Ct. App. 1984).

An unambiguous sentence pronounced orally and recorded in the sentencing transcript controls over the written judgment of conviction. State v. Perry, 136 Wis. 2d 92, 401 N.W.2d 748 (1987).

The sentencing court does not abuse its discretion by considering a victim's statements and recommendations. State v. Johnson, 158 Wis. 2d 458, 463 N.W.2d 352 (Ct. App. 1990).

The primary factors to be considered in exercising discretion in sentencing are: 1) the gravity of the offense; 2) the rehabilitative needs of the defendant; and 3) the protection of the public. State v. Paske, 163 Wis. 2d 52, 471 N.W.2d 55 (1991).

Due process does not require the presence of counsel at a presentence investigation interview of the defendant. State v. Perez, 170 Wis. 2d 130, 487 N.W.2d 630 (Ct. App. 1992).

Whether a particular factor will be considered as a mitigating or aggravating factor will depend on the particular defendant and case. State v. Thompson, 172 Wis. 2d 257, 493 N.W.2d 729 (Ct. App. 1992).

The trial court's possible consideration at sentencing of the defendant's culpability in a more serious offense, although the jury convicted on a lesser included offense, was not error. State v. Marhal, 172 Wis. 2d 491, 493 N.W.2d 758 (Ct. App. 1992). See also State v. Bobbitt, 178 Wis. 2d 11, 503 N.W.2d 11 (Ct. App. 1993).

No specific burden of proof is imposed as to read−in offenses that bear upon sentencing; all sentencing is under the standard for judicial discretion. State v. Hubert, 181 Wis. 2d 333, 510 N.W.2d 799 (Ct. App. 1993).

A sentencing court may consider a defendant's religious beliefs and practices only if a reliable nexus exists between the defendant's criminal conduct and those beliefs and practices. State v. Fuerst, 181 Wis. 2d 903, 512 N.W.2d 243 (Ct. App. 1994).

If an oral pronouncement is ambiguous, it is proper to look to the written judgment to ascertain a court's intent in sentencing. An omission in the oral pronouncement can create an ambiguity. State v. Lipke, 186 Wis. 2d 358, 521 N.W.2d 444 (Ct. App. 1994).

Under s. 973.013 [now sub. (1)], life imprisonment without parole is not an option. State v. Setagord, 187 Wis. 2d 339, 523 N.W.2d 124 (Ct. App. 1994).

A trial court in exercising sentencing discretion is not prohibited from entertaining general predispositions based on experience, but the judge's predispositions may never be so specific as to ignore the particular circumstances of the individual offender. State v. Ogden, 199 Wis. 2d 566, 544 N.W.2d 574 (1996), 94−1485.

A defendant who requests resentencing must show that specific information was inaccurate and that the court relied on it. When facts stated in a presentence report are not challenged at sentencing, the sentencing judge may appropriately consider them. State v. Mosley, 201 Wis. 2d 36, 547 N.W.2d 806 (Ct. App. 1996), 95−1340.

A court must consider 3 primary factors in exercising discretion in sentencing: 1) the gravity of the offense; 2) the character of the offender; and 3) the need to protect the public. Remorse is an additional factor that may be considered. State v. Rodgers, 203 Wis. 2d 83, 552 N.W.2d 123 (Ct. App. 1996), 95−2570. For enumeration of other additional factors that may be considered, see State v. Barnes, 203 Wis. 2d 132, 552 N.W.2d 857 (Ct. App. 1996), 95−1831.

A defendant is automatically prejudiced when the prosecutor materially and substantially breaches a plea agreement. New sentencing is required. State v. Smith, 207 Wis. 2d 258, 558 N.W.2d 379 (1997), 94−3364.

When resentencing a defendant, a court should consider all information relevant about a defendant, including information not existing or not known when sentence was first passed. State v. Carter, 208 Wis. 2d 142, 560 N.W.2d 256 (1997), 94−2001.

A marital relationship between a case's prosecutor and the presentence report writer was sufficient to draw the objectivity of the report into question. It was error not to strike the report. State v. Suchocki, 208 Wis. 2d 509, 561 N.W.2d 332 (Ct. App. 1997), 96−1712.

Evidence of unproven offenses involving the defendant my be considered in sentencing decisions, as the court must consider whether the crime is an isolated act or part of a pattern of conduct. State v. Fisher, 211 Wis. 2d 665, 565 N.W.2d 565 (Ct. App. 1997), 96−1764.

A defendant's argument that his sentence was excessive in relation to other sentences for similar crimes committed in the same county was without merit. There is no requirement that persons convicted of similar offenses must receive similar sentences. State v. Lechner, 217 Wis. 2d 392, 576 N.W.2d 912 (1998), 96−2830.

That a conviction followed an *Alford* plea did not prevent requiring the defendant, as a condition, to complete a treatment program that required acknowledging responsibility for the crime which resulted in the conviction. The imposition of the condition did not violate the defendant's due process rights. There is nothing inherent in an *Alford* plea that gives a defendant any rights as to punishment. State ex rel. Warren v. Schwarz, 219 Wis. 2d 615, 579 N.W.2d 698 (1998), 96−2441.

When a victim's criminal record supports a defendant's version of a crime, the gravity of which crime is a sentencing factor, the criminal record should be admitted as evidence at the defendant's sentencing hearing. State v. Spears, 227 Wis. 2d 495, 596 N.W.2d 375 (1999), 97−0536.

Proper sentencing discretion can exist without delineation of sentencing factors; what is required is consideration of the sentencing factors (see the note to *Rodgers)*. When the same judge presides at sentencing after probation revocation and the original sentencing, the judge does not have to restate the reasons supporting the original sentencing, which is implicitly adopted. State v. Wegner, 2000 WI App 231, 239 Wis. 2d 96, 619 N.W.2d 289, 99−3079.

It is entirely reasonable that a competency examination designed to address a defendant's ability to understand the proceedings and assist counsel may also address issues of future dangerousness, which a court may reasonably consider when gauging the need for public protection in setting a sentence. State v. Slagoski, 2001 WI App 112, 244 Wis. 2d 49, 629 N.W.2d 50, 00−1586.

Spears does not stand for the proposition that a defendant may, at sentencing, present any and all evidence that he or she wishes to present. State v. Robinson, 2001 WI App 127, 246 Wis. 2d 180, 629 N.W.2d 810, 00−1170.

The exercise of sentencing discretion requires the court to exercise its discretion to create a sentence within the range provided by the legislature that reflects the circumstances of the situation and the particular characteristics of the offender. The court must consider the gravity of the offense, the offender's character and the public's need for protection. The weight given to any factor is left to the trial court's discretion. State v. Steele, 2001 WI App 160, 246 Wis. 2d 744, 632 N.W.2d 112, 00−2864.

In sentencing after probation revocation, if the judge did not preside at the original sentencing, the judge must be able to rely upon the entire record, including comments at the first sentencing. When the record at the second sentencing reflected no recognition by the second judge of trial testimony, the presentence investigation report, or the trial judge's comments on the severity of the offense, the sentence could not stand. State v. Reynolds, 2002 WI App 15, 249 Wis. 2d 798, 640 N.W.2d 140, 01−0498.

A court's correction of an invalid sentence by increasing the punishment does not constitute double jeopardy; the initial sentence being invalid, the second sentence is the only valid sentence imposed. An increased sentence is permissible at resentencing only when it is based upon a desire to implement the original dispositional scheme from the first sentencing and when the initial conviction and sentence are invalid, the resentencing court has no new information or newly known information, and the resentencing court seeks to impose a greater sentence. State v. Helm, 2002 WI App 154, 256 Wis. 2d 285, 647 N.W.2d 405, 01−2398.

In fixing a sentence within statutory limits, the judge may consider the defendant's false testimony observed by the judge during trial. United States v. Grayson, 438 U.S. 41 (1978).

The Lodestar of Personal Responsibility. Brennan. 88 MLR 365 (2004).

Appellate sentence review. 1976 WLR 655. (1983).

973.0135 Sentence for certain serious felonies; parole eligibility determination. (1) In this section:

(a) "Prior offender" means a person who meets all of the following conditions:

1. The person has been convicted of a serious felony on at least one separate occasion at any time preceding the serious felony for which he or she is being sentenced.

2. The person's conviction under subd. 1. remains of record and unreversed.

3. As a result of the conviction under subd. 1., the person was sentenced to more than one year of imprisonment.

(b) "Serious felony" means any of the following:

1. Any felony under s. 961.41 (1), (1m) or (1x) if the felony is punishable by a maximum prison term of 30 years or more.

2. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m) or (1r), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., s. 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2., 3., or 4., 948.05, 948.051, 948.06, 948.07, 948.075, 948.08, or 948.30 (2).

3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

4. A crime at any time under federal law or the law of any other state or, prior to April 21, 1994, under the law of this state that is comparable to a crime specified in subd. 1., 2. or 3.

(2) Except as provided in sub. (3), when a court sentences a prior offender to imprisonment in a state prison for a serious felony committed on or after April 21, 1994, but before December 31, 1999, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

(a) The person is eligible for parole under s. 304.06 (1).

(b) The person is eligible for parole on a date set by the court. Under this paragraph, the court may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. 304.06 (1) and may not set a date that occurs later than two−thirds of the sentence imposed for the felony.

(3) A person is not subject to this section if the current serious felony is punishable by life imprisonment.

(4) If a prior conviction is being considered as being covered under sub. (1) (b) 4. as comparable to a felony specified under sub. (1) (b) 1., 2. or 3., the conviction may be counted as a prior conviction under sub. (1) (a) only if the court determines, beyond a reasonable doubt, that the violation relating to that conviction would constitute a felony specified under sub. (1) (b) 1., 2. or 3. if committed by an adult in this state.

History: 1993 a. 194, 483; 1995 a. 448; 1997 a. 219, 283, 295; 1999 a. 32, 188; 2001 a. 109; 2007 a. 116; 2015 a. 366.

973.014 Sentence of life imprisonment; parole eligibility determination; extended supervision eligibility determination. (1) Except as provided in sub. (2), when a court sentences a person to life imprisonment for a crime committed on or after July 1, 1988, but before December 31, 1999, the court shall make a parole eligibility determination regarding the person and choose one of the following options:

(a) The person is eligible for parole under s. 304.06 (1).

(b) The person is eligible for parole on a date set by the court. Under this paragraph, the court may set any later date than that provided in s. 304.06 (1), but may not set a date that occurs before the earliest possible parole eligibility date as calculated under s. 304.06 (1).

(c) The person is not eligible for parole. This paragraph applies only if the court sentences a person for a crime committed on or after August 31, 1995, but before December 31, 1999.

(1g) (a) Except as provided in sub. (2), when a court sentences a person to life imprisonment for a crime committed on or after December 31, 1999, the court shall make an extended supervision eligibility date determination regarding the person and choose one of the following options:

1. The person is eligible for release to extended supervision after serving 20 years.

2. The person is eligible for release to extended supervision on a date set by the court. Under this subdivision, the court may set any later date than that provided in subd. 1., but may not set a date that occurs before the earliest possible date under subd. 1.

3. The person is not eligible for release to extended supervision.

(b) When sentencing a person to life imprisonment under par. (a), the court shall inform the person of the provisions of s. 302.114 (3) and the procedure for petitioning under s. 302.114 (5) for release to extended supervision.

(c) A person sentenced to life imprisonment under par. (a) is not eligible for release on parole.

(2) When a court sentences a person to life imprisonment under s. 939.62 (2m) (c), the court shall provide that the sentence is without the possibility of parole or extended supervision.

History: 1987 a. 412; 1989 a. 31; 1993 a. 289; 1995 a. 48; 1997 a. 283, 326; 1999 a. 32.

The constitutionality of this section is upheld. State v. Borrell, 167 Wis. 2d 749, 482 N.W.2d 883 (1992).

The denial of presentence confinement credit when parole was established under sub. (2) [now sub. (1) (b)] was constitutional. State v. Chapman, 175 Wis. 2d 231, 499 N.W.2d 223 (Ct. App. 1993).

Sub. (1) (b) allows a circuit court to impose a parole eligibility date beyond a defendant's expected lifetime. State v. Setagord, 211 Wis. 2d 397, 565 N.W.2d 506 (1997), 95−0207.

A trial court sentencing a defendant under sub. (1) (b), exercising its discretion, may or may not give credit for presentence incarceration. State v. Seeley, 212 Wis. 2d 75, 567 N.W.2d 897 (Ct. App. 1997), 96−1939.

Parole eligibility is not a statutorily or constitutionally necessary component of a valid plea colloquy in a case in which a life sentence is imposed. State v. Byrge, 225 Wis. 2d 702, 594 N.W.2d 388 (Ct. App. 1999), 97−3217.

The United States Supreme Court in Miller v. Alabama, 132 S. Ct. 2455, did not foreclose a sentencer's ability to sentence a juvenile to life without the possibility of parole in homicide cases, but required sentencing courts to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison. Thus, it is not unconstitutional to sentence a juvenile to life imprisonment without the possibility of supervised release for intentional homicide under s. sub. (1g) (a) 3. if the circumstances warrant it. State v. Barbeau, 2016 WI App 51, ___ Wis. 2d ___, 883 N.W.2d 520, 14−2876.

The mandatory minimum of 20 years' imprisonment provided by sub. (1g) (a) 1. as applied to children does not violate the prohibitions against cruel and unusual punishment contained in the United States and Wisconsin constitutions. State v. Barbeau, 2016 WI App 51, ___ Wis. 2d ___, 883 N.W.2d 520, 14−2876.

973.015 Special disposition. (1m) (a) 1. Subject to subd. 2. and except as provided in subd. 3., when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition. This subsection does not apply to information maintained by the department of transportation regarding a conviction that is required to be included in a record kept under s. 343.23 (2) (a).

2. The court shall order at the time of sentencing that the record be expunged upon successful completion of the sentence if the offense was a violation of s. 942.08 (2) (b), (c), or (d) or (3), and the person was under the age of 18 when he or she committed it.

3. No court may order that a record of a conviction for any of the following be expunged:

a. A Class H felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (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.

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

(b) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record. If the person has been imprisoned, the detaining authority shall also forward a copy of the certificate of discharge to the department.

(2m) At any time after a person has been convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for a violation of s. 944.30, a court may, upon the motion of the person, vacate the conviction, adjudication, or finding, or may order that the record of the violation of s. 944.30 be expunged, if all of the following apply:

(a) The person was a victim of trafficking for the purposes of a commercial sex act, as defined in s. 940.302 (1) (a), under s. 940.302 or 948.051 or under 22 USC 7101 to 7112.

(b) The person committed the violation of s. 944.30 as a result of being a victim of trafficking for the purposes of a commercial sex act.

(c) The person submitted a motion that complies with s. 971.30, that contains a statement of facts and, if applicable, the reason the person did not previously raise an affirmative defense under s. 939.46 or allege that the violation was committed as a result of being a victim of trafficking for the purposes of a commercial sex act, and that may include any of the following:

1. Certified records of federal or state court proceedings.

2. Certified records of approval notices, law enforcement certifications, or similar documents generated from federal immigration proceedings.

3. Official documentation from a federal, state, or local government agency.

4. Other relevant and probative evidence of sufficient credibility in support of the motion.

(d) The person made the motion with due diligence subject to reasonable concern for the safety of himself or herself, family members, or other victims of trafficking for the purposes of a commercial sex act or subject to other reasons consistent with the safety of persons.

(e) A copy of the motion has been served on the office of the district attorney that prosecuted the case that resulted in the conviction, adjudication, or finding except that failure to serve a copy does not deprive the court of jurisdiction and is not grounds for dismissal of the motion.

(f) The court in which the motion was made notified the appropriate district attorney's office of the motion and has given the district attorney's office an opportunity to respond to the motion.

(g) The court determines that the person will benefit and society will not be harmed by a disposition.

(3) A special disposition under this section is not a basis for a claim under s. 775.05.

History: 1975 c. 39; 1975 c. 189 s. 105; 1975 c. 199; 1983 a. 519; 1991 a. 189; 2003 a. 33, 50, 320; 2009 a. 28; 2011 a. 268; 2013 a. 362; 2015 a. 80, 366.

An expunged conviction is not admissible to attack a witness's credibility. State v. Anderson, 160 Wis. 2d 435, 466 N.W.2d 681 (Ct. App. 1991).

This section does not require law enforcement agencies or prosecutors to destroy records relating to an expunged conviction, nor does it prohibit courts from considering the facts underlying an expunged conviction in sentencing in another case. State v. Leitner, 2002 WI 77, 253 Wis. 2d 449, 646 N.W.2d 341, 00−1718.

A reasonable reading of this section is that the legislature included the words "at the time of sentencing" in sub. (1m) (a) 2. to limit the point in time at which the circuit court is to make a decision about expunction, and that the phrase "at the time of sentencing" means at the proceeding at which the circuit court announces the sanction. State v. Matasek, 2014 WI 27, 353 Wis. 2d 601, 846 N.W.2d 811, 12−1582.

The only requirements sub. (2) [now sub. (1m) (b)] places on an individual defendant to successfully complete probation are that: 1) he or she has not been convicted of a subsequent offense; 2) his or her probation has not been revoked; and 3) he or she has satisfied all the conditions of probation. If a probationer satisfies these 3 criteria, he has earned expungement and is automatically entitled to expungement of the underlying charge. State v. Hemp, 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811, 13−1163.

This section places no burden upon a person who successfully completes probation to petition the circuit court within a certain period of time in order to effectuate the expungement. The detaining or probationary authority must forward the certificate of discharge to the court of record upon the individual defendant's successful completion of his or her sentence and at that point the process of expungement is self−executing. State v. Hemp, 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811, 13−1163.

Nothing in this section grants the circuit court the authority to revisit an expungement decision. State v. Hemp, 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811, 13−1163.

This section does not apply to civil forfeiture violations. The language of sub. (1) (a) [now sub. (1m) (a) 1.] indicates that law violations for which expunction is available relate to laws that include some "period of imprisonment." Thus, where there is no period of imprisonment associated with a law, that law is not one to which this section applies. Kenosha County v. Frett, 2014 WI App 127, 359 Wis. 2d 246, 858 N.W.2d 397, 14−0006.

The circuit court's consideration of the defendant's prior supervision in his expunged case was a consideration of the facts underlying a record of conviction expunged under this section and thereby a permissible consideration under *Leitner*. The "facts" a court can consider under *Leitner* are not limited to only those facts surrounding the underlying expunged criminal act but include the facts surrounding the entire underlying expunged criminal record. State v. Allen, 2015 WI App 96, 366 Wis. 2d 299, 873 N.W.2d 92, 14−2840.

"Expunge" under this section means to strike or obliterate from the record all references to the defendant's name and identity. 67 Atty. Gen. 301.

Circuit courts do not possess inherent powers to expunge or destroy conviction records. 70 Atty. Gen. 115.

973.017 Bifurcated sentences; use of guidelines; consideration of aggravating and mitigating factors. (1) DEFINITION. In this section, "sentencing decision" means a

decision as to whether to impose a bifurcated sentence under s. 973.01 or place a person on probation and a decision as to the length of a bifurcated sentence, including the length of each component of the bifurcated sentence, the amount of a fine, and the length of a term of probation.

(2) GENERAL REQUIREMENT. When a court makes a sentencing decision concerning a person convicted of a criminal offense committed on or after February 1, 2003, the court shall consider all of the following:

(ad) The protection of the public.

(ag) The gravity of the offense.

(ak) The rehabilitative needs of the defendant.

(b) Any applicable mitigating factors and any applicable aggravating factors, including the aggravating factors specified in subs. (3) to (8).

(3) AGGRAVATING FACTORS; GENERALLY. When making a sentencing decision for any crime, the court shall consider all of the following as aggravating factors:

(a) The fact that the person committed the crime while his or her usual appearance was concealed, disguised, or altered, with the intent to make it less likely that he or she would be identified with the crime.

(b) The fact that the person committed the crime using information that was disclosed to him or her under s. 301.46.

(c) The fact that the person committed the crime for the benefit of, at the direction of, or in association with any criminal gang, as defined in s. 939.22 (9), with the specific intent to promote, further, or assist in any criminal conduct by criminal gang members, as defined in s. 939.22 (9g).

(d) The fact that the person committed the felony while wearing a vest or other garment designed, redesigned, or adapted to prevent bullets from penetrating the garment.

(e) 1. Subject to subd. 2., the fact that the person committed the felony with the intent to influence the policy of a governmental unit or to punish a governmental unit for a prior policy decision, if any of the following circumstances also applies to the felony committed by the person:

a. The person caused bodily harm, great bodily harm, or death to another.

b. The person caused damage to the property of another and the total property damaged is reduced in value by $25,000 or more. For the purposes of this subd. 1. b., property is reduced in value by the amount that it would cost either to repair or to replace it, whichever is less.

c. The person used force or violence or the threat of force or violence.

2. a. In this subdivision, "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

b. Subdivision 1. does not apply to conduct arising out of or in connection with a labor dispute.

(4) AGGRAVATING FACTORS; SERIOUS SEX CRIMES COMMITTED WHILE INFECTED WITH CERTAIN DISEASES. (a) In this subsection:

1. "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

1m. "HIV test" has the meaning given in s. 252.01 (2m).

2. "Serious sex crime" means a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.085.

3. "Sexually transmitted disease" means syphilis, gonorrhea, hepatitis B, hepatitis C, or chlamydia.

4. "Significantly exposed" means sustaining a contact that carries a potential for transmission of a sexually transmitted disease or HIV by one or more of the following:

a. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

b. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

c. Exchange, into an eye, an open wound, an oozing lesion, or other place where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

(b) When making a sentencing decision concerning a person convicted of a serious sex crime, the court shall consider as an aggravating factor the fact that the serious sex crime was committed under all of the following circumstances:

1. At the time that he or she committed the serious sex crime, the person convicted of committing the serious sex crime had a sexually transmitted disease or acquired immunodeficiency syndrome or had had a positive HIV test.

2. At the time that he or she committed the serious sex crime, the person convicted of committing the serious sex crime knew that he or she had a sexually transmitted disease or acquired immunodeficiency syndrome or that he or she had had a positive HIV test.

3. The victim of the serious sex crime was significantly exposed to HIV or to the sexually transmitted disease, whichever is applicable, by the acts constituting the serious sex crime.

(5) AGGRAVATING FACTORS; VIOLENT FELONY COMMITTED AGAINST ELDER PERSON. (a) In this subsection:

1. "Elder person" means any individual who is 62 years of age or older.

2. "Violent felony" means any felony under s. 940.19 (2), (4), (5), or (6), 940.225 (1), (2), or (3), 940.23, or 943.32.

(b) When making a sentencing decision concerning a person convicted of a violent felony, the court shall consider as an aggravating factor the fact that the victim of the violent felony was an elder person. This paragraph applies even if the person mistakenly believed that the victim had not attained the age of 62 years.

(6) AGGRAVATING FACTORS; CHILD SEXUAL ASSAULT OR CHILD ABUSE BY CERTAIN PERSONS. (a) In this subsection, "person responsible for the welfare of the child" includes the child's parent, stepparent, guardian, or foster parent; an employee of a public or private residential home, institution, or agency; any other person legally responsible for the child's welfare in a residential setting; or a person employed by one who is legally responsible for the child's welfare to exercise temporary control or care for the child.

(b) When making a sentencing decision concerning a person convicted of a violation of s. 948.02 (1) or (2), 948.025 (1), 948.03 (2), (3), or (5) (a) 1., 2., 3., or 4., or 948.051, the court shall consider as an aggravating factor the fact that the person was a person responsible for the welfare of the child who was the victim of the violation.

(6m) AGGRAVATING FACTORS; DOMESTIC ABUSE IN PRESENCE OF A CHILD. (a) In this subsection:

1. "Child" means an individual who has not attained the age of 18 years.

2. "Domestic abuse" has the meaning given in s. 968.075 (1) (a).

(b) When making a sentencing decision concerning a person convicted of a crime that involves an act of domestic abuse, the court shall consider as an aggravating factor the fact that the act was committed in a place or a manner in which the act was observable by or audible to a child or was in the presence of a child and

the actor knew or had reason to know that the act was observable by or audible to a child or was in the presence of a child.

(7) AGGRAVATING FACTORS; HOMICIDE OR INJURY BY INTOXICATED USE OF A VEHICLE. When making a sentencing decision concerning a person convicted of a violation of s. 940.09 (1) or 940.25 (1), the court shall consider as an aggravating factor the fact that, at the time of the violation, there was a minor passenger under 16 years of age or an unborn child in the person's motor vehicle.

(8) AGGRAVATING FACTORS; CONTROLLED SUBSTANCES OFFENSES. (a) *Distribution or delivery to prisoners.* 1. In this paragraph, "precinct" means a place where any activity is conducted by a prison, jail, or house of correction.

2. When making a sentencing decision concerning a person convicted of violating s. 961.41 (1) or (1m), the court shall consider as an aggravating factor the fact that the violation involved delivering, distributing, or possessing with intent to deliver or distribute a controlled substance or controlled substance analog to a prisoner within the precincts of any prison, jail, or house of correction.

3. When making a sentencing decision concerning a person convicted of violating s. 961.65, the court shall consider as an aggravating factor the fact that the person intended to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine to a prisoner within the precincts of any prison, jail, or house of correction.

(b) *Distribution or delivery on public transit vehicles.* When making a sentencing decision concerning a person convicted of violating s. 961.41 (1) or (1m), the court shall consider as an aggravating factor the fact that the violation involved delivering, distributing, or possessing with intent to deliver or distribute a controlled substance included in schedule I or II or a controlled substance analog of any controlled substance included in schedule I or II and that the person knowingly used a public transit vehicle during the violation.

(c) *Distribution or delivery of methamphetamine on public transit vehicles.* When making a sentencing decision concerning a person convicted of violating s. 961.65, the court shall consider as an aggravating factor the fact that the person intended to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine and that the person knowingly used a public transit vehicle during the violation.

(9) AGGRAVATING FACTORS NOT AN ELEMENT OF THE CRIME. The aggravating factors listed in this section are not elements of any crime. A prosecutor is not required to charge any aggravating factor or otherwise allege the existence of an aggravating factor in any pleading for a court to consider the aggravating factor when making a sentencing decision.

(10m) STATEMENT OF REASONS FOR SENTENCING DECISION. (a) The court shall state the reasons for its sentencing decision and, except as provided in par. (b), shall do so in open court and on the record.

(b) If the court determines that it is not in the interest of the defendant for it to state the reasons for its sentencing decision in the defendant's presence, the court shall state the reasons for its sentencing decision in writing and include the written statement in the record.

History: 2001 a. 109; 2003 a. 321; 2005 a. 14, 277; 2007 a. 20, 96, 97, 116; 2009 a. 28, 209; 2011 a. 273; 2013 a. 165; 2015 a. 366.

Under sub. (10m), a circuit court must state the reasons for its sentencing decision on the record. Under the erroneous exercise of discretion standard, the circuit court's determination will be upheld on appeal if it is a reasonable conclusion, based upon a consideration of the appropriate law and facts of record. State v. Salas Gayton, 2016 WI 58, 370 Wis. 2d 264, 882 N.W.2d 459, 13−0646.

973.02 Place of imprisonment when none expressed. Except as provided in s. 973.032, if a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence of less than one year shall be to the county jail, a sentence of more than one year shall be to the Wisconsin state prisons and the minimum under the indeterminate sentence law shall be one year, and a sentence of one year may be to either the Wisconsin state prisons or the county jail. In any proper case, sentence and commitment may be to the department or any house of correction or other institution as provided by law or to detention under s. 973.03 (4).

History: 1973 c. 90; 1987 a. 27; 1991 a. 39.

The legislature is presumed to have been aware of many existing statutes carrying sentences of one year or less with no place of confinement specified when it enacted the predecessor to s. 973.02 as chapter 154, laws of 1945. State ex rel. McDonald v. Douglas Cty. Cir. Ct. 100 Wis. 2d 569, 302 N.W.2d 462 (1981).

