



2015 SENATE BILL 679

February 1, 2016 – Introduced by Senators L. TAYLOR, HARRIS DODD and MILLER, cosponsored by Representatives GOYKE, KESSLER, OHNSTAD, SINICKI, POPE, SUBECK, ZEPNICK, JOHNSON and BARNES. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to amend** 301.03 (3) (b) 3., 302.11 (7) (am), 302.113 (9) (am), 302.114 (9)
2 (am), 304.06 (3), 973.09 (3) (b), 973.09 (3) (bg) 1. and 973.09 (3) (bm) 2.; and **to**
3 **create** 304.074 (4g) and 973.20 (1v) of the statutes; **relating to:** prohibiting
4 revocation of probation, extended supervision, or parole for failure to pay
5 restitution or certain fees.

Analysis by the Legislative Reference Bureau

Under current law, a person who is placed on probation or who is released from confinement in prison to parole or to extended supervision may be required, as a condition of his or her release, to pay a fee to the Department of Corrections (DOC) intended to partially reimburse DOC for the costs of providing supervision and services (supervision fee). Additionally, a person who is convicted of a crime may be required to pay restitution to the victim of his or her crime. Payment of restitution may be a condition of probation or of release to probation or extended supervision.

Under current law, if a person violates a condition of probation or release to parole or extended supervision, his or her period of extension may be modified, extended, or revoked, and his or her release to parole or extended supervision may be revoked.

Under this bill, a person may not have his or her probation or release to parole or extended supervision revoked solely because he or she fails to pay a supervision fee or restitution.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 301.03 (3) (b) 3. of the statutes is amended to read:

2 301.03 (3) (b) 3. ~~Determines~~ Subject to ss. 304.074 (4g) and 973.20 (1v),
3 determines when revocation is the required response to the violation.

4 **SECTION 2.** 302.11 (7) (am) of the statutes is amended to read:

5 302.11 (7) (am) ~~The~~ Subject to ss. 304.074 (4g) and 973.20 (1v), the reviewing
6 authority may return a parolee released under sub. (1) or (1g) (b) or s. 304.02 or
7 304.06 (1) to prison for a period up to the remainder of the sentence for a violation
8 of the conditions of parole. The remainder of the sentence is the entire sentence, less
9 time served in custody prior to parole. The revocation order shall provide the parolee
10 with credit in accordance with ss. 304.072 and 973.155.

11 **SECTION 3.** 302.113 (9) (am) of the statutes is amended to read:

12 302.113 (9) (am) ~~If~~ Subject to ss. 304.074 (4g) and 973.20 (1v), if a person
13 released to extended supervision under this section violates a condition of extended
14 supervision, the reviewing authority may revoke the extended supervision of the
15 person. If the extended supervision of the person is revoked, the reviewing authority
16 shall order the person to be returned to prison for any specified period of time that
17 does not exceed the time remaining on the bifurcated sentence. The time remaining
18 on the bifurcated sentence is the total length of the bifurcated sentence, less time
19 served by the person in confinement under the sentence before release to extended
20 supervision under sub. (2) and less all time served in confinement for previous
21 revocations of extended supervision under the sentence. The order returning a

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1 person to prison under this paragraph shall provide the person whose extended
2 supervision was revoked with credit in accordance with ss. 304.072 and 973.155.

3 **SECTION 4.** 302.114 (9) (am) of the statutes is amended to read:

4 302.114 (9) (am) If Subject to ss. 304.074 (4g) and 973.20 (1v), if a person
5 released to extended supervision under this section violates a condition of extended
6 supervision, the reviewing authority may revoke the extended supervision of the
7 person. If the extended supervision of the person is revoked, the person shall be
8 returned to the circuit court for the county in which the person was convicted of the
9 offense for which he or she was on extended supervision, and the court shall order
10 the person to be returned to prison for a specified period of time before he or she is
11 eligible for being released again to extended supervision. The period of time specified
12 under this paragraph may not be less than 5 years and may be extended in
13 accordance with sub. (3).

14 **SECTION 5.** 304.06 (3) of the statutes is amended to read:

15 304.06 (3) Every paroled prisoner remains in the legal custody of the
16 department unless otherwise provided by the department. If Subject to ss. 304.074
17 (4g) and 973.20 (1v), if the department alleges that any condition or rule of parole has
18 been violated by the prisoner, the department may take physical custody of the
19 prisoner for the investigation of the alleged violation. If Subject to ss. 304.074 (4g)
20 and 973.20 (1v), if the department is satisfied that any condition or rule of parole has
21 been violated it shall afford the prisoner such administrative hearings as are
22 required by law. Unless waived by the parolee, the final administrative hearing shall
23 be held before a hearing examiner from the division of hearings and appeals in the
24 department of administration who is licensed to practice law in this state. The
25 hearing examiner shall enter an order revoking or not revoking parole. Upon request

