

CHAPTER 359.

JUDGMENT AND EXECUTION.

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Cross Reference For probation, see ch. 57. For judgments in juvenile cases, see 48.07.

359.02 Certificate of conviction. When a defendant is sentenced to imprisonment or to pay a fine, the clerk of the court shall make a certificate of conviction and sentence citing the statute which he violated and the statute under which he was sentenced and showing his name, the crime which he committed, the date of conviction and a copy of the sentence, and deliver such certificate to the sheriff to be retained by him if the defendant is sentenced to the county jail or workhouse or to be transmitted with the defendant in case of sentence to some other prison.

359.03 Form of certificate of conviction. The certificate of conviction mentioned in section 359.02 may be substantially in the following form:

CERTIFICATE OF CONVICTION

STATE OF WISCONSIN,
 County, Court. }
 The State of Wisconsin,

v.

Name of defendant.

As the clerk of said court, I hereby certify that at a term of said court, held at the courthouse in the city of, on the day of, 19.., was convicted of the crime of (here give a brief description of the crime) in violation of section of the statutes, and upon said conviction the court did, on the day of, 19.., sentence him under section of the statutes as follows: (here give the sentence in full, as pronounced by the court).

Given under my hand and the seal of said court, this day of, 19...

[Seal]

.... .., Clerk

359.04 Crimes, how stated in certificate. It shall be sufficient in describing the crime in the certificate of conviction to set it out in the language of the statute.

359.045 Sentence and commitment. (1) Male persons not less than 16 nor more than 30 years of age may be sentenced to the Wisconsin state reformatory if convicted of a felony (other than murder in the first or second degree) or a misdemeanor punishable by imprisonment in the county jail or house of correction for one year or more.

(2) All commitments to the Wisconsin home for women shall be for one year or more.

(3) Female persons over 16 and not yet 18 years of age shall be committed either to the Wisconsin school for girls or the Wisconsin home for women. Female persons over 18 years of age shall be committed to the Wisconsin home for women.

359.05 Indeterminate sentence, state prison. Except persons convicted of a crime for which the minimum imprisonment is life or 20 years or more, if imprisonment in the state prison is imposed, the court may fix a term less than the prescribed maximum and the form of such sentence shall be substantially as follows:

"You are hereby sentenced to the state prison at hard labor for an indeterminate term of not less than (the minimum fixed by statute) years and not more than (the maximum as fixed by the court) years."

The sentence shall have the effect of a sentence for the maximum term fixed by the court, subject to the power of actual release from confinement by parole by the state department of public welfare or by pardon by the governor. If a person is sentenced for a definite time for an offense for which he may be sentenced under this section, he 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 or 20 years or more shall be sentenced for a fixed term.

359.051 Indeterminate sentence, reformatory and home for women. (1) Except persons convicted of a crime for which the minimum imprisonment is life or 20 years or more, if imprisonment in the Wisconsin state reformatory or the Wisconsin home for women 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 reformatory (or to the Wisconsin home for women) for an indeterminate term of not less than (the minimum fixed by statute) years, and not more than (the maximum as fixed by the court) years."

Such sentence shall have the force and effect of a sentence for the maximum term subject to the power of actual release from confinement by parole by the state department of public welfare or by pardon as provided by law. If, through mistake or otherwise, any person shall be sentenced for a definite period of time for any offense for which he may be sentenced under the provisions of this section, such sentence shall not be void, but the prisoner shall be deemed to be sentenced nevertheless as provided and required by the terms of this section.

(2) Upon the recommendation of the state department of public welfare, the governor may, without the procedure required by chapter 57 of these statutes, discharge absolutely, or upon such conditions and restrictions, and under such limitations as he may think proper, any inmate of the reformatory after he shall have served the minimum term of punishment prescribed by law for the offense for which he was sentenced. Such discharge shall have the force and effect of an absolute or conditional pardon, respectively.

(2a) Upon the recommendation of the state department of public welfare, the governor may, without the procedure required by ch. 57, discharge absolutely, or upon such conditions and restrictions, and under such limitations as he may think proper, any inmate of the home for women who at the time of commitment was under 30 years of age and who is serving a first felony conviction and who is not serving a life sentence after she shall have served the minimum term of punishment prescribed by law for the offense for which she was sentenced. Such discharge shall have the force and effect of an absolute or conditional pardon, respectively.

(3) In lieu of the penalty provided by statute, under which a female offender is tried, the court may commit such person except one convicted of murder in the first or second degree to the home for women for an indeterminate term, which term shall not exceed 5 years in any case, subject to the power of release from actual confinement, by parole or absolute discharge by the state department of public welfare or by pardon, as provided by law.