Criminal defendants who receive consecutive sentences that in the aggregate exceed one year, but individually are all less than one year, should be incarcerated in county jails rather than the Wisconsin prison system. 78 Atty. Gen. 44.

973.03 Jail sentence. (1) If at the time of passing sentence upon a defendant who is to be imprisoned in a county jail there is no jail in the county suitable for the defendant and no cooperative agreement under s. 302.44, the court may sentence the defendant to any suitable county jail in the state. The expenses of supporting the defendant there shall be borne by the county in which the crime was committed.

(2) A defendant sentenced to the Wisconsin state prisons and to a county jail or house of correction for separate crimes shall serve all sentences whether concurrent or consecutive in the state prisons.

(3) (a) If a court sentences a defendant to imprisonment in the county jail, the court may provide that the defendant perform community service work under pars. (b) and (c). Except as provided in par. (am), the defendant earns good time at a rate of one day for each 3 days of work performed. A day of work equals 8 hours of work performed. This good time is in addition to good time authorized under s. 302.43.

(am) If a court provides that a defendant may perform community service work pursuant to par. (a) and the defendant is sentenced to probation or imprisonment in a Huber facility under s. 303.09, or if a defendant has been ordered to perform community service work under s. 800.09, a county may, with the approval of the chief judge in the county, allow the defendant to perform community service work under pars. (b) and (c). The county may determine the rate at which all defendants in the county earn good time, except that a defendant may not earn less than one day of good time for every 3 days of work performed, nor more than one day of good time for each day of work performed. A day of work equals 8 hours of work performed. This good time is in addition to good time authorized under s. 302.43.

(b) The court may require that the defendant perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the defendant and the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

(c) Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

(d) This subsection applies to persons who are sentenced to a county jail but are transferred to a Huber facility under s. 303.09, to a county work camp under s. 303.10 or to a tribal jail under s. 302.445.

(e) A court may not provide that a defendant perform community service work under this subsection if the defendant is being sentenced regarding any of the following:

1. A crime which is a Class A, B, or C felony.

2. A crime which is a Class D, E, F, or G felony listed in s. 969.08 (10) (b), but not including any crime specified in s. 943.10.

(4) (a) In lieu of a sentence of imprisonment to the county jail, a court may impose a sentence of detention at the defendant's place of residence or other place designated by the court. The

length of detention may not exceed the maximum possible period of imprisonment. The detention shall be monitored by the use of an electronic device worn continuously on the defendant's person and capable of providing positive identification of the wearer at the detention location at any time. A sentence of detention in lieu of jail confinement 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 sentence of detention, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms of the sentence of detention may include a requirement that the defendant pay a daily fee to cover the costs associated with monitoring him or her. In that case, the terms must specify to whom the payments are made.

(b) A person sentenced to detention under par. (a) is eligible to earn good time in the amount of one−fourth of his or her term for good behavior if sentenced to at least 4 days, but fractions of a day shall be ignored. The person shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). If the defendant fails to comply with the terms of the sentence of detention, the court may order the defendant brought before the court and the court may order the defendant deprived of good time.

(c) If the defendant fails to comply with the terms of the sentence of detention, the court may order the defendant brought before the court and the court may order that the remainder of the sentence of detention be served in the county jail.

(d) A sentence under this subsection is not a sentence of imprisonment, except for purposes of ss. 973.04, 973.15 (8) (a) and 973.19.

(5) (a) In this subsection:

1. "Commission of a serious crime" has the meaning given under s. 969.08 (10) (a).

2. "Serious crime" has the meaning given under s. 969.08 (10) (b).

(b) In lieu of a continuous sentence, a court may sentence a person to serve a series of periods, not less than 48 hours nor more than 3 days for each period, of imprisonment in a county jail. The person is not subject to confinement between periods of imprisonment.

(c) A court may not sentence a person under par. (b) regarding any violation under ch. 961 or the commission of a serious crime.

History: 1971 c. 298; 1983 a. 110, 192; 1985 a. 150; 1987 a. 27; 1987 a. 332 s. 64; 1987 a. 398, 399; 1989 a. 31, 85; 1993 a. 48; 1995 a. 281, 448; 2001 a. 109; 2007 a. 178.

973.032 Sentence to intensive sanctions program. **(1)** SENTENCE. Beginning July 1, 1992, a court may sentence a person who is convicted of a felony occurring on or after August 15, 1991, but before December 31, 1999, to participate in the intensive sanctions program under s. 301.048. If a person is convicted of a felony occurring on or after December 31, 1999, a court may not sentence the person to participate in the intensive sanctions program under s. 301.048.

(2) ELIGIBILITY. (a) A court may sentence a person under sub. (1) if the department provides a presentence investigation report recommending that the person be sentenced to the program. If the department does not make the recommendation, a court may order the department to assess and evaluate the person. After that assessment and evaluation, the court may sentence the person to the program unless the department objects on the ground that it recommends that the person be placed on probation.

(b) Notwithstanding par. (a), the court may not sentence a person under sub. (1) if he or she is convicted of a felony punishable by life imprisonment or has at any time been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violent offense, as defined in s. 301.048 (2) (bm).

(3) LIMITATIONS. The following apply to a sentence under sub. (1):

(a) The court shall provide a maximum period for the sentence, which may not exceed the maximum term of imprisonment that could be imposed on the person, including imprisonment authorized by any penalty enhancement statute.

(b) The court shall provide a maximum period for placements under s. 301.048 (3) (a) 1., which may not exceed one year unless the defendant waives this requirement.

(c) 1. In this paragraph, "Type 1 prison" has the meaning given in s. 301.01 (5).

2. The court may prescribe reasonable and necessary conditions of the sentence in accordance with s. 301.048 (3), except the court may not specify a particular Type 1 prison, jail, camp or facility where the offender is to be placed under s. 301.048 (3) (a) and the court may not restrict the department's authority under s. 301.048 (3) (b) or (c).

(4) MODIFICATION. (a) The department may provide for placements under s. 301.048 (3) (a) for a shorter period than the maximum period specified by the court under sub. (3) (b).

(b) The department may request that the court extend the maximum period provided by the court under sub. (3) (a) or the maximum period provided by the court under sub. (3) (b) or both. Unless a hearing is voluntarily waived by the person, the court shall hold a hearing on the matter. The court may not extend the maximum period of the sentence beyond the amount allowable under sub. (3) (a). Except as provided in par. (c), the court may not extend the maximum period for placements under s. 301.048 (3) (a) 1. beyond a total, including the original period and all extensions, of 2 years or two−thirds of the maximum term of imprisonment that could have been imposed on the person, whichever is less.

(c) The court may extend under par. (b) the maximum period for placements under s. 301.048 (3) (a) 1. to a period not exceeding two−thirds of the maximum term of imprisonment that could have been imposed on the person under sub. (3) (a) for his or her sentence to the intensive sanctions program if all of the following apply:

1. The person escaped from a sentence to the intensive sanctions program.

2. The person is sentenced for the escape to a sentence of imprisonment concurrent with the sentence to the intensive sanctions program.

3. The sentence under subd. 2. exceeds the total of the maximum period originally provided by the court under sub. (3) (b) for the sentence to the intensive sanctions program and the maximum extensions available under par. (b).

(5) PAROLE RESTRICTIONS. A person sentenced under sub. (1) is eligible for parole except as provided in ss. 302.11, 304.02 and 304.06.

(6) CREDIT. Any sentence credit under s. 973.155 (1) or (1m) applies toward service of the period under sub. (3) (a) but does not apply toward service of the period under sub. (3) (b).

History: 1991 a. 39; 1993 a. 79; 1995 a. 27, 390; 1997 a. 283; 1999 a. 9, 185; 2001 a. 109; 2005 a. 25.

When a presentence investigation recommends it, nothing prohibits a court from sentencing a person to the intensive sanctions program although the sentencing guidelines would recommend probation. State v. Miller, 180 Wis. 2d 320, 509 N.W.2d 98 (Ct. App. 1993).

An extension of confinement under this provision may be appealed by common law writ of certiorari. The time for appeal is governed by s. 808.04. State v. Bridges, 195 Wis. 2d 254, 536 N.W.2d 153 (Ct. App. 1995), 94−0880.

The extension of a placement period under the intensive sanctions program must be based on public safety considerations and the participant's need for punishment and treatment. All that needs to be shown at an extension hearing is that the participant has not made sufficient progress in the program and that more time is required to meet those concerns. State v. Turner, 200 Wis. 2d 168, 546 N.W.2d 880 (Ct. App. 1996), 95−1295.

The right, under s. 972.14 (2), of a defendant to make a statement prior to sentencing does not apply to an extension of a placement under the intensive sanctions program. State v. Turner, 200 Wis. 2d 168, 546 N.W.2d 880 (Ct. App. 1996), 95−1295.

Intensive Sanctions: A New Sentencing Option. Fiedler. Wis. Law. June 1992.

973.0335 Sentencing; restriction on possession of body armor. Whenever a court imposes a sentence or places a defendant on probation for a conviction for a violent felony, as

defined in s. 941.291 (1) (b), the court shall inform the defendant of the requirements and penalties under s. 941.291.

History: 2001 a. 95.

973.035 Transfer to state−local shared correctional facilities. Any person serving a sentence of imprisonment to the Wisconsin state prisons, a county jail, a county reforestation camp or a county house of correction or serving a sentence to the intensive sanctions program may be transferred to a state−local shared correctional facility under s. 302.45 (1).

History: 1983 a. 332; 1989 a. 31; 1991 a. 39.

973.04 Credit for imprisonment under earlier sentence for the same crime. When a sentence is vacated and a new sentence is imposed upon the defendant for the same crime, the department shall credit the defendant with confinement previously served.

History: 1983 a. 66, 528.

While periods of time served due to an indigent's inability to post bail prior to trial must be credited as time served on a prison sentence imposed, a court need not credit time served by an indigent offender against probationary confinement. State v. Avila, 192 Wis. 2d 870, 532 N.W.2d 423 (Ct. App. 1995).

An offender is not entitled to additional sentence credit under this section when: 1) the vacated sentence was originally imposed concurrent to a separate sentence; 2) the separate sentence is not vacated; 3) the vacated sentence is reimposed consecutively to the non−vacated sentence; and 4) the time that the defendant requested was served in satisfaction of the sentence that was not vacated. State v. Lamar, 2011 WI 50, 334 Wis. 2d 536, 799 N.W.2d 758, 08−2206.

973.042 Child pornography surcharge. (1) In this section, "image" includes a video recording, a visual representation, a positive or negative image on exposed film, and data representing a visual image.

(2) If a court imposes a sentence or places a person on probation for a crime under s. 948.05 or 948.12 and the person was at least 18 years of age when the crime was committed, the court shall impose a child pornography surcharge of $500 for each image or each copy of an image associated with the crime. The court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury.

(4) After determining the amount due, the clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(5) The secretary of administration shall credit the surcharge to the appropriation account under s. 20.455 (5) (gj).

(6) If an inmate in a state prison or a person sentenced to a state prison has not paid the child pornography surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected under this subsection shall be transmitted to the secretary of administration.

History: 2005 a. 433; 2013 a. 20.

973.043 Drug offender diversion surcharge. (1) If a court imposes a sentence or places a person on probation for a crime under ch. 943 that was committed on or after October 1, 2005, the court shall impose a drug offender diversion surcharge of $10 for each conviction.

(2) After determining the amount due, the clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(3) All moneys collected from drug offender diversion surcharges shall be credited to the appropriation account under s. 20.455 (2) (kv) and used for the purpose of making grants to counties under s. 165.95.

(4) If an inmate in a state prison or a person sentenced to a state prison has not paid the drug offender diversion surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

History: 2005 a. 25; 2013 a. 20.

973.045 Crime victim and witness assistance surcharge. (1) If a court imposes a sentence or places a person on probation, the court shall impose a crime victim and witness assistance surcharge. A surcharge imposed under this subsection may not be waived, reduced, or forgiven for any reason. The surcharge is the total amount calculated by adding up the amount for every misdemeanor count and every felony count as follows:

(a) For each misdemeanor count on which a conviction occurred, $67.

(b) For each felony count on which a conviction occurred, $92.

(1m) (a) In this subsection, "civil offense" means an offense punishable by a forfeiture.

(b) If all of the following apply, the court shall impose a crime victim and witness assistance surcharge in addition to any forfeiture that it imposes:

1. The person is charged with one or more crimes in a complaint.

2. As a result of the complaint being amended, the person is charged with a civil offense in lieu of one of those crimes.

3. The court finds that the person committed that civil offense on or after October 27, 2007.

(c) The amount of the surcharge imposed under par. (b) shall be the amount specified in sub. (1) (a) or (b), depending on whether the crime that was the subject of the amendment under par. (b) 2. was a misdemeanor or a felony.

(2) After the clerk determines the amount due, the clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2. The secretary of administration shall credit to the appropriation account under s. 20.455 (5) (g) the amount paid to the secretary by the county treasurer under this subsection and any amount collected under sub. (4).

(4) If an inmate in a state prison or a person sentenced to a state prison has not paid the crime victim and witness assistance surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

History: 1983 a. 27; 1987 a. 27; 1989 a. 31; 1993 a. 16; 1995 a. 201; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 28; 2011 a. 32, 257; 2011 a. 260 s. 81; 2013 a. 20.

973.0455 Crime prevention funding board surcharge. (1) If a court in a county that has established a crime prevention funding board under s. 59.54 (28) imposes a sentence or places a person on probation, the court shall impose a crime prevention funding board surcharge. The surcharge is the total amount calculated by adding up, for each misdemeanor or felony count on which a conviction occurred, $20.

(2) After the clerk determines the amount due, the clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (n). The county treasurer shall then distribute the moneys under s. 59.25 (3) (gm).

History: 2015 a. 55.

973.046 Deoxyribonucleic acid analysis surcharge. (1r) If a court imposes a sentence or places a person on probation, the court shall impose a deoxyribonucleic acid analysis surcharge, calculated as follows:

(a) For each conviction for a felony, $250.

(b) For each conviction for a misdemeanor, $200.

(2) After the clerk of court determines the amount due, the clerk shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(3) All moneys collected from deoxyribonucleic acid analysis surcharges shall be deposited by the secretary of administration as specified in s. 20.455 (2) (Lm) and utilized under s. 165.77.

(4) If an inmate in a state prison or a person sentenced to a state prison has not paid the deoxyribonucleic acid analysis surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

History: 1993 a. 16; 1995 a. 201; 1997 a. 27; 1999 a. 9; 2003 a. 33; 2005 a. 277; 2013 a. 20.

As applied to a defendant who committed crimes before the effective date of sub. (1r), but was sentenced after that date, sub. (1r) is punitive and an unconstitutional ex post facto law. There is no ex post facto problem in applying the DNA surcharge statute to criminal defendants on a going−forward basis. State v. Radaj, 2015 WI App 50, 363 Wis. 2d 633, 866 N.W.2d 758, 14−2496.

2013 Wis. Act 20 required circuit courts to begin imposing the surcharge on misdemeanants on January 1, 2014, but required the circuit courts to wait until April 1, 2015, before they could actually order misdemeanants to provide a biological specimen for DNA analysis. This multiphase rollout led to an ex post facto violation because it created a class of people who committed an offense before the courts could impose a DNA surcharge. State v. Elward, 2015 WI App 51, 363 Wis. 2d 628, 866 N.W.2d 756, 14−2569.

Unlike in *Radaj*, 2015 WI App 50, in which separate surcharge was imposed for each of multiple convictions although costs of running the DNA data bank would not increase in relation to the number of convictions, as applied to the defendant in the this case who committed crimes before the effective date of sub. (1r), but was sentenced after that date, the imposition of a single surcharge under sub. (1r) was not punitive and not an unconstitutional ex post facto law. State v. Scruggs, 2015 WI App 88, 365 Wis. 2d 568, 872 N.W.2d 146, 14−2981.

The defendant failed to demonstrate beyond a reasonable doubt that the $250 DNA surcharge that the circuit court imposed on the defendant for a single felony conviction constituted a punishment and, thus, violated the prohibitions against ex post facto laws in the U.S. and Wisconsin Constitutions. State v. Scruggs, 2015 WI App 88, 365 Wis. 2d 568, 872 N.W.2d 146.

973.047 Deoxyribonucleic acid analysis requirements. (1f) If a court imposes a sentence or places a person on probation, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. The court shall inform the person that he or she may request expungement under s. 165.77 (4).

(1m) The results from deoxyribonucleic acid analysis of a specimen provided under this section may be used only as authorized under s. 165.77 (3).

(2) Biological samples required under sub. (1f) shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

History: 1993 a. 16, 98, 227; 1995 a. 440; 1999 a. 9; 2005 a. 275; 2009 a. 202, 261; 2013 a. 20; 2013 a. 173 s. 33.

973.048 Sex offender reporting requirements. (1m) (a) Except as provided in sub. (2m), if a court imposes a sentence or places a person on probation for any violation, or for the solicitation, conspiracy, or attempt to commit any violation, under ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the person to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the person report under s. 301.45.

(b) If a court under par. (a) orders a person to comply with the reporting requirements under s. 301.45 in connection with a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09 and the person was under the age of 21 when he or she committed the offense, the court may provide that the person be released from the requirement to comply with the reporting requirements under s. 301.45 upon successfully completing the sentence or probation imposed for the offense. A person successfully completes a sentence if he or she is not convicted of a subsequent offense during the term of the sentence. A person successfully completes probation if probation is not revoked and the person satisfies the conditions of probation.

(2m) If a court imposes a sentence or places a person on probation for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the person was not the victim's parent, the court shall require the person to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply under s. 301.45 (1m).

(3) In determining under sub. (1m) (a) whether it would be in the interest of public protection to have the person report under s. 301.45, the court may consider any of the following:

(a) The ages, at the time of the violation, of the person and the victim of the violation.

(b) The relationship between the person and the victim of the violation.

(c) Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

(d) Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

(e) The probability that the person will commit other violations in the future.

(g) Any other factor that the court determines may be relevant to the particular case.

(4) If the court orders a person to comply with the reporting requirements under s. 301.45, the court may order the person to continue to comply with the reporting requirements until his or her death.

(5) If the court orders a person to comply with the reporting requirements under s. 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the conviction on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the conviction has been reversed, set aside or vacated.

History: 1995 a. 440; 1997 a. 130; 1999 a. 89; 2001 a. 109; 2003 a. 50; 2005 a. 277; 2007 a. 116; 2009 a. 137.

Cross−reference: See also ch. Jus 9, Wis. adm. code.

Sex−offender registration as a condition of bail−jumping probation was not authorized by s. 973.09 (1) (a). Bail jumping is not one of the offenses enumerated in the sex−offender registration statutes, ss. 301.45 or 973.048, that permit or require registration, and read−in, but dismissed, sexual assault charges do not bring a case within s. 973.048. State v. Martel, 2003 WI 70, 262 Wis. 2d 483, 664 N.W.2d 69, 02−1599.

Sub. (1m) authorizes the circuit court to require that a person convicted of specified crimes, including crimes enumerated in ch. 940, register as a sex offender if the court determines that the underlying conduct was sexually motivated as defined in s. 980.01(5) and if registration would be in the interest of public protection. Under *Martel* a read−in offense, including sexual assault, may not serve as a basis to order a defendant to register as a sex offender. State v. Jackson, 2012 WI App 76, 343 Wis. 2d 602, 819 N.W.2d 288, 10−2689.

973.049 Sentencing; restrictions on contact. (1) In this section:

(a) "Co−actor" means any individual who was a party to a crime considered at sentencing, whether or not the individual was charged with or convicted of the crime considered at sentencing.

(b) "Crime considered at sentencing" means any crime for which the defendant was convicted or any read−in crime, as defined in s. 973.20 (1g) (b).

(2) When a court imposes a sentence on an individual or places an individual on probation for the conviction of a crime, the court may prohibit the individual from contacting victims of, witnesses to, or co−actors in, a crime considered at sentencing during any part of the individual's sentence or period of probation if the court determines that the prohibition would be in the interest of public protection. For purposes of the prohibition, the court may determine who are the victims of or witnesses to any crime considered at sentencing.

(3) If a court issues an order under sub. (2), the court shall inform the individual of the prohibition and include the prohibition in the judgment of conviction for the crime.

History: 2005 a. 32; 2011 a. 267.

Sub. (2) plainly allows a sentencing court to prohibit a defendant from contacting victims of a crime considered at sentencing. The statute clearly states the court may impose this prohibition during any part of the defendant's sentence. The statute also grants the court discretion to determine who is a victim of a crime considered at sentencing. State v. Campbell, 2011 WI App 18, 331 Wis. 2d 91, 794 N.W.2d 276, 10−0905.

973.05 Fines. (1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment of the fine, plus costs, fees, and surcharges imposed under ch. 814, to be made within a period not to exceed 60 days. If no such permission is embodied in the sentence, the fine, plus costs, fees, and surcharges imposed under ch. 814, shall be payable immediately.

(1m) If the court orders payment of restitution and a fine and related payments under s. 973.20, the court may authorize a payment period in excess of the limit imposed under sub. (1).

(2) When a defendant is sentenced to pay a fine and is also placed on probation, the court may make the payment of the fine, plus costs, fees, and surcharges imposed under ch. 814, a condition of probation.

(2m) Payments under this section shall be applied as applicable in the following order:

(a) To payment of the penalty surcharge until paid in full.

(b) To payment of the jail surcharge until paid in full.

(c) To payment of part A of the crime victim and witness assistance surcharge imposed before July 2, 2013, until paid in full.

(d) To payment of part B of the crime victim and witness assistance surcharge imposed before July 2, 2013, until paid in full.

(dg) To payment of part C of the crime victim and witness assistance surcharge imposed before July 2, 2013, until paid in full.

(dr) To payment of the crime victim and witness surcharge imposed on or after July 2, 2013, until paid in full.

(e) To payment of the crime laboratories and drug law enforcement surcharge until paid in full.

(f) To payment of the deoxyribonucleic acid analysis surcharge until paid in full.

(fm) To payment of the child pornography surcharge until paid in full.

(g) To payment of the drug abuse program improvement surcharge until paid in full.

(gm) To payment of the drug offender diversion surcharge until paid in full.

(h) To payment of the driver improvement surcharge until paid in full.

(i) To payment of the truck driver education surcharge until paid in full.

(j) To payment of the domestic abuse surcharge until paid in full.

(jm) To payment of the global positioning system tracking surcharge until paid in full.

(k) To payment of the consumer protection surcharge until paid in full.

(L) To payment of the natural resources surcharge until paid in full.

(m) To payment of the natural resources restitution surcharge until paid in full.

(n) To payment of the environmental surcharge until paid in full.

(o) To payment of the wild animal protection surcharge until paid in full.

(om) To the payment of the wildlife violator compact surcharge until paid in full.

(p) To payment of the weapons surcharge until paid in full.

(q) To payment of the uninsured employer surcharge until paid in full.

(r) To payment of the enforcement surcharge under s. 253.06 (4) (c) until paid in full.

(rm) To the payment of the ignition interlock surcharge under s. 343.301 (5) until paid in full.

(rv) To payment of the crime prevention funding board surcharge until paid in full.

(s) To payment of the fine and the costs and fees imposed under ch. 814.

(3) (a) In lieu of part or all of a fine imposed by a court, the court may stay the execution of part or all of the sentence and provide that the defendant perform community service work under pars. (b) and (c). Any applicable driver improvement surcharge under s. 346.655, any safe ride program surcharge under s. 346.657, or any domestic abuse surcharge under s. 973.055 shall be imposed under ch. 814 regardless of whether part or all of the sentence has been stayed. If the defendant fails to comply with the community service order, the court shall order the defendant brought before the court for imposition of sentence. If the defendant complies with the community service order, he or she has satisfied that portion of the sentence.

(b) The court may require that the defendant perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the defendant and the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

(c) Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

(4) If a defendant fails to pay the fine, surcharge, costs, or fees within the period specified under sub. (1) or (1m), the court may do any of the following:

(a) Issue a judgment for the unpaid amount and direct the clerk to file and docket a transcript of the judgment, without fee. If the court issues a judgment for the unpaid amount, the court shall send to the defendant at his or her last−known address written notification that a civil judgment has been issued for the unpaid fine, surcharge, costs, or fees. The judgment has the same force and effect as judgments docketed under s. 806.10.

(b) Issue an order assigning not more than 25 percent of the defendant's commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102, and other money due or to be due in the future to the clerk of circuit court for payment of the unpaid fine, surcharge, costs, or fees. In this paragraph, "employer" includes the state and its political subdivisions.

(c) Issue an order assigning lottery prizes won by a defendant whose name is on the list supplied to the clerk of circuit court under s. 565.30 (5r) (a), for payment of the unpaid fine, surcharge, costs, or fees.

(4m) As provided in s. 767.75 (4), a child support withholding assignment under state law has priority over any assignment or order under sub. (4).

(5) (a) 1. Upon entry of the assignment under sub. (4) (b), unless the court finds that income withholding is likely to cause the defendant irreparable harm, the court shall provide notice of the assignment by regular mail to the last−known address of the person from whom the defendant receives or will receive money. If the clerk of circuit court does not receive the money from the person notified, the court shall provide notice of the assignment to any other person from whom the defendant receives or will receive money. Notice of an assignment under sub. (4) (b) shall inform the intended recipient that, if a prior assignment under sub. (4) (b) has been received relating to the same defendant, the recipi-

ent is required to notify the clerk of circuit court that sent the subsequent notice of assignment that another assignment has already been received. A notice of assignment shall include a form permitting the recipient to designate on the form that another assignment has already been received.

2. If, after receiving the annual list under s. 565.30 (5r) (a), the clerk of circuit court determines that a person identified in the list may be subject to an assignment under sub. (4) (c), the clerk shall inform the court of that determination. If the court issues an order under sub. (4) (c), the clerk of circuit court shall send the notice of that order to the administrator of the lottery division of the department of revenue, including a statement of the amount owed under the judgment and the name and address of the person owing the judgment. The court shall notify the administrator of the lottery division of the department of revenue when the judgment that is the basis of the assignment has been paid in full.

3. Notice under this paragraph may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order which directs payment.

(b) For each payment made under the assignment under sub. (4) (b), the person from whom the defendant under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed $3, which shall be deducted from the money to be paid to the defendant.

(c) A person who receives notice of the assignment under sub. (4) (b) shall withhold the amount specified in the notice from any money that person pays to the defendant later than one week after receipt of the notice of assignment. Within 5 days after the day on which the person pays money to the defendant, the person shall send the amount withheld to the clerk of circuit court of the jurisdiction providing notice. If the person has already received a notice of an assignment under sub. (4) (b), the person shall retain the later assignment and withhold the amount specified in that assignment after the last of any prior assignments is paid in full. Within 10 days of receipt of the later notice, the person shall notify the clerk of circuit court that sent the notice that the person has received a prior notice of an assignment under sub. (4) (b). Section 241.09 does not apply to assignments under this section.

(d) If after receipt of notice of assignment under par. (a) 1. the person from whom the defendant receives money fails to withhold the money or send the money to the clerk of circuit court as provided in this subsection, the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under ch. 778 and be required to forfeit not less than $50 nor more than an amount, if the amount exceeds $50, that is equal to 1 percent of the amount not withheld or sent.

(e) If an employer who receives notice of an assignment under sub. (4) (b) fails to notify the clerk of circuit court within 10 days after an employee is terminated or otherwise temporarily or permanently leaves the employer's employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

(f) Compliance by the person from whom the defendant receives money with the order operates as a discharge of the person's liability to the defendant as to that portion of the defendant's commission, earnings, salaries, wages, benefits or other money so affected.

(g) No employer may use an assignment under sub. (4) (b) as a basis for the denial of employment to a defendant, the discharge of an employee or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee in violation of this paragraph may be fined not more than $500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of workforce development for enforcement of this paragraph.