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1 by either party, the administrator of the division of hearings and appeals shall review
2 the order. The hearing examiner may order that a deposition be taken by audiovisual
3 means and allow the use of a recorded deposition under s. 967.04 (7) to (10). If Subject
4 to ss. 304.074 (4g) and 973.20 (1v), if the parolee waives the final administrative
5 hearing, the secretary of corrections shall enter an order revoking or not revoking
6 parole. If Subject to ss. 304.074 (4g) and 973.20 (1v), if the examiner, the
7 administrator upon review, or the secretary in the case of a waiver finds that the
8 prisoner has violated the rules or conditions of parole, the examiner, the
9 administrator upon review, or the secretary in the case of a waiver, may order the
10 prisoner returned to prison to continue serving his or her sentence, or to continue on
11 parole. If the prisoner claims or appears to be indigent, the department shall refer
12 the prisoner to the authority for indigency determinations specified under s. 977.07
13 (1).

14 **SECTION 6.** 304.074 (4g) of the statutes is created to read:

15 304.074 (4g) A probationer, parolee, or person on extended supervision may not
16 be subject to revocation of his or her probation, parole, or extended supervision solely
17 because he or she fails to pay a fee charged under this section.

18 **SECTION 7.** 973.09 (3) (b) of the statutes is amended to read:

19 973.09 (3) (b) The department shall notify the sentencing court, any person to
20 whom unpaid restitution is owed and the district attorney of the status of the ordered
21 restitution payments unpaid at least 90 days before the probation expiration date.
22 If payment as ordered has not been made, the court shall hold a probation review
23 hearing prior to the expiration date, unless the hearing is voluntarily waived by the
24 probationer with the knowledge that waiver may result in an extension of the
25 probation period ~~or in a revocation of probation.~~ If the court does not extend

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1 probation, it shall issue a judgment for the unpaid restitution and direct the clerk
2 of circuit court to file and enter the judgment in the judgment and lien docket,
3 without fee, unless it finds that the victim has already recovered a judgment against
4 the probationer for the damages covered by the restitution order. If the court issues
5 a judgment for the unpaid restitution, the court shall send to the person at his or her
6 last-known address written notification that a civil judgment has been issued for the
7 unpaid restitution. The judgment has the same force and effect as judgments
8 entered under s. 806.10.

9 **SECTION 8.** 973.09 (3) (bg) 1. of the statutes is amended to read:

10 973.09 (3) (bg) 1. At least 90 days before the expiration date of a probationer's
11 period of probation, the department shall notify the sentencing court and district
12 attorney that a probationer owes an unpaid surcharge imposed under s. 973.045.
13 Upon receiving notice from the department, the court shall schedule a probation
14 review hearing to be held before the expiration date of the period of probation unless
15 the probationer either pays the unpaid surcharge before the scheduled hearing date
16 or voluntarily waives the hearing. A waiver of a probation review hearing under this
17 paragraph must include an acknowledgment by the probationer that waiver may
18 result in an extension of the probation period, or a modification of the terms and
19 conditions of probation, ~~or a revocation of probation.~~

20 **SECTION 9.** 973.09 (3) (bm) 2. of the statutes is amended to read:

21 973.09 (3) (bm) 2. Upon receiving notice from the department under subd. 1.,
22 the court shall schedule a probation review hearing to be held before the expiration
23 date of the period of probation unless the probationer either pays the fees before the
24 scheduled hearing date or voluntarily waives the hearing. A waiver of a probation
25 review hearing under this subdivision shall include an acknowledgement by the

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1 probationer that waiver may result in an extension of the probation period, or a
2 modification of the terms and conditions of probation ~~or a revocation of probation.~~

3 **SECTION 10.** 973.20 (1v) of the statutes is created to read:

4 973.20 (1v) (a) Restitution ordered under this section is a condition of
5 probation, extended supervision, or parole served by the defendant for a crime for
6 which the defendant was convicted, but no probationer, parolee, or person on
7 extended supervision may be subject to revocation of his or her probation, parole, or
8 extended supervision solely because he or she fails to pay restitution ordered under
9 this section.

10 (b) After the termination of probation, extended supervision, or parole, or if the
11 defendant is not placed on probation, extended supervision, or parole, restitution
12 ordered under this section is enforceable in the same manner as a judgment in a civil
13 action by the victim named in the order to receive restitution or enforced under ch.
14 785.

15 **SECTION 11. Initial applicability.**

16 (1) This act first applies to a probationer, parolee, or person on extended
17 supervision who is subject to revocation on the effective date of this act.

18 (END)