

CHAPTER 54

YOUTHFUL OFFENDERS ACT

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54.01 Title: Intent. (1) **TITLE.** This chapter may be cited as the "Youthful Offenders Act".

(2) **INTENT.** The intent of this chapter is to provide a specialized correctional program for youthful offenders who are found guilty in the criminal courts. The program grows out of the increasing public concern with the disproportionately high incidence of criminality and recidivism among youthful offenders. Recognizing that these individuals are in their formative years, with an adult lifetime ahead of them, it is to the advantage of society to concentrate on specialized treatment efforts. It is the intent of this chapter to provide an alternative to procedures in the criminal code relating to conviction and sentencing. This chapter is to be liberally construed to effect its objectives.

History: 1975 c. 39

54.02 Definitions. In this chapter:

(1) "Court" means a court of record.

(2) "Department" means the department of health and social services.

(3) "Judgment" has the same meaning as defined in s. 806.01 (1).

(4) "Youthful offender" means a person who has been determined to be a youthful offender under s. 54.03.

History: 1975 c. 39

54.03 Determination of youthful offender status. (1) When a person under the age of 21 years at the time of the commission of the offense for which the person has been found guilty in a court of a violation of law for which the maximum penalty provided is imprisonment in the state prison for a period less than life, the person shall be determined to be a youthful offender if:

(a) The person has been waived under s. 48.18 and is determined to be a person who will benefit and society will not be harmed by disposition as a youthful offender; or

(b) The person is determined to be a person who will benefit and society will not be harmed by disposition as a youthful offender.

(2) If the person was found guilty of a violation of s. 944.01, 944.02 or 944.11, or was found guilty under s. 939.32 of attempting to violate s. 944.01 or 944.02, the court shall proceed under ch. 975. If the person was found guilty of a sex crime other than those specified in this subsection, the court may proceed under ch. 975.

(3) Before making a determination under sub. (1), the court may order the department to make a social investigation and furnish a report to the court. Counsel for both the prosecution and the defense shall have access to the report when it is received by the court subject to s. 972.15.

(4) (a) If the court determines that the person will benefit from the disposition as a youthful offender and society will not be harmed thereby, it shall make a finding to that effect, adjudge the person to be a youthful offender, and shall either order the person to be placed on probation to the department under s. 54.04 or enter a judgment committing the person to the department under s. 54.07.

(b) A youthful offender disposition shall not disqualify the youthful offender from entering public or private employment, or securing occupational and professional licenses. A youthful offender disposition shall not disqualify a person from voting or holding public office after discharge from probation or discharge from commitment to the department.

(c) If the court does not find the person to be a youthful offender it shall enter a judgment of conviction and proceed under chs. 972 and 973.

History: 1975 c. 39, 199

54.04 Probation. (1) The court may withhold commitment and place the youthful offender on probation to the department. If the

court places a youthful offender on probation, the period of probation shall not be less than one year nor more than 3 years. Prior to the expiration of the probation period, upon petition and hearing, the court may, under s. 54.06, order an extension of probation for a period not to exceed 3 years.

(2) The order of probation shall specify the court's reasons for placing the youthful offender on probation and may impose reasonable conditions of probation, including, but not limited to, the payment of restitution, the payment of the costs of prosecution and the payment of support. The order shall have the effect of placing the offender in the custody of the department subject to the control of the department under such rules or regulations as the department may prescribe.

(3) The period of probation may be made consecutive to a period of commitment or a period of probation on a different charge, whether imposed at the same time or previously. Consecutive periods of probation may be imposed. If the probation is revoked the current probation and all subsequent consecutive probations shall be revoked under s. 54.05.

History: 1975 c. 39.

54.05 Revocation of probation. (1) If a youthful offender on probation under this section is alleged to have violated the rules or conditions of probation, the department may order the offender brought before the court in which found guilty. If, after a hearing under sub. (4), the court finds that the offender violated the conditions of probation, it may revoke the order of probation and enter a judgment of commitment under s. 54.07.

(2) Within 96 hours, subject to extension for good cause, of a detention under s. 54.15 the department shall hold a preliminary hearing to determine if there is probable cause to believe the allegations in the violation report. A preliminary hearing need not be held if the basis for the revocation is a bindover on charges of, stipulation to, or written admission of a new criminal offense. Pending the hearing, application for bail may be made to the committing court which may set bail. If bail is granted or the probationer or parolee is otherwise not detained, the probable cause hearing may be held within a reasonable time.