(i) 1. In this paragraph, "payroll period" has the meaning given in s. 71.63 (5).

2. If after an assignment is in effect the defendant's employer changes its payroll period, or the defendant changes employers and the new employer's payroll period is different from the former employer's payroll period, the clerk may, unless otherwise ordered by a judge, amend the withholding assignment or order so that all of the following apply:

a. The withholding frequency corresponds to the new payroll period.

b. The amounts to be withheld reflect the adjustment to the withholding frequency.

(j) The clerk shall provide notice of the amended withholding assignment or order under par. (i) by regular mail to the defendant's employer and to the defendant.

History: 1977 c. 29; 1979 c. 34, 111; 1981 c. 20, 88, 352; 1983 a. 27, 535; 1985 a. 36; 1987 a. 27, 339, 398; 1989 a. 64, 107, 359; 1991 a. 39; 1993 a. 16; 1995 a. 227, 438, 448; 1997 a. 3, 27, 35, 148, 248; 1999 a. 9, 32; 2001 a. 16, 56, 105; 2003 a. 139; 2005 a. 25, 149, 282, 433; 2005 a. 443 s. 265; 2007 a. 20, 97; 2009 a. 28, 100; 2011 a. 32, 266; 2013 a. 20; 2015 a. 55.

Sections 973.05 (1), permitting a delay of 60 days for payment of a fine, and 973.07, providing commitment to jail for nonpayment, are constitutional since the court may stay the sentence and put the defendant on probation. The burden of proving inability to pay is on the defendant. State ex rel. Pedersen v. Blessinger, 56 Wis. 2d 286, 201 N.W.2d 778 (1972).

Trial courts are encouraged to use the installment method when dealing with indigent defendants; the installment period may exceed 60 days. Will v. State, 84 Wis. 2d 397, 267 N.W.2d 357 (1978).

After the defendant raised the issue of ability to pay a fine in a postconviction motion, a hearing was necessary to avoid an unconstitutional application of the statutes. The court should consider: 1) the financial resources of the defendant and the burden that payment will impose; 2) the ability of the defendant to pay on an installment basis or on other conditions to be fixed by the court; 3) the extent to which payment will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim; and 4) whether there are particular reasons that make a fine appropriate as a deterrent or corrective measure. State v. Kuechler, 2003 WI App 245, 268 Wis. 2d 192, 673 N.W.2d 335, 02−1205.

A court cannot impose probation or order a defendant to perform community work in lieu of imposing a statutorily required minimum jail sentence. 71 Atty. Gen. 41.

973.055 Domestic abuse surcharges. (1) If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse surcharge under ch. 814 of $100 for each offense if:

(a) 1. The court convicts the person of a violation of a crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19, 940.20 (1m), 940.201, 940.21, 940.225, 940.23, 940.235, 940.285, 940.30, 940.305, 940.31, 940.32, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01 (1), 947.012 or 947.0125 or of a municipal ordinance conforming to s. 940.201, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01 (1), 947.012 or 947.0125; and

2. The court finds that the conduct constituting the violation under subd. 1. involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child; or

(b) The court convicts a person under s. 813.12 (8) (a) or a conforming municipal ordinance.

(2) (a) If the surcharge is imposed by a court of record, after the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(b) If the surcharge is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the secretary of administration as provided in s. 66.0114 (1) (bm).

(3) All moneys collected from domestic abuse surcharges shall be deposited by the secretary of administration in s. 20.437 (1) (hh) and utilized in accordance with s. 49.165.

(4) A court may waive part or all of the domestic abuse surcharge under this section if it determines that the imposition of the full surcharge would have a negative impact on the offender's family.

History: 1979 c. 111; 1979 c. 221 s. 2202 (20); 1979 c. 355; 1981 c. 20 s. 2202 (20) (s); 1983 a. 27 s. 2202 (20); 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 262, 319; 1995 a. 27, 201, 343, 353; 1997 a. 27, 35, 143; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16; 2003 a. 33, 139, 225, 326, 327; 2007 a. 20, 97, 127; 2011 a. 35; 2013 a. 362.

973.057 Global positioning system tracking surcharge. (1) If a court convicts a person under s. 813.12 or 813.125, or a conforming municipal ordinance, the court shall impose a global positioning system tracking surcharge under ch. 814 of $200 for each offense.

(2) (a) If the surcharge is imposed by a court of record, after the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(b) If the surcharge is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the secretary of administration as provided in s. 66.0114 (1) (bm).

(3) All moneys collected from global positioning system tracking surcharges shall be deposited by the secretary of administration in s. 20.410 (1) (gL) and utilized in accordance with s. 301.49.

(4) If the moneys collected under this section prove inadequate to fund the global positioning system tracking program under s. 301.49, the department may, by rule, increase the surcharge under sub. (1) by not more than 5 percent each year to cover the costs of the global positioning system tracking program.

History: 2011 a. 266; 2013 a. 165 s. 115

973.06 Costs, fees, and surcharges. (1) Except as provided in s. 93.20, the costs, fees, and surcharges taxable against the defendant shall consist of the following items and no others:

(a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, preliminary examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed to return a defendant from another state or country.

(am) Moneys expended by a law enforcement agency under all of the following conditions:

1. The agency expended the moneys to purchase a controlled substance or controlled substance analog that was distributed in violation of ch. 961.

2. The moneys were expended in the course of an investigation that resulted in the defendant's conviction.

3. The moneys were used to obtain evidence of the defendant's violation of the law.

4. The agency has not previously been reimbursed or repaid for the expended moneys by the defendant.

(ar) If the defendant violated s. 947.017, the moneys expended by a state or local government agency for the following activities in connection with a threat under s. 947.017 (2):

1. The response to the threat by emergency medical personnel, as defined in s. 941.37 (1) (c).

2. The analysis of any substance alleged to be a harmful substance, as defined in s. 947.017 (1).

3. The medical treatment of persons who are alleged to have been exposed to an alleged harmful substance, as defined in s. 947.017 (1).

(av) 1. Except as provided in subd. 2., if the defendant violated s. 946.41 by obstructing an officer, the reasonable costs expended by a state or local law enforcement agency or emergency response agency to respond to or investigate the false information that the defendant provided or the physical evidence that the defendant placed. Costs allowable under this paragraph may include personnel costs and costs associated with the use of police or emergency response vehicles.

2. No costs may be taxable against a defendant under this paragraph if any of the following applies:

a. The defendant was charged under s. 946.41 solely because he or she recanted a report of abusive conduct, including interspousal battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, as defined in s. 49.165 (1) (a), 813.12 (1) (am), or 968.075 (1) (a), harassment, as defined in s. 813.125 (1) (am), sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss. 948.02 to 948.11.

b. The defendant was a victim of abusive conduct, including interspousal battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, as defined in s. 49.165 (1) (a), 813.12 (1) (am), or 968.075 (1) (a), harassment, as defined in s. 813.125 (1) (am), sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss. 948.02 to 948.11, and he or she was charged under s. 946.41 based on information he or she omitted or false information he or she provided during the course of an investigation into the crime committed against him or her.

c. The defendant was charged under s. 946.41 solely because his or her report did not lead to criminal charges against, or a conviction of, another person.

(b) Fees and travel allowance of witnesses for the state at the preliminary examination and the trial.

(c) Fees and disbursements allowed by the court to expert witnesses. Section 814.04 (2) shall not apply in criminal cases.

(d) Fees and travel allowance of witnesses for the defense incurred by the county at the request of the defendant, at the preliminary hearing and the trial.

(e) Attorney fees payable to the defense attorney by the county or the state. If the court determines at the time of sentencing that the defendant's financial circumstances are changed, the court may adjust the amount in accordance with s. 977.07 (1) (a) and rules promulgated under s. 977.02 (3).

(g) An amount equal to 10 percent of any restitution ordered under s. 973.20, payable to the county treasurer for use by the county.

(h) The cost of performance of a test under s. 968.38, if ordered by the court.

(j) If the defendant violated s. 23.33 (4c), 23.335 (12) (a) or (b), 30.681, 114.09, 346.63, 350.101, 940.09 (1), or 940.25, any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood, except that the court may not impose on the defendant any cost for an alternative test provided free of charge as described in s. 343.305 (4). If at the time the court finds that the defendant committed the violation, the law enforcement agency has not paid or been charged with the costs of withdrawing the person's blood, the court shall impose and collect the costs the law enforcement agency reasonably expects to be charged for the withdrawal, based on the current charges for this procedure. Notwithstanding sub. (2), the court may not remit these costs.

(2) The court may remit the taxable costs, in whole or in part.

(3) If the court orders payment of restitution, collection of costs shall be as provided under s. 973.20.

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1979 c. 356; 1981 c. 352; 1985 a. 29; 1987 a. 347, 398, 403; 1991 a. 39, 269; 1995 a. 27, 53, 448; 1999 a. 58, 69, 186; 2003 a. 104, 139; 2007 a. 84; 2009 a. 164; 2011 a. 32, 269; 2015 a. 55, 170, 253.

An accused who cancels a jury trial at the last moment to accept a plea bargain risks both taxation of costs under s. 973.06 and assessment of jury fees under s. 814.51. State v. Foster, 100 Wis. 2d 103, 301 N.W.2d 192 (1981).

A court may not order reimbursement of a law enforcement agency for routine investigative activities. State v. Peterson, 163 Wis. 2d 800, 472 N.W.2d 571 (Ct. App. 1991).

Contribution under sub. (1) (e) toward a defendant's attorney fees payable by the county may not be taxed in an order separate from the sentence. State v. Grant, 168 Wis. 2d 682, 484 N.W.2d 371 (Ct. App. 1992).

Sub. (1) (c) does not limit recovery of expert witness fees to fees for court appointed witnesses. State v. Schmaling, 198 Wis. 2d 757, 543 N.W.2d 555 (Ct. App. 1995).

A court was authorized to order that a defendant pay the cost of DNA testing by a private laboratory as a cost under this section. State v. Beiersdorf, 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997), 95−1234.

Expenses incurred by a sheriff's department in transporting a witness from a Florida corrections facility to testify at the defendant's trial were chargeable to the defendant under s. 973.06 (1) (a). State v. Bender, 213 Wis. 2d 338, 570 N.W.2d 590 (Ct. App. 1997), 97−1095.

For costs to be imposed under sub. (1) (am), all the listed conditions must be met. State v. Neave, 220 Wis. 2d 786, 585 N.W.2d 169 (Ct. App. 1998), 97−3486.

Sub. (1) (c) authorized the taxation of the costs of an expert's medical examination when the development of that evidence was used in the prosecution of the defendant although the examination was not done in contemplation of trial and the expert witness did not testify. State v. Rohe, 230 Wis. 2d 294, 602 N.W.2d 125 (Ct. App. 1999), 99−0233.

"Disbursements and fees" are given the same meaning in sub. (1) (a) and (c). Whether the expenses associated with orders to produce a defendant are taxable "fees of officers" under sub. (1) (a) depends upon whether they are ordinarily charged to and payable by another or are merely internal operating expenses of a governmental unit. State v. Dismuke, 2001 WI 75, 244 Wis. 2d 457, 628 N.W.2d 791, 99−1734.

The trial court has inherent authority to assess the cost of impaneling a jury against a party. The purpose of imposing jury costs is to deter disruptive practices that contribute to inefficiency in the court system. The trial court is not limited to imposing costs on parties, but may sanction an attorney whose conduct negligently disrupts the court's orderly administration of justice. O'Neil v. Monroe County Circuit Court, 2003 WI App 149, 266 Wis. 2d 155, 667 N.W.2d 774, 02−2866.

When a defendant agrees to reimburse the county for the attorney fees of standby counsel or the circuit court informs the defendant of his or her potential liability for the fees and standby counsel functions as traditional defense counsel, ss. 973.06 (1) (e) and 973.09 (1g) give a circuit court the authority to impose the attorney fees of standby counsel as a condition of probation. If a defendant does not agree to reimburse the county or is not informed of the potential obligation to pay the fees of standby counsel, payment of attorney fees may not be a condition of probation, under s. 973.06 (1) (e). When standby counsel acts primarily for the benefit of the court rather than as defense counsel, attorney fees for standby counsel are inappropriate. State v. Campbell, 2006 WI 99, 294 Wis. 2d 100, 718 N.W.2d 649, 04−0803.

The obligation of a defendant under this section is not dischargeable in bankruptcy. Matter of Zarzynski, 771 F.2d 304 (1985).

Right to counsel; repayment of cost of court−appointed counsel as a condition of probation. 56 MLR 551.

973.07 Failure to pay fine, fees, surcharges, or costs or to comply with certain community service work. If the fine, plus costs, fees, and surcharges imposed under ch. 814, are not paid or community service work under s. 943.017 (3) is not completed as required by the sentence, the defendant may be committed to the county jail until the fine, costs, fees, and surcharges are paid or discharged, or the community service work under s. 943.017 (3) is completed, for a period fixed by the court not to exceed 6 months.

History: 1977 c. 29; 1979 c. 34, 111; 1981 c. 20; 1983 a. 27; 1985 a. 36; 1987 a. 27, 339; 1989 a. 64; 1991 a. 39; 1993 a. 16; 1995 a. 24; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

Sections 973.05 (1), permitting a delay of 60 days for payment of a fine, and s. 973.07, allowing commitment to jail for nonpayment, are constitutional since the court may stay the sentence and put defendant on probation. The burden of proving inability to pay is on the defendant. State ex rel. Pedersen v. Blessinger, 56 Wis. 2d 286, 201 N.W.2d 778 (1972).

When a fine and payment schedule are reasonably suited to an offender's means, the offender carries a heavy burden of showing inability to pay. Will v. State, 84 Wis. 2d 397, 267 N.W.2d 357 (1978).

Commitment under this section may be consecutive to another term of incarceration. State v. Way, 113 Wis. 2d 82, 334 N.W.2d 918 (Ct. App. 1983).

The 6−month limit on commitments under this section is the aggregate amount of time a defendant may be jailed for nonpayment of a fine. State v. Schuman, 173 Wis. 2d 743, 496 N.W.2d 684 (Ct. App. 1993).

Incarceration as a means of collecting a fine is limited to 6 months by this section. It was error for a court to make payment of an old, unpaid fine a condition of probation for a new conviction when violation of probation exposed the defendant to incarceration of more than 6 months. State v. Oakley, 2000 WI 37, 234 Wis. 2d 528, 609 N.W.2d 786, 98−1099.

In the case of an order for commitment for failure to pay attorney fees, in order to be constitutional this section must require a finding of ability to pay prior to any commitment. The defendant must be given notice and an opportunity to be heard. State v. Helsper, 2006 WI App 243, 297 Wis. 2d 377, 724 N.W.2d 414, 06−0835.

973.075 Forfeiture of property derived from crime and certain vehicles. (1) The following are subject to seizure and forfeiture under ss. 973.075 to 973.077:

(a) All property, real or personal, including money, used in the course of, intended for use in the course of, or directly or indirectly derived from or realized through the commission of any crime.

(b) 1m. Except as provided in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the following ways:

a. To transport any property or weapon used or to be used or received in the commission of any felony.

b. In the commission of a crime under s. 946.70.

c. In the commission of a crime in violation of s. 940.302, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.09, 948.10, 948.12, or 948.14.

d. In the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

e. To cause more than $2,500 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012.

f. In the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (4) or 940.32.

g. In the commission of a crime under s. 943.75 (2) or (2m).

h. In the commission of a crime under s. 948.07.

2m. a. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under ss. 973.075 to 973.077 unless it appears that the owner or other person in charge of the vehicle had knowledge of or consented to the commission of the crime.

b. No vehicle is subject to forfeiture under ss. 973.075 to 973.077 by reason of any act or omission established by the owner of the vehicle to have been committed or omitted without his or her knowledge or consent.

c. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the crime which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(bg) Any property used or to be used in the commission of a crime under s. 943.74, 943.75 (2) or (2m), or 948.07, but if the property is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(bm) Any property used in the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (4) or 940.32, but if the property is encumbered by a bonafide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(c) All remote sensing equipment, navigational devices, survey equipment and scuba gear and any other equipment or device used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

(d) A tank vessel that violates s. 299.62 (2) that is owned by a person who, within 5 years before the commission of the current violation, was previously convicted of violating s. 299.62 (2), but if the tank vessel is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(e) Any recording, as defined in s. 943.206 (5), created, advertised, offered for sale or rent, sold, rented, transported or possessed in violation of ss. 943.207 to 943.209 or s. 943.49 and any electronic, mechanical or other device for making a recording or for manufacturing, reproducing, packaging or assembling a recording that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom the recording or device is seized. If a device subject to forfeiture under this paragraph is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(2) A law enforcement officer may seize property subject to this section upon process issued by any court of record having jurisdiction over the property. Except for vehicles used in the commission of a crime in violation of s. 940.302, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.09, 948.10, 948.12, or 948.14, seizure without process may be made under any of the following circumstances:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under any administrative or special inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state.

(c) The officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) The officer has probable cause to believe that the property was derived from or realized through a crime, or was used in a crime under s. 948.07, or that the property is a vehicle which was used to transport any property or weapon used or to be used or received in the commission of any felony, which was used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47, which was used in the commission of a crime under s. 948.07, or which was used to cause more than $2,500 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012.

(3) If there is a seizure under sub. (2) or s. 342.30 (4) (a), proceedings under s. 973.076 shall be instituted. Property seized under this section or s. 342.30 (4) (a) is not subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this section or s. 342.30 (4) (a), the person seizing the property may do any of the following:

(a) Place the property under seal.

(b) Remove the property to a place designated by it.

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(4) When property is forfeited under ss. 973.075 to 973.077, the agency seizing the property may sell the property that is not required by law to be destroyed or transferred to another agency. The agency may retain any vehicle for official use or sell the vehicle. The agency seizing the property may deduct 50 percent of the amount received for administrative expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as the proceeds of the forfeiture. If the property forfeited under ss. 973.075 to 973.077 is money, all the money shall be deposited in the school fund.

(5) All forfeitures under ss. 973.075 to 973.077 shall be made with due provision for the rights of innocent persons under sub. (1) (b) 2m., (bg), (bm), (d) and (e). Except as provided in sub. (5m), any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned as soon as practically possible if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(5m) (a) In this subsection:

1. "Forfeiture action deadline" means the 30th day after the seizure of the property or, if the property was seized as a result of a criminal conviction, the 30th day after the date of the conviction.

2. "Prosecutor" means the district attorney or, in counties having a population of 500,000 or more, the district attorney or the corporation counsel.

3. "Victim" means the owner, as defined in s. 943.206 (2), of the sounds in a recording described in sub. (1) (e) or, if the recording is seized in connection with an investigation or prosecution of a violation of s. 943.208, the performance owner.

(b) If a recording involved in a violation of ss. 943.207 to 943.209 is forfeited, the sheriff of the county in which the recording was seized shall destroy it after the completion of all proceedings in which the recording might be required as evidence.

(c) If, by the forfeiture action deadline, a summons, complaint and affidavit have not been filed under s. 973.076 (1) (b) 1. with respect to property seized under sub. (1) (e), the prosecutor shall notify the victim, if known, by certified mail no later than 7 days after the forfeiture action deadline. The prosecutor shall then return the property to the person from whom it was seized no earlier than 60 days and no later than 90 days after the forfeiture action deadline unless one of the following applies:

1. A court has entered an order prohibiting the return of the property or requiring it to be conveyed to another person.

2. The property is needed as evidence in a criminal proceeding and is likely to be unavailable for use as evidence if returned to the person from whom it was seized.

(6) Sections 973.075 to 973.077 do not apply to crimes committed under ch. 961.

History: 1981 c. 267; 1985 a. 245, 258; 1987 a. 348; 1989 a. 263; 1993 a. 92, 169, 459, 491; 1995 a. 290, 448; 1997 a. 35, 285; 1999 a. 45, 51, 186; 2001 a. 16, 91; 2013 a. 262, 362; 2015 a. 352.

The critical inquiry under sub. (1) (b) is not whether the vehicle was used in a crime, but whether property carried by the vehicle was used in a crime. State v. One 1971 Oldsmobile Cutlass, 159 Wis. 2d 718, 464 N.W.2d 851 (Ct. App. 1990).

The forfeiture of a motor vehicle under sub. (1) (b) did not violate the constitutional guarantees against excessive punishment. State v. Hammad, 212 Wis. 2d 343, 569 N.W.2d 68 (Ct. App. 1997), 95−2669.

Ownership under sub. (1) (b) 2. (renumbered sub. (1) (b) 2m. b.) is not controlled by legal title, but will be found based on consideration of possession, title, control, and financial stake. State v. Kirch, 222 Wis. 2d 598, 587 N.W.2d 919 (Ct. App. 1998), 98−0582.

A punitive forfeiture violates the prohibition against excessive fines in the U.S. constitution if it is grossly disproportional to the gravity of the defendant's offense. Whether a forfeiture is far in excess of the maximum fine is a factor appropriately considered. State v. Boyd, 2000 WI App 208, 238 Wis. 2d 693, 618 N.W.2d 251, 99−2633.

For purposes of the statutory "innocent owner" exception in this case, while one co−titleholder had the largest financial interest in the forfeited vehicle, the 2nd co−titleholder, who used the vehicle in drug sales was the actual owner of the vehicle when that 2nd titleholder had nearly complete possession and control of the vehicle and paid for insurance, gas, and maintenance while the first titleholder had a different vehicle of her own. However, while forfeiture of the vehicle and 2nd co−titleholder's 's financial interest in it was constitutional, forfeiture of the first titleholder's full financial interest in the vehicle was unconstitutional under the Excessive Fines Clause. State v. One 2013, Toyota Corolla, 2015 WI App 84, 365 Wis. 2d 582, 872 N.W.2d 98, 14−2226.

A law enforcement agency may not retain unclaimed contraband money for its own use. In the absence of an asset forfeiture proceeding initiated by the state or a judicial determination that the money constitutes contraband, a local law enforcement agency should dispose of the money as unclaimed property under s. 59.66 (2). OAG 10−09.

973.076 Forfeiture proceedings. (1) CIVIL FORFEITURES. (a) *Type of action; where brought.* In an action brought to cause the forfeiture of any property specified in s. 342.30 (4) (a) or s.

973.075 (1), the court may render a judgment in rem or against a party personally, or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Any property seized may be the subject of a federal forfeiture action.

(b) *Commencement.* 1. The district attorney of the county within which the property was seized or in which the defendant is convicted shall commence the forfeiture action within 30 days after the seizure of the property or the date of conviction, whichever is earlier, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

2. Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

3. In counties having a population of 500,000 or more, the district attorney or the corporation counsel may proceed under subd. 1.

4. If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

(2m) CRIMINAL FORFEITURES. (a) In addition to any penalties under this chapter, the court shall, with due provision for the rights of innocent persons, order forfeiture of any property specified in s. 973.075 (1) in accordance with pars. (b), (c), and (d).

(b) A criminal complaint must allege the extent of property subject to forfeiture under this subsection. At trial, the court or the jury shall return a special verdict determining the extent of property, if any, that is subject to forfeiture under this subsection. When a special verdict contains a finding of property subject to a forfeiture under this subsection, a judgment of criminal forfeiture shall be entered along with the judgment of conviction under s. 972.13.

(c) An injured person has a right or claim to forfeited property or the proceeds derived from forfeited property under this subsection that is superior to any right or claim the state has in the property or proceeds. This paragraph does not grant the injured person priority over state claims or rights by reason of a tax lien or other basis not covered by this section or by s. 973.075 or 973.077. All rights, titles, and interest in property specified in s. 973.075 (1) vest in the state upon the commission of the act giving rise to forfeiture under this subsection.

(d) An injured or innocent person may petition the court for relief from the judgment of criminal forfeiture entered under par. (b) within 30 days after it is entered. The person filing the petition has the burden of satisfying or convincing to a reasonable certainty by the greater weight of the evidence that the person has a bona fide perfected security interest in the property subject to forfeiture in s. 973.075 (1) or any other property subject to forfeiture in sub. (4). The court may order that a person with a bona fide perfected security interest be paid from the proceeds of the forfeiture or any other equitable relief necessary so as to do substantial justice to the person.

(3) BURDEN OF PROOF. The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under s. 973.075 to 973.077.

(4) ACTION AGAINST OTHER PROPERTY OF THE PERSON. The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to forfeiture under s. 973.075 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.

(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.

(c) Is beyond the jurisdiction of the court.

(d) Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.

(e) Has been commingled with other property that cannot be divided without difficulty.

History: 1981 c. 267; Sup. Ct. Order, 120 Wis. 2d xiii (1984); 1985 a. 245; 1989 a. 121; 1993 a. 92, 321, 491; 1997 a. 187; 2013 a. 362.

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service of the summons, complaint and affidavit on the defendants. The prior statute, requiring service within 30 days after seizure of the property, was an exception to the general rule of s. 801.02 (2), stats. [Re Order effective Jan. 1, 1985]

Section 801.15 (2) governs extensions of time after the time for setting a hearing has expired. State v. Elliot, 203 Wis. 2d 95, 551 N.W.2d 850 (Ct. App. 1996), 96−0012.

Under sub. (2) (a), 2001 stats., "adjudication" occurs at the moment of a finding of guilt or innocence by a circuit court and does not embrace an appeal of a conviction. Sub. (2) (a), 2001 stats., does not contemplate adjournment of forfeiture proceedings pending an appeal of the underlying criminal conviction. State v. One 1997 Ford F−150, 2003 WI App 128, 265 Wis. 2d 264, 665 N.W.2d 411, 02−2685.

973.077 Burden of proof; liabilities. (1) It is not necessary for the state to negate any exemption or exception regarding any crime in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under s. 973.076. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by ss. 973.075 to 973.077 upon any authorized law enforcement officer or employee engaged in the lawful performance of duties.

History: 1981 c. 267.

973.08 Records accompanying prisoner. (1) When any defendant is sentenced to the state prisons, a copy of the judgment of conviction and a copy of any order for restitution under s. 973.20 shall be delivered by the officer executing the judgment to the warden or superintendent of the institution when the prisoner is delivered.

(2) The transcript of any portion of the proceedings relating to the prisoner's sentencing shall be filed at the institution within 120 days from the date sentence is imposed.

(3) The transcript of all other testimony and proceedings upon order of a court shall be delivered to a prisoner within 120 days of his or her request.

(4) The transcript of all other testimony and proceedings upon order of a court shall be delivered to the department within 120 days of its request.

(5) The clerk of court shall file or deliver a transcript under sub. (2), (3) or (4).

History: 1971 c. 298 s. 26 (1); 1977 c. 187; Sup. Ct. Order, eff. 1−1−80; 1979 c. 221; 1987 a. 398.

For a court order to be entered under sub. (3), at a minimum a requesting prisoner must show that he or she either never received, or was denied, access to the requested documents. State v. Wilson, 170 Wis. 2d 720, 490 N.W.2d 48 (Ct. App. 1992).

973.09 Probation. (1) (a) Except as provided in par. (c) or if probation is prohibited for a particular offense by statute, if a person is convicted of a crime, the court, by order, may withhold sentence or impose sentence under s. 973.15 and stay its execution, and in either case place the person on probation to the department for a stated period, stating in the order the reasons therefor. The court may impose any conditions which appear to be reason-

able and appropriate. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously. If the court imposes a term of probation under sub. (2) (a) 1. or 2. or (b) 2., it shall place its reasons for doing so on the record.

(b) If the court places the person on probation, the court shall order the person to pay restitution under s. 973.20, unless the court finds there is substantial reason not to order restitution as a condition of probation. If the court does not require restitution to be paid to a victim, the court shall state its reason on the record. If the court does require restitution, it shall notify the department of justice of its decision if the victim may be eligible for compensation under subch. I of ch. 949.

(c) When a person is convicted of any crime which is punishable by life imprisonment, the court shall not place the person on probation.

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

(e) The court may impose a sentence under s. 973.032, stay its execution and place the person on probation. A court may not provide that a condition of any probation involves participation in the intensive sanctions program.