(4) All courts of record having criminal jurisdiction, regardless of their jurisdictions as otherwise defined by statute, shall have the power to commit as provided in subsection (3).

(5) The court may impose as many sentences as there are convictions and may provide that any such sentence shall commence at the expiration of any other sentence; and if the defendant is then serving a sentence, the present sentence may provide that it shall commence at the expiration of a previous sentence. If the defendant is sentenced to a state prison and to a jail on separate counts, both sentences shall be served concurrently at a state prison unless otherwise ordered by the court.

History: 1953 c. 43, 97.

359.052 Trial and commitment records; execution. (1) When any offender is sentenced to the state prison or to the reformatory or to the home for women, the commitment papers shall consist of the certificate of conviction, and certified copies of the information, indictment or complaint, the plea of the accused, the verdict and the judgment and sentence, which copies shall be delivered with the certificate of conviction to the officer executing it, and by him to the superintendent of the institution when the convict is delivered. The copy of the transcript of testimony when filed at the institution shall become a part of the commitment papers.

(2) In case no testimony is taken, a statement of the prosecuting attorney, giving the facts in the case, and the statement of the defendant in court, shall be delivered in lieu thereof.

(3) The clerk's fees for furnishing such copies shall be fixed by the trial judge, and shall be paid by the county in which trial is had as part of the court expenses.

(4) Whenever any woman is sentenced to the home for women the sheriff shall assign a woman deputy to execute the commitment. She shall receive the same fee as is provided for the sheriff.

(5) When any person is sentenced to the reformatory the court shall immediately notify the superintendent thereof. If the institution be filled to capacity, the convict shall be retained in the county jail until he can be received into the reformatory; but, if convicted of a felony, the court may commit him temporarily to the state prison to be

thence transferred as soon as may be. Notice of such temporary commitment shall be given to the superintendent, and the commitment papers shall be delivered with the convict to the warden of the prison, who shall deliver them to said superintendent when the convict is transferred.

History: 1951 c. 557.

359.06 Jail sentence. 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 said defendant, the court may sentence him to any suitable county jail. The expenses of supporting him there shall be borne by the county in which the crime was committed.

Sentence to county jail does not run concurrently with later sentence to state prison. 38 Atty. Gen. 544.

359.07 Sentence, terms, escapes. All sentences to the state prison 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 defendant is in the county jail or is at large on bail shall not be computed as any part of his term of imprisonment. The court may impose as many sentences as there are convictions and may provide that any such sentence shall commence at the expiration of any other sentence; and if the defendant is then serving a sentence, the present sentence may provide that it shall commence at the expiration of the previous sentence. If a convict escapes, the time during which he is unlawfully absent from the prison after such escape shall not be computed as part of his term. If the defendant is sentenced to a state prison and to a county jail on separate counts, both sentences shall be served concurrently at a state prison unless otherwise ordered by the court.

History: 1953 c. 97.

359.08 Time out. If an order or judgment releasing a prisoner on habeas corpus is reversed, the time during which he was at liberty thereunder shall not be reckoned as part of his term.

359.09 Sentence to state prison. If a male defendant is convicted of a felony and it is established at the trial that he had previously been convicted of a felony and the sentence is for more than one year, he shall be sentenced to the Wisconsin state prison.

Second offender may not be sentenced to Wisconsin state reformatory, although if sentenced to Wisconsin state prison he may be transferred to the reformatory by the state department of public welfare pursuant to 53.18 (2) unless convicted of first- or second-degree murder. 40 Atty. Gen. 107.

359.10 Judgment against corporation. If a corporation fails to appear within 20 days after an indictment or information is served by leaving a copy thereof with the persons upon whom a circuit court summons in a civil action against the corporation may be served, the default of such corporation may be recorded and the charges against it taken as true, and judgment shall be rendered accordingly.

359.11 Collection of judgment against corporation. The judgment against a corporation shall be collected in the same manner as judgments in civil actions against it.

359.12 Sentence of repeater. (1) DEFINITIONS. As used in this section, unless context or subject matter otherwise requires:

(a) "Repeater" means a person convicted of a crime punishable by imprisonment, (except escapes under section 346.40 or 346.45 (2)), who, within 5 years prior to commission thereof, had been convicted of a felony or on 3 separate occasions during such 5-year period had been convicted of misdemeanors by any criminal court or courts of this state or of the United States or of any other state or territory of the United States, which conviction or convictions remain of record and unreversed, whether pardoned therefor or not (except on grounds of innocence) and whether or not sentence on such conviction was stayed, suspended or withheld. No time during which such person was in actual confinement serving a criminal sentence shall be included in such 5-year period.