(3) The probationer shall receive notice of the probable cause hearing and a copy of the violation report not less than 24 hours before the hearing and shall receive notice of the full hearing.

(4) If after the hearing under sub. (2) the department finds there is probable cause to

believe the probationer has violated the conditions of probation, a hearing of record shall be held by the court to determine whether there has been a violation of the rules or conditions of probation and whether such violation warrants revocation. The probationer shall have the right to be present, subpoena material witnesses, confront accusers, examine witnesses, inspect the violation report and be represented by counsel to the extent provided by law. If indigent, counsel shall be appointed by the court.

History: 1975 c. 39, 199.

54.06 Extension of probation. The court may order extension of probation if after hearing it finds the probationer has been found under s. 54.05 to have violated conditions of probation.

History: 1975 c. 39, 199.

54.07 Commitment. (1) If the court enters a judgment of commitment to the department, it shall fix a maximum term. The maximum term may not exceed the limit provided by statute for the crime of which the youthful offender is found guilty, but may not be for less than one year.

(2) When the court commits a person to the department, the court may order the person conveyed to some place of detention approved or established by the department, or may direct that the person be left at liberty until otherwise ordered by the department under such conditions as in the opinion of the court will ensure the youthful offender's submission to any orders which the department may issue.

History: 1975 c. 39, 199.

Note: Chapter 224, laws of 1975, section 144, provides in part: "During a transition period from July 1, 1976, to June 30, 1977, the department may temporarily commingle youthful offenders and criminal offenders during the process of transfer of criminal offenders from the designated youthful offender institution to correctional institutions for criminal offenders and the phase-in of youthful offenders at the youthful offender institution. On or before July 1, 1977, all criminal offenders shall be removed from the designated youthful offender institution and entirely separated from youthful offenders."

54.08 Data available to the department. If a youthful offender has been committed to the department or placed on probation under this chapter, the prosecuting officials, the law enforcement authorities and all other public officials shall make available for inspection and copying to the department all pertinent data in their possession relating to the case.

History: 1975 c. 39.

54.09 Examination of persons committed. The department shall examine any person committed to it under this chapter within 60 days to determine the type of treatment best suited to the person consistent with the protection of the

public. In making this examination the department may use any facilities, public or private, which offer aid to it in the determination of the correct treatment.

History: 1975 c. 39, 199

54.10 Control and treatment. When a youthful offender has been committed under s. 54.07 the department may:

(1) Order confinement or recommitment under such conditions as it deems best.

(2) Permit liberty on parole not earlier than 6 months after the date of commitment and set the conditions of such parole.

(3) Discharge from control under s. 54.16.

History: 1975 c. 39, 199.

54.11 Revocation of parole. (1) If a youthful offender on parole under s. 54.10 (2) is alleged to have violated the conditions of parole, the department may take the offender into custody and shall hold a preliminary hearing to determine if there is probable cause to believe the allegations. Such hearing shall be held within 96 hours after detention, subject to extension for good cause. A preliminary hearing need not be held if the basis of revocation is conviction of, stipulation to or written admission of a new criminal offense.

(2) The parolee shall receive notice of the probable cause hearing and a copy of the violation report not less than 24 hours before the hearing and shall receive notice of the full hearing.

(3) If after the hearing under sub. (1) the department finds there is probable cause to believe the allegations, the department shall hold a hearing of record to determine whether there has been a violation of law or whether the parolee has violated the conditions of parole. The parolee shall have the right to be present, present witnesses, confront accusers, cross-examine witnesses, and be represented by counsel to the extent provided by law. If the parolee is indigent, counsel shall be appointed by the state public defender.

(4) If, after hearing, the department finds by a preponderance of the evidence that the parolee has violated the conditions of parole, the department may order revocation.

History: 1975 c. 39, 199.

54.12 Appeal. Appeal of an order of revocation of parole shall be to the circuit court for Dane county and the review shall be conducted by the court without a jury and shall be confined to the record. The court may affirm the decision, or may reverse or modify it if the substantial rights of the appellant have been prejudiced as a result of the findings or decisions being:

(1) Contrary to constitutional rights or privileges;

(2) In excess of statutory authority or jurisdiction, or affected by other error of law;

(3) Made or promulgated upon unlawful procedure;

(4) Unsupported by substantial evidence in view of the entire record as submitted; or

(5) Arbitrary and capricious.

History: 1975 c. 39.

54.13 Period of probation or parole tolled.

(1) The period of probation or parole ceases running upon the youthful offender's absconding or committing a crime or some other violation of the terms of probation or parole which results in revocation under s. 54.05 or 54.11.