(1d) If a person is placed on probation for a felony or for any violation of ch. 940, 948, or 961, the person, his or her residence, and any property under his or her control may be searched by a law enforcement officer at any time during his or her period of supervision if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of probation. Any search conducted pursuant to this subsection shall be conducted in a reasonable manner and may not be arbitrary, capricious, or harassing. A law enforcement officer who conducts a search pursuant to this subsection shall, as soon as practicable after the search, notify the department of corrections.

(1g) If the court places the person on probation, the court may require, upon consideration of the factors specified in s. 973.20 (13) (a) 2. to 5., that the probationer reimburse the county or the state, as applicable, for any costs for legal representation to the county or the state for the defense of the case. In order to receive this reimbursement, the county or the state public defender shall provide a statement of its costs of legal representation to the defendant and court within the time period set by the court.

(2) The original term of probation shall be:

(a) 1. Except as provided in subd. 2., for any of the following misdemeanors, not less than 6 months nor more than 2 years:

a. A misdemeanor that the defendant committed while possessing a firearm.

b. A misdemeanor that was an act of domestic abuse, as defined in s. 968.075 (1) (a).

c. A misdemeanor under s. 940.225 (3m) or ch. 948.

d. A misdemeanor under s. 23.33 (4c) or (4p) (e), 23.335 (12) (a), (b), or (h), 30.681, 30.684 (5), 350.101, 350.104 (5), or 350.17 or a misdemeanor under s. 346.63 to which s. 973.09 (1) (d) applies.

1m. Except as provided in subd. 2., for Class A misdemeanors not covered by subd. 1., not less than 6 months nor more than one year.

1r. Except as provided in subd. 2., for misdemeanors not covered by subd. 1. or 1m., not more than one year.

2. If the probationer is convicted of not less than 2 nor more than 4 misdemeanors at the same time, the maximum original term of probation may be increased by one year. If the probationer is convicted of 5 or more misdemeanors at the same time, the maximum original term of probation may be increased by 2 years.

(ar) Notwithstanding par. (a) 1r., and except as provided in par. (a) 2., for a violation punishable under s. 813.12 (8) or 813.125 (7), not less than 6 months or more than the period of the injunction issued under s. 813.12 or 813.125.

(b) 1. Except as provided in subd. 2., for felonies, not less than one year nor more than either the maximum term of confinement in prison for the crime or 3 years, whichever is greater.

2. If the probationer is convicted of 2 or more crimes, including at least one felony, at the same time, the maximum original term of probation may be increased by one year for each felony conviction.

(2m) If a court imposes a term of probation in excess of the maximum authorized by statute, the excess is void and the term of probation is valid only to the extent of the maximum term authorized by statute. The term is commuted without further proceedings.

(3) (a) Prior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof.

(b) The department shall notify the sentencing court, any person to whom unpaid restitution is owed and the district attorney of the status of the ordered restitution payments unpaid at least 90 days before the probation expiration date. If payment as ordered has not been made, the court shall hold a probation review hearing prior to the expiration date, unless the hearing is voluntarily waived by the probationer with the knowledge that waiver may result in an extension of the probation period or in a revocation of probation. If the court does not extend probation, it shall issue a judgment for the unpaid restitution and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket, without fee, unless it finds that the victim has already recovered a judgment against the probationer for the damages covered by the restitution order. If the court issues a judgment for the unpaid restitution, the court shall send to the person at his or her last−known address written notification that a civil judgment has been issued for the unpaid restitution. The judgment has the same force and effect as judgments entered under s. 806.10.

(bg) 1. At least 90 days before the expiration date of a probationer's period of probation, the department shall notify the sentencing court and district attorney that a probationer owes an unpaid surcharge imposed under s. 973.045. Upon receiving notice from the department, the court shall schedule a probation review hearing to be held before the expiration date of the period of probation unless the probationer either pays the unpaid surcharge before the scheduled hearing date or voluntarily waives the hearing. A waiver of a probation review hearing under this paragraph must include an acknowledgment by the probationer that waiver may result in an extension of the probation period, a modification of the terms and conditions of probation, or a revocation of probation.

2. If the court does not extend probation, the court shall issue a judgment for the unpaid surcharge and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket. The judgment has the same force and effect as judgments entered under s. 806.10.

3. At a probation review hearing scheduled under subd. 1., the department has the burden of proving that the probationer owes an unpaid surcharge imposed under s. 973.045 and the amount of the unpaid surcharge. If the department proves by a preponderance of the evidence that the probationer owes an unpaid surcharge under s. 973.045, the court may, by order, extend the period of probation for a stated period or modify the terms and conditions of probation.

4. If the court does not extend or modify the terms of probation under subd. 3., the court shall issue a judgment for the unpaid surcharge and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket without fee. If the court

issues a judgment for the unpaid surcharge, the court shall send to the department a written notification that a civil judgment has been issued for the unpaid fees. The judgment has the same force and effect as judgments entered under s. 806.10.

(bm) 1. At least 90 days before the expiration date of a probationer's period of probation, the department may notify the sentencing court and the district attorney that a probationer owes unpaid fees to the department under s. 304.074.

2. Upon receiving notice from the department under subd. 1., the court shall schedule a probation review hearing to be held before the expiration date of the period of probation unless the probationer either pays the fees before the scheduled hearing date or voluntarily waives the hearing. A waiver of a probation review hearing under this subdivision shall include an acknowledgement by the probationer that waiver may result in an extension of the probation period, a modification of the terms and conditions of probation or a revocation of probation.

3. At a probation review hearing under subd. 2., the department has the burden of proving that the probationer owes unpaid fees under s. 304.074 and the amount of the unpaid fees. If the department proves by a preponderance of the evidence that the probationer owes unpaid fees under s. 304.074, the court may, by order, extend the period of probation for a stated period or modify the terms and conditions of probation.

4. If the court does not extend or modify the terms of probation under subd. 3., it shall issue a judgment for the unpaid fees and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket, without fee. If the court issues a judgment for the unpaid fees, the court shall send to the department a written notification that a civil judgment has been issued for the unpaid fees. The judgment has the same force and effect as judgments entered under s. 806.10.

(c) Any of the following may constitute cause for the extension of probation:

1. The probationer has not made a good faith effort to discharge court−ordered payment obligations or to pay fees owed under s. 304.074.

2. The probationer is not presently able to make required restitution payments and the probationer and the person to whom restitution is owed consent to the performance of community service work under sub. (7m) in satisfaction of restitution ordered for that person, for which an extended period of probation is required.

3. The probationer stipulates to the extension of supervision and the court finds that extension would serve the purposes for which probation was imposed.

(d) The court may modify a person's period of probation and discharge the person from probation if all of the following apply:

1. The department petitions the court to discharge the person from probation.

2. The probationer has completed 50 percent of his or her period of probation.

3. The probationer has satisfied all conditions of probation that were set by the sentencing court.

4. The probationer has satisfied all rules and conditions of probation that were set by the department.

5. The probationer has fulfilled all financial obligations to his or her victims, the court, and the department, including the payment of any fine, forfeiture, fee or surcharge, or order of restitution.

6. The probationer is not required to register under s. 301.45.

(3m) (a) In this subsection, "victim" has the meaning given in s. 950.02 (4).

(b) When a court receives a petition under sub. (3) (d), the clerk of the circuit court shall send a notice of hearing to the victim of the crime committed by the probationer, if the victim has submitted a card under par. (c) requesting notification. The notice shall inform the victim that he or she may appear at any hearing scheduled under sub. (3) (d) and shall inform the victim of the manner in which he or she may provide a statement concerning the modification of the probationer's term of probation. The clerk of the circuit court shall make a reasonable attempt to send the notice of hearing to the last−known address of the victim, postmarked at least 10 days before the date of the hearing.

(c) The director of state courts shall design and prepare cards for a victim to send to the clerk of the circuit court for the county in which the probationer was convicted and sentenced. The cards shall have space for a victim to provide his or her name and address, the name of the applicable probationer, and any other information that the director of state courts determines is necessary. The director of state courts shall provide the cards, without charge, to clerks of circuit court. Clerks of circuit court shall provide the cards, without charge, to victims. Victims may send completed cards to the clerk of the circuit court for the county in which the probationer was convicted and sentenced. All court records or portions of records that relate to mailing addresses of victims are not subject to inspection or copying under s. 19.35 (1).

(4) (a) The court may also require as a condition of probation that the probationer be confined during such period of the term of probation as the court prescribes, but not to exceed one year. The court may grant the privilege of leaving the county jail, Huber facility, work camp, or tribal jail during the hours or periods of employment or other activity under s. 303.08 (1) while confined under this subsection. The court may specify the necessary and reasonable hours or periods during which the probationer may leave the jail, Huber facility, work camp, or tribal jail or the court may delegate that authority to the sheriff. In those counties without a Huber facility under s. 303.09, a work camp under s. 303.10, or an agreement under s. 302.445, the probationer shall be confined in the county jail. In those counties with a Huber facility under s. 303.09, the sheriff shall determine whether confinement under this subsection is to be in that facility or in the county jail. In those counties with a work camp under s. 303.10, the sheriff shall determine whether confinement is to be in the work camp or the county jail. The sheriff may transfer persons confined under this subsection between a Huber facility or a work camp and the county jail. In those counties with an agreement under s. 302.445, the sheriff shall determine whether a person who is confined under this subsection but who is not subject to an order under par. (b) is to be confined in the tribal jail or the county jail, unless otherwise provided under the agreement. In those counties, the sheriff may transfer persons confined under this subsection between a tribal jail and a county jail, unless otherwise provided under the agreement.

(b) With the consent of the department and when recommended in the presentence investigation, the court may order that a felony offender subject to this subsection be confined in a facility located in the city of Milwaukee under s. 301.13 or 301.16 (1q), for the purpose of allowing the offender to complete an alcohol and other drug abuse treatment program.

(c) While subject to this subsection, the probationer is subject to s. 303.08 (1), (3) to (6), (8) to (12), and (14) or to s. 303.10, whichever is applicable, to all the rules of the facility to which the probationer is confined, and to the discipline of the department, if confined to a facility under par. (b), or the sheriff.

(4m) The department shall inform each probationer who is disqualified from voting under s. 6.03 (1) (b) that he or she may not vote in any election until his or her civil rights are restored. The department shall use the form designed under s. 301.03 (3a) to inform the probationer, and the probationer and a witness shall sign the form.

(5) When the period of probation for a probationer has expired, the probationer shall be discharged from probation and the department shall do all of the following:

(a) If the probationer was placed on probation for a felony, issue the probationer one of the following:

1. A certificate of discharge from probation for the felony for which he or she was placed on probation if, at the time of discharge, the probationer is on probation or parole for another felony.

2. A certificate of final discharge if, at the time of discharge, the probationer is not on probation or parole for another felony. A certificate of final discharge under this subdivision shall list the civil rights which have been restored to the probationer and the civil rights which have not been restored to the probationer.

(b) If the probationer was placed on probation for a misdemeanor, notify the probationer that his or her period of probation has expired.

(c) In all cases, notify the court that placed the probationer on probation that the period of probation has expired.

(7m) (a) Except as provided in s. 943.017 (3), the court may require as a condition of probation that the probationer perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the probationer and the organization or agency. The court shall ensure that the probationer is provided a written statement of the terms of the community service order and that the community service order is monitored. If the court requires the conditions provided in this subsection and sub. (4), the probationer reduces the period of confinement under sub. (4) at a rate of one day for each 3 days of work performed. A day of work equals 8 hours of work performed.

(b) Any organization or agency acting in good faith to which a probationer is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the probationer.

History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989 a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289; 1999 a. 9, 58, 69, 186; 2001 a. 16, 104, 109; 2003 a. 33, 121, 139, 141; 2005 a. 25, 149, 451; 2007 a. 20, 84; 2009 a. 28, 100; 2011 a. 38, 266; 2013 a. 20, 79; 2015 a. 170, 371.

Judicial Council Note, 1981: A cross−reference to s. 973.15 has been inserted to clarify that the provisions of that statute govern the imposition of sentence even though the court stays execution of the sentence under this statute. [Bill 341−A]

Judicial Council Note, 1987: Sub. (1g) is amended to require the court to consider the defendant's ability to pay when ordering reimbursement of the costs of legal representation.

Sub. (3) (c) specifies grounds for extending probation. The availability of a civil judgment for unpaid restitution enforceable by the victim under s. 973.20 (1), stats., substantially reduces the necessity of extending probation solely for the purpose of enforcing court−ordered payments, a practice of questionable cost−effectiveness. See legislative audit bureau report No. 85−10, April 15, 1985, at 17−18. Probation may, however, be extended upon stipulation of the defendant, to enforce community service in satisfaction of restitution, or when the probationer has not made a good faith effort to make restitution or other payments. Huggett v. State, 83 Wis. 2d 790, 803 (1978). [87 Act 398]

The terminology of work−release under sub. (4) and Huber law privileges under s. 56.08 [now s. 303.08] cannot be used interchangeably without the danger of an inappropriate sentence. Yingling v. State, 73 Wis. 2d 438, 243 N.W.2d 420 (1976).

Claims of credit for pretrial or preconviction incarceration may be made only as to sentences imposed, and not to periods of confinement during nonworking hours imposed as a condition of probation under sub. (4). Full confinement for one year as a condition of probation is not authorized under sub. (4). State v. Gloudemans, 73 Wis. 2d 514, 243 N.W.2d 220 (1976).

A probation condition that the probationer not contact her codefendant fiance was a permissible infringement of her constitutional rights because the condition was reasonably related to rehabilitation and was not overly broad. Edwards v. State, 74 Wis. 2d 79, 246 N.W.2d 109 (1976).

Failure to make restitution is not cause for extending probation under sub. (3) if the probationer demonstrates good faith effort to pay but lacks the capacity to do so during probation. Huggett v. State, 83 Wis. 2d 790, 266 N.W.2d 403 (1978).

An order to pay restitution, in an amount to be determined later, authorized collection of funds from the defendant. Thieme v. State, 96 Wis. 2d 98, 291 N.W.2d 474 (1980).

Remand for resentencing was the proper procedure when the trial court improperly imposed a period of probation to run concurrently with a period of parole. State v. Givens, 102 Wis. 2d 476, 307 N.W.2d 178 (1981).

Issuance of a warrant during a probationary term tolls the running of the term. State ex rel. Cox v. DHSS, 105 Wis. 2d 378, 314 N.W.2d 148 (Ct. App. 1981).

In setting restitution, the court must consider the probationer's resources and future ability to pay. State v. Pope, 107 Wis. 2d 726, 321 N.W.2d 359 (Ct. App. 1982).

There was a denial of due process in revoking probation without notice of the total extent and nature of the alleged violations of probation. State ex rel. Thompson v. Riveland, 109 Wis. 2d 580, 326 N.W.2d 768 (1982).

Reimposition of a sentence after a defendant had been placed on probation, absent violation of a probation condition, violated the double jeopardy clause. State v. Dean, 111 Wis. 2d 361, 330 N.W.2d 630 (Ct. App. 1983).

The court erred in imposing consecutive terms of probation. Increased punishment on resentencing did not violate double jeopardy protections. State v. Pierce, 117 Wis. 2d 83, 342 N.W.2d 776 (Ct. App. 1983). See also State v. Gereaux, 114 Wis. 2d 110, 338 N.W.2d 118 (Ct. App. 1983).

When probation was conditioned on the defendant's voluntary commitment to a mental hospital, but the hospital refused admittance, the court properly modified the original sentence by imposing a new sentence of 3 years' imprisonment. Double jeopardy was not violated. State v. Sepulveda, 120 Wis. 2d 231, 353 N.W.2d 790 (1984).

A court may not assess the cost of a special prosecutor as a condition of probation. State v. Amato, 126 Wis. 2d 212, 376 N.W.2d 75 (Ct. App. 1985).

A court may order a defendant to reimburse the police for funds used for a drug purchase that resulted in the conviction. State v. Connelly, 143 Wis. 2d 500, 421 N.W.2d 859 (Ct. App. 1988).

A lack of counsel at a probation revocation hearing does not deny the probationer's constitutional rights if the probationer does not face the loss of liberty. State v. Hardwick, 144 Wis. 2d 54, 422 N.W.2d 922 (Ct. App. 1988.)

Sub. (1) (b) does not restrict a court's authority to condition probation on any reasonable and appropriate requirement under sub. (1) (a). State v. Heyn, 155 Wis. 2d 621, 456 N.W.2d 157 (1990).

Sub. (3) (a) authorizes a court to modify all conditions of probation established for a specific probationer, including those imposed by the corrections department. State ex rel. Taylor v. Linse, 161 Wis. 2d 719, 469 N.W.2d 201 (Ct. App. 1991).

A plea agreement to amend a judgment of conviction upon successful completion of probation is not authorized by statute. State v. Hayes, 167 Wis. 2d 423, 481 N.W.2d 699 (Ct. App. 1992).

Probationers at a hearing to modify probation are entitled: 1) to notice of the hearing and the reasons for the requested change; 2) to be present; 3) to cross−examine and present witnesses; 4) to have conditions modified based on correct information; and 5) to counsel, if jail confinement is possible. State v. Hayes, 173 Wis. 2d 439, 496 N.W.2d 645 (Ct. App. 1992).

Requiring a convicted defendant to deposit money for possible future counselling costs of victims was impermissible. State v. Handley, 173 Wis. 2d 838, 496 N.W.2d 725 (Ct. App. 1993).

Requiring a defendant convicted of sexual assault to pay a victim's costs of tuition to attend another school to avoid harassment that arose after the assault was a reasonable condition of probation. State v. Brown, 174 Wis. 2d 550, 497 N.W.2d 463 (Ct. App. 1993).

A condition of probation not related to the underlying conviction but related to prior convictions was reasonable and appropriate. State v. Miller, 175 Wis. 2d 204, N.W.2d (Ct. App. 1993).

The notification provisions of sub. (3) apply only in the case of probation extension proceedings, not revocations. Bartus v. DHSS, 176 Wis. 2d 1063, 501 N.W.2d 419 (1993).

Sub. (2) (a) applies to probation for misdemeanors and sub. (2) (b) to felonies; sub. (2) (b) 2. does not authorize increasing probation for a misdemeanor if the defendant is convicted of a felony at the same time. State v. Reagles, 177 Wis. 2d 168, 501 N.W.2d 861 (Ct. App. 1993).

A forced confession as a condition of probation does not violate the right against self−incrimination. The constitution protects against the use of confessions in subsequent criminal prosecutions, but does not protect against the use of such statements in a revocation proceeding. State v. Carrizales, 191 Wis. 2d 85, 528 N.W.2d 29 (Ct. App. 1995).

While time served due to an indigent's inability to post bail prior to trial must be credited as time served on a prison sentence imposed, a court need not credit that time against probationary confinement. State v. Avila, 192 Wis. 2d 870, 532 N.W.2d 423 (Ct. App. 1995).

A jail term probationer eligible for good time credit under sub. (1) (d) may not be denied the possibility of earning good time as a sentence condition. State v. McClinton, 195 Wis. 2d 344, 536 N.W.2d 413 (Ct. App. 1995), 94−0747.

A trial court in exercising sentencing discretion is not prohibited from entertaining general predispositions based on experience, but the judge's predispositions may never be so specific as to ignore the particular circumstances of the individual offender. State v. Ogden, 199 Wis. 2d 566, 544 N.W.2d 574 (1996), 94−1485.

A court was authorized to order a defendant to pay the cost of DNA testing by a private laboratory as a condition of probation. State v. Beiersdorf, 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997), 95−1234.

A condition of probation placed on a sex offender that he not engage in a sexual relationship without first discussing it with his agent and obtaining his agent's approval did not unreasonably restrict the probationer's constitutional rights of privacy. Krebs v. Schwartz, 212 Wis. 2d 127, 568 N.W.2d 26 (Ct. App. 1997), 96−2596.

An unfulfilled condition of probation does not automatically extend the probation period; an extension must be obtained. If the probation has not been stayed and the probation period has been served, the probationer is entitled to discharge even in the face of an unfulfilled condition of probation; at that point the trial court loses jurisdiction. State v. Stefanovic, 215 Wis. 2d 310, 572 N.W.2d 140 (Ct. App. 1997), 97−1791.

A conviction following an *Alford* plea of no contest under which the defendant does not admit guilt, does not prevent imposing as a condition of probation that the defendant complete a treatment program that requires acknowledging responsibility for the crime that resulted in the conviction. The imposition of the condition does not violate the defendant's due process rights. State ex rel. Warren v. Schwarz, 219 Wis. 2d 615, 579 N.W.2d 698 (1998), 96−2441.

When a court orders probation under sub. (1) (d), it lacks authority to order monitored home detention in lieu of confinement under sub. (4). State v. Eastman, 220 Wis. 2d 330, 582 N.W.2d 749 (Ct. App. 1998), 97−2173.

The 90−day notice requirement in sub. (3) (b) is directory, not mandatory. The extension of probation for the sole purpose of collecting a debt, when the record contained substantial reasons not to extend, was an abuse of discretion. State v. Olson, 222 Wis. 2d 283, 588 N.W.2d 256 (Ct. App. 1998), 98−0201.

Sub. (3) (a) allows circuit courts to modify conditions of probation at any time before the period of probation expires, even before the period of probation begins. State v. Gray, 225 Wis. 2d 39, 590 N.W.2d 918 (1999), 96−3363.

The court has broad discretion to fashion appropriate conditions of probation in each individual case. The validity of conditions of probation are tested by how well they serve the goals of rehabilitation and protection of the public. State v. Simonetto, 2000 WI App 17, 232 Wis. 2d 315, 606 N.W.2d 275, 99−0486.

A probationer has the right to refuse probation not only when it is first granted but at any time while serving it. State v. McCready, 2000 WI App 68, 234 Wis. 2d 110, 608 N.W.2d 762, 99−1822.

The trial court exceeded its authority in authorizing a probation agent to decide whether to require the defendant to serve three months in jail that the court ordered as a part of probation and then stayed. State v. Fearing, 2000 WI App 229, 239 Wis. 2d 105, 619 N.W.2d 115, 99−2849.

Generally, neither probation or imprisonment as a condition of probation is considered to be a sentence. As such a person confined as a condition of probation cannot earn good time. State v. Fearing, 2000 WI App 229, 239 Wis. 2d 105, 619 N.W.2d 115, 99−2849.

Corroboration of a confession is not required for the confession to be used as the basis of a revocation of probation. The appropriate test for admission of the confession is that it must carry sufficient indicia of reliability that the fact finder can rely upon to support the conclusion that revocation is appropriate and necessary. State ex rel. Washington v. Schwarz, 2000 WI App 235, 239 Wis. 2d 443, 620 N.W.2d 414, 00−0004.

Sentencing a defendant to consecutive terms of probation is not authorized. State v. Schwebke, 2001 WI App 99, 242 Wis. 2d 585, 627 N.W.2d 213, 99−3204.

Affirmed on other grounds. 2002 WI 55, 253 Wis. 2d 1, 644 N.W.2d 666, 99−3204.

There is no statutory authority to order, as a condition of probation, payment of restitution obligations in a separate criminal case. State v. Torpen, 2001 WI App 273, 248 Wis. 2d 951, 637 N.W.2d 481, 01−0182.

Probation is permitted under sub. (1) (d) for 4th and subsequent OWI violations as long as the probation requires confinement for at least the mandatory minimum time period under s. 346.65. State v. Eckola, 2001 WI App 295, 249 Wis. 2d 276, 638 N.W.2d 903, 01−1044.

Revocation hearing examiners must specifically find that good cause exists for not allowing confrontation of adverse witnesses, but failure to do so does not require automatic reversal. Good cause should generally be based upon a balancing of the need of the probationer in cross−examining the witness and the interest of the state in denying confrontation, including consideration of the reliability of the evidence and the difficulty, expense, or other barriers to obtaining live testimony. State ex rel. Simpson v. Schwarz, 2002 WI App 7, 250 Wis. 2d 214, 640 N.W.2d 527, 01−0008.

The right against self−incrimination survives conviction and remains active while a direct appeal is pending. A probationer may be compelled to answer self−incriminating questions from a probation or parole agent, or suffer revocation for refusing to do so, only if there is a grant of immunity rendering the testimony inadmissible in a criminal prosecution. State ex rel. Tate v. Schwarz, 2002 WI 127, 257 Wis. 2d 40, 654 N.W.2d 438, 00−1635.

When a statutory definition is available that provides a defendant with sufficient notice as to the expected course of conduct and an ascertainable standard for enforcement, the condition is not unconstitutionally vague. The definition of "dating relationship" in s. 813.12 (1) (ag) provided the appellant an objective standard and adequate notice of when a condition applied that required her to introduce any person she was "dating" to her supervising agent. State v. Koenig, 2003 WI App 12, 259 Wis. 2d 833, 656 N.W.2d 499, 02−1076.

It is not required that a defendant's rejection of probation be clear and unequivocal. A court's focus should be on whether a defendant communicates the intent to refuse probation rather than on the defendant's choice of words. State v. Pote, 2003 WI App 31, 260 Wis. 2d 426, 659 N.W.2d 82, 02−0670.

Section 302.425 allows the sheriff to place persons on home monitoring when they are given jail time as a probation condition. A circuit court may not prohibit the sheriff from ordering home monitoring for a probationer ordered to serve jail time as a probation condition. By precluding the sheriff from releasing the probation on home monitoring, the trial court substantially interfered with the sheriff's power in violation of the separation of powers doctrine. State v. Schell, 2003 WI App 78, 261 Wis. 2d 841, 661 N.W.2d 503.

Sex−offender registration as a condition of bail−jumping probation was not authorized by sub. (1) (a). Bail jumping is not one of the offenses enumerated in the sex−offender registration statutes, ss. 973.048 or 301.45, that permit or require registration, and read−in, but dismissed, sexual assault charges do not bring a case within s. 973.048. State v. Martel, 2003 WI 70, 262 Wis. 2d 483, 664 N.W.2d 69, 02−1599.

A trial court has the discretionary authority to stay a probationer's conditional jail time while he or she is hospitalized. When the trial court chooses to stay confinement time, the probationer is not a prisoner and is not entitled to credit against such confinement time because the probationer could not be charged with escape. State v. Edwards, 2003 WI App 221, 267 Wis. 2d 491, 671 N.W.2d 371, 03−0790.

An agreement that provided that following a plea of no contest, the defendant would have the opportunity prior to sentencing to procure and return stolen items, and if so the state would amend the charge to a lesser offense and the sentencing would proceed accordingly, was not invalid under *Hayes*. The concerns of *the Hayes* court regarding the limitations of the probation statute and the trial court's lack of authority to amend a judgment after completion of a sentence were not implicated. State v. Cash, 2004 WI App 63, 271 Wis. 2d 451, 677 N.W.2d 709, 03−1614.

A court cannot avoid the holding in *Schell* by modifying the conditions of probation to order the probationer to refuse home monitoring. State v. Galecke, 2005 WI App 172, 285 Wis. 2d 691, 702 N.W.2d 392, 04−0779.

This section provides no authority for issuing orders to county sheriffs to transfer prisoners from one county jail to another. State v. Galecke, 2005 WI App 172, 285 Wis. 2d 691, 702 N.W.2d 392,285 Wis. 2d 691, 702 N.W.2d 392 04−0779.

Convicted at the same time under sub. (2) (a) or (b) is not the same as sentenced at the same time. Because the defendant, although sentenced in separate child support and drug cases at a single hearing, was not convicted at the same time within the meaning of the statute, and therefore not serving a single probationary term, the trial court had the statutory authority to order consecutive periods of conditional jail time exceeding one year in total. State v. Johnson, 2005 WI App 202, 287 Wis. 2d 313, 704 N.W.2d 318, 04−2176.

Sub. (2) plainly and unambiguously provides that the maximum term of probation is dependent upon the maximum term of confinement for the crime committed and not the maximum term of imprisonment. The maximum term of probation for Class B to H felonies equals the maximum initial term of confinement for those crimes. State v. Stewart, 2006 WI App 67, 291 Wis. 2d 480, 713 N.W.2d 165, 05−0979.