(b) As to crimes committed in Wisconsin, "felony" and "misdemeanor" have the meaning given in section 353.31; otherwise "felony" is any crime under the laws of the United States or any other state or territory which carries a possible penalty of imprisonment for one year or more in a state prison or penitentiary or a federal penitentiary; and "misdemeanor" is any crime under the laws of the United States or any other state or territory which does not carry a possible penalty sufficient to constitute it a felony, and includes crimes punishable only by a fine. Motor vehicle offenses under chapter 85, fish and game law offenses in violation of chapter 23 or 29 or offenses against equivalent laws of other states are not to be considered crimes for purposes of this section.

(c) In determining whether a crime is a felony or misdemeanor "possible penalty" means the maximum penalty provided by law for the crime, notwithstanding that because of age or any other reason the defendant could not be sentenced to such maximum pen-

alty; but juvenile court proceedings under chapter 48 or equivalent proceedings under the law of the United States or any other state or territory shall not be considered in determining whether the defendant is a repeater.

(2) **HOW PRIOR CONVICTION CHARGED AND DETERMINED.** Whenever a person charged with a crime will be a repeater if convicted, his prior conviction or convictions may be alleged in the complaint, indictment or information or otherwise brought to the attention of the court at any time before execution of sentence has commenced, and if such prior conviction or convictions be admitted by the defendant or proved by the state he shall be subject to be sentenced under this section unless he shall establish that he was pardoned on grounds of innocence for any crime necessary to constitute him a repeater. If the defendant be alleged to be a repeater after conviction, the charge shall be reduced to writing unless it be admitted in open court, and the defendant may have a jury trial on that issue if it be demanded, otherwise the issue shall be tried by the court. An official report of the federal bureau of investigation or of 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 so served for such period of time as is shown by or is consistent with the report. The court shall take judicial notice of United States and foreign statutes in determining whether the prior conviction was for a felony or a misdemeanor. If sentence has already been passed but execution thereof has not commenced before the court is informed that the defendant is a repeater, the court may set aside such sentence and resentence the defendant under this section.

(3) **SENTENCE.** The court may sentence repeaters as follows:

(a) If the present conviction be for a crime punishable by imprisonment only in the county jail, the sentence may be to imprisonment in the county jail not less than the minimum provided by law for the crime nor more than one year or to the state prison not less than one nor more than 3 years.

(b) If the present conviction be for a crime punishable by imprisonment in either the county jail or the state prison, and the prior convictions were for misdemeanors, the sentence may be to the state prison for a maximum term of not more than 2 years in excess of the maximum provided by law for the crime or, if a prior conviction was for a felony, not more than 3 years in excess of such maximum.

(c) If the present conviction be for a crime punishable only by imprisonment in the state prison and the prior convictions were for misdemeanors, the sentence may be for a maximum term of not more than 2 years in excess of the maximum provided by law for the crime, or if a prior conviction was for a felony, not more than 15 years in excess of such maximum.

(4) **FORM OF SENTENCE; ERRORS CURED.** In every such case 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; and if in any case the court shall impose a maximum penalty in excess of that authorized by this section, such excess shall be void and the sentence shall be valid only to the extent authorized by this section and shall stand automatically commuted to that extent without any further proceedings.

Where a defendant had been convicted of the prior offense of robbery by means of firearms and was convicted in the instant prosecution of violations of the game laws, he could be sentenced either under the general repeater statute or under the game-law penalty statute, at the election of the court having jurisdiction. *State v. Meyer*, 253 W 326, 46 NW (2d) 341.

In a prosecution for violations of the game laws, where a prior conviction for robbery by means of firearms was alleged in the information, and the defendant waived the reading of the information but did not admit any of the allegations thereof, permitting the state to produce evidence of the prior conviction, in the presence of the jury, shortly after the trial began, and before the de-

fendant had taken the stand, was proper. If former convictions are alleged and admitted, then they are proved within the meaning of the repeater statute and no evidence of the former convictions should thereafter be received nor comment to the jury be permitted. *State v. Meyer*, 253 W 326, 46 NW (2d) 341.

Following the defendant's plea of not guilty to an information charging incest and alleging 2 prior convictions for larceny, the district attorney's introduction in evidence of the record of such prior convictions was proper. *State v. Raether*, 259 W 391, 48 NW (2d) 483.

Court which has criminal jurisdiction only of offenses not punishable in the state prison cannot impose repeater sentence under (3) (a). 39 Atty. Gen. 340.

359.17 Masking aggravates crime. If the defendant committed the crime while masked, he may, in addition to the maximum punishment fixed for such crime, in case of conviction for a misdemeanor, be imprisoned not to exceed one year in the county jail, and in case of a felony not to exceed 5 years in the state prison.