(2) Such period also ceases running from the date of violation to actual arrest or detention of the probationer or parolee.

(3) The date of violation shall be established after the hearing under s. 54.05 (2) when the hearing of record under s. 54.05 (4) has been waived, or under s. 54.05 (4) or 54.11 (3).

History: 1975 c. 39, 199.

54.14 Adult conviction of a youthful offender.

Whenever a person under a disposition as a youthful offender is convicted as an adult of an offense for which the penalty is imprisonment in the state prison, any unexpired time remaining on the youthful offender disposition shall be concurrent with the adult sentence.

History: 1975 c. 39.

54.15 Custody of probationers and parolees.

Every youthful offender on probation under s. 54.04 or paroled under s. 54.10 (2) remains in the legal custody of the department unless otherwise provided by the department. At any time during the period of probation, the court of the county in which the probationer is a resident or the county in which the probationer is alleged to have violated the conditions of probation, may issue a warrant and cause the probationer to be arrested for alleged violation of the conditions of probation. Any probation or parole officer, or law enforcement official at the request of the probation or parole officer, may arrest a probationer or parolee without a warrant. In the case of an arrest without a warrant, the arresting officer shall have or obtain a detention order from the probation or parole officer or, if not available, from his or her superior. The detention order shall be reduced to writing within 48 hours stating that the probationer or parolee has, in the judgment of the probation or parole officer or his or her superior, violated the conditions of the probation or parole and a copy of the detention order shall

be provided the probationer or parolee within 48 hours of the detention. A detention order may be based on information and belief. The detention order shall state the facts concerning the alleged violation of the conditions of probation or parole; and the rights of the individual under this chapter to a preliminary probable cause hearing, to a full hearing with representation by counsel if probable cause is established, to subpoena witnesses and to examine witnesses. The order shall be sufficient warrant to detain the probationer or parolee in the county jail until a revocation hearing may be held. The probation or parole officer shall, within 48 hours after a detention without a warrant, report the arrest and detention of a probationer to the court and of a parolee to the department.

History: 1975 c. 39, 199.

54.16 Duration of control: discharge. (1)

The department may discharge a person committed to it when that person has attained parole eligibility under s. 54.10 (2) and the department determines that there is reasonable probability that continued control is not necessary, or upon expiration of the period of commitment set by the court.

(2) The court may discharge a youthful offender placed on probation when it determines that there is reasonable probability that continued control is not necessary, or upon expiration of the period of probation.

(3) Upon discharge, the department shall issue to the youthful offender a certificate of final discharge.

History: 1975 c. 39.

54.17 Services and facilities. (1) To carry out its responsibilities under this chapter, the department may establish, operate and maintain:

(a) Places of confinement of all degrees of security, educational institutions, hospitals or any other types of facilities and services including, without limitation, boarding homes, farms and forestry, soil conservation or other camps deemed necessary.

(b) Agencies and facilities for the supervision, training and control of youthful offenders who have not been in confinement, or who have

been released from confinement upon stated conditions, and for aiding those persons in finding employment and assistance.

(2) In addition to the facilities and services described in sub. (1), the department may use other facilities and services under its jurisdiction. The department may enter into agreements with appropriate public or private officials for separate care and special treatment in existing institutions of youthful offenders. Placement of youthful offenders in facilities not under the control of the department does not terminate the control of the department over those persons. Removal to facilities for mentally ill, developmentally disabled, drug dependent and alcoholic persons shall be as provided in ch. 51.

(3) A youthful offender may be transferred to an adult correctional institution other than the state prison. Such transfer may be made only upon application and hearing held in the court which determined the person to be a youthful offender. The department shall show that the youthful offender cannot practicably be detained at a youthful offender institution and that the offender's presence constitutes a substantial danger to the staff, other inmates or to the offender. Pending disposition of a court hearing, the youthful offender may be held in a county jail. The court may transfer the hearing to the circuit court in the county of detention. The youthful offender shall have the right to be represented by counsel at any court hearing under this subsection. If indigent, counsel shall be appointed by the court.

(4) Public facilities shall accept and care for youthful offenders placed with them by the department. A public facility is not required to serve the department in any way inconsistent with its functions or with the laws and rules governing its activities.

(5) The department may inspect all facilities used under this section and examine and consult with youthful offenders who are placed in such facilities.

(6) After July 1, 1977, the department shall maintain full separation of criminal and youthful offenders.

History: 1975 c. 39, 199, 224, 430