Conditions of probation may impinge upon constitutional rights as long as they are not overly broad and are reasonably related to the person's rehabilitation. Geographical limitations, while restricting a defendant's rights to travel and associate, are not per se unconstitutional. Each case must be analyzed on its facts to determine whether the geographic restriction is narrowly drawn. State v. Stewart, 2006 WI App 67, 291 Wis. 2d 480, 713 N.W.2d 165, 05−0979.

A civil settlement agreement can have no effect upon a restitution order while the defendant is on probation unless the circuit court first finds that continued enforcement of the restitution order would result in a double recovery for the victim. After a defendant is released from probation and any unpaid restitution becomes a civil judgment, however, a settlement agreement between the victim and the defendant may preclude the victim from enforcing the judgment. Huml v. Vlazny, 2006 WI 87, 293 Wis. 2d 169, 716 N.W.2d 807, 04−0036.

When a defendant agrees to reimburse the county for the attorney fees of standby counsel or the circuit court informs the defendant of his or her potential liability for the fees and standby counsel functions as traditional defense counsel, ss. 973.06 (1) (e) and 973.09 (1g) give a circuit court the authority to impose the attorney fees of standby counsel as a condition of probation. If a defendant does not agree to reimburse the county or is not informed of the potential obligation to pay the fees of standby counsel, payment of attorney fees may not be a condition of probation, under s. 973.06 (1) (e). When standby counsel acts primarily for the benefit of the court rather than as defense counsel, attorney fees for standby counsel are inappropriate. State v. Campbell, 2006 WI 99, 294 Wis. 2d 100, 718 N.W.2d 649, 04−0803.

When a defendant has served jail time as a condition of probation and his or her probation is later revoked and the defendant commences serving an imposed and stayed sentence, the defendant is entitled to sentence credit for days spent in custody while in conditional jail time status, even if that custody is concurrent with service of an unrelated prison sentence. State v. Yanick, 2007 WI App 30, 299 Wis. 2d 456, 728 N.W.2d 365, 06−0849.

Sub. (2) limits the length of an original term of probation. There is no way to reasonably interpret "original" to mean original plus any extensions. The statute plainly distinguishes limitations on original terms of probation from possible subsequent extensions. Extensions of probation are limited by requiring that they be "for cause," and requiring courts to specify the length of the extension. This interpretation does not render the statute unconstitutional for failing to provide sufficient notice of potential punishment. While "for cause" leaves the determination of maximum sentences to the court, no unlawful delegation of legislative power is involved. State v. Luu, 2009 WI App 91, 319 Wis. 2d 778, 769 N.W.2d 125, 08−2138.

Whether or not circuit courts possess inherent authority to reduce a period of probation that is comparable to the inherent authority courts possess to reduce a sentence, courts have no inherent authority to reduce probation based on a finding of successful rehabilitation. Even assuming that circuit courts possess this inherent authority, that authority must be circumscribed in the same way as the inherent authority of courts to modify sentences already imposed. A claim of rehabilitation sufficient to obviate public protection concerns is not grounds for sentence modification. State v. Dowdy, 2010 WI App 158, 330 Wis. 2d 444, 792 N.W.2d 230, 10−0772.

Sub. (3) (a) does not grant a circuit court authority to reduce the length of probation. Sub. (3) (a) grants a circuit court authority only to "extend probation for a stated period" or to "modify the terms and conditions" of probation. When read in context, it is clear that the authority to "modify the terms and conditions" of probation does not include the authority to reduce the length of probation. State v. Dowdy, 2012 WI 12, 338 Wis. 2d 565, 808 N.W.2d 691, 10−0772.

Probation is not a sentence; it is an alternative to sentence. Probation is a privilege, not a right. Unlike with a maximum sentence or a penalty enhancer, there is no statutory requirement that an accused be advised of potential probation terms or conditions. In this case, the statute itself provided the defendant with sufficient notice of the potential probationary term for acts of domestic abuse. The state did not need to set forth in the information and complaint that it was seeking two years of probation under sub. (2) (a) 1. b. That the state did indicate that it sought a finding of domestic abuse in the first two counts in the complaint did not create a duty to do so in a third. State v. Edwards, 2013 WI App 51, 347 Wis. 2d 526, 830 N.W.2d 109, 12−0758.

Because the defendant's court−ordered 3−year term of probation had not expired at the time the DOC commenced revocation proceedings, the DOC retained jurisdiction over the defendant despite its issuance of a discharge certificate. The defendant's due process rights were not violated, and equitable estoppel was not available in the context of certiorari review. Greer v. Wiedenhoeft, 2014 WI 19, 353 Wis. 2d 307, 845 N.W.2d 373, 11−2188.

Sub. (2) applies to all sentences pronounced at the same time, whether grouped together, because they are related or because of convenience. U.S. v. Stalbaum, 63 F.3d 537 (1995).

973.10 Control and supervision of probationers. **(1)** Imposition of probation shall have the effect of placing the defendant in the custody of the department and shall subject the defendant to the control of the department under conditions set by the court and rules and regulations established by the department for the supervision of probationers, parolees and persons on extended supervision.

(1m) (a) The department may order that a probationer perform community service work for a public agency or a nonprofit charitable organization. An order may apply only if agreed to by the probationer and the organization or agency. The department

shall ensure that the probationer is provided a written statement of the terms of the community service order and shall monitor the probationer's compliance with the community service order. Compliance with this subsection does not entitle a probationer to credit under s. 973.155.

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

(2) If a probationer violates the conditions of probation, the department of corrections may initiate a proceeding before the division of hearings and appeals in the department of administration. Unless waived by the probationer, a hearing examiner for the division shall conduct an administrative hearing and enter an order either revoking or not revoking probation. Upon request of either party, the administrator of the division shall review the order. If the probationer waives the final administrative hearing, the secretary of corrections shall enter an order either revoking or not revoking probation. If probation is revoked, the department shall:

(a) If the probationer has not already been sentenced, order the probationer brought before the court for sentence which shall then be imposed without further stay under s. 973.15; or

(b) If the probationer has already been sentenced, order the probationer to prison, and the term of the sentence shall begin on the date the probationer enters the prison.

(2g) Upon demand prior to a revocation hearing under sub. (2), the district attorney shall disclose to a defendant the existence of any audiovisual recording of an 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 statement. If, after compliance with this subsection, the state obtains possession, custody or control of such a 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 statement.

(2m) In any administrative hearing under sub. (2), the hearing examiner may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10).

(2s) If a probationer signs a statement admitting a violation of a condition or rule of probation, the department may, as a sanction for the violation, confine the probationer for up to 90 days in a regional detention facility or, with the approval of the sheriff, in a county jail. If the department confines the probationer in a county jail under this subsection, the department shall reimburse the county for its actual costs in confining the probationer from the appropriations under s. 20.410 (1) (ab) and (b).

(3) A copy of the order of the department of corrections in the case of a waiver or the division of hearings and appeals in the department of administration in the case of a final administrative hearing is sufficient authority for the officer executing it to take the probationer to court or to prison. The officer shall execute the order as a warrant for arrest but any officer may, without order or warrant, take the probationer into custody whenever necessary in order to prevent escape or enforce discipline or for violation of probation.

(4) The division of hearings and appeals in the department of administration shall make either an electronic or stenographic record of all testimony at each probation 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.

History: 1971 c. 298; 1975 c. 41, 157, 199; 1977 c. 347; 1981 c. 50; 1983 a. 27, 197; 1985 a. 262 s. 8; 1989 a. 31, 107; 1995 a. 96, 387; 1997 a. 283; 2005 a. 42; 2013 a. 196.

Cross−reference: See also ss. DOC 330.02 and 331.01, Wis. adm. code.

Judicial Council Note, 1981: Sub. (2) (a) has been amended to clarify that, upon revocation of probation of an offender from whom sentence was originally withheld, the court must impose sentence in accordance with s. 973.15. That section now permits the court to order that any sentence be concurrent with or consecutive to any sentence imposed at the same time or previously. [Bill 341−A]

Before probation can be revoked, the department must hold a hearing and make a record so that on judicial review it can be determined whether the department acted arbitrarily or capriciously. The hearing need not be formal. State ex rel. Johnson v. Cady, 50 Wis. 2d 540, 185 N.W.2d 306 (1971).

Revocation of probation is an integral part of the sentencing process; a defendant is entitled to assistance of counsel at parole or probation revocation hearings without regard to whether the hearing occurs in a withheld sentence or a postsentence situation. Oestrich v. State, 55 Wis. 2d 222, 198 N.W.2d 664 (1974).

Since probation revocation hearings are independent from the original conviction and sentencing, a judge disqualified in the original case may preside at the hearing in the absence of a challenge. State v. Fuller, 57 Wis. 2d 408, 204 N.W.2d 452 (1973).

Witnesses at a probation revocation hearing need not be sworn. State v. Gerard, 57 Wis. 2d 611, 205 N.W.2d 374 (1973).

ABA standards relating to probation are adopted and applied. State ex rel. Plotkin v. DHSS, 63 Wis. 2d 535, 217 N.W.2d 641 (1974).

A certiorari proceeding in the committing court to review a revocation of parole or probation is not a criminal proceeding. State ex rel. Hanson v. DHSS, 64 Wis. 2d 367, 219 N.W.2d 267 (1974).

The right to counsel at a preliminary revocation hearing is within the discretion of the department based on the need to meet the applicable due process requirements. State ex rel. Hawkins v. Gagnon, 64 Wis. 2d 394, 219 N.W.2d 252 (1974).

A defendant whose probation was transferred to Tennessee and who was charged with a violation of probation there was denied due process when the revocation hearing was held in Wisconsin and the department refused to allow deposition of witnesses in Tennessee. When the witnesses' testimony is of a direct and unequivocally exculpatory nature rather than cumulative, character, or background testimony that might have been adequately presented by deposition or affidavit, an opportunity to present live testimony with cross−examination of the witnesses is required. State ex rel. Harris v. Schmidt, 69 Wis. 2d 668, 230 N.W.2d 890 (1975).

Department probation files and records are public records and admissible at a probation revocation hearing. State ex rel. Prellwitz v. Schmidt, 73 Wis. 2d 35, 242 N.W.2d 227 (1976).

Time spent in jail awaiting revocation is deducted from a maximum sentence despite the option available to the defendant to spend the time in prison. State ex rel. Solie v. Schmidt, 73 Wis. 2d 76, 242 N.W.2d 244 (1976).

When the department overrules its hearing examiner and revokes probation, it must provide a statement of the evidence relied upon and the reasons for revoking probation. Ramaker v. State, 73 Wis. 2d 563, 243 N.W.2d 534 (1976).

A warrantless search by a probation officer was constitutionally permissible when probable cause existed for the officer's attempt to determine whether the probationer had violated probation. State v. Tarrell, 74 Wis. 2d 647, 247 N.W.2d 696 (1976).

The trial court had no authority to extend the probation of a defendant brought before the court under sub. (2). State v. Balgie, 76 Wis. 2d 206, 251 N.W.2d 36 (1977).

The court exceeded its jurisdiction by releasing the defendant on bail pending revocation proceedings. State ex rel. DHSS v. Second Judicial Circuit Court, 84 Wis. 2d 707, 267 N.W.2d 373 (1978).

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).

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

Probation can be revoked for violation of a criminal statute absent a written probation agreement. State ex rel. Rodriguez v. DHSS, 133 Wis. 2d 47, 393 N.W.2d 105 (Ct. App. 1986).

A probation officer may conduct a warrantless search. That the underlying conviction is subsequently overturned does not retroactively invalidate a warrantless search by the probation officer. State v. Angiolo, 207 Wis. 2d 561, 558 N.W.2d 701 (Ct. App. 1996), 96−0099.

A probationer has a right to a competency determination when during a revocation proceeding the administrative law judge has reason to doubt the probationer's competence. The determination shall be made by the circuit court in the county of sentencing, which shall adhere to ss. 971.13 and 971.14 to the extent practicable. State ex rel. Vanderbeke v. Endicott, 210 Wis. 2d 502, 563 N.W.2d 883 (1997), 95−0907.

Because an administrative decision may be reviewed upon a timely petition for certiorari, an adequate remedy exists at law to correct defects and relief under habeas corpus will not be granted. State ex rel. Reddin v. Galster, 215 Wis. 2d 179, 572 N.W.2d 505 (Ct. App. 1998), 97−0111.

A certiorari proceeding to review a probation revocation must be heard in the circuit court of conviction, but it need not be by the same branch. Drow v. Schwarz, 225 Wis. 2d 362, 592 N.W.2d 623 (1999), 97−1867.

Sub (2) is constitutional. Probation and probation revocation are within the powers shared by the branches of government. Legislative delegation of revocation to the executive branch does not unduly burden or substantially interfere with the judiciary's constitutional function to impose criminal penalties. State v. Horn, 226 Wis. 2d 637, 594 N.W.2d 772 (1999), 97−2751.

Sub. (2) prohibits judicial revocation of probation by the trial courts. State v. Burchfield, 230 Wis. 2d 348, 602 N.W.2d 154 (Ct. App. 1999), 99−0716.

If a probationer refuses to incriminate himself or herself as required by a condition of supervision, he or she cannot be automatically revoked on that ground. If the probationer refuses despite a grant of immunity, his or her probation may be revoked on that basis. Any incriminating statements the probationer provides under the grant of immunity may be used as justification for revocation, but not used in any criminal proceedings. If a probationer is compelled by way of probation rules to incriminate himself or herself, the resulting statements may not be used in any criminal proceeding. State v. Peebles, 2010 WI App 156, 330 Wis. 2d 243, 792 N.W.2d 212, 09−3111.

When both the circuit court and the defendant's probation agent ordered the defendant to attend sex offender counseling, his supervision rules required that he be truthful, that he submit to lie detector tests, and that he fully cooperate with and successfully complete sex offender counseling, the probation supervision rules documents explicitly informed the defendant he could be revoked for failure to comply with any conditions, and the defendant gave his statements, at least in part, because he was required to take lie detector tests, his statements were compelled for purposes of the 5th amendment. Because the statements were then used against him at sentencing to increase his prison sentence, they were incriminating and should have been excluded. State v. Peebles, 2010 WI App 156, 330 Wis. 2d 243, 792 N.W.2d 212, 09−3111.

When a 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.

A state may require probation officers, among other "peace officers," to be U.S. citizens. Cabel v. Chavez−Solido, 454 U.S. 432 (1982).

Revocation of probation without a hearing is a denial of due process. Hahn v. Burke, 430 F.2d 100 (1970).

A probation revocation hearing may be administrative. Retained or appointed counsel must be allowed to participate. Gunsolus v. Gagnon, 454 F.2d 416 (1971).

Probation revocation; right to a hearing and to counsel. 1971 WLR 648.

Probation and parole revocation in Wisconsin. 1977 WLR 503.

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 either mandatory periods of imprisonment are not required or the person is sentenced under s. 346.65 (2) (bm) or (cm), (2j) (bm) or (cm), or (3r), 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. A person's participation in the program may not be used to conceal, withhold, or mask information regarding the judgment of conviction if the conviction is required to be included in a record kept under s. 343.23 (2) (a). 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), (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 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.
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.

History: 1991 a. 253; 1993 a. 213; 2003 a. 33; 2005 a. 389; 2007 a. 84.

973.12 Sentence of a repeater or persistent repeater. (1) Whenever a person charged with a crime will be a repeater or a persistent repeater under s. 939.62 if convicted, any applicable prior convictions may be alleged in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea. The court may, upon motion of the district attorney, grant a reasonable time to investigate possible prior convictions before accepting a plea. If the prior convictions are admitted by the defendant or proved by the state, he or she shall be subject to sentence under s. 939.62 unless he or she establishes that he or she was pardoned on grounds of innocence for any crime necessary to constitute him or her a repeater or a persistent repeater. An official report of the F.B.I. or any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been served for such period of time as is shown or is consistent with the report. The court shall take judicial notice of the statutes of the United States and foreign states in determining whether the prior conviction was for a felony or a misdemeanor.

(2) In every case of sentence under s. 939.62, the sentence shall be imposed for the present conviction, but if the court indicates in passing sentence how much thereof is imposed because the defendant is a repeater, it shall not constitute reversible error, but the combined terms shall be construed as a single sentence for the present conviction.

History: 1993 a. 289.

This section does not authorize two sentences for one crime. State v. Upchurch, 101 Wis. 2d 329, 305 N.W.2d 57 (1981).

Because s. 939.62 authorizes penalty enhancement only when the maximum underlying sentence is imposed, the enhancement portion of a sub−maximum sentence was vacated as an abuse of sentencing discretion. State v. Harris, 119 Wis. 2d 612, 350 N.W.2d 633 (1984).

A report under sub. (1) must contain critically relevant facts in order to support penalty enhancement. State v. Farr, 119 Wis. 2d 651, 350 N.W.2d 640 (1984).

The effect of consolidation on a repeater allegation is discussed. State v. Rachwal, 159 Wis. 2d 494, 465 N.W.2d 490 (1991).

No amendment to a charging document to add a repeater allegation may be made after arraignment and acceptance of any plea. State v. Martin, 162 Wis. 2d 883, 470 N.W.2d 900 (1991).

A post−plea amendment of a repeater allegation in a charging document that meaningfully changes the basis on which possible punishment can be assessed is barred. State v. Wilks, 165 Wis. 2d 102, 477 N.W.2d 632 (Ct. App. 1991).

A guilty plea without a specific admission to repeater allegations is not sufficient to establish the facts necessary to impose the repeater penalty enhancer. State v. Zimmermann, 185 Wis. 2d 549, 518 N.W.2d 303 (Ct. App. 1994).

When a defendant does not admit to habitual criminality when entering a no contest plea, the state must prove the alleged repeater status beyond a reasonable doubt. State v. Theriault, 187 Wis. 2d 125, 522 N.W.2d 254 (Ct. App. 1994).

For a repeater enhancer to apply, the prior conviction must be alleged prior to the entry of a plea, but an error in the information regarding the penalty may be corrected when an amendment will cause no prejudice. State v. Gerard, 189 Wis. 2d 505, 525 N.W.2d 718 (1995).

Proof of repeater status must be made prior to sentencing. Judicial notice of prior convictions at a postconviction hearing was improper. State v. Koeppen, 195 Wis. 2d 117, 536 N.W.2d 386 (Ct. App. 1995), 94−2386.

Gerard is not limited to clerical errors. If the information correctly alleges a defendant's repeater status, a post−arraignment amendment to the information does not violate this section as long as it does not affect the sufficiency of the notice to the defendant concerning his or her repeater status. State v. Campbell, 201 Wis. 2d 783, 549 N.W.2d 501 (Ct. App. 1996), 95−2217.

The requirements for establishing prior offenses in s. 973.12 are not applicable to the penalty enhancement provisions under chs. 341 to 349, including drunk driving offenses under s. 346.65 (2) or operating after revocation offenses under s. 343.44 (2). State v. Wideman, 206 Wis. 2d 91, 556 N.W.2d 737 (1996), 95−0852 and State v. Spaeth, 206 Wis. 2d 135, 556 N.W.2d 728 (1996), 95−1827.

Sub. (1) does not require that the period of incarceration under s. 939.62 (2) must be alleged in the charging document. State v. Squires, 211 Wis. 2d 876, 565 N.W.2d 309 (Ct. App. 1997), 96−3302.

When the record established that the defendant fully understood the nature of the repeater charge against him, the defendant's no contest plea to the information, which charged the defendant as a repeater on all counts, constituted an admission under s. 973.12. State v. Liebnitz, 231 Wis. 2d 272, 603 N.W.2d 208 (1999), 98−2182.

Sub. (1) does not prohibit defendants from agreeing, after arraignment and entry of a not guilty plea as part of a plea agreement, to amend charging documents to add repeater allegations. State v. Peterson, 2001 WI App 220, 247 Wis. 2d 871, 634 N.W.2d 893, 01−0116.

Although the information itself failed to contain sufficient detail to provide proper notice of a repeater allegation in compliance with the statute and *Gerard*, a certified copy of the defendant's prior convictions, provided at a change of plea hearing, cured the defect. State v. Fields, 2001 WI App 297, 249 Wis. 2d 292, 638 N.W.2d 897, 01−1177.

An uncertified copy of a prior judgment of conviction may be used to prove a convicted defendant's status as a habitual criminal. The rules of evidence do not apply to documents offered during a circuit court's presentence determination of whether a qualifying prior conviction exists. The state has the burden of proof and must offer proof beyond a reasonable doubt of the conviction. State v. Saunders, 2002 WI 107, 255 Wis. 2d 589, 649 N.W.2d 263, 01−0271.

The admissibility of evidence proving prior convictions can be waived when the prosecution submits documentary evidence that on its face is sufficient to show that the defendant was a repeater. State v. Edwards, 2002 WI App 66, 251 Wis. 2d 651, 642 N.W.2d 537, 01−0612.

In a complaint that in referring to predicate convictions described the offenses, stated the correct county where the convictions occurred, and cited the case number, but misstated the date of the convictions by only one calendar day, the misstatement did not meaningfully change the basis on which the defendant entered a plea and provided the required notice of the predicate convictions on which the repeater status was based. State v. Stynes, 2003 WI 65, 262 Wis. 2d 335, 665 N.W.2d 115, 02−1143.

The State's use of a Consolidated Court Automation Programs (CCAP) report as evidence of a conviction did not constitute prima facie proof of that conviction. State v. Bonds, 2006 WI 83, 292 Wis. 2d 344, 717 N.W.2d 133, 05−0948. But see also State v. LaCount, 2008 WI 59, 310 Wis. 2d 85, 750 N.W.2d 780, 06−0672.

Evidence of repeater status may be submitted any time following the jury verdict up until the actual sentencing. State v. Kashney, 2008 WI App 164, 314 Wis. 2d 623, 761 N.W.2d 672, 07−2687.

973.123 Sentence for certain violent offenses; use of a firearm. (1) In this section, "violent felony" means any felony under s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.235, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.302, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29, 941.292, 941.30, 941.327 (2) (b) 3. or 4., 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32, 943.87, 946.43, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, or 948.30.

(2) A court shall impose a bifurcated sentence under s. 973.01 if the court sentences a person for committing a violent felony and the court finds that all of the following are true:

(a) At the time the person committed the violent felony, he or she was subject to s. 941.29 because he or she was convicted of, adjudicated delinquent for, or found not guilty of by reason of mental disease or defect, committing, soliciting, conspiring, or attempting to commit a prior violent felony.

(b) The person used a firearm in the commission of the violent felony for which the court is imposing the sentence.

(3) The confinement portion of a bifurcated sentence imposed pursuant to sub. (2) shall be:

(a) Not less than 5 years if the violent felony is a Class A, Class B, Class C, Class D, Class E, Class F, or Class G felony.

(b) Not less than 3 years if the violent felony is a Class H felony.

(c) Not less than one year and 6 months if the violent felony is a Class I felony.

(4) If a court sentences a person under this section and also imposes a sentence pursuant to s. 941.29 (4m) arising from the same occurrence, the court shall order the person to serve the sentences consecutively.

(5) This section does not apply to sentences imposed after July 1, 2020.

History: 2015 a. 109.

973.125 Notice of lifetime supervision for serious sex offenders. (1) Whenever a prosecutor decides to seek lifetime supervision under s. 939.615 of a person charged with a serious sex offense specified in s. 939.615 (1) (b) 1., the prosecutor shall, at any time before or at arraignment and before acceptance of any plea, state in the complaint, indictment or information or amendments to the complaint, indictment or information that the prosecution will seek to have the person placed on lifetime supervision under s. 939.615.

(2) Whenever a prosecutor decides to seek lifetime supervision under s. 939.615 of a person charged with a serious sex offense specified in s. 939.615 (1) (b) 2., the prosecutor shall, at any time before or at arraignment and before acceptance of any plea, do all of the following:

(a) State in the complaint, indictment or information or amendments to the complaint, indictment or information that the prosecution will seek to have the person placed on lifetime supervision under s. 939.615.

(b) Allege in the complaint that the violation with which the person is charged is a serious sex offense under s. 939.615 (1) (b) because one of the purposes for the conduct constituting the violation was for the person's sexual arousal or gratification.

(3) Before accepting a plea, the court may, upon motion of the district attorney, grant a reasonable time to investigate whether lifetime supervision may be necessary for a defendant or whether one of the purposes for the conduct constituting a violation with which a defendant is charged was for the defendant's sexual arousal or gratification.

History: 1997 a. 275.

973.13 Excessive sentence, errors cured. In any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings.

This section caps the length of a sentence reduced thereby, but it does not address other aspects or conditions of sentencing. The sentencing court may resentence the defendant if the new sentence is permitted by the law. State v. Holloway, 202 Wis. 2d 694, 551 N.W.2d 841 (Ct. App. 1996), 95−2575.

This section commands that all sentences in excess of that authorized by law be declared void, including the repeater portion of a sentence. Prior postconviction motions that failed to challenge the validity of the sentence do not bar seeking relief from faulty repeater sentences. State v. Flowers, 221 Wis. 2d 20, 586 N.W.2d 175 (Ct. App. 1998), 97−3682.

To allow the imposition of an unauthorized criminal penalty on the basis of waiver ignores the dictate of this section to alleviate all maximum penalties imposed in excess of that prescribed by law. State v. Hanson, 2001 WI 70, 244 Wis. 2d 405, 628 N.W.2d 759, 99−3142.

Flowers holds that neither *Escalona−Naranjo* nor s. 974.06 (4) bar motions challenging the foundation for the convictions sustaining the habitual criminal status that are properly brought under this section. However, this section as it pertains to sentencing a repeat offender applies only when the state fails to prove the prior conviction necessary to establish the habitual criminal status or when the penalty given is longer than permitted by law for a repeater. State v. Mikulance, 2006 WI App 69, 291 Wis. 2d 494, 713 N.W.2d 160, 05−1120.

This section, which commutes a sentence imposed that exceeds the maximum statutory penalty, does not provide a remedy when the sentence initially imposed did not exceed the maximum statutory penalty. State v. Finley, 2016 WI 63, 370 Wis. 2d 402, 882 N.W.2d 761, 14−2488.

973.135 Courts to report convictions to the state superintendent of public instruction. (1) In this section:

(a) "Educational agency" has the meaning given in s. 115.31 (1) (b).

(b) "State superintendent" means the state superintendent of public instruction.

(2) If a court determines that a person convicted of a crime specified in ch. 948, including a crime specified in s. 948.015, a felony for which the maximum term of imprisonment is at least 5 years, 4th degree sexual assault under s. 940.225 (3m) or a crime in which the victim was a child, is employed by an educational agency, the clerk of the court in which such conviction occurred shall promptly forward to the state superintendent the record of conviction.

(3) If a conviction under sub. (2) is reversed, set aside or vacated, the clerk of the court shall promptly forward to the state superintendent a certificate stating that the conviction has been reversed, set aside or vacated.

History: 1991 a. 42; 1995 a. 27; 1997 a. 27, 35.

973.137 Courts to report convictions to the department of transportation. Upon conviction of a person for any of the following offenses, the clerk of the court in which such conviction occurred shall promptly forward the record of conviction to the department of transportation:

(1) A violation of s. 941.235.

(1m) A violation of s. 947.015, if the property involved is owned or leased by the state or any political subdivision of the state, or if the property involved is a school premises, as defined in s. 948.61 (1) (c).

(2) A violation of s. 948.605.

History: 2003 a. 200.

973.14 Sentence to house of correction. (1) In addition to the authority in ss. 302.18 and 303.18, prisoners sentenced to a county jail may be transferred by the sheriff to a house of correction without court approval.

(2) Prisoners confined in the house of correction may be transferred by the superintendent of the house of correction to the county jail without court approval.

(3) A prisoner sentenced to a county jail or the house of correction being held in a county jail awaiting trial on another charge shall be deemed to be serving the county jail or house of correction sentence and shall be given credit on the sentence as provided in s. 302.43 or 303.19.

History: 1977 c. 126; 1989 a. 31.

973.15 Sentence, terms, escapes. (1) Except as provided in s. 973.032, all sentences to the Wisconsin state prisons shall be for one year or more. Except as otherwise provided in this section, all sentences commence at noon on the day of sentence, but time which elapses after sentence while the convicted offender is at large on bail shall not be computed as any part of the term of imprisonment.

(2) (a) Except as provided in par. (b), the court may impose as many sentences as there are convictions and may provide that any such sentence be concurrent with or consecutive to any other sentence imposed at the same time or previously.

(b) The court may not impose a sentence to the intensive sanctions program consecutive to any other sentence. The court may not impose a sentence to the intensive sanctions program concurrent with a sentence imposing imprisonment, except that the court may impose a sentence to the program concurrent with an imposed and stayed imprisonment sentence or with a prison sentence for which the offender has been released on extended supervision or parole. The court may impose concurrent intensive sanctions program sentences. The court may impose an intensive sanctions program sentence concurrent to probation. The court may impose any sentence for an escape from a sentence to the intensive sanctions program concurrent with the sentence to the intensive sanctions program.

(2m) (a) *Definitions.* In this subsection:

1. "Determinate sentence" means a bifurcated sentence imposed under s. 973.01 or a life sentence under which a person is eligible for release to extended supervision under s. 973.014 (1g) (a) 1. or 2.

2. "Indeterminate sentence" means a sentence to the Wisconsin state prisons other than one of the following:

a. A determinate sentence.

b. A sentence under which the person is not eligible for release on parole under s. 939.62 (2m) (c) or 973.014 (1) (c).

3. "Period of confinement in prison," with respect to any sentence to the Wisconsin state prisons, means any time during which a person is incarcerated under that sentence, including any extensions imposed under s. 302.11 (3), 302.113 (3), or 302.114 (3) and any period of confinement in prison required to be served under s. 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

(b) *Determinate sentences imposed to run concurrent with or consecutive to determinate sentences.* 1. If a court provides that a determinate sentence is to run concurrent with another determinate sentence, the person sentenced shall serve the periods of confinement in prison under the sentences concurrently and the terms of extended supervision under the sentences concurrently.

2. If a court provides that a determinate sentence is to run consecutive to another determinate sentence, the person sentenced shall serve the periods of confinement in prison under the sentences consecutively and the terms of extended supervision under the sentences consecutively and in the order in which the sentences have been pronounced.

(c) *Determinate sentences imposed to run concurrent with or consecutive to indeterminate sentences.* 1. If a court provides that a determinate sentence is to run concurrent with an indeterminate sentence, the person sentenced shall serve the period of confinement in prison under the determinate sentence concurrent with the period of confinement in prison under the indeterminate sentence and the term of extended supervision under the determinate sentence concurrent with the parole portion of the indeterminate sentence.

2. If a court provides that a determinate sentence is to run consecutive to an indeterminate sentence, the person sentenced shall serve the period of confinement in prison under the determinate sentence consecutive to the period of confinement in prison under the indeterminate sentence.

(d) *Indeterminate sentences imposed to run concurrent with or consecutive to determinate sentences.* 1. If a court provides that an indeterminate sentence is to run concurrent with a determinate sentence, the person sentenced shall serve the period of confinement in prison under the indeterminate sentence concurrent with the period of confinement in prison under the determinate sentence and the parole portion of the indeterminate sentence concurrent with the term of extended supervision required under the determinate sentence.

2. If a court provides that an indeterminate sentence is to run consecutive to a determinate sentence, the person sentenced shall serve the period of confinement in prison under the indeterminate sentence consecutive to the period of confinement in prison under the determinate sentence.

(e) *Revocation in multiple sentence cases.* If a person is serving concurrent determinate sentences and extended supervision is revoked in each case, or if a person is serving a determinate sentence concurrent with an indeterminate sentence and both extended supervision and parole are revoked, the person shall concurrently serve any periods of confinement in prison required under those sentences under s. 302.11 (7) (am), 302.113 (9) (am), or 302.114 (9) (am).

(3) Courts may impose sentences to be served in whole or in part concurrently with a sentence being served or to be served in a federal institution or an institution of another state.

(4) When a court orders a sentence to the Wisconsin state prisons to be served in whole or in part concurrently with a sentence being served or to be served in a federal institution or an institution of another state:

(a) The court shall order the department to immediately inform the appropriate authorities in the jurisdiction where the prior sentence is to be served that the convicted offender is presently available to commence or resume serving that sentence; and

(b) The trial and commitment records required under s. 973.08 shall be delivered immediately to the warden or superintendent of the Wisconsin institution designated as the reception center to receive the convicted offender when he or she becomes available to Wisconsin authorities.

(5) A convicted offender who is made available to another jurisdiction under ch. 976 or in any other lawful manner shall be credited with service of his or her Wisconsin sentence or commitment under the terms of s. 973.155 for the duration of custody in the other jurisdiction.

(6) Sections 302.11 and 304.06 are applicable to an inmate serving a sentence to the Wisconsin state prisons for a crime committed before December 31, 1999, but confined in a federal institution or an institution in another state.

(7) If a convicted offender escapes, the time during which he or she is unlawfully at large after escape shall not be computed as service of the sentence.

(8) (a) The sentencing court may stay execution of a sentence of imprisonment or to the intensive sanctions program only:

1. For legal cause;

2. Under s. 973.09 (1) (a); or

3. For not more than 60 days, except that the court may not stay execution of a person's sentence of imprisonment or to the intensive sanctions program under this subdivision if the sentence is for a 3rd or subsequent violation that is counted as a suspension, revocation, or conviction under s. 343.307, or a violation of s. 940.09 (1) or 940.25 in the person's lifetime, or a combination thereof.

(b) If a court sentences a person under s. 973.03 (5) (b), this subsection applies only to the first period of imprisonment.

History: 1973 c. 90; 1977 c. 347, 353, 447; 1981 c. 50, 292; 1983 a. 528; 1989 a. 31, 85; 1991 a. 39; 1993 a. 79; 1995 a. 390; 1997 a. 283; 2001 a. 109; 2009 a. 100.

Judicial Council Note, 1981: Sub. (2) has been simplified to allow a court, in imposing a criminal sentence, to order that it be concurrent with or consecutive to any other sentence imposed at the same time or previously. The prior statute, although lengthier and more complicated, failed to achieve its apparent purpose of allowing consecutive sentencing in situations involving probation and parole revocations, escapes, etc. See Drinkwater v. State, 69 Wis. 2d 60 (1975); Guyton v. State, 69 Wis. 2d 663 (1975); Bruneau v. State, 77 Wis. 2d 166 (1977); Smith v. State, 85 Wis. 2d 650 (1978); and Donaldson v. State, 93 Wis. 2d 306 (1980).

This revision allows sentences to be made consecutive to any previously or simultaneously imposed sentence, without regard to whether the offender is "then serving" such sentence, is subject to parole revocation proceedings, or has received a new sentence between the time of an escape and a return to a state facility. The revised statute also governs the sentencing of probationers by virtue of the cross−references in ss. 973.09 (1) (a) and 973.10 (2) (a). [Bill 341−A]

Judicial Council Note, 1981: Sub. (8) has been added to specify the circumstances under which execution of a sentence of imprisonment may be stayed. Par. (a) references the rule of Reinex v. State, 51 Wis. 152 (1881) and Weston v. State, 28 Wis. 2d 136 (1965), whereby execution can be stayed for "legal cause", such as during the pendency of an appeal. Par. (b) cross−references the probation statute. Par. (c) is new. It allows the court to delay the commencement of a sentence for up to 60 days. The Wisconsin supreme court recently held that courts have no authority to stay execution of a sentence of imprisonment in the absence of such a statutory provision or legal cause. State v. Braun, 100 Wis. 2d 77 (1981). [Bill 736−A]

Under s. 973.15 (2) and (3), a court may impose a sentence consecutive to an out−of−state sentence. State v. Toy, 125 Wis. 2d 216, 371 N.W.2d 386 (Ct. App. 1985).

A sentencing court has authority to stay a sentence and order it be served consecutive to a ss. 345.47 and 973.07 commitment for failure to pay a fine and penalty assessment. State v. Strohbeen, 147 Wis. 2d 566, 433 N.W.2d 288 (Ct. App. 1988).

An adult sentence cannot run consecutive to a juvenile disposition. State v. Woods, 173 Wis. 2d 129, 496 N.W.2d 144 (Ct. App. 1992).

The sentence of a defendant convicted of committing a crime while committed under a prior not guilty by reason of mental incompetence commitment under s. 971.17 may not be served concurrent with the commitment. State v. Szulczewski, 209 Wis. 2d 1, 561 N.W.2d 781 (Ct. App. 1997), 96−1323.

A court may not order a prison sentence consecutive to an s. 971.17 commitment. A sentence can only be imposed concurrent or consecutive to another sentence. State v. Harr, 211 Wis. 2d 584, 568 N.W.2d 307 (Ct. App. 1997), 96−2815.

The power under sub. (2) to impose consecutive sentences does not grant authority to impose a sentence to be served consecutively to jail time being served as a condition of probation. State v. Maron, 214 Wis. 2d 384, 571 N.W.2d 454 (Ct. App. 1997), 97−0790.

A commitment under s. 971.17 is legal cause under s. 973.15 (8) to stay the sentence of a defendant who commits a crime while serving the commitment. Whether to stay the sentence while the commitment is in effect or to begin the sentence immediately is within the sentencing court's discretion. State v. Szulczewski, 216 Wis. 2d 495, 574 N.W.2d 660 (1998), 96−1323.

Sub. (2) authorizes a trial court to impose a sentence consecutive to a previously imposed sentence upon revocation of parole on that sentence. Prior revocation of parole on the earlier sentence is not required before a consecutive sentence may be issued. State v. Cole, 2000 WI App 52, 233 Wis. 2d 577, 608 N.W.2d 432, 98−3336.

That a sentence begins at noon under sub. (1) was not relevant to a double jeopardy analysis in regard to a sentence pronounced in the morning and then corrected and lengthened the same afternoon before the judgment was entered into the record. State v. Burt, 2000 WI App 126, 237 Wis. 2d 610, 614 N.W.2d 42, 99−1209.

Double jeopardy prevents a court that, under a mistaken view of the law, entered a valid concurrent sentence from 3 months later revising the sentence to be a consecutive sentence. State v. Willett, 2000 WI App 212, 238 Wis. 2d 621, 618 N.W.2d 881, 99−2671.

When applicable, sub. (5) dictates giving sentencing credit for the duration of custody in the other jurisdiction. Here, the applicability of s. 973.10 (2) (b) or 973.155 were not dispositive. Whether the petitioner entered a Wisconsin prison before starting his federal sentences, or whether his federal sentences were in connection with the course of conduct for which sentence was imposed, was not the correct test. The question to be answered was whether the petitioner fell within the ambit of sub. (5). State v. Brown, 2006 WI App 41, 289 Wis. 2d 823, 711 N.W.2d 708, 05−0361.

Sections 302.113 (4), 973.01, and 973.15 establish that consecutive periods of extended supervision are to be served consecutively, aggregated into one continuous period, so that revocation of extended supervision at any time allows revocation as to all consecutive sentences. State v. Collins, 2008 WI App 163, 314 Wis. 2d 653, 760 N.W.2d 438, 07−2580.

A sentencing court may consider a COMPAS risk assessment at sentencing without violating a defendant's right to due process if the risk assessment is used properly with an awareness of the limitations and cautions set forth in the opinion. Risk scores may not be used: 1) to determine whether an offender is incarcerated; or 2) to determine the severity of the sentence. Additionally, risk scores may not be used as the determinative factor in deciding whether an offender can be supervised safely and effectively in the community. Any Presentence Investigation Report (PSI) containing a COMPAS risk assessment must contain a written advisement listing those limitations and informing sentencing courts of certain cautions set forth in the opinion. State v. Loomis, 2016 WI 68, ___ Wis. 2d ___, 881 N.W.2d 749, 15−0157.

Overcrowding does not constitute legal cause under sub. (8) (a). 76 Atty. Gen. 165.

973.155 Sentence credit. (1) (a) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:

1. While the offender is awaiting trial;

2. While the offender is being tried; and

3. While the offender is awaiting imposition of sentence after trial.

(b) The categories in par. (a) and sub. (1m) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed upon the person for the same course of conduct as that resulting in the new conviction.

(1m) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody as part of a substance abuse treatment program that meets the requirements of s. 165.95 (3), as determined by the department of justice under s. 165.95 (9) and (10), for any offense arising out of the course of conduct that led to the person's placement in that program.

(2) After the imposition of sentence, the court shall make and enter a specific finding of the number of days for which sentence credit is to be granted, which finding shall be included in the judgment of conviction. In the case of revocation of probation, extended supervision or parole, the department, if the hearing is waived, or the division of hearings and appeals in the department of administration, in the case of a hearing, shall make such a finding, which shall be included in the revocation order.

(3) The credit provided in sub. (1) or (1m) shall be computed as if the convicted offender had served such time in the institution to which he or she has been sentenced.

(4) The credit provided in sub. (1) shall include earned good time for those inmates subject to s. 302.43, 303.07 (3) or 303.19 (3) serving sentences of one year or less and confined in a county jail, house of correction or county reforestation camp.

(5) If this section has not been applied at sentencing to any person who is in custody or to any person who is on probation, extended supervision or parole, the person may petition the department to be given credit under this section. Upon proper verification of the facts alleged in the petition, this section shall be applied retroactively to the person. If the department is unable to determine whether credit should be given, or otherwise refuses to award retroactive credit, the person may petition the sentencing court for relief. This subsection applies to any person, regardless of the date he or she was sentenced.

(6) A defendant aggrieved by a determination by a court under this section may appeal in accordance with s. 809.30.

History: 1977 c. 353; 1979 c. 154; 1983 a. 377, 528; 1987 a. 403 s. 256; 1989 a. 31, 107; 1997 a. 283; 2001 a. 109; 2005 a. 25; 2013 a. 20.

Cross−reference: See also s. DOC 302.28, Wis. adm. code.

The trial court did not abuse its discretion during resentencing when it refused to give the defendant credit for time served on an unrelated conviction that was voided. State v. Allison, 99 Wis. 2d 391, 298 N.W.2d 286 (Ct. App. 1980).

This section grants credit for each day in custody regardless of the basis for confinement as long as it is connected to the offense for which sentence is imposed. State v. Gilbert, 115 Wis. 2d 371, 340 N.W.2d 511 (1983).

When the intended sentence was valid, but the judge did not follow the procedures under this section, the appropriate remedy was to modify the sentence to conform it to the requirements of this section. State v. Walker, 117 Wis. 2d 579, 345 N.W.2d 413 (1984).

"Custody" must result from the occurrence of a legal event, process, or authority that occasions, or is related to, confinement on a charge for which the accused is ultimately sentenced. State v. Demars, 119 Wis. 2d 19, 349 N.W.2d 708 (Ct. App. 1984).

When an offender committed robbery and 24 hours later fled from an officer, the offender was not entitled to credit toward the robbery sentence for time served under the sentence for fleeing an officer. State v. Gavigan, 122 Wis. 2d 389, 362 N.W.2d 162 (Ct. App. 1984).

When a probationer is arrested for a 2nd crime and consequently begins serving time for the first crime, no credit toward the 2nd sentence is required for time served under the first sentence. State v. Beets, 124 Wis. 2d 372, 369 N.W.2d 382 (1985).

No credit was due for time spent in a drug treatment facility as a condition of probation when the defendant was not in actual "custody" at the facility within the meaning of this section and s. 946.42. State v. Cobb, 135 Wis. 2d 181, 400 N.W.2d 9 (Ct. App. 1986).

Credit under this section is given on a day−to−day basis, which is not to be duplicatively credited to more than one consecutive sentence. State v. Boettcher, 144 Wis. 2d 86, 423 N.W.2d 533 (1988).

A defendant is not entitled to credit against a sentence for time spent under home detention. State v. Pettis, 149 Wis. 2d 207, 441 N.W.2d 247 (Ct. App. 1989). See also State v. Swadley, 190 Wis. 2d 139, 526 N.W.2d 778 (Ct. App. 1994).

A defendant is entitled to credit against a sentence for the period during which he was denied admission to a county jail due to overcrowding, but the defendant is not entitled to credit for time as of the date he was to have reported to jail to serve the sentence. State v. Riske, 152 Wis. 2d 260, 448 N.W.2d 260 (Ct. App. 1989).

Presentence credit must be applied to each of the concurrent terms to which the defendant is sentenced. State v. Ward, 153 Wis. 2d 743, 452 N.W.2d 158 (Ct. App. 1989).

Out−of−state presentence confinement while the defendant was on parole from Wisconsin may not be credited against subsequent reconfinement in Wisconsin for a parole violation. State v. Rohl, 160 Wis. 2d 325, 466 N.W.2d 208 (Ct. App. 1991).

When a waiver of juvenile jurisdiction is granted, secure juvenile detention time is eligible for credit consideration under this section as if it were jail time, retroactive to the date of the filing of the juvenile petition. State v. Baker, 179 Wis. 2d 655, 508 N.W.2d 40 (Ct. App. 1993).

The definition of "custody" in s. 946.42 (1) (a) is used to determine whether a person is in custody for sentence credit purposes. State v. Sevelin, 204 Wis. 2d 127, 554 N.W.2d 521 (Ct. App. 1996), 96−0729.

A person confined on a probation revocation or change in intensive sanctions due to an arrest for a subsequent crime is not entitled to credit under sub. (1) against the sentence for the subsequent crime although the confinement was triggered by the subsequent crime. State v. Abbott, 207 Wis. 2d 624, 558 N.W.2d 927 (Ct. App. 1996), 96−2051.

Sub. (1) (a) provides sentence credit only for custody connected to the charges to which the custody resulted from. Time served as the result of a bail jumping charge was not credited against a sentence for sexual assault, although the bail condition violated was in the sexual assault case. State v. Beiersdorf, 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997), 95−1234.

When a defendant is unable to satisfy cash−bail requirements on 2 or more unrelated charges, the defendant is entitled to sentence credit on both charges. However, if the defendant is committed following a finding of not guilty by reason of mental defect on one charge, there will be no sentence credit from the commitment against a sentence upon conviction on another of the charges as the confinement after the commitment is solely the result of the commitment. State v. Harr, 211 Wis. 2d 584, 568 N.W.2d 307 (Ct. App. 1997), 96−2815.

An 18−year−old on juvenile aftercare parole who was returned to juvenile detention because the parole was revoked pending sentencing after pleading guilty to an adult crime was eligible for sentence credit for the time spent in juvenile detention prior to sentencing. State v. Thompson, 225 Wis. 2d 578, 593 N.W.2d 875 (Ct. App. 1999), 97−3245.

When a sentence has been withheld and probation imposed, sub. (2) gives the court exclusive authority to determine sentence credit in imposing a postprobation sentence. A person subject to electronic monitoring, but not locked in the home at night, was not in custody and not entitled to sentence credit. State v. Olson, 226 Wis. 2d 457, 595 N.W.2d 460 (Ct. App. 1999), 98−1450.

"Course of conduct" in sub. (1) (a) means the specific act for which the defendant is sentenced. As such, a defendant was not entitled to sentence credit on a later imposed sentence for time already served on sentences arising from the same criminal episode, but different criminal acts. State v. Tuescher, 226 Wis. 2d 465, 595 N.W.2d 443 (Ct. App. 1999), 98−2564.

Pretrial confinement on a dismissed charge that is read in at sentencing relates to an offense for which the offender is ultimately sentenced, entitling the offender to sentence credit. State v. Floyd, 2000 WI 14, 232 Wis. 2d 767, 606 N.W.2d 155, 98−2062.

For sentence credit purposes, an offender's status constitutes custody whenever the offender is subject to an escape charge for leaving that status. State v. Magnuson, 2000 WI 19, 233 Wis. 2d 40, 606 N.W.2d 536, 98−1105.

Boettcher bars a claim for dual credit when the defendant has already received the same credit against a prior sentence that the defendant has already served. State v. Jackson, 2000 WI App 41, 233 Wis. 2d 231, 607 N.W.2d 338, 99−1161.

In a multiple count conviction, when one sentence is imposed and another stayed, applicable sentence credit must be applied to the first imposed sentence. State v. Wolfe, 2001 WI App 66, 242 Wis. 2d 426, 625 N.W.2d 655, 00−1466.

Sentence credit is not to be granted for time spent on electronic monitoring. State ex rel. Simpson v. Schwarz, 2002 WI App 7, 250 Wis. 2d 214, 640 N.W.2d 527, 01−0008.

A person who was unable to serve a sentence upon being informed by the jailer that the jail was overcrowded and that he should return at a later date was absent from the jail through no fault of his own and entitled to sentence credit for the period between when he first reported to the jail and when he later was admitted. State v. Dentici, 2002 WI App 77, 251 Wis. 2d 436, 643 N.W.2d 180, 01−1703.

Detention at the Wisconsin Resource Center while awaiting evaluation and trial on a petition for commitment as a sexually violent person under Chapter 980 satisfies neither the "in custody" nor "in connection with" requirements of this section. The detention does not qualify for sentence credit under this section. Thorson v. Schwarz, 2004 WI 96, 274 Wis. 2d 1, 681 N.W.2d 914, 02−3380.

An offender who has had extended supervision revoked is entitled to sentence credit on any new charges until the trial court resentences him or her for the available remaining term of extended supervision. A reconfinement hearing is a sentencing, and the revocation is not. The defendant was entitled to sentence credit on the new charge from the date of his arrest until the day of sentencing on both charges because while his extended supervision was revoked, his resentencing had not yet occurred. State v. Presley, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713, 05−0359.

When a defendant has served jail time as a condition of probation and his or her probation is later revoked and the defendant commences serving an imposed and stayed sentence, the defendant is entitled to sentence credit for days spent in custody while in conditional jail time status, even if that custody is concurrent with service of an unrelated prison sentence. State v. Yanick, 2007 WI App 30, 299 Wis. 2d 456, 728 N.W.2d 365, 06−0849.

Sentence credit must be awarded under sub. (1) (b) for time in custody on an extended supervision hold if the hold was at least in part due to the conduct resulting in the new conviction. State v. Hintz, 2007 WI App 113, 300 Wis. 2d 583, 731 N.W.2d 646, 06−0217.

The underlying purpose of the sentence credit statute is to afford fairness by ensuring that a person not serve more time than that for which he or she is sentenced. A narrow interpretation of the phrase "in connection with" furthers this purpose. If the defendant would have been in custody even if a charged offense had never occurred, the defendant was not treated unfairly by not receiving sentence credit for that time. State v. Johnson, 2007 WI 107, 304 Wis. 2d 318, 735 N.W.2d 505, 05−1492.

Sub. (1) (a) requires an award of credit against each sentence imposed for all days spent in custody in connection with the course of conduct underlying the sentence. The "in connection with the course of conduct" requirement applies individually to each concurrent sentence imposed at the same time. Credit due against any individual sentence is not awarded against a concurrent sentence that was not imposed in connection with the course of conduct giving rise to that individual sentence. State v. Johnson, 2009 WI 57, 318 Wis. 2d 21, 767 N.W.2d 207, 07−1114. See also State v. Carter, 2010 WI 77, 327 Wis. 2d 1, 785 N.W.2d 516, 06−1811.

When an offender is on a parole hold in a different sovereignty that has not acted to revoke parole, the circuit court should grant sentence credit in Wisconsin for the time the offender spent in presentence confinement in Wisconsin. Until the other sovereignty has acted on whether to grant credit, the Wisconsin sentence is the only outstanding sentence against which the court can grant credit. Therefore, the question of "double credit" is not ripe. The Wisconsin court, as the only court the issue of credit is before, should grant credit. State v. Brown, 2010 WI App 43, 324 Wis. 2d 236, 781 N.W.2d 244, 09−0896.

A court, in determining a sentence, may consider the amount of sentence credit to which the defendant is entitled so long as the court does not do so with the purpose of enlarging the sentence to deprive the defendant of his or her right to receive sentence credit. State v. Armstrong, 2014 WI App 59, 354 Wis. 2d 111, 847 N.W.2d 860, 13−1995.

A convicted offender is entitled to credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. The defendant in this case was entitled to credit for the time during which he was unable to make cash bail on a burglary charge while he was also confined pursuant to a civil commitment order for contempt of court. Even though the defendant was in custody pursuant to the civil commitment order during the relevant time period, the custody was also in connection with the course of conduct for

which the burglary sentence was imposed. State v. Trepanier, 2014 WI App 105, 357 Wis. 2d 662, 855 N.W.2d 465, 14−0178.

While a circuit court may seek assistance from its court clerk in accessing records that may be relevant to its determination, the award of sentence credit is the court's duty and the court must reach its own conclusion on the amount of sentence credit to be awarded and explain its findings and reasoning on the record. State v. Kitt, 2015 WI App 9, 359 Wis. 2d 592, 859 N.W.2d 164, 14−0500.

Sub. (4) applies to inmates serving sentences of one year or less and confined in a county jail. Sub. (4) was not applicable to the defendant who had a sentence of more than one year, and therefore, the defendant was not entitled to the good time earned during his failed probationary period to be applied as sentence credit to his confinement time in prison. Baade v. Hayes, 2015 WI App 71, 365 Wis. 2d 174, 870 N.W.2d 478, 14−2655.

Floyd, 2000 WI 14, remains good law. *Floyd* limited the reach of sub. (1) to charges that are dismissed and read in at sentencing. That the trial court discussed a sexual assault, for which the defendant was ultimately acquitted, when sentencing him for an intimidation charge, did not require that the defendant be awarded credit for the time he spent in custody related to the sexual assault charge. State v. Piggue, 2016 WI App 13, 366 Wis. 2d 605, 875 N.W.2d 663, 15−0152.

Jail credit may not be granted if it is not provided for by statute. 71 Atty. Gen. 102.

Sentence Credit: More Than Just Math. White. Wis. Law. Oct. 1991.

973.16 Time out. If an order or judgment releasing a prisoner on habeas corpus is reversed, the time during which the prisoner was at liberty thereunder shall not be counted as part of the prisoner's term.

History: 1993 a. 486.

973.17 Judgment against a corporation or limited liability company. (1) If a corporation or limited liability company fails to appear within the time required by the summons, the default of such corporation or limited liability company may be recorded and the charge against it taken as true, and judgment shall be rendered accordingly.

(2) Upon default of the defendant corporation or limited liability company or upon conviction, judgment for the amount of the fine shall be entered.

(3) A judgment against a corporation or limited liability company shall be collected in the same manner as in civil actions.

History: 1993 a. 112.

973.176 Notice of restrictions. (1) FIREARM POSSESSION. Whenever a court imposes a sentence or places a defendant on probation regarding a felony conviction, the court shall inform the defendant of the requirements and penalties applicable to him or her under s. 941.29 (1m) or (4m).

(2) VOTING. Whenever a court imposes a sentence or places a defendant on probation for a conviction that disqualifies the defendant from voting under s. 6.03 (1) (b), the court shall inform the defendant in writing that he or she may not vote in any election until his or her civil rights are restored. The court shall use the form designed by the department of corrections under s. 301.03 (3a) to inform the defendant, and the defendant and a witness shall sign the form.

(3) CHILD SEX OFFENDER WORKING WITH CHILDREN. Whenever a court imposes a sentence or places a defendant on probation regarding a conviction under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is under 18 years of age at the time of the offense, a conviction under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or a conviction under s. 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075, or 948.085, the court shall inform the defendant of the requirements and penalties under s. 948.13.

History: 2003 a. 121 ss. 2, 3, 5; 2005 a. 277, 451; 2007 a. 116; 2015 a. 109.

Failure to give the warning under this section does not prevent a conviction under s. 941.29. State v. Phillips, 172 Wis. 2d 391, 493 N.W.2d 270 (Ct. App. 1992).

973.18 Notice of rights to appeal and representation. (1) In this section, "postconviction relief" and "sentencing" have the meanings ascribed in s. 809.30 (1).

(2) The trial judge shall personally inform the defendant at the time of sentencing of the right to seek postconviction relief and, if indigent, the right to the assistance of the state public defender.

(3) Before adjourning the sentencing proceeding, the judge shall direct the defendant and defendant's trial counsel to sign a form to be entered in the record, indicating that the lawyer has counseled the defendant regarding the decision to seek postconviction relief, and that the defendant understands that a notice of intent to pursue postconviction relief must be filed in the trial court within 20 days after sentencing for that right to be preserved.

(4) The judge shall direct the defendant's counsel to confer with the defendant before signing the form, during the proceeding or as soon thereafter as practicable, and may make appropriate orders to allow the defendant to confer with counsel before being transferred to the state prison. The defendant shall be given a copy of the form.

(5) If the defendant desires to pursue postconviction relief, the defendant's trial counsel shall file the notice required by s. 809.30 (2) (b).

History: Sup. Ct. Order, 123 Wis. 2d xi (1985).

Judicial Council Note, 1984: Sub. (2) is similar to prior s. 809.30 (1) (b). Subs. (3) and (4) codify State v. Argiz, 101 Wis. 2d 546, 305 N.W.2d 124 (1981). Sub. (5) codifies trial counsel's continuing duty to provide representation until appellate counsel is retained or appointed. Whitmore v. State, 56 Wis. 2d 706, 203 NW 2d 56 (1973). [Re order effective July 1, 1985]

973.19 Motion to modify sentence. (1) (a) A person sentenced to imprisonment or the intensive sanctions program or ordered to pay a fine who has not requested the preparation of transcripts under s. 809.30 (2) may, within 90 days after the sentence or order is entered, move the court to modify the sentence or the amount of the fine.

(b) A person who has requested transcripts under s. 809.30 (2) may move for modification of a sentence or fine under s. 809.30 (2) (h).

(2) Within 90 days after a motion under sub. (1) (a) is filed, the court shall enter an order either determining the motion or extending the time for doing so by not more than 90 days for cause.

(3) If an order determining a motion under sub. (1) (a) is not entered timely under sub. (2), the motion shall be considered denied and the clerk of the court shall immediately enter an order denying the motion.

(4) An appeal from an order determining a motion under sub. (1) (a) is governed by the procedure for civil appeals.

(5) By filing a motion under sub. (1) (a) the defendant waives his or her right to file an appeal or postconviction motion under s. 809.30 (2).

History: Sup. Ct. Order, 123 Wis. 2d xiv (1985); 1991 a. 39.

Judicial Council Note, 1984: This section is intended as an expeditious alternative to the procedure prescribed in s. 809.30 (2) when the only claim for postconviction relief relates to the severity of the sentence. It is not intended to alter the substantive grounds for such relief and it restores the time limits governing such motions prior to the 1978 revision of the appellate rules.

This section will probably be most frequently used in guilty plea cases, although it is not limited to such cases. However, if the defendant intends to withdraw a guilty plea or file other postconviction motions, s. 809.30 (2) or 974.06 provides the appropriate procedure. Motions under this section should usually be filed by trial counsel without the need for transcripts or for appointment of an appellate public defender. A defendant must elect between the remedies provided by this section and s. 809.30 (2). Filing a motion under this section waives relief under s. 809.30 (2). However, a defendant who has filed a notice of intent to pursue postconviction relief under s. 809.30 (2) (b) may invoke this remedy at any time before transcripts are ordered under s. 809.30 (2). If transcripts are required for prosecution of a motion under sub. (1) (a), they should be sought under SCR 71.03 (2).

Sub. (4) does not expand the scope of appellate review. [Re Order effective July 1, 1985.]

The trial court's increase of the defendant's sentence based solely on "reflection" did not constitute a valid basis for modification of a sentence. There was no "new factor" justifying a more severe sentence, a prerequisite for sentence reevaluation. Scott v. State, 64 Wis. 2d 54, 218 N.W.2d 350 (1974).

A reduction in the maximum statutory penalty for an offense is not a "new factor" justifying a postconviction motion to modify the sentence. State v. Hegwood, 113 Wis. 2d 544, 335 N.W.2d 399 (1983).

There are two alternative means to seek modification of a sentence; proceeding under sub. (1) (a) or (b). Under either, a motion must be first made in the trial court. State v. Norwood, 161 Wis. 2d 676, 468 N.W.2d 741 (Ct. App. 1991).

Rehabilitation may not be considered as a "new factor" for purposes of modifying an already imposed sentence. State v. Kluck, 210 Wis. 2d 1, 563 N.W.2d 468 (1997), 95−2238.

A defendant's sentence may be modified if there is some "new factor." Post−sentencing conduct does not constitute a new factor. State v. Scaccio, 2000 WI App 265, 240 Wis. 2d 95, 622 N.W.2d 449, 99−3101.

A defendant subject to a post−probation revocation sentence cannot use s. 809. 30 and sub. (1) (b) to raise issues that go the original judgment, but the defendant may take a direct appeal from a subsequent judgment in order to fully litigate issues initially raised by the resentencing. State v. Scaccio, 2000 WI App 265, 240 Wis. 2d 95, 622 N.W.2d 449, 99−3101.

Under the facts of the case, information presented to the court that had a direct bearing on the length of the sentence that proved to be incorrect was a "new factor" warranting sentence modification. State v. Norton, 2001 WI App 245, 248 Wis. 2d 162, 635 N.W.2d 656, 00−3538. See also State v. Wood, 2007 WI App 190, 305 Wis. 2d 133, 738 N.W.2d 81, 06−1338.

A circuit court has the inherent power to modify a previously imposed sentence after the sentence has commenced, but it may not reduce a sentence merely upon reflection or second thoughts. A court may do so on the basis of new factors or when it concludes its original sentence was unduly harsh or unconscionable. A court's altered view of facts known to the court at sentencing, or a reweighing of their significance, does not constitute a new factor for sentencing purposes but is mere reflection or second thoughts. State v. Grindemann, 2002 WI App 106, 255 Wis. 2d 632, 648 N.W.2d 507, 01−0542.

A circuit court should proceed in a fashion similar to that outlined in s. 974.06 (3) when it receives a motion requesting sentence modification. State v. Grindemann, 2002 WI App 106, 255 Wis. 2d 632, 648 N.W.2d 507, 01−0542.

A defendant can seek sentence modification in two ways: 1) moving for modification as a matter of right under this section, to assert an erroneous exercise of discretion based on excessiveness, undue harshness, or unconscionability; or 2) moving for discretionary review, invoking the inherent power of the circuit court, which applies only if a new factor justifying sentence modification exists, in which case, the timeliness requirements of this section are inapplicable. State v. Noll, 2002 WI App 273, 258 Wis. 2d 573, 653 N.W.2d 895, 01−3341.

A mental health professional who conducted a psychological assessment of a defendant convicted of sexual assault, which was incorporated into the presentence investigation report and admitted into evidence at the sentencing hearing, had a conflict of interest due to the fact that she had treated the victim in the case. The conflict of interest is a new factor justifying the modification of the sentence. State v. Stafford, 2003 WI App 138, 265 Wis. 2d 886, 667 N.W.2d 370, 02−0544.

The adoption of Truth−in−Sentencing, s. 973.01, did not affect existing "new factor" jurisprudence. State v. Crochiere, 2004 WI 78, 273 Wis. 2d 57, 681 N.W.2d 524, 02−1809.

A change in the classification of a crime under the 2001 Act 109 revisions to the sentencing laws was not a new factor for sentence modification purposes. State v. Longmire, 2004 WI App 90, 272 Wis. 2d 759, 681 N.W.2d 354, 03−0300.
Affirmed. State v. Trujillo, 2005 WI 45, 279 Wis. 2d 712, 694 N.W.2d 933, 03−1463.

The existence of a new factor does not automatically entitle the defendant to relief. The question of whether the sentence warrants modification is left to the discretion of the circuit court. State v. Trujillo, 2005 WI 45, 279 Wis. 2d 712, 694 N.W.2d 933, 03−1463.

A new factor refers to a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing. A reduction in the maximum penalty after sentencing is not highly relevant to the imposition of sentence and does not constitute a new factor. State v. Trujillo, 2005 WI 45, 279 Wis. 2d 712, 694 N.W.2d 933, 03−1463.

A defendant's substantial and important assistance to law enforcement after sentencing may constitute a new factor that the trial court can take into consideration when deciding whether modification of a sentence is warranted. State v. John Doe, 2005 WI App 68, 280 Wis. 2d 731, 697 N.W.2d 101, 04−0773.

When resentencing based upon a new factor, the court's rationale must clearly reflect the high relevance of the new factor. There must be some connection between the factor and the sentencing; something that strikes at the very purpose for the sentence selected by the trial court. The trial court cannot reduce or increase a sentence upon its reflection that the sentence imposed was harsh or inadequate. State v. Prager, 2005 WI App 95, 281 Wis. 2d 811, 698 N.W.2d 837, 04−0843.

The circuit court's authority to review its decision to determine whether the sentence it imposed is unduly harsh does not include the authority to reduce a sentence based on events that occurred after sentencing. In deciding whether a sentence is unduly harsh, the circuit court's inquiry is confined to whether it erroneously exercised its sentencing discretion based on the information it had at the time of sentencing. A circuit court's authority to modify a sentence based on events that occurred after sentencing is defined by new factor jurisprudence. Because sexual assault in prison is not a new factor under the case law, the circuit court in this case correctly decided that it did not have the authority to modify the sentence based on the assault. State v. Klubertanz, 2006 WI App 71, 291 Wis. 2d 751, 713 N.W.2d 116, 05−1256.

When a defendant seeks modification of the sentence imposed at resentencing, this section and 809.30 (2) require the defendant to file a postconviction motion with the circuit court before taking an appeal. These rules on sentence modification apply even though the sentence imposed at resentencing is identical to a previous sentence. The rules apply regardless of whether a defendant challenges the original sentence, a sentence after revocation, or the sentence imposed at resentencing. State v. Walker, 2006 WI 82, 292 Wis. 2d 326, 716 N.W.2d 498, 04−2820.

Once the trial court found that grounds for sentence modification did not exist, particularly with an unrepresented defendant, the trial court should not have converted a motion for sentence modification to a motion for resentencing in the absence of a clear, unequivocal, and knowing stipulation by the defendant. State v. Wood, 2007 WI App 190, 305 Wis. 2d 133, 738 N.W.2d 81, 06−1338.

A defendant has a due process right to be sentenced based on accurate information. The defendant requesting resentencing must prove, by clear and convincing evidence, both that the information is inaccurate and that the trial court relied upon it. Once a defendant does so, the burden shifts to the state to show that the error was harmless. An error is harmless if there is no reasonable probability that it contributed to the outcome. State v. Payette, 2008 WI App 106, 313 Wis. 2d 39, 756 N.W.2d 423, 07−1192.

The Department of Correction's determination that an inmate does not meet the placement criteria for the Challenge Incarceration Program under s. 302.045 does not constitute a new factor for purposes of sentence modification when a trial court has determined at sentencing that the defendant is eligible to participate in the program. Once the trial court has made an eligibility determination, the final placement determination is made by the department. Section 302.045 provides that, if an inmate meets all of the program eligibility criteria, the department "may" place that inmate in the program. It is not the sentencing court's function to classify an inmate to a particular institution or program. State v. Schladweiler, 2009 WI App 177, 322 Wis. 2d 642, 777 N.W.2d 114, 08−3119.

A "new factor" in the context of a motion for sentence modification is a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because it was unknowingly overlooked by all of the parties. Frustration of the purpose of the original sentence is not an independent requirement when determining whether a fact or set of facts alleged by a defendant constitutes a new factor. State v. Harbor, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828, 09−1252.

The defendant did not show "by clear and convincing evidence that a new factor exists" when asserting that the scientific community recently realized that adolescents are generally impulsive and often have trouble making wise choices, such that the information was a new factor that, if known by the trial court at the time of sentencing, might have resulted in a different parole−eligibility date. Even though the studies proffered may not have been in existence at the time of sentencing, the conclusions reached by the studies were already in existence and well reported by that time. State v. McDermott, 2012 WI App 14, 339 Wis. 2d 316, 810 N.W.2d 237, 10−2232.

When fruits of a defendant's substantial presentence assistance to law enforcement authorities are not known until after sentencing, those fruits, if highly relevant to the imposition of the sentence in light of the factors set forth in *Doe*, can constitute a new sentencing factor that the trial court can take into consideration when deciding whether modification of a sentence is warranted. State v. Boyden, 2012 WI App 38, 340 Wis. 2d 155, 814 N.W.2d 505, 11−0977.

Repeal of a program that previously allowed inmates convicted of certain offenses to earn potential reductions in their terms of initial confinement for defined positive behavior was not a new factor justifying sentence modification when the possibility of positive adjustment time was not a factor highly relevant to the sentence imposed. State v. Carroll, 2012 WI App 83, 343 Wis. 2d 509, 819 N.W.2d 343, 11−1922.

A postsentencing report that expresses an opinion different from that of the trial court regarding the objectives of sentencing (protection, punishment, rehabilitation, and deterrence) is nothing more than a challenge to the trial court's discretion and does not constitute a new factor for sentence modification purposes. State v. Sobonya, 2015 WI App 86, 365 Wis. 2d 559, 872 N.W.2d 134, 14−2392.

An error in imposing a parole eligibility date rather than an extended supervision eligibility date was not a new factor that warranted modifying the defendant's sentence. State v. Barbeau, 2016 WI App 51, ___ Wis. 2d ___, 883 N.W.2d 520, 14−2876.

973.195 Sentence adjustment. (1g) DEFINITION. In this section, "applicable percentage" means 85 percent for a Class C to E felony and 75 percent for a Class F to I felony.

(1r) CONFINEMENT IN PRISON. (a) Except as provided in s. 973.198, an inmate who is serving a sentence imposed under s. 973.01 for a crime other than a Class B felony may petition the sentencing court to adjust the sentence if the inmate has served at least the applicable percentage of the term of confinement in prison portion of the sentence. If an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually for purposes of sentence adjustment under this subsection.

(b) Any of the following is a ground for a petition under par. (a):

1. The inmate's conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment, or other correctional programs since he or she was sentenced.

3. A change in law or procedure related to sentencing or revocation of extended supervision effective after the inmate was sentenced that would have resulted in a shorter term of confinement in prison or, if the inmate was returned to prison upon revocation of extended supervision, a shorter period of confinement in prison upon revocation, if the change had been applicable when the inmate was sentenced.

4. The inmate is subject to a sentence of confinement in another state or the inmate is in the United States illegally and may be deported.

5. Sentence adjustment is otherwise in the interests of justice.

(c) Upon receipt of a petition filed under par. (a), the sentencing court may deny the petition or hold the petition for further consideration. If the court holds the petition for further consideration, the court shall notify the district attorney of the inmate's petition. If the district attorney objects to adjustment of the inmate's sentence within 45 days of receiving notification under this paragraph, the court shall deny the inmate's petition.

(d) If the sentence for which the inmate seeks adjustment is for an offense under s. 940.225 (2) or (3), 948.02 (2), 948.08, or 948.085, and the district attorney does not object to the petition within 10 days of receiving notice under par. (c), the district attorney shall notify the victim, as defined under s. 950.02 (4), of the inmate's petition. The notice to the victim shall include informa-

tion on the sentence adjustment petition process under this subsection, including information on how to object to the inmate's petition. If the victim objects to adjustment of the inmate's sentence within 45 days of the date on which the district attorney received notice under par. (c), the court shall deny the inmate's petition.

(e) Notwithstanding the confidentiality of victim address information obtained under s. 302.113 (9g) (g) 3., a district attorney who is required to send notice to a victim under par. (d) may obtain from the clerk of the circuit court victim address information that the victim provided to the clerk under s. 302.113 (9g) (g) 3.

(f) If the sentencing court receives no objection to sentence adjustment from the district attorney under par. (c) or the victim under par. (d) and the court determines that sentence adjustment is in the public interest, the court may adjust the inmate's sentence as provided under par. (g). The court shall include in the record written reasons for any sentence adjustment granted under this subsection.

(g) Except as provided under par. (h), the only sentence adjustments that a court may make under this subsection are as follows:

1. If the inmate is serving the term of confinement in prison portion of the sentence, a reduction in the term of confinement in prison by the amount of time remaining in the term of confinement in prison portion of the sentence, less up to 30 days, and a corresponding increase in the term of extended supervision.

2. If the inmate is confined in prison upon revocation of extended supervision, a reduction in the amount of time remaining in the period of confinement in prison imposed upon revocation, less up to 30 days, and a corresponding increase in the term of extended supervision.

(h) 1. If the court adjusts a sentence under par. (g) on the basis of a change in law or procedure as provided under par. (b) 3. and the total sentence length of the adjusted sentence is greater than the maximum sentence length that the offender could have received if the change in law or procedure had been applicable when the inmate was originally sentenced, the court may reduce the length of the term of extended supervision so that the total sentence length does not exceed the maximum sentence length that the offender could have received if the change in law or procedure had been applicable when the inmate was originally sentenced.

2. If the court adjusts a sentence under par. (g) on the basis of a change in law or procedure as provided under par. (b) 3. and the adjusted term of extended supervision is greater than the maximum term of extended supervision that the offender could have received if the change in law or procedure had been applicable when the inmate was originally sentenced, the court may reduce the length of the term of extended supervision so that the term of extended supervision does not exceed the maximum term of extended supervision that the offender could have received if the change in law or procedure had been applicable when the inmate was originally sentenced.

(i) An inmate may submit only one petition under this subsection for each sentence imposed under s. 973.01.

History: 2001 a. 109; 2005 a. 253, 277; 2007 a. 97; 2009 a. 28; 2011 a. 38, 258; 2013 a. 168.

This section is a remedy that provides the procedure for judicial review of a sentence when the law relating to sentencing changes and is an adequate remedy to address the circumstances resulting from the reduction in penalties under the 2001 Act 109 revisions to the sentencing laws. State v. Trujillo, 2005 WI 45, 279 Wis. 2d 712, 694 N.W.2d 933, 03−1463.

Sub. (1g) sets forth the "applicable percentage" of the term of initial confinement a person must serve before being eligible for sentence adjustment utilizing the felony classification scheme adopted in 2001 Act 109 and does not indicate how to calculate the "applicable percentage" for a sentence under the scheme adopted in1997 Act 283. This problem is remedied by applying the Act 109 felony classification under s. 939.50 to persons sentenced under Act 283 for the limited purpose of determining the applicable percentage of a term of initial confinement in a petition for sentence adjustment. State v. Tucker, 2005 WI 46, 279 Wis. 2d 697, 694 N.W.2d 926, 03−1276.

Two concurring/dissenting opinions joined in by the same 4 justices, read together, hold that, "shall" in the last sentence of sub. (1r) (c) is directory, thereby giving a circuit court discretion to accept or reject an objection from a district attorney on a petition for sentence adjustment under s. 973.195. The circuit court must exercise its discretion by weighing the appropriate factors under sub. (1r) (b) 1. when the court reaches its decision on sentence adjustment. State v. Stenklyft, 2005 WI 71, 281 Wis. 2d 484, 697 N.W.2d 452, 03−1959.

Sub. (1r) clearly states that "if an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually for purposes of sentence adjustment under this subsection." There is no alternative interpretation; multiple sentences are to be considered separately for the purpose of sentence adjustment. State v. Polar, 2014 WI App 15, 352 Wis. 2d 452, 842 N.W.2d 531, 13−1433.

A person serving an enhanced misdemeanor prison term imposed when a defendant is convicted of a misdemeanor and is subject to penalty enhancement, such that a bifurcated sentence under s. 973.01 (1) is a possibility and the court actually chooses to impose prison time, is eligible for sentence adjustment under this section. Because the "applicable percentage" for Class I felonies is 75 percent, and because 75 percent is the lowest "applicable percentage" specified by the legislature, the most reasonable assumption is that the legislature intended that 75 percent applies to enhanced misdemeanants. State v. Anderson, 2015 WI App 92, 366 Wis. 2d 147, 873 N.W.2d 82, 14−0982.

The Pendulum Swings: No More Early Release. Brennan. Wis. Law. Sept. 2011.

973.198 Sentence adjustment; positive adjustment time. (1) When an inmate who is serving a sentence imposed under s. 973.01 and who has earned positive adjustment time under s. 302.113, 2009 stats., or under s. 304.06, 2009 stats., has served the confinement portion of his or her sentence less positive adjustment time earned between October 1, 2009, and August 3, 2011, he or she may petition the sentencing court to adjust the sentence under this section, based on the number of days of positive adjustment time the inmate claims that he or she has earned.

(3) Within 60 days of receipt of a petition filed under sub. (1), the sentencing court shall either deny the petition or hold a hearing and issue an order relating to the inmate's sentence adjustment and release to extended supervision.

(5) If the court determines that the inmate has earned positive adjustment time, the court may reduce the term of confinement in prison by the amount of time remaining in the term of confinement in prison portion of the sentence, less up to 30 days, and shall lengthen the term of extended supervision so that the total length of the bifurcated sentence originally imposed does not change.

(6) An inmate who submits a petition under this section may not apply for adjustment of the same sentence under s. 973.195 for a period of one year from the date of the petition.

History: 2011 a. 38.

The supreme court reversed the court of appeals determination that this section does not violate the constitutional prohibition against ex post facto laws, but did not provide a remedy in this case or remand for relief. Singh v. Kemper, 2016 WI 67, ___ Wis. 2d ___, 883 N.W.2d 86, 13−1724.

973.20 Restitution. (1g) In this section:

(a) "Crime considered at sentencing" means any crime for which the defendant was convicted and any read−in crime.

(b) "Read−in crime" means any crime that is uncharged or that is dismissed as part of a plea agreement, that the defendant agrees to be considered by the court at the time of sentencing and that the court considers at the time of sentencing the defendant for the crime for which the defendant was convicted.

(1r) When imposing sentence or ordering probation for any crime, other than a crime involving conduct that constitutes domestic abuse under s. 813.12 (1) (am) or 968.075 (1) (a), for which the defendant was convicted, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing or, if the victim is deceased, to his or her estate, unless the court finds substantial reason not to do so and states the reason on the record. When imposing sentence or ordering probation for a crime involving conduct that constitutes domestic abuse under s. 813.12 (1) (am) or 968.075 (1) (a) for which the defendant was convicted or that was considered at sentencing, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime or, if the victim is deceased, to his or her estate, unless the court finds that imposing full or partial restitution will create an undue hardship on the defendant or victim and describes the undue hardship on the record. Restitution ordered under this section is a condition of probation, extended supervision, or parole served by the defendant for a crime for which the defendant was convicted. After the termination of probation, extended supervision, or parole, or if the defendant is not placed on probation, extended supervision, or

parole, restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution or enforced under ch. 785.

(2) If a crime considered at sentencing resulted in damage to or loss or destruction of property, the restitution order may require that the defendant:

(a) Return the property to the owner or owner's designee; or

(b) If return of the property under par. (a) is impossible, impractical or inadequate, pay the owner or owner's designee the reasonable repair or replacement cost or the greater of:

1. The value of the property on the date of its damage, loss or destruction; or

2. The value of the property on the date of sentencing, less the value of any part of the property returned, as of the date of its return. The value of retail merchandise shall be its retail value.

(3) If a crime considered at sentencing resulted in bodily injury, the restitution order may require that the defendant do one or more of the following:

(a) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care and treatment.

(b) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation.

(c) Reimburse the injured person for income lost as a result of a crime considered at sentencing.

(d) If the injured person's sole employment at the time of the injury was performing the duties of a homemaker, pay an amount sufficient to ensure that the duties are continued until the person is able to resume performance of the duties.

(4) If a crime considered at sentencing resulted in death, the restitution order may also require that the defendant pay an amount equal to the cost of necessary funeral and related services under s. 895.04 (5).

(4m) If the defendant violated s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, or 948.085, or s. 940.302 (2), if the court finds that the crime was sexually motivated, as defined in s. 980.01 (5), and sub. (3) (a) does not apply, the restitution order may require that the defendant pay an amount, not to exceed $10,000, equal to the cost of necessary professional services relating to psychiatric and psychological care and treatment. The $10,000 limit under this subsection does not apply to the amount of any restitution ordered under sub. (3) or (5) for the cost of necessary professional services relating to psychiatric and psychological care and treatment.

(4o) If the defendant violated s. 940.302 (2) or 948.051, and sub. (2) or (3) does not apply, the restitution order may require that the defendant pay an amount equal to any of the following:

(a) The costs of necessary transportation, housing, and child care for the victim.

(b) The greater of the following:

1. The gross income gained by the defendant due to the services of the victim.

2. The value of the victim's services as provided under the state minimum wage.

(c) Any expenses incurred by the victim if relocation for personal safety is determined to be necessary by the district attorney.

(d) The costs of relocating the victim to his or her city, state, or country of origin.

(5) In any case, the restitution order may require that the defendant do one or more of the following:

(a) Pay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.

(b) Pay an amount equal to the income lost, and reasonable out−of−pocket expenses incurred, by the person against whom a crime considered at sentencing was committed resulting from the filing of charges or cooperating in the investigation and prosecution of the crime.

(c) Reimburse any person or agency for amounts paid as rewards for information leading to the apprehension or successful prosecution of the defendant for a crime for which the defendant was convicted or to the apprehension or prosecution of the defendant for a read−in crime.

(d) If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.

(6) Any order under sub. (5) (c) or (d) shall require that all restitution to victims under the order be paid before restitution to other persons.

(7) If the court orders that restitution be paid to more than one person, the court may direct the sequence in which payments are to be transferred under sub. (11) (a). If more than one defendant is ordered to make payments to the same person, the court may apportion liability between the defendants or specify joint and several liability. If the court specifies that 2 or more defendants are jointly and severally liable, the department or the clerk to whom payments are made under sub. (11) (a) shall distribute any overpayments so that each defendant, as closely as possible, pays the same proportion of the ordered restitution.

(8) Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action. The facts that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action. Any restitution made by payment or community service shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(9) (a) If a crime victim is paid an award under subch. I of ch. 949 for any loss arising out of a criminal act, the state is subrogated to the rights of the victim to any restitution required by the court. The rights of the state are subordinate to the claims of victims who have suffered a loss arising out of the offenses or any transaction which is part of the same continuous scheme of criminal activity.

(b) When restitution is ordered, the court shall inquire to see if an award has been made under subch. I of ch. 949 and if the department of justice is subrogated to the cause of action under s. 949.15. If the restitution ordered is less than or equal to the award under subch. I of ch. 949, the restitution shall be credited to the appropriation account under s. 20.455 (5) (hh). If the restitution ordered is greater than the award under subch. I of ch. 949, an amount equal to the award under subch. I of ch. 949 shall be credited to the appropriation account under s. 20.455 (5) (hh) and the balance shall be paid to the victim.

(9m) When restitution is ordered, the court shall inquire to see if recompense has been made under s. 969.13 (5) (a). If recompense has been made and the restitution ordered is less than or equal to the recompense, the restitution shall be applied to the payment of costs and, if any restitution remains after the payment of costs, to the payment of the judgment. If recompense has been made and the restitution ordered is greater than the recompense, the victim shall receive an amount equal to the amount of restitution less the amount of recompense and the balance shall be applied to the payment of costs and, if any restitution remains after the payment of costs, to the payment of the judgment. This subsection applies without regard to whether the person who paid the recompense is the person who is convicted of the crime.

(10) (a) The court may require that restitution be paid immediately, within a specified period or in specified installments. If the defendant is placed on probation or sentenced to imprisonment, the end of a specified period shall not be later than the end of any period of probation, extended supervision or parole. If the defendant is sentenced to the intensive sanctions program, the end

of a specified period shall not be later than the end of the sentence under s. 973.032 (3) (a).

(b) The department or the clerk of court may certify an amount owed under par. (a) to the department of revenue if any of the following apply:

1. The court required that restitution be paid immediately and more than 30 days have passed since the order was entered.

2. The court required that restitution be paid within a specified period and more than 30 days have passed since the expiration of that period.

3. The court required that restitution be paid in specified installments and the defendant is delinquent in making any of those payments.

(11) (a) Except as otherwise provided in this paragraph, the restitution order shall require the defendant to deliver the amount of money or property due as restitution to the department for transfer to the victim or other person to be compensated by a restitution order under this section. If the defendant is not placed on probation or sentenced to prison, the court may order that restitution be paid to the clerk of court for transfer to the appropriate person. The court shall impose on the defendant a restitution surcharge under ch. 814 equal to 5 percent of the total amount of any restitution, costs, attorney fees, court fees, fines, and surcharges ordered under s. 973.05 (1) and imposed under ch. 814, which shall be paid to the department or the clerk of court for administrative expenses under this section.

(b) The department shall establish a separate account for each person in its custody or under its supervision ordered to make restitution for the collection and disbursement of funds. A portion of each payment constitutes the surcharge for administrative expenses under par. (a).

(c) If a defendant who is in a state prison or who is sentenced to a state prison is ordered to pay restitution, the court order shall require the defendant to authorize the department to collect, from the defendant's wages and from other moneys held in the defendant's prisoner's account, an amount or a percentage the department determines is reasonable for payment to victims.

(d) Each clerk of court who collects restitution under this section shall notify the department when a defendant has satisfied an order for restitution.

(e) The department and each clerk of court that collects restitution under this section shall annually submit a report to the legislature under s. 13.172 (2) that specifies, for each fiscal year, the total amounts of restitution ordered for the department and each clerk of court to collect, the administrative fee the department and each clerk of court collects under par. (a), and the amounts of restitution collected by the department and by the clerk of court and dispersed to victims.

(12) (a) If the court orders restitution in addition to the payment of fines, costs, fees, and surcharges under ss. 973.05 and 973.06 and ch. 814, it shall set the amount of fines, costs, fees, and surcharges in conjunction with the amount of restitution and issue a single order, signed by the judge, covering all of the payments and any amounts due under s. 304.074. If the costs for legal representation by a private attorney appointed under s. 977.08 or the fees due under s. 304.074 are not established at the time of issuance of the order, the court may revise the order to include those costs at a later time.

(b) Except as provided in par. (c), payments shall be applied first to satisfy the ordered restitution in full, then to pay any fines or surcharges under s. 973.05, then to pay costs, fees, and surcharges under ch. 814 other than attorney fees and finally to reimburse county or state costs of legal representation.

(c) If a defendant is subject to more than one order under this section and the financial obligations under any order total $50 or less, the department or the clerk of court, whichever is applicable under sub. (11) (a), may pay these obligations first.

(13) (a) The court, in determining whether to order restitution and the amount thereof, shall consider all of the following:

1. The amount of loss suffered by any victim as a result of a crime considered at sentencing.

2. The financial resources of the defendant.

3. The present and future earning ability of the defendant.

4. The needs and earning ability of the defendant's dependents.

5. Any other factors which the court deems appropriate.

(b) The district attorney shall attempt to obtain from the victim prior to sentencing information pertaining to the factor specified in par. (a) 1. Law enforcement agencies, the department of corrections and any agency providing services under ch. 950 shall extend full cooperation and assistance to the district attorney in discharging this responsibility. The department of justice shall provide technical assistance to district attorneys in this regard and develop model forms and procedures for collecting and documenting this information.

(c) The court, before imposing sentence or ordering probation, shall inquire of the district attorney regarding the amount of restitution, if any, that the victim claims. The court shall give the defendant the opportunity to stipulate to the restitution claimed by the victim and to present evidence and arguments on the factors specified in par. (a). If the defendant stipulates to the restitution claimed by the victim or if any restitution dispute can be fairly heard at the sentencing proceeding, the court shall determine the amount of restitution before imposing sentence or ordering probation. In other cases, the court may do any of the following:

1. Order restitution of amounts not in dispute as part of the sentence or probation order imposed and direct the appropriate agency to file a proposed restitution order with the court within 90 days thereafter, and mail or deliver copies of the proposed order to the victim, district attorney, defendant and defense counsel.

2. Adjourn the sentencing proceeding for up to 60 days pending resolution of the amount of restitution by the court, referee or arbitrator.

3. With the consent of the defendant, refer the disputed restitution issues to an arbitrator acceptable to all parties, whose determination of the amount of restitution shall be filed with the court within 60 days after the date of referral and incorporated into the court's sentence or probation order.

4. Refer the disputed restitution issues to a circuit court commissioner or other appropriate referee, who shall conduct a hearing on the matter and submit the record thereof, together with proposed findings of fact and conclusions of law, to the court within 60 days of the date of referral. Within 30 days after the referee's report is filed, the court shall determine the amount of restitution on the basis of the record submitted by the referee and incorporate it into the sentence or probation order imposed. The judge may direct that hearings under this subdivision be recorded either by audio recorder or by a court reporter. A transcript is not required unless ordered by the judge.

(14) At any hearing under sub. (13), all of the following apply:

(a) The burden of demonstrating by the preponderance of the evidence the amount of loss sustained by a victim as a result of a crime considered at sentencing is on the victim. The district attorney is not required to represent any victim unless the hearing is held at or prior to the sentencing proceeding or the court so orders.

(b) The burden of demonstrating, by the preponderance of the evidence, the financial resources of the defendant, the present and future earning ability of the defendant and the needs and earning ability of the defendant's dependents is on the defendant. The defendant may assert any defense that he or she could raise in a civil action for the loss sought to be compensated. The office of the state public defender is not required to represent any indigent defendant unless the hearing is held at or prior to the sentencing

proceeding, the defendant is incarcerated when the hearing is held or the court so orders.

(c) The burden of demonstrating, by the preponderance of the evidence, such other matters as the court deems appropriate is on the party designated by the court, as justice requires.

(d) All parties interested in the matter shall have an opportunity to be heard, personally or through counsel, to present evidence and to cross−examine witnesses called by other parties. The court, arbitrator or referee shall conduct the proceeding so as to do substantial justice between the parties according to the rules of substantive law and may waive the rules of practice, procedure, pleading or evidence, except provisions relating to privileged communications and personal transactions or communication with a decedent or mentally ill person or to admissibility under s. 901.05. Discovery is not available except for good cause shown. If the defendant is incarcerated, he or she may participate by telephone under s. 807.13 unless the court issues a writ or subpoena compelling the defendant to appear in person.

(15) If misappropriation, from a cemetery, of an object that indicates that a deceased was a veteran, as described in s. 45.001, is a crime considered at sentencing, the restitution order shall require that the defendant reimburse an individual, organization, or governmental entity for the cost of replacing the object.

History: 1987 a. 398 ss. 39 to 41, 43; 1989 a. 31, 188; 1991 a. 39, 269; 1993 a. 213; 1995 a. 141, 161; 1997 a. 283; 2001 a. 16, 61; 2003 a. 139, 321; 2005 a. 277, 447; 2007 a. 20, 116; 2009 a. 105; 2015 a. 355.

Judicial Council Note, 1987: Sub. (1) allows restitution to be ordered although the defendant is not placed on probation. It allows restitution to be made payable to the estate of a deceased victim. It requires restitution ordered to be a condition of probation or parole served by the defendant for the offense. Finally, it allows restitution unpaid at the time probation or parole supervision terminates to be enforced by the victim as a judgment creditor. See 18 USC 3662 (a), (c) and (h).

Sub. (2) is patterned on 18 USC 3663 (b) (1) and prior s. 973.09 (1r), stats.

Sub. (3) is patterned on 18 USC 3663 (b) (2). Paragraph (d) is patterned on s. 949.06 (1) (b) 3., stats.

Sub. (4) is patterned on 18 USC 3663 (b) (3).

Sub. (5) (a) and (b) is based on prior s. 973.09 (8) (a) and (b), stats. A new provision allows the court to order restitution of income lost by the victim while participating in the investigation and prosecution of the offense.

Sub. (5) (c) is new. It allows the court to order restitution of rewards paid for information which helps solve or prosecute the offense.

Sub. (5) (d) carries forward the provision of prior s. 973.09 (1) (b), stats., allowing restitution to insurers, sureties, etc.

Sub. (6) is based on 18 USC 3663 (e) (1).

Sub. (7) is new. It allows the court to direct the order of payment when there is more than one victim, and to apportion liability when more than one defendant is ordered to make restitution to the same person, or to specify joint and several liability.

Sub. (10) is based on 18 USC 3663 (f).

Sub. (11) (a) is based on prior s. 973.09 (1) (b) and (1m) (c), stats.

Sub. (11) (b) is based on prior s. 973.09 (1m) (d), stats.

Sub. (12) (a) is based on prior s. 973.09 (1m) (a), stats.

Sub. (12) (b) is based on prior s. 973.09 (1m) (c), stats.

Sub. (12) (c) is based on prior s. 973.09 (1m) (cm), stats.

Sub. (13) (a) is patterned on 18 USC 3664 (a). Prior s. 973.09 (1m) (a), stats., similarly required the court to consider the defendant's ability to pay when determining the amount of restitution.

Sub. (13) (b) is new. It makes the district attorney primarily responsible for obtaining information relating to the amount of loss suffered by any crime victim. Law enforcement, probation and parole, and victim assistance agencies must cooperate with the district attorney in this regard. The department of justice is directed to develop model forms and procedures for collecting victim loss data. See legislative audit bureau report No. 85−10, April 15, 1985, at 14−18.

Sub. (13) (c) creates several optional procedures for resolving disputes over the amount of restitution without resort to a judicial evidentiary hearing as provided by prior s. 973.09 (1m) (b), stats. First, the defendant may stipulate to the district attorney's determination of the amount of victim loss, while reserving the right to seek a lower amount of restitution based on ability−to−pay factors. Second, the court may hear the dispute at the sentencing proceeding, or adjourn the matter for later hearing prior to imposing sentence. Third, the court may order restitution of items not in dispute, referring disputed issues for subsequent resolution. Fourth, the court, with the consent of the parties, may refer disputed restitution issues to an arbitrator, whose determination is final and binding. Fifth, the court may appoint a referee to conduct fact−finding into the disputed restitution issues, whose proposed findings must be presented to the court within 60 days.

Sub. (14) (a) to (c) is based on 18 USC 3664 (d) and prior s. 973.09 (1m) (a), stats.

Sub. (14) (d) is new. It is intended to allow restitution disputes to be heard in an informal way so that parties may participate effectively without the need for legal counsel. Restitution hearings are not governed by the rules of evidence. State v. Pope, 107 Wis. 2d 726 (Ct. App. 1982). [87 Act 398]

In the absence of objection to a restitution summary, when a defendant has received a copy, the trial court may assume that the amount is not in dispute and may order restitution on that basis. In such cases, the court need not make detailed findings under sub. (13) (c). State v. Szarkowitz, 157 Wis. 2d 740, 460 N.W.2d 819 (Ct. App. 1990).

Under sub. (14) (b), the defendant has the burden of offering evidence concerning ability to pay. When the defendant fails to offer evidence, the trial court may order restitution without making detailed findings as to sub. (13) (a) 1. to 4. State v. Szarkowitz, 157 Wis. 2d 740, 460 N.W.2d 819 (Ct. App. 1990).

Application of bail toward payment of restitution is not permitted. State v. Cetnarowski, 166 Wis. 2d 700, 480 N.W.2d 790 (Ct. App. 1992).

Requiring a convicted defendant to deposit money for possible future counselling costs of victims was impermissible. State v. Handley, 173 Wis. 2d 838, 496 N.W.2d 725 (Ct. App. 1993).

Restitution to a party with no relation on the record to the crime of conviction or to read−in crimes is improper. State v. Mattes, 175 Wis. 2d 572, 499 N.W.2d 711 (Ct. App. 1993).

This section does not authorize restitution for non−pecuniary damages. State v. Stowers, 177 Wis. 2d 798, 503 N.W.2d 8 (Ct. App. 1993).

Imposition of a restitution order after commencement of the defendant's jail sentence did not constitute double jeopardy. State v. Perry, 181 Wis. 2d 43, 510 N.W.2d 722 (Ct. App. 1993).

The time period for determining restitution under sub. (13) (c) 2. is directory, not mandatory. State v. Perry, 181 Wis. 2d 43, 510 N.W.2d 722 (Ct. App. 1993).

Restitution for read−in charges may be ordered without the defendant's personal admission to the read−in charge. State v. Cleaves, 181 Wis. 2d 73, 510 N.W.2d 143 (Ct. App. 1993).

Sub. (1) [now sub. (1r)] imposes a mandatory duty on a court to provide for restitution; a sentence not providing restitution is illegal and subject to amendment to provide restitution. State v. Borst, 181 Wis. 2d 118, 510 N.W.2d 739 (Ct. App. 1993).

Repayment to a police department of money used by the police to buy drugs from a defendant is not authorized by this section. State v. Evans, 181 Wis. 2d 978, 512 N.W.2d 259 (Ct. App. 1994).

Interest on a restitution award is not allowed. State v. Hufford, 186 Wis. 2d 461, 522 N.W.2d 26 (Ct. App. 1994).

A restitution award for the repair or replacement cost of a stolen or damaged item is not limited to the fair market value of that item as determined by the jury. State v. Kennedy, 190 Wis. 2d 252, 528 N.W.2d 9 (Ct. App. 1994).

In the absence of a specific objection at the time restitution is ordered, the trial court may proceed with the understanding that the defendant's silence is a constructive stipulation to the restitution, including the amount. State v. Hopkins, 196 Wis. 2d 36, 538 N.W.2d 543 (Ct. App. 1995), 94−0537.

The expenses of fire−fighting and clean−up resulting from a crime could not be properly awarded to the county as restitution because the county did not have a direct relationship with the crime of record and was not a victim. State v. Schmaling, 198 Wis. 2d 757, 543 N.W.2d 555 (Ct. App. 1995).

A restitution order is unaffected by bankruptcy proceedings. State v. Sweat, 202 Wis. 2d 366, 550 N.W.2d 709 (Ct. App. 1996), 95−1975.

While a trial court may not, as part of a restitution order, assess general damages that compensate a victim for such things as pain and suffering, anguish, or humiliation, it may award as special damages any specific expenditure by the victim paid because of the crime. State v. Behnke, 203 Wis. 2d 43, 553 N.W.2d 265 (Ct. App. 1996), 95−1970.

The term "any defense" in sub. (14) (b) does not mean all defenses available in a civil suit, but rather all defenses relating to the determination of loss sought to be compensated. The civil statute of limitations does not apply. State v. Sweat, 208 Wis. 2d 409, 561 N.W.2d 695 (1997), 95−1975.

When a defendant defrauds people, reasonable attorney fees expended to recover losses from parties who are civilly or criminally liable may be awarded as restitution. State v. Anderson, 215 Wis. 2d 673, 573 N.W.2d 872 (Ct. App. 1997), 97−1600.

That sub. (12) (a) requires issuing a single order covering all fines, assessments, costs, and restitution after a restitution hearing does not authorize the court to hold open all other financial terms of a previously imposed sentence while restitution is being imposed. State v. Perry, 215 Wis. 2d 696, 573 N.W.2d 876 (Ct. App. 1997), 97−0847.

A governmental entity may be a "victim" under sub. (1r) entitled to collect restitution. State v. Howard−Hastings, 218 Wis. 2d 152, 579 N.W.2d 290 (Ct. App. 1998), 97−2986. See also State v. Ortiz, 2001 WI App 215, 247 Wis. 2d 836, 634 N.W.2d 860, 00−3390.

An order that a defendant liquidate his life insurance policies, withdraw funds from a pension fund, and pay the proceeds to the victims of his embezzlement crime was barred by federal law. State v. Kenyon, 225 Wis. 2d 657, 593 N.W.2d 491 (Ct. App. 1999), 98−1421.

In an employee felony theft case, it was improper to order restitution for unearned benefits and vacation that were not "readily ascertainable pecuniary expenditures," the use of a vehicle that the employee had unrestricted personal use of, and the costs of recruiting and hiring a replacement for the defendant that resulted from the employee's resignation, and not from the theft. State v. Holmgren, 229 Wis. 2d 358, 599 N.W.2d 876 (Ct. App. 1999), 98−3405.

A defendant is entitled to a hearing, although it may be informal, to challenge the existence of damage to the victim, as well as the amount of damage. If damage results from a criminal episode in which the defendant played any part, the defendant is jointly and severally liable in restitution for the amount of damages. State v. Madlock, 230 Wis. 2d 324, 602 N.W.2d 104 (Ct. App. 1999), 98−2718.

For restitution to be ordered, a causal nexus between the crime and the disputed damage is required. The defendant's actions must be the precipitating cause of the injury, and the harm must have resulted from the natural consequences of the actions. State v. Canady, 2000 WI App 87, 234 Wis. 2d 261, 610 N.W.2d 147, 99−1457.

Contributory negligence may not be raised as a defense to restitution. State v. Knoll, 2000 WI App 135, 237 Wis. 2d 384, 614 N.W.2d 20, 99−1808.

There was no statutory authority for a restitution order that provided for payment from the defendant's prison earnings account, with the Department of Corrections to determine the specific amount. State v. Evans, 2000 WI App 178, 238 Wis. 2d 411, 617 N.W.2d 220, 99−2315.

Medical Assistance is an insurer like any other for purposes of sub. (5) (d). Victims need not in each case present evidence of the state's obligation to or its subrogation rights. State v. Baker, 2001 WI App 100, 243 Wis. 2d 77, 626 N.W.2d 862, 99−3347.

The definition of "victim" in s. 950.02 (4) (a) is applicable to sub. (1r). The mother of a child killed by a criminal act was a victim. The child's aunt was not. State v. Gribble, 2001 WI App 227, 248 Wis. 2d 409, 636 N.W.2d 488, 00−1821.

There is no statutory authority to order, as a condition of probation, payment of restitution obligations in a separate criminal case. State v. Torpen, 2001 WI App 273, 248 Wis. 2d 951, 637 N.W.2d 481, 01−0182.

There are 4 alternative procedures under sub. (13) (c) by which a court, at sentencing, can postpone the determination of restitution amounts. If a court constructs its own procedure to set restitution, the decision cannot stand. Nothing precludes remanding a case to the circuit court to allow it to properly determine restitution. State v. Krohn, 2002 WI App 96, 252 Wis. 2d 757, 643 N.W.2d 874, 01−1832.

When salaried bank employees spent work time researching a forgery, the damage incurred by the bank was not the payment of wages, as the employees would have been paid the same sum regardless, but rather the loss of the value of its employees' services for the time that they were diverted from other work. That is a special damage recoverable in a civil proceeding and properly the subject of a restitution order under sub. (5). State v. Rouse, 2002 WI App 107, 254 Wis. 2d 761, 648 N.W.2d 507, 01−0774.

Restitution does not include reimbursement for collateral expenses incurred in the normal course of law enforcement as the law enforcement agency is not a victim. State v. Storlie, 2002 WI App 163, 256 Wis. 2d 500, 643 N.W.2d 874, 01−3376. See also State v. Haase, 2006 WI App 86, 293 Wis. 2d 322, 716 N.W.2d 526, 05−0987.

In addition to replacement costs, reasonable rental fees incurred by a victim may be part of a restitution award. State v. Kayon, 2002 WI App 178, 256 Wis. 2d 577, 649 N.W.2d 331, 01−2365.

Because there was a valid reason for exceeding the statutory time period set in sub. (13) (c) and because no prejudice resulted from the delay in the restitution proceedings, a circuit court's restitution order was not vacated as untimely. State v. Johnson, 2002 WI App 166, 256 Wis. 2d 871, 649 N.W.2d 284, 01−0382.

A stepparent of a victim may not be awarded restitution under sub. (1r), but a security system purchased by a stepparent for the benefit of the victim was properly characterized as the victim's special damages that the stepfather compensated the victim for by paying for the system. The stepparent's lost wages for attending hearings in the case were not subject to the order as recovery of lost wages is limited to persons identified in sub. (5) (b). State v. Johnson, 2002 WI App 166, 256 Wis. 2d 871, 649 N.W.2d 284, 01−0382.

When a defendant presents evidence of ability to pay, the trial court is not authorized to defer adjusting the amount of restitution based on ability to pay. State v. Loutsch, 2003 WI App 16, 259 Wis. 2d 901, 656 N.W.2d 781, 02−1755.

A victim's loss of sick leave is special damages under sub. (5) (a). A court has authority to award restitution for sick leave the victim used. State v. Loutsch, 2003 WI App 16, 259 Wis. 2d 901, 656 N.W.2d 781, 02−1755.

In ordering restitution, the sentencing court must take a defendant's entire course of conduct into consideration and not break down the defendant's conduct into its constituent parts and ascertain whether one or more parts were a cause of the victim's damages. When the victim was abducted as he unlocked his car, the abduction left the car vulnerable to theft and damage, and the resulting damage was a clear consequence of the abduction. State v. Rash, 2003 WI App 32, 260 Wis. 2d 369, 659 N.W.2d 189, 02−0841.

In a contractor fraud case, poor quality of the work actually performed under the contract is purely a civil wrong and the criminal restitution statute cannot be enlisted to remedy it nor to recover attorney fees under s 100.20 (5) for administrative code violations by a contractor. State v. Longmire, 2004 WI App 90, 272 Wis. 2d 759, 681 N.W.2d 354, 03−0300.

Restitution orders from proceedings held outside the statutory time period for valid reasons may be upheld, provided that doing so will not result in prejudice to the defendant. When there were no demonstrable valid reasons for delaying the restitution determination hearing for 14 years and the delay inherently prejudiced the defendant, the trial court lacked the authority to order restitution. State v. Ziegler, 2005 WI App 69, 280 Wis. 2d 860, 695 N.W.2d 895, 04−0848.

"Special damages" means any readily ascertainable pecuniary expenditure paid out because of the crime. Sub. (5) (a) contemplates that restitution will generally render actual civil litigation unnecessary. The ultimate question in deciding whether an item of restitution is "special damages" is whether the item is a readily ascertainable pecuniary expenditure attributable to the defendant's criminal conduct that could be recovered in a civil action. A restitution hearing is not the equivalent of a civil trial and does not require strict adherence to the rules of evidence and burden of proof. State v. Johnson, 2005 WI App 201, 287 Wis. 2d 381, 704 N.W.2d 625, 04−2059.

Before a trial court may order restitution there must be a showing that the defendant's criminal activity was a substantial factor in causing pecuniary injury to the victim in a "but for" sense. "Substantial factor" denotes that the defendant's conduct has such an effect in producing the harm as to lead the trier of fact to regard it as a cause, using that word in the popular sense. A defendant cannot escape responsibility for restitution simply because his or her conduct did not directly cause the damage. State v. Johnson, 2005 WI App 201, 287 Wis. 2d 381, 704 N.W.2d 625, 04−2059.

Lost profits are recoverable as special damages. It is not necessary to have an established contract in order to demonstrate the necessary causal link between the defendant's criminal activity and claimed lost profits. When negotiations are under way and appear likely to succeed, interference with them has been considered to be a tort of interference with a prospective contractual relation. The victim must prove with reasonable certainty that the prospective contractual relationship would have accrued absent the defendant's wrongful conduct. Due weight may be given to the fact that the defendant's wrongful conduct created any speculation or uncertainty. State v. Johnson, 2005 WI App 201, 287 Wis. 2d 381, 704 N.W.2d 625, 04−2059.

When the restitution amount was not set until approximately one year after a civil judgment was entered, it was appropriate to reopen the civil judgment to allow consideration of that issue. A full hearing was required to determine whether the outstanding restitution order has been included in the calculation of the civil settlement. Herr v. Lanaghan, 2006 WI App 29, 289 Wis. 2d 440, 710 N.W.2d 496, 05−0422.

A civil settlement agreement can have no effect upon a restitution order while the defendant is on probation unless the circuit court first finds that continued enforcement of the restitution order would result in a double recovery for the victim. After a defendant is released from probation and any unpaid restitution becomes a civil judgment, however, a settlement agreement between the victim and the defendant may preclude the victim from enforcing the judgment. Huml v. Vlazny, 2006 WI 87, 293 Wis. 2d 169, 716 N.W.2d 807, 04−0036.

This section does not limit the consideration of a defendant's ability to pay out of funds derived from only earnings or wages. "Financial resources" refers to all financial resources available to the defendant at the time of the restitution order, including gifted funds, except where otherwise provided by law. State v. Greene, 2008 WI App 100, 313 Wis. 2d 211, 756 N.W.2d 411, 07−0269.

When the amount of restitution was set at judgment and the initial order in this case was timely, the defendant was not prejudiced by an amended order that only clarified when he would be required to start paying the restitution established in the original order. The amended order did not violate double jeopardy principles. State v. Greene, 2008 WI App 100, 313 Wis. 2d 211, 756 N.W.2d 411, 07−0269.

The circuit court had the authority to order the defendant to reimburse his mother for forfeited bail his mother paid, either as restitution or as a condition of extended supervision. State v. Agosto, 2008 WI App 149, 314 Wis. 2d 385, 760 N.W.2d 415, 06−2646.

This section authorizes a trial court to order restitution to victims of a crime considered at sentencing, which includes any crime for which the defendant was convicted and any read−in crime. Here, an officer was injured while pursuing a person charged with armed robbery and not with fleeing an officer, assaulting an officer, or any crime related to his flight from the officer. Accordingly, the officer was not a victim of a crime considered at sentencing, and neither he nor the insurance company that paid expenses related to his injuries can receive restitution. State v. Lee, 2008 WI App 185, 314 Wis. 2d 764, 762 N.W.2d 431, 08−0390.

When a court has considered the defendant's ability to pay in setting restitution, the length of the term of probation or of the sentence does not have any limiting effect on the total amount of restitution that may be ordered. In providing for converting unpaid restitution to civil judgments, it seems clear that the legislature recognized that there would be circumstances where all the necessary restitution amounts often would not and could not be paid before the completion of the sentence or probationary period. State v. Fernandez, 2009 WI 29, 316 Wis. 2d 598, 764 N.W.2d 509, 07−1403.

The school district was the direct victim of a bomb threat directed against a school. During the time that the students and staff were evacuated from school district property as a result of a bomb scare the school district paid its employees, but received no services from them. Under *Rouse* and sub. (5) (a), the district is entitled to restitution for that loss of employee productivity. State v. Vanbeek, 2009 WI App 37, 316 Wis. 2d 527, 765 N.W.2d 834, 08−1275.

There are two components to the question of whether restitution can be ordered. The claimant must be a "direct victim" of the crime and there must be a causal connection between the defendant's conduct and harm suffered by the claimant. When the defendant damaged a residence rented from the claimant by making unauthorized alternations constructing and operating a marijuana growing operation, the claimant was a direct victim of the crime and the growing operation was the substantial factor in causing the damages incurred. State v. Hoseman, 2011 WI App 88, 334 Wis. 2d 415, 799 N.W.2d 479, 10−1362.

The eventual recovery of stolen property does not satisfy the defendant's restitution obligation. Here, at the time a stolen vehicle was recovered, the victim had been compensated by its insurer, and the circumstances made return of the vehicle impractical. The circuit court's determination that the insurer was entitled to compensation for the losses it incurred in fulfilling its obligation to its insureds in a manner consistent with its business practice was reasonable. State v. Gibson, 2012 WI App 103, 344 Wis. 2d 220, 822 N.W.2d 500, 11−1760.

Article I, section 9m, of the Wisconsin Constitution provides for restitution only insofar as the legislature confers that right through statute. The legislature makes restitution available to crime victims under this section and other statutes, but crime victims are not guaranteed restitution in every instance. Sub. (12) (b) makes clear that restitution payments take priority over specific statutory fees, surcharges, fines, and costs, but the priority scheme does not include supervision fees under s. 304.074. OAG 2−